newsletter on
intellectual freedom
IFC ALA

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ISSN 0028-9485

November 1991 ☐ Volume XL ☐ No. 6

FTRF files brief in Morristown case

U.S. District Court Judge H. Lee Sarokin's May 22, 1991, decision striking down rules and regulations of the Morristown, New Jersey, Public Library (see Newsletter, *July 1991, p 116; September 1991, p 169) has attracted significant attention. In his decision, Judge Sarokin recognized both the right and necessity for libraries to make reasonable, specific, and necessary rules governing library use, and the library user's First Amendment right to receive information. Subsequently, however, the Morristown Public Library filed an appeal of all points in the decision — including Judge Sarokin's holding that public libraries are public forums and that there is a First Amendment right to receive information. In fact, the library brief affirmatively argues that public libraries are* not *public forums and there is* no *First Amendment right to receive information.*

On September 12, the Freedom to Read Foundation filed an amicus curiae *brief in the U.S. Court of Appeals for the Third Circuit in the case. The brief was filed in support of neither party, but, for the first time, lays out a newly formulated analysis of public libraries as public forums for* access *to information. Separating the public library from traditional public forums, such as parks or streets, which have always served as places for the* dissemination *of information, the Foundation's brief identifies the public library as a traditional public forum for* access *to information. Acknowledging that libraries have the right and responsibility to make rules governing patron behavior, the brief argues that, as a public forum for the access to information, library rules must meet the legal standards of reasonable time, place, and manner regulations, or which are directed to non-speech elements of conduct in a manner which only has an incidental effect on freedom of expression while furthering a significant government interest.*

The second crucial point argued in the FTRF brief is that there is a well established First Amendment right to receive information, essential to the preservation of the First Amendment rights as a whole. Obviously, the right of the speaker to speak cannot be fully realized without the corresponding right of the hearer to hear, view or read.

Excerpts from the brief begin on page 211.

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

in this issue

targets of the censor

(ISSN 0028-9485)

Newsletter on Intellectual Freedom is published bimonthly (Jan., March, May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, Illinois 60611. Subscriptions: $30 per year (includes annual index), back issues $6 each from Subscription Department, American Library Association. Editorial mail should be addressed to the Office for Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611. Second class postage paid at Chicago, Illinois at additional mailing offices. POSTMASTER: send address changes to Newsletter on Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611.

'worst' year for school censorship

More attempts to censor school books were made last school year in the United States than ever before, according to a report released August 28 by People for the American Way, a liberal advocacy group. "In the last few years we have witnessed a vicious assault on free expression in all its forms," said Arthur J. Kropp, president of the 300,000 member organization. "The 1990s are taking shape as the decade of the censor, and the public schools have not been spared."

The group's ninth annual report on *Attacks on the Freedom to Learn* cited 264 instances in 45 states, including 229 incidents of attempted censorship, up about 20 percent from the previous year and 33 percent from 1988-89. "The 1990-91 school year was the single worst year for school censorship in the history of our research," Kropp said. "There were more incidents of attempted censorship, and more instances where challenges were successful." According to the report, most of the complaints came from conservative Christians who "want public schools to train the next generation of Americans to think as they do," Kropp said.

"National conservative groups have retaken the censorship initiative," Kropp charged. "Public school materials [are] challenged for nothing more sinister than depicting diversity, telling the truth about troubling issues, or teaching children to face up to problems and take responsibility."

The report found that California had by a wide margin the most incidents of attempted censorship with 36, followed by Oregon (19), Michigan (17), Illinois (15), and Texas (13). South Carolina and New York ranked next with ten incidents apiece. But the report concluded that "the problem is not restricted to any single area of the country."

The report concluded that charges of anti-Christian, satanic, occultic or even "New Age" content had emerged as the favorite accusations of would-be school censors. Such theological or sectarian charges have become more common than charges of "secular humanism," profanity and sexual frankness, which predominated in surveys by the organization in the mid-1980s. According to the report, 149 of the 264 reported incidents involved theology and ideology, including charges of satanism.

People for the American Way also found less emphasis on attempts to get schools and school libraries to ban some traditional targets, such as J. D. Salinger's *Catcher in the Rye*, Mark Twain's *Adventures of Huckleberry Finn* and John Steinbeck's *Of Mice and Men*. Although all three still remained on the list of ten most frequently targeted materials, each ranked lower than in previous years. Juvenile and young adult author Judy Blume — the "most censored" author of the 1980s — dropped out of the top ten.

"Special curricula dealing with drug abuse prevention or sexuality came under heavy fire last year," the report said. Indeed, the most censored items were not individual books but curricular programs and reading series. By far the single most censored title was the *Impressions* reading series, targeted 45 times by groups alleging it contains satanism and violence. The fifteen-volume series of elementary school readers contains 822 literary selections and was the target of a whopping 23 percent of all the incidents documented in the reports. The next most targeted materials were the Quest International self-esteem development and drug prevention program and the Michigan Model Program for Comprehensive School Health Education.

"In almost all instances, *Impressions* challengers complain that the series promotes satanism, the occult and New Age religion," Kropp said. "In one case, for example, challengers cited pictures of rainbows . . . and asserted it was a symbol of the New Age. Elsewhere, they charged that cats in the books' stories suggested a preoccupation with the occult."

"Challenges go far beyond efforts to remove individual novels from the curriculum," the report concluded. "Thirty-one percent of the challenges were to works that no child was required to read — library books or optional materials, for example. Challenges were registered against classic works of literature, sex education programs, drug abuse prevention curricula, biology curricula, and a range of other materials."

Other titles comprising the top eleven targeted materials were, in descending order: *Catcher in the Rye; Preventing Teen Pregnancy*, a video series; *Curses, Hexes and Spells*, by Daniel Cohen; *How to Eat Fried Worms*, by Thomas Rockwell; *Huckleberry Finn; Of Mice and Men; The Witches*, by Roald Dahl; and *A Wrinkle in Time*, by Madeleine L'Engle.

All incidents in the report involved efforts to ban materials across-the-board after school districts adopted them and did not include any efforts by parents to have only their own children exempted from use of materials. In about five percent of the cases reported, liberals tried to initiate the bans, Kropp said, including one case involving the ACLU (see *Newsletter*, September 1991, p. 173). Reported in: *Arkansas Gazette*, August 29; *Atlanta Constitution*, August 29; *Birmingham Post-Herald*, August 28; *Charleston News & Courier*, September 1; *Chicago Tribune*, August 29; *Harrisburg Patriot*, September 1; *Richmond Times-Dispatch*, August 29; *St. Louis Post-Dispatch*, August 29. □

kids have rights, too

At the American Library Association's 1991 Annual Conference in Atlanta, the ALA Intellectual Freedom Committee, the Intellectual Freedom Round Table, and the Intellectual Freedom Committees of the American Association of School Librarians, the Association for Library Service to Children, the American Library Trustee Association, the Public Library Association, and the Young Adult Library Services Association (previously, the Young Adult Services Division) sponsored a program entitled "Kids Have Rights, Too." The program featured Robert Kohn, a partner in the law firm of Hodges, Loizzi, Eisenhammer, Rodick & Kohn; Frances McDonald, Professor of Library Media Education at Mankato (MN) State University; and Pat Scales, Media Specialist and Librarian of the Greenville (SC) Middle School. Edited versions of their remarks follow.

remarks by Robert Kohn

Robert Kohn is a partner in the law firm of Hodges, Loizzi, Eisenhammer, Rodick & Kohn, located in Arlington Heights, Illinois, a suburb of Chicago. The firm specializes in representing public entities, and Mr. Kohn's practice is concentrated in public sector law, municipal contracts, and student rights issues. In addition to acting as legal counsel for school boards, Mr. Kohn is an elected member of his local school board.

Let us imagine that you are librarians by day and school board members by night. I know for some of you in the audience this is not too far from reality. You are duly elected members of the Board of Education of your local school district, which provides an education to students enrolled in kindergarten through twelfth grade.

You have a board of education meeting tonight with an extremely full agenda. The first item on your agenda concerns a student discipline matter. You are going to review the five day suspension of four ninth grade students for protesting against the Persian Gulf war. The students wore black headbands that contained the peace symbol and passed out pamphlets protesting the United States' involvement in the war. Because of the tremendous support for the war in the community, including among faculty and students, the students were verbally abused and caused a commotion in their classes. The principal suspended the students because responses to the pamphlets and the headbands disrupted classes. The principal even commented that he was suspending the students for their own safety because he feared that they might be physically attacked for their unpopular views.

As if the first item on your board agenda was not enough, you have heard from various community members that some parents are going to attend the board meeting to discuss the board's pending action to remove a book from the school library. The Superintendent is recommending that the Board remove *The Hoax of the Twentieth Century*, by Arthur Butz, which contends that the Holocaust never occurred.

In addition, you just received a call from the Superintendent. He has seen a copy of one of the student speeches for your school district's high school graduation, which is to be held tomorrow. The Superintendent is concerned that the content of the speech is inappropriate and wants the Board to discuss whether or not to prohibit the student from speaking. You have not seen the speech, but understand it concerns the threat to students from AIDS, referencing sexual relations, both heterosexual and homosexual, and advocating the use of condoms.

Finally, you went to the school board office at the high school building this morning to pick up some papers for tonight's meeting. As you were walking through the building, a student, or someone you thought looked like a student, handed you a newspaper. In browsing through it, you learned that it advocated fundamentalist Christian teachings. The newspaper had several articles, some of which condemned abortion, and others complained of the alleged satanistic content of school textbooks. Attached to the newspaper was an announcement of a meeting of a fundamentalist Christian group at the high school, to be held immediately after school. The announcement invited all students to attend. You are somewhat puzzled because the announcement and the newspaper frequently mentions the school district and many schools.

You have an important meeting at work this afternoon to discuss the evaluation of staff. But your mind is focused on the chaos that seems to surround your school district. Although your first reaction is, "why did I ever want to be a school board member," you begin thinking of how to deal with the many issues facing your school district.

This afternoon, we will explore the rights of students under the First Amendment to the United States Constitution. Our overview of the law will cover First Amendment protection in the areas of symbols, books, student newspapers, distribution of materials on school property, and meetings of student organizations on school property.

Students have other rights, such as the Fourth Amendment right to be free from unreasonable searches and seizures, which occurs in searches of student lockers and cars or strip searches. Students also have Fifth and Fourteenth Amendment due process rights, which frequently arise in student discipline cases. These rights, however, are beyond the scope of these remarks.

Today's speech will be an overview of the law, focusing on U.S. Supreme Court decisions. We have attendees from all over the country and Supreme Court decisions govern your actions regardless of where you live.

When we talk of students we also need to focus on the age or grade level of the student. Throughout my remarks, I will

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challenged books, blurred boundaries

The following is the text of remarks delivered by author Jean Craighead George at a program sponsored by the ALA Intellectual Freedom Committee and the Association of American Publishers Freedom to Read Committee at the 1991 ALA Annual Conference in Atlanta. Jean Craighead George is the author of over forty books, including the 1973 Newbery Medal-winning Julie of the Wolves, *the 1960 Newbery Honor Book*, My Side of the Mountain, *and its 1990 sequel*, On the Far Side of the Mountain. *Ms. George was raised in a family of naturalists, and her life has centered around nature and writing. In the 1940's she was a member of the White House press corps and a reporter for the* Washington Post.

A retired friend of mine compiled a file of quotes and jokes that speakers could use as openers. I asked him to see if he had some amusing stories on the subject of literary censorship. He called back three long days later to say he had exhausted his resources and found nothing funny. "You are walking in serious waters," he said.

And so, I tremble a bit to be speaking on the sensitive and emotional subject of "Challenged Books, Blurred Boundaries." But I also welcome the opportunity. Judith Krug, your director of the Office for intellectual Freedom, wrote in her letter of invitation to me: "As you are fully aware, your highly acclaimed books have been the subject of challenges, and requests to restrict or remove them from the shelves of libraries."

I am fully aware; and I *think* I am pleased to have the opportunity to talk about these challenges, although I am somewhat embarrassed to do so. A banned book means to me that I have failed as a writer. I have not handled sensitive material as artistically and as clearly as I should have.

Every writer is a censor and none are more conscious of working within the blurred boundaries than children's authors. We speak to an audience who is young, full of insecurities and doubts, an audience that understands some things and not others, and consequently, we select our words for them with great care.

When I start writing a children's book, I censor my adult thinking and go back to my childhood. I feel again the fears and joys of a young person. I feel their reaction to their parents, to the awareness of love in themselves. I feel their curiosity about sex. I taste their response to aloneness, competition, knowledge, status, loss and gain. Children are not blank sheets of paper on which adults write what they want them to know. They are highly complex and thinking people and we need to give them every chance to read, make judgments and grow. That means adults should not ban their books. They must select to truly learn. Children ban books everyday for their own good reasons: dullness, preachiness, or because the subject is over their heads. My granddaughter, Rebecca, selects her reading by how battered the books are. "Those are the good ones," she said. I presume the unbattered ones are ablaze with the message, "Beware, no good."

I have been reviewing the research of scholars of censorship in children's literature to find the reasons behind the banning of children's books. After surveying newspapers and other media, they conclude that children's books are censored for three major crimes. The censors are parents, teachers and librarians primarily. A prime reason for censorship is realism. Realism is not good for children, I learned. *Julie* was banned in certain schools and libraries because the censors objected to the fact that Julie, forced to marry, refused the advances of her child-adult husband in a kid's kick and scratch fight. Beverly Cleaver's *Where The Lilies Bloom* was banned for telling a sensitive story in which the protagonist dies.

Profanity is another reason to ban a children's book. No matter how necessary to the development of a character an expletive is, a writer of children's books must not use even the word "Lord," as I did in the last line of *Vulpes, The Red Fox*. "Lord, he's a beautiful animal," I quoted the old fox hunter as saying just before he shot the fox. To me, his words were a prayer and an apology. To critics, it was profanity. The book was not banned, it made it to the Lewis Carroll shelf, but I was warned.

The censors had a bit of a point there, I recalled. My father told my brothers and me that anyone who had to resort to swear words showed a lack of vocabulary and imagination. This meant to me that it was all right to swear if you made up your own words, which my cousin and I did. My father would have praised Paul Zindel, whose book *The Pigman* was banned for profanity, although he not only made up his expletives, but also put them down in imaginative symbols.

Finally, we come to sex in a children's book. Most are banned for this explosive reason. Children must be protected from sex no matter if withholding information means death, as it does today with AIDS now threatening every group. Judy Blume, although she is a good writer, has been banned and banned and banned.

Realism, profanity and sex, then, are the prime reasons for banning most children's books; also racism, as in *Huckleberry Finn*.

I can add a few more to the list.

When a young woman called me from Miami, Ohio, to say a certain element wanted to ban *Julie of The Wolves* in schools in that town, she asked if I knew about it. I told her no. "You mean," she said, "people who ban books aren't courteous enough to tell the author? You should be given a chance to defend it."

Thinking that the Ohio group considered page 102 to be a rape scene, which it is not, I told her she might suggest in her article that the committee reread the English in that paragraph carefully. "'Tomorrow, I can,' does not mean, 'Today I did,'" I said, and then went on to tell her that I

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censorship pressures on Canadian libraries

By Alvin M. Schrader, Ph.D. The following article summarizes a study of censorship in Canadian public libraries between 1985 and 1987. The study was funded by the Alberta Foundation for the Literary Arts, the Small Faculties Endowment Fund at the University of Alberta, and the School of Library and Information Studies at the University of Alberta, at which the author teaches.

Is Canada a nation of quiet censors and quiet censorship, as the Book and Periodical Development Council charged in 1984? The impetus for the study summarized here was the realization that Canadian public librarians lacked national comparative data on the scope and nature of community pressures to censor materials housed in the nation's public libraries. The study was designed to remedy this long-standing deficiency, and thus to shed light on the prevailing climate of intellectual freedom in Canadian public libraries.

The study was carried out by questionnaire survey, and asked for information from all public libraries across Canada for the 3 years between 1985 and 1987. The survey took place in early 1988, with follow-up by telephone and mail of selected non-respondents in late spring.

Overall, the survey response was very positive: 560 public libraries participated out of 1,000 across Canada. By political jurisdiction, the response rate varied from slightly less than half of the public libraries in Ontario and Quebec, to 85% or more in Alberta, Saskatchewan, Nova Scotia, Prince Edward Island, Newfoundland, and the two Territories. Respondents served 19.4 million residents in 1987, thus accounting for 76% of all Canadians. They reported 7.5 million registered borrowers, circulated over 142 million items, and provided 46,000 hours per week of service.

The typical respondent to the survey was a relatively small, single-unit public library located in Ontario, with an average per capita circulation in 1987 of between 6 and 7 items per year, serving 6,000 residents, reporting 2,000 registered borrowers, circulating over 36,000 items, and providing 33 hours per week of service.

Do Canadian public libraries have in place formal, written policies relating to intellectual freedom and access? The answer is that only 1 out of 4 have adopted all of the following: a written selection policy, a written policy for handling objections, endorsement of the CIA Statement on Intellectual Freedom, a written form for registering objections, and a written donations policy. At the other extreme, a similar proportion reported that they had not adopted any of these policies at all.

Do Canadian residents enjoy unfettered, unrestrained access to published materials through their public libraries? A considerable number of young people across the country do not: 40% of survey respondents reported that they either restrict borrowing by age, or require written parental or guardian consent for minors. And, while most public libraries allow patrons over the age of 12 or 13 to borrow adult books and comics, others limit borrowing privileges of these materials to patrons over the age of 14, 15, 16, 17, or even 18. Some respondents restrict access to specific titles, or to certain categories of materials, such as adult fiction, violent material, sexually explicit material, or other items on sexuality and sex education.

Are public libraries susceptible to censorship pressures? Some indication of this was obtained by means of a controversial holdings checklist, which consisted of 30 titles that could be deemed potentially controversial in that they had been subjected to censorial pressure during the previous 4 or 5 years in Canadian public libraries. Of the 556 respondent public libraries that reported checklist holdings, mean ownership was 13 titles per library (43% of the checklist). Collectively, Canadian public libraries owned all 30 items, so that all of the titles were available somewhere in Canada; 12 titles were owned by half or more of the survey respondents (see table 1 below).

But the most compelling evidence about patron access to public library collections is found in survey reports on overt challenges, that is, on direct requests to remove or otherwise restrict access to one or more titles. On average, at least 1 direct challenge occurred every day of the year, somewhere in Canada. And as many as 4 public libraries per week were affected. In terms of each of the three years in the study, there were 155 and 160 objections reported in each of 1985 and 1986, and 254 in 1987; but this increase in 1987 is not a real one: it is more likely due to better library records and better respondent memories. (The average rates of 1 challenge per day and 4 libraries per week were calculated on the basis of the 1987 data, conservatively adjusted upwards by 20% of 440 survey non-respondents to account for challenges among this group.)

In total, during the 3 years between 1985 and 1987, direct challenges were reported by 1 out of 3 public libraries. These institutions served municipalities with over 13 million people, thus implying a potential denial of access to particular public library materials for 7 out of every 10 Canadian residents represented in the study. Public library patrons in every political jurisdiction were potentially affected, but there were wide variations: 30% or less of the public libraries in Alberta, Manitoba, and Ontario; all of the public libraries in the two Territories, Saskatchewan, and Prince Edward Island.

Over the 3 years in the study, direct challenges reported by respondents totalled 700; in 1987 alone, there were more than 250 incidents. Altogether, there were 600 objectors. Most of them initiated only 1 objection, but 10% initiated 2 or more.

Objectors were described as about half adult patrons and about half parents (even though so many described themselves as parents, only 10% said they were representing a child). Five percent represented groups. Challenges

were communicated to library staff about equally between verbal and written forms, although it is very likely that verbal challenges are generally understated.

To put these patterns into perspective, over a 3-year period, some 600 individuals and groups in Canada attempted to intervene in the public library selection process, basing their actions on personal tastes, preferences, beliefs, values, fears, and prejudices as legitimate criteria for determining the collection content that should be made available to more than 13 million other people.

A total of 500 different titles were involved in the challenges between 1985 and 1987. They were challenged for many different reasons, most frequently because of sexual explicitness, nudity, violence, and unsuitability for a particular age group. But there were many other reasons, too, revealing a fascinating (and at times bewildering) spectrum of community values, social attitudes, and ideological mindsets. Among the other complaints about materials were: negative moral values or behaviour; coarse language, profanity; discriminatory (sexist, racist, or anti-semitic); the occult, supernatural, witchcraft, or devil worship; offensive to religion, blasphemous; homosexuality; and misinformation or bias (medical, scientific, or political).

Almost all of these 500 titles were complained about only once between 1985 and 1987, but a small minority received more than one complaint. What this appears to imply is that, although it may be possible to identify those subjects that are vulnerable to censorship pressures, it is not possible to predict the specific titles that will be challenged. The selection of titles deemed offensive seems to be capricious if not altogether random.

Leading the statistics for most offensive title was *Lizzy's Lion*, with 11 complaints over the 3 years in the study, followed by *Forever, Wifey, The Haj, Slugs, Where Did I Come From?*, and *Outside Over There* (see table 2 below). What the table reveals is that a few titles were objected to several times, while most titles received very few objections.

The vast majority of objectors wanted the offending items removed from the collection, while a few requested internal relocations, access restrictions. labelling, or reclassification. Fiction was the most common category of challenges, about 3 out of 4 titles, equally divided between titles for adults and titles for children and teenagers.

How did public librarians across Canada handle these objections? In 70% of the incidents, the challenged titles were retained; there were also a few internal relocations and a few titles that had access restrictions imposed. In 99 incidents, or 16% of all challenges, the offending material was withdrawn from the collection. In about half of all cases, the decisions about how to handle the challenges were made by either the chief executive officer or a branch manager; in 10%, the decision was made by a library board or a municipal council. Almost half of the challenges were resolved within a month — in fact, many were resolved on the same day as the complaint was made. But another 28% took up to 2 months and 12% up to 3. In only 28 challenges, or 4% of all incidents, was there a report in the local media.

More subtle forms of censorial activity were also reported by public library respondents. Altogether, about 10% experienced incidents of indirect or "covert" censorship — those incidents of collection loss, theft, defacement, alteration, mutilation, or destruction that were suspected to have been attempts to prevent or restrict access by others. This works out to at least 1 or 2 public libraries per month.

Over the 3 years in the study, 1 out of 5 public libraries said that they had experienced acquisition pressures to acquire or accept materials; this amounts to at least 1 public library per week. These respondents served municipalities with 10 million people, just over half of the study population. The most common sources of these pressures were religious groups and political interest groups, which wanted to have literature supporting their beliefs on the shelves of the public library; one of the most frequently mentioned topics of pressure-group interest was abortion.

Almost half of the respondents reported that their public library boards or municipal councils had taken a public stand on Bill C-54, introduced by the federal government in May 1987 to replace the censorship provisions in the Criminal Code. Out of those who had taken a public stand, only 7% supported the legislation without qualification. Fully 93% — 220 public libraries — called for its withdrawal or, in a few cases, for withdrawal and amendment. Those opposed to the government's censorship bill represented municipal populations totalling 12 million Canadians, while those supporting it represented only 300,000.

In summary, this study has revealed an encouraging pattern of resistance by Canadian public librarians to censorship pressures from vocal members of their respective communities; they have shown considerable courage in striving to uphold the public trust in their institutions.

However, there are a least two areas which merit further examination and discussion by public librarians. The first is the public library community's treatment of one of its largest constituencies, children and young adults. The evidence from this study suggests that public librarians should become more consistent champions of the right of children and young adults to have unqualified access to library materials. In particular, the variations in age restrictions across Canada show that public librarians do not have a defensible national policy on intellectual freedom for minors.

The second area of concern is the matter of formal, written policies relating to intellectual freedom and access. Many public libraries still do not have them, and yet no public library is immune to challenge. Comments by numerous respondents indicated that the key to dealing successfully with challenges to materials is a collection development policy. While the existence of formal policies does not guarantee freedom from censorship pressures, such policies are im-

perative for sound, consistent management response to challenges; and patrons should be made aware of these policies to help them better understand the role and responsibility of the public library in maintaining freedom of expression and the citizen's right to freedom of choice.

Unfortunately, even these measures will not allow Canadian public librarians to rest easy in the years to come. The greatest challenges are likely to come from pressure groups and from governments and politicians at all levels. The following governmental measures are ominous: Bill C-264, which concerns instruments and literature for illicit drug use; the hate literature provisions of the Criminal Code; the continuing intervention by politicians as self-appointed arbiters of music, especially rap music, painting, and public taste; the overwhelming military censorship imposed during the Gulf War; and the continuing assault by Canada Customs on the importation of materials for reading, viewing, and listening — an assault that finds its primary focus, at the moment, in governmental discrimination against the right of the gay community to celebrate its own literature and erotica. And them, too, there is the ever-present threat of another federal censorship bill to replace the current obscenity provisions of the Criminal Code.

It is hoped that the findings of this research project, the first national comparative study of its kind in the world, will help to shed light on the prevailing climate of intellectual freedom in Canadian public libraries, and to provoke discussion about the proper limits on freedom of expression that are appropriate in the Canadian body politic. □

in review

The First Amendment, Democracy and Romance. Steven H. Shiffrin. Howard University Press. 1990. 285p. $29.95

What are your perceptions of the First Amendment? Consider them carefully before you read Steven H. Shifffrin's book *The First Amendment, Democracy, and Romance*. He will most likely challenge each assumption and belief with bold insights supported at every turn. Shiffrin, professor of law at Cornell University, believes that legal scholars as well as the average American do not appreciate the true meaning of the First Amendment. Inaccurate and oversimplified metaphors and symbols have been utilized to portray the First Amendment, fostering a one-dimensional portrait of a multifaceted document.

Shiffrin begins to build his case by discussing First Amendment doctrine. This presentation, although at times laborious, serves as a necessary basis for a better understanding of what is to come. He points to Supreme Court "renditions" of the meaning behind the First Amendment, the result being a serious lack of protection for those who speak out against the norm. He states that social engineering alone is insufficient to respond to social reality. For Shiffrin, romance is an essential ingredient in First Amendment interpretation and the understanding of freedom of speech. He then proclaims in dramatic fashion the focus of his book: Emerson and Whitman have more to offer in the way of First Amendment meaning and interpretation than do the mighty Holmes or Brennan. If this is a great deal to grasp, one needs only to read on for more eye-opening views.

An intense discussion of freedom of speech, dissent, and their value with respect to First Amendment meaning ensues. Shiffrin states that the First Amendment should not only protect dissent but reach "beyond its legal implications and functions as a cultural symbol to encourage dissent." In many cases, Supreme Court decisions, carefully cited by Shiffrin, display that "the culture has functioned in powerful ways to discourage engagement and dissent."

Shiffrin argues that scholars and citizens do not fully understand or appreciate First Amendment doctrine. To make matters worse, social engineering has been viewed in the past as sufficient to interpret cases that affect us all, such as *United States* v. *O'Brien*. Shiffrin terms it "perhaps the ultimate First Amendment insult." David Saul O'Brien burned his draft card and "was convicted and sentenced to the custody of the Attorney General" for his actions.

Shiffrin believes that this case as well as countless others needed an appreciation for romanticism on the part of those deciding such cases. "Moreover, the romantic vision itself can encourage a cluster of views that tie together around the notion of freedom or liberation." Emerson and Whitman believed that romantics are "those who are willing to break out of classical forms." Shiffrin believes to "promote dissent is to promote engaged association." Therefore, if dissent is viewed as a First Amendment value, the eclectic method of interpretation is not enough. A romantic approach is needed as well. Shiffrin says, "Whatever the court's methodology, the dissent value should play a more prominent role in the Court's rhetoric and its decisionmaking than has previously been the case." If a high value is placed on dissent, Shiffrin contends that this will have a significant effect on many decisions.

And so in a relatively short work backed with an outstanding and lengthy bibliography, Shiffrin makes the connection between the First Amendment, democracy, and romance. Although the first half of his presentation is at times like a legal lecture, it is necessary to provide a foundation for the case he so eloquently articulates in the latter portion of his book. The frequency of scholars cited to strengthen his points may also at times seem more than necessary, but if we can look beyond to the essence of his message we can close his book with a new understanding and appreciation for what is often taken for granted in our culture — the First Amendment — *Reviewed by Deborah Matthews, Librarian, Humanities Department, The Carnegie Library of Pittsburgh, Pittsburgh, Pennsylvania.* □

censorship dateline

libraries

Carthage, Missouri

The Carthage Public Library administrator said September 13 that a book that offended at least one member of the Library Board of Trustees was a reason that she was fired. Rose-Marie Gulley submitted her resignation, effective October 1, after it was demanded by the board.

"This resignation is not my choice and I have submitted it under protest," Gulley said. She told reporters that an incident involving the controversial novel *American Psycho*, by Brett Easton Ellis, "snowballed" and was one of the reasons the board requested her resignation.

Gulley described the book as "gruesome," but said it had been requested by two patrons, was on the best seller list, and was listed in *Publisher's Weekly*. "These are the same criteria that we use to order many of the other library books on our shelves," she said. The book was ordered and shelved in July.

After a complaint about the book by board member Patricia Flanigan, the library board in August directed Gulley to take the book off the shelf and keep it under the circulation desk. "I was told to keep the card in the card catalog, but not to check out the book to anyone under the age of eighteen," she said. At the September board meeting, Gulley said that Flanigan again brought up the Ellis book. "I thought the problem had been settled, but at the September board meeting I was told basically to lose the book," Gulley continued.

Gulley said she had not been given a chance by the board to rebut any charges about her performance. "Basically, I wasn't invited to attend the meeting," she said. "I don't specifically know what the complaints were against me or who was making them." She said the fact that the controversy over *American Psycho* was discussed in two board meetings gave her reason to think that it had been an issue. Reported in: *Kansas City Globe*, September 14.

Charlottesville, Virginia

A group of parents has filed formal complaints with Albemarle County school officials asking that five magazines be removed from school library shelves. In August, four parents, including two members of the conservative group Family Council, lodged complaints against *Mother Jones*, *Thrasher*, *Seventeen*, *YM*, and *Rolling Stone*.

After similar complaints in June, the school board agreed to ban the publications, but then asked that the complaints be lodged with school principals before a final determination, in keeping with an established policy (see *Newsletter*, September 1991, p. 153). As of mid-August, subscriptions to several of the magazines had been canceled because of budget cuts.

Mother Jones is a liberal general interest magazine. *Thrasher* is a skateboarding magazine aimed at teens, and *Seventeen* and *YM* are aimed at young women. *Rolling Stone* covers the music industry. The complaints say advertisements and articles in the periodicals contain topics inappropriate for middle-school and high-school students.

The complaining parents also want a requirement that all books, magazines, lecturers, textbooks and other academic material be screened before use in school is allowed, said one of the parents, Audrey Welborn. Only materials deemed appropriate should be permitted, she said.

According to Welborn, removing materials from school libraries is not censorship. "It is an exercise of judgment. A process that gives people the right to determine what goes on the shelves. A process that allows parental involvement," she said. Reported in: *Charlottesville Daily Progress*, September 8.

schools

Oakland, California

Almost four months after the Oakland school board rejected a controversial set of social studies textbooks (see *Newsletter*, September 1991, p. 154), the district is still bickering over how to replace them. Last year, California sanctioned a new set of social studies textbooks for the primary and junior high grades. But the Oakland board, overriding the city's teachers and siding with some ethnic advocacy groups, rejected the texts. Since then the city's schools have been thrown into chaos. Two weeks into the school year, students and teachers faced the disorderly reality of learning with no books, old books or books considered by just about everyone to be worse than those rejected.

Meanwhile, district officials and community representatives continued to argue over the new materials — what they will say, who will write them, and how much they will cost. There is little dispute that students should be taught more about the contributions and viewpoints of ethnic and cultural groups other than white Europeans. But there is ran-

corous debate about how to do that without distorting history or stirring racial discord.

Once the state-sanctioned texts published by Houghton Mifflin were rejected, the Oakland Board of Education selected different texts for certain grades and received state waivers to buy them, even though the alternatives were widely considered to be inferior to the rejected books. But in grades four, five and seven they found no books that matched the new statewide curriculum. In the fourth and fifth grades, where that framework still stresses California and American history, old textbooks have been dusted off, books that date to 1985 and reflect virtually no multicultural perspectives.

In seventh grade, the focus has been shifted to the study of history from 500 to 1789, with a focus on non-Western civilizations. The old books make no sense with the new curriculum. And the teachers have no lesson plans, dittos or other materials from years past, and little knowledge of Islamic, Ming Chinese or Aztec history, which they now must teach.

One result is that the rejected text has sneaked into the classrooms. At the Claremont Middle School, for instance, where the Houghton Mifflin books were tested last year, seventh grade teachers used a semester's worth of copier paper in the first two weeks duplicating chapters. "We're in better shape than other schools because we have one set of the books here," said Steven Weinberg, chair of the social studies department, who voted for the books when the teachers sent their favorable recommendation to the board.

Meanwhile, the fight continues over who will select supplementary readings and appoint review committees. The district issued each teacher a generic geography lesson, appropriate for the grade, which is not very useful and covered only the first six weeks. The district also said it would use lessons prepared by a volunteer group of educators. The community committee that led rejection of the books has also prepared alternative materials.

That committee spend the summer writing its own six-week lesson plans for grades four, five and seven. It was a "hairy" process, said Fred Ellis, a professor of education at California State University, Hayward, and a leader of the group. Many ethnic organizations participated, each wanting its own group's heritage told in its own way, and decisions were made by consensus.

The district has said it would use the committee's lessons for fourth and fifth grades, although they remain sketchy. But the seventh-grade material was deemed unacceptable by the district curriculum department and by some board members.

One section of the seventh-grade material — widely criticized in the media and subsequently withdrawn — was a worksheet, headlined "Crimes of a Racist Society," which included pictures of the nonwhite victims of an accused mass murderer in Milwaukee and an editorial cartoon of Judge Clarence Thomas.

"These issues of racism are very important and they need to be addressed by students," said Shelly Weintraub, who runs the social studies division of the curriculum department. "But somewhere along the line, we have to teach medieval world history."

Creators of the new materials argue that they are imperfect, but pointed in the right direction, an argument, it should be noted, made as well by supporters of the Houghton Mifflin texts last spring.

It's a curriculum in creation," said Kitty Kelly Epstein, an associate professor of education at Holy Names College and a leader of the community group. "It reflects the struggles and debates of this community. We can go into the classroom with this and evoke the big questions and then modify it based on criticism."

The board shows no sign of endorsing that approach, despite having few alternatives. "It was amateurish," said board member David Anderson, who opposed the Houghton Mifflin texts, of the community group's materials. "We voted on this in June and here it is September and we're still no further ahead." he said. "We cannot afford to be the laughingstock of California." Reported in: *New York Times*, September 18; *Oakland Tribune*, September 20.

Simsbury, Connecticut

As seniors, members of the drama club at Simsbury High School were compelled last spring to cancel their performance of the Pulitzer Prize- and Tony Award-winning play, *The Shadow Box*, by Michael Christofer, because school officials said it was too risque. Superintendent of Schools Joseph Townsley and Principal Dennis Carrithers forced cancellation of the play by asking for script changes that the students said unacceptably watered down the quality of the production.

On August 2 and 3, however, as graduates, the nine-member cast presented the uncut version of the play without school sponsorship at Eno Memorial Hall, Simsbury's town meeting hall.

"It's not like it's vindication," said Michael Bray, former co-president of the drama club, who graduated in June, "because we were censored. We just wanted to do the play. We can show that we can do the play and that there is an outlet for real drama, without going through the school system." The production was directed by Simsbury High English teacher John Stanko, who stepped down as volunteer director of the school club after the flap with school officials.

The Shadow Box tells how three dying people — a homosexual, a blue-collar worker, and a blind, handicapped woman who recently had a mastectomy — cope with terminal illness while living in a hospice. The play includes references to fornication, homosexuality, oral sex, masturbation, testicles, and breasts.

David Mattson, assistant school superintendent, said he had no problem with the play being performed at Eno Hall. He said the original controversy "had nothing to do with the play itself, but the audience it was intended for." Simsbury's culture, parks and recreation department rented the hall to the former students. The department director said he viewed the performers as an "adult theater group" and had no problem with the play. Reported in: *Hartford Courant*, July 22.

Sanford, Florida

Seminole County ninth graders will not get a peek at a sex education textbook that critics say goes too far. Without comment September 4, a committee that designed and wrote the sex education curriculum for elementary and high school students dropped the supplemental textbook, *Education in Sexuality*, from the ninth-grade curriculum.

Parts of the book, which would have been used only in the classroom, included descriptions of birth control devices, sexual arousal and oral sex. Those sections were not planned to be used, but students could have read them on their own. The committee agreed to write its own material on contraception and to appoint another committee to review eleven videotapes middle and high school teachers may use as supplements.

Parents at the meeting said they were glad to see the textbook go, but were still angry that the school board did not have to approve the final curriculum. Robin Haase of the Seminole County Christian Coalition said only four parents served on the 35-member committee. She said her group would consider pressuring the school board to vote on the curriculum.

The committee originally approved the textbook in July. Although only non-controversial parts of the book were to be used, critics said students would have access to pages on birth control, sexual arousal, masturbation and homosexuality. Reported in: *Orlando Sentinel*, September 4, 5.

Wheaton, Illinois

A group of Lowell Elementary School parents may consider legal action to block Wheaton-Warrenville District 200 from using the controversial *Impressions* reading series in their children's classrooms. About eighty parents hired attorney Robert Gildo to represent them and on August 28 he approached the school board with a request that the series be banned.

The books, used as supplementary material for children in kindergarten through grade five, have been under fire in the district for a year. In March, the school board decided to keep the books but to allow parents to have children opt out of selected readings. The board also agreed to investigate whether a better series is available (see *Newsletter*, July 1991, p. 131).

Some Lowell parents say, however, that the opt out procedure is "unnecessarily burdensome" and "unfairly places teachers in the middle of the controversy." The parents, who dislike the series because it contains stories that are depressing or frightening and encourages children to defy their parents, want their children to be able to avoid all *Impressions* material.

Gildo said he would look into a lawsuit that would block use of the materials. He maintained that there are "blatant examples of impropriety" in the books. "My clients are demanding the right to opt their children out of the entire *Impressions* material," he said. The parents say they believe that while *Impressions* would be harmful to their children, they are not seeking to impose their position on others. Reported in: *Barrington Daily Herald*, August 29.

Dallas, Texas

A sexually explicit folk tale prompted Dallas school administrators to have teachers rip an offending page from school textbooks, a move that outraged some educators. The story, which refers to male genitals and bodily functions as metaphorical characters, is contained in *African Folktales: Traditional Stories of the Black World*, a textbook to be used by two hundred high school seniors taking a world literature honors course.

The school administrators said they recommended the move because the story didn't fit the curriculum. "We just simply asked [teachers] that since this is a text that's going to be used in the classroom, just remove the page," said Georganna MacQuigg, the school system's director of curriculum development. Instructors were also asked to avoid teaching the first two chapters of another book that dealt in part with circumcision and puberty.

Some teachers were unhappy with the decision. "There's no way you can deal with mythology without talking about sexual images," one high school teacher said. Added another: "These are not the type of students who snicker over every little thing. We're talking about students who do have some kind of intellectual capacity. There's nothing in that [textbook] they haven't already read in a biology book." Reported in: *American School Board Journal*, September 1991.

periodical

Berkeley, California

Staging a *Playboy* read-in in Berkeley is asking for a fight, and when a feminist antipornography group and an ad hoc assembly of First Amendment advocates met at Bette's Oceanview Diner the result was a food fight. Armed with trays of ketchup-laden hot dogs and sliced up tennis balls, the antipornography protesters came to show their support for the very thing that Berkeley writer Bill Redican staged

the read-in to protest: On August 28, a waitress at Bette's had asked a patron to put away his *Playboy* because she didn't want to look at the pictures while serving him breakfast.

Playboy reader Mike Hughes balked at the request, finished his breakfast, left her a tip consisting of a note saying, "read the First Amendment," and promptly called *San Francisco Chronicle* columnist Herb Caen to report the incident. When Redican read Caen's account, he decided to stage the read-in and distribute free *Playboys* to anyone who showed up. "I thought it was going to be more like a party," Redican said, his jacket splattered with ketchup.

It was, as a local paper later put it, "a classic Berkeley protest, the ultimate collision of political and foodie culture." As the two dozen conflicting protesters hurled sometimes obscene insults at each other, Bette's waitresses plied the bemused crowd of onlookers with coffee and free scones — complete with advertisements for Bette's scone mix.

Playboy isn't my regular reading material," Redican said, "but sometimes you have to stand up for basic rights. *Playboy* is entitled to the same protection in a diner in Berkeley as a feminist magazine is in a truck stop on the backroads anywhere in this country."

Both Mike Hughes and Barbara the waitress, who will not give her last name for fear of harassment, showed up for the melee. "I'm here", said Hughes, "because I think the real issue is getting lost. This isn't about sexuality or violence against women, although those are important issues that deserve attention. The issue today is censorship, the First Amendment, and the freedom to read what you want when you want."

"Bette's is a great restaurant, and Barbara is a great waitress. But I felt that Barbara needed to learn that there are more important issues going on here than her personal beliefs about pornography. Someday, she may be sitting in a restaurant reading something and a waiter will ask her to put it away because he doesn't agree with it."

"This is clearly an issue of sexual harassment," countered Barbara. "The guy was holding the magazine in a very obvious way, waving the pictures in my face so I couldn't avoid looking at them! There are laws in this country that protect women from that sort of thing. I didn't ask him to leave the restaurant. I didn't ask him to stop reading. I asked him to please hold the magazine in a more discreet fashion so it wasn't in my face. And suddenly he started screaming about the First Amendment."

Hughes recalled it differently. He said he wasn't even looking at the pictures, but was, ironically, reading an article on the First Amendment. "The waitress did not see one picture of naked women ever. I wasn't flashing pictures around. I wasn't looking at the pictures. The magazine was lying flat on the table. I was reading an article. The real issue here is my right to read what I want in a public place."

Bette Kroening, owner of the diner, said, "I don't read *Playboy* and I don't like pornography. It offends my sensibilities, but it's not my business as a restaurant owner to tell people what they can and cannot read," Kroening said the restaurant had adopted a new policy that customers can read whatever they like, but if a waitress doesn't want to wait on them, she can ask to be assigned to another table. Reported in: *East Bay Express*, September 27.

films

Quincy, Massachusetts

The mayor of Quincy asked city theaters not to show the critically acclaimed film, *Boyz N the Hood*, after the city's acting police chief said the film "is of no value and is nothing but trouble." Mayor James A. Sheets sent a letter to Entertainment Cinemas asking that the movie not be shown in Quincy Center theaters.

"It seems very apparent that the showing of this film has been at the bottom of many riots," Sheets wrote. "I would hope that this will not happen in Quincy." Sheets wrote the letter after the city's licensing board voted unanimously at a meeting August 6 to ask theaters not to show the film. Quincy Police Capt. Frederick J. Laracy, acting chief of the department, said he brought the issue before the board.

The owners of both major Quincy theaters said they did not intend to show the film anyway. "It's basically a family neighborhood theater, and we wouldn't play anything controversial like that, mostly because it causes disturbances among the audience themselves," said Arthur Chandler, owner of the Wollaston Theater.

The opening of the film in July in theaters throughout the country was marked by violence and many theaters decided not to show the movie or provided extra security for its run. The initial violence was not repeated in subsequent weeks, however, and the film met with a generally favorable critical reception, owing partly to its strong stand against drugs and street gangs. Reported in: *Boston Globe*, August 8.

New York, New York

Miramax Films launched a crusade against the major television networks after all three refused to air ads for its film *The Pope Must Die*. "It's censorship squared," said law professor Alan Dershowitz, hired by the networks "to monitor the situation and negotiate with the networks."

Both CBS and NBC said they wouldn't broadcast the commercial for the film, a satire in which a bumbling country priest is mistakenly named Pope. "We believe it contains material that would offend a substantial segment of our viewing audience because of its sacrilegious nature," said an NBC representative. ABC, however, said it rejected the spot because of two technicalities and said it would be willing to air a modified version.

A number of newspapers also requested changes to ads for the film. The *Boston Globe*, for instance, accepted the ad only after the title was changed to *The Pope Must...*! Reported in: *Wall Street Journal*, August 30.

Richmond, Virginia

Tongues Untied, the controversial film about black homosexuals pulled from PBS stations in July (see below and *Newsletter*, September 1991, p. 159), was dropped July 24 from the Virginia Museum of Fine Arts' 1991 "Nights for New Films" series. Museum officials cited "community standards" as their reason for deciding not to show the film. The hour-long movie by Marlon Riggs features scenes of men kissing and fleeting nudity. It was the first time in the series' five-year history that a film had been pulled from the schedule. It was replaced by "Ethnic Notions," an earlier Riggs film.

The decision to remove the film from the series was made by John Curtis, president of the museum's board of trustees. "I had to consider whether a state-supported museum which has family memberships, etc., could show it at this time," Curtis said. "Could we show it at 8 o'clock when public television stations, even in major markets, were moving the time back?"

"My decision that [*Tongues Untied*] shouldn't be shown at the Virginia Museum has nothing to do with my personal views of the film," Curtis added. "Unless you put your head in the sand, you're dealing with public perceptions." The theme of the series for the year was "Artists of Conscience," focusing on "current social, political and environmental issues." Reported in: *Richmond News Leader*, July 25.

television

Washington, D.C.

In the wake of lingering controversy over the refusal of about 100 public television stations to air a documentary about the experiences of black homosexuals (see *Newsletter*, September 1991, p. 159), the Public Broadcasting System (PBS) canceled a program about gay activists and backed away from a dramatic film about AIDS and homophobia.

On August 12, the network withdrew *Stop the Church*, a short film about a 1989 demonstration against Catholic church policies on AIDS, just two weeks before it was to air as part of the "P.O.V." series. "P.O.V." stirred controversy in July when it aired *Tongues Untied*, a film about gay African American men. David Davis, chief executive of the series, said that he concurred with the decision to pull *Stop the Church* because of the "tremendous stress" that the earlier fight had imposed on some affiliates. PBS programmers also refused to endorse the airing of *Son of Sam and Delilah* as part of the "New Television" series, although individual stations were allowed to air it if they wished.

Stop the Church, which includes footage of Catholic rituals cut against "The Vatican Rag," a decades-old satirical song by Tom Lehrer, "has a pervasive tone of ridicule which rather overwhelms its critique of church policy," said PBS representative Mary Jane McKinven.

John Grant, the network's vice president for scheduling and program administration, said the cancellation of *Stop the Church* was "a judgment call, a very subjective judgment call." He said PBS did "not look at this as censorship but as an obligation to distribute to stations programs that meet a certain level or standard."

"Our decision has nothing to do with the attack on the church in this program, it has nothing to do with the fact that it was made by an AIDS activist group," he continued. "It really is the tone and the ridicule that we found inappropriate for broadcast." Grant said he could not recall any comparable decision to pull a scheduled program because of its content. "Programs have been pulled after they had been scheduled, but each case has been different," he said. "I don't have a strong example that was pulled for content reasons."

Robert Hilferty, the 29-year-old filmmaker who made *Stop the Church*, denied that the film ridicules the Catholic Church. "It criticizes its political role," he said. "If the Catholic Church wants to play politics, they must take the consequences."

Hilferty is a member of ACT-UP, a sponsor of the demonstration recorded in the film. But he said the film was dispassionate. "Whether you like ACT-UP or hate it, everyone is fascinated," he said. "I don't pick sides. At the end, you judge whether what they did is right. It's not propaganda in the least."

Son of Sam and Delilah, which uses a serial killer as a metaphor for AIDS, was not endorsed by PBS because it is "obscure and unclear" and full of gratuitous violence, according to Melinda Ward, the network's director of drama, performance and cultural programming. Even after filmmaker Charles Atlas added a segment at the beginning that explained the metaphor, Ward said, the violence seemed unnecessary. "The real danger is that the audience wouldn't get it," she said. As of mid-August only WGBH in Boston and WNET in New York said for certain that they would broadcast *Son of Sam and Delilah*.

Although publicly PBS contends that both decisions were made without outside interference, privately network insiders said the problem was that public television has been under increasingly harsh attacks — mainly directed against local stations — from conservative and fundamentalist groups. For instance, a group called the Committee for Media Integrity has challenged the license of KCET in Los Angeles. According to Marc Weiss, executive producer of "P.O.V.," the Rev. Donald Wildmon's American Family Association has

threatened to pressure underwriters to withdraw funding from at least six stations.

According to Weiss, stations were so displeased with the publicity surrounding *Tongues Untied* that the "P.O.V." staff feared that another controversy might doom the program entirely. *Tongues Untied* was partly funded by a $5,000 grant from the National Endowment for the Arts. It was labeled offensive by Rev. Wildmon, who later claimed that 201 of PBS's 341 stations refused to air the show. Weiss would not confirm that figure, but estimated that the show reached about 60 percent of the potential PBS audience.

Susan Dowling, co-producer of "New Television" for WGBH, said that PBS was being overprotective of the stations. "They are gatekeepers of the system," she said, "and I respect that, but at the same time they're perpetuating protection of content, and by extension, homophobia. Whatever the programmers' claims, they have a damaging effect." Reported in: *Washington Post*, August 13; *Los Angeles Times*, August 14.

Washington, D.C.

Subscribers to Bravo, the cable television channel specializing in independent and foreign films, got something they didn't expect this summer: movie scenes that were bleeped, blurred, or just not there. The altered scenes all involved sex and obscene language, said the American Civil Liberties Union, which announced August 14 that it had asked Bravo to stop the practice, which it called censorship.

"The work of art is mutilated," said Marjorie Heins, director of ACLU's Art's Censorship Project. "The work cannot be seen...with the integrity it's meant to have."

Cable channels are subject to looser restrictions on content than broadcast channels, Heins said. But Bravo has become a basic cable service in many areas. In an August 5 letter to Bravo President Joshua Sapan, Heins expressed concern that this transformation had caused Bravo's new editing policy.

In a statement, the cable channel defended the editing of "a select number" of films to protect children. "With ninety-six percent of our viewers receiving the network as a basic service, available to all members of the household including children, Bravo believes that some editing is appropriate. Bravo's editing is focused on scenes that we believe are difficult for children such as portrayals of excessive violence or violent sex." A representative said the channel edits "less than five percent" of the movies it broadcasts.

This summer, a Washington viewer noticed that some of his favorite films, which had previously aired intact on Bravo, were rebroadcast with scenes cut out. "I didn't think anything of it, but it kept getting worse and worse," said Marcellus Rux.

Nude scenes had been cut from *Julia and Julia*, an Italian film starring Kathleen Turner and Sting, and from *Private Function*, a comedy. And a shot of a woman's bare behind in the Jim Jarmusch film *Down By Law* was electronically blurred. After seeing "ten or fifteen" altered films in the course of two months, Rux contacted the ACLU.

The films aired with no advisory that they had been edited, Rux said. "At the very least viewers ought to be made aware that the films broadcast on Bravo are expurgated," Heins said in her letter to Sapan. Reported in: *Newsday*, August 15.

Tupelo, Mississippi

The Tupelo-based American Family Association, a group headed by Rev. Donald Wildmon that is known for calling boycotts against products advertised on what it claims are offensive television programs, began taking its message to major advertising agencies this summer. Young and Rubicam and BBDO Worldwide received several bags full of postcards from AFA members in July, while J. Walter Thompson USA, Saatchi & Saatchi Advertising and Leo Burnett USA said they got similar mailings some time earlier.

Each preprinted postcard received by the agencies said: "I believe that your clients have the right to sponsor any program they desire, but please remind them that I have the right to purchase (or not purchase) any products I desire. I have participated and will continue to participate in boycotts promoted by the AFA."

In the mailings to Thompson and to Saatchi, the AFA warned the agencies that it planned to boycott sponsors of Norman Lear's new "Sunday Dinner" program on CBS because of "Mr. Lear's attacks on conservative Christians who believe in traditional values." The cards noted that AFA members are also boycotting S.C. Johnson & Son and Pfizer "because of their sponsorship of sex, violence, profanity and anti-Christian bigotry on the networks."

Rev. Wildmon said the postcard campaign was aimed at a half-dozen large ad agencies because marketers have often said after ads appeared on offending programs that "the agency did not follow [the marketer's] guidelines."

"We simply are trying to let the agencies know we're here," the Rev. Wildmon said. "This should reinforce what the advertisers say they're telling their agencies." Wildmon said the agencies that received cards were selected because they're among the largest domestic agencies, not because they handle specific clients.

In an editorial, the advertising industry periodical *Advertising Age* offered a suggestion as to how agencies might respond to the mailings: "What if the agencies beam those names and addresses [of writers of protest cards] into giant data banks and deluge the targeted protesters with polite replies, selected product samples, brand-specific promotional literature and the obligatory cents-off coupons?"

"Given the rapid growth of consumer data banks, can it be that marketers can actually benefit these days from boycotts that serve up names and addresses of boycotters?" the editorial asked. "That they will mean it when they tell boycotters, 'Keep those cards and letters coming?'" Reported in: *Advertising Age*, July 15, 22.

recordings

Boston, Massachusetts

The Miami lawyer who led 1990's anti-obscenity crusade against the rap group 2 Live Crew has launched a new campaign against the rap group N.W.A. that will focus on Boston and other key cities. Attorney Jack Thompson said in August that he would contact local and state officials asking that Massachusetts obscenity rules be enforced regarding the sale of N.W.A.'s latest album, *Niggas4life*, alternately titled *Efil4zaggin*.

"I'm planning on hitting Boston because the words 'Banned in Boston' still attract attention nationally," Thompson said. "I also think it's important to focus on places that have a reputation as being open-minded and progressive to prove how harmful this music is."

N.W.A., which stands for Niggas With Attitude, made news in 1989 when an FBI official complained about the song "F_____ tha Police" from the group's *Straight Outta Compton* album. Thompson calls *Niggas4life* "the most sexually violent album I've ever heard. It makes 2 Live Crew sound like Boy Scouts."

By blocking the sale of such albums to minors, Thompson said he hopes to "dry up all demand for rap records." Reported: *Boston Herald*, August 9.

Hickory, North Carolina

Catawba County District Attorney Bob Thomas was not laughing after hearing comedian Andrew Dice Clay's act. In a letter to eight record stores July 15, Thomas urged dealers to stop selling Clay's material. He said that Clay's record *Dice Man Rules* and "another record by him from 1989" were, in his opinion, obscene under North Carolina law. "As District Attorney I will follow the law and prosecute those who violate it," he wrote. If the material is not removed in a "reasonable length" of time, Thomas promised to pursue grand jury indictments against store owners.

Thomas said he made the request because he believes Clay's tapes are obscene and violate North Carolina laws. "He uses language referring to oral sex, vaginal and anal sex, masturbation and things of that type," Thomas said. Audio material has never been tested against North Carolina obscenity statutes, but Thomas said the tape he listened to for thirty minutes in his car violated state law. Thomas said his review of Clay's *Dice Man Rules* was prompted by a request from a Hickory minister.

At least one store, Disc Jockey, complied with the request. "It was my own decision, based on the information given to me by reporters," said Vic Wilfong, the store manager. He said he had considered pulling the tapes before Thomas released his letter.

The North Carolina ACLU accused Thomas of issuing an "edict" ordering removal of the tape without trial. "Your conduct in issuing this decree and threatening store owners with prosecution if they do not comply violates the First Amendment," ACLU chapter legal director William Simpson wrote to Thomas. "Your public threats announce an unlawful censorship campaign. Your mandate is designed to suppress a particular recording without its ever having been ruled obscene."

Thomas denied that he was acting unlawfully or had issued an "edict" against Clay. "My letter was to inform retail outlets that I had received a complaint. I feel it is incumbent upon me to look into it.... The purpose of my letter was to let sales outlets know that in my opinion the record was obscene and I intended to enforce the law. I wasn't trying to intimidate anyone. I do not issue edicts, only advice." Reported in: *Hickory Daily Record*, August 8.

art

Pleasanton, California

Patrons at the Alameda County Fair may not know much about art, but they know what they don't like — and most of them said they don't like fair officials hiding a controversial painting. Fair Manager Peter Bailey decided before the fair began in June that a painting by Ventura artist Jason Aldrich shouldn't hang with the rest of the juried art exhibit. While the other 177 paintings were hung in an open courtyard, "Mary Had a Little Habit," which shows a woman sticking a hypodermic needle into her arm, was placed in a dark broom closet near the exhibit sales office.

"We're trying to be like apple pie and motherhood and the clean-cut American fair," Bailey said. "This is a family-oriented fair, and this is not the kind of thing we built our reputation on. It's just not wholesome." Asked if he was concerned about charges of censorship, Bailey replied, "Censorship is my job. The Board depends on me for it. My criteria is: Would I want that hanging in my home?"

A jury of three professional artists chose Aldrich's painting from among more than 500 others to be included in the show. Of 21 people interviewed by reporters at the exhibit, 14 disagreed with Bailey's decision.

Alameda County Board of Supervisors President Mary King and Supervisor Don Perata also criticized the decision. "I don't think that kind of censorship was necessary," Perata said. "In this day and age, these things are not shocking."

"I don't believe in censorship," said King. "I don't think that [painting] would encourage drug use." King and Supervisor Bill Aragon agreed that the county needed to examine how the decision was made and ensure that the Fair Association has a policy about how to handle controversial art.

"What we need to be concerned about is how decisions are made and what criteria are used to decide what's appropriate and what's not appropriate," Aragon said. "If you don't have a clear procedure, you leave yourself exposed to a lot of embarrassing situations." Alameda County is a mostly urban and suburban county in the San Francisco Bay Area and includes the cities of Oakland and Berkeley. Reported in: *Tri-Valley Herald*, July 4, 9.

Fairfield, Connecticut

A Fairfield artist removed his exhibit from the Polka Dot Playhouse July 26 following a dispute over censorship. Jack Lardis, a member of the Elm Street Artists group of Bridgeport, removed his eight works after the president of the theater, Rose Lodice, told artists they should display works with nude figures only at night.

"They were not explicit types of drawings," said Lardis. "None of the works are provocative in any way. They were interpretations of the human figure. I'm really upset about it. As harmless as it may seem to the director of the theater, the principle of censorship is there."

But according to Lodice, "It's not the material we had a problem with at all." She said the concern was for children in a summer camp at the theater and for children who attend the play *Into the Woods* at the theater. "I just feel being president of the board, we just have to watch out and be sensitive to the public," said Lodice. "They send their children to a day camp and many of them don't know that this is also an art gallery."

The entire exhibit of 52 works by six members of the Elm Street Artists consisted primarily of landscapes, still lifes, portraits, sketches and one photograph. Seven works depicting nudes were removed during the day, including two of Lardis' works. In the fall of 1990, an exhibit consisting entirely of nudes went on display after a summer children's workshop ended. Reported in: *Bridgeport Post*, July 30.

etc.

Freestone, California

From Northern California's rural wine country comes a unique story of government censorship by the federal Bureau of Alcohol, Tobacco and Firearms. Clos Pegase is a winery that decided to use French cubist artist Jean Dubuffet's work "Bedecked Nude" on the label of one of its table wines. If one looks closely at the semi-abstract painting, a penis and testicles can be found.

"We didn't think the label was in the best interest of the consumer," explained a Bureau censor when asked to explain why the agency had invoked its regulatory powers to keep the offending bottle label from stores. "The genitals were the problem."

The owner of the winery, Jan Shrem, responded by offering to place the word "censored" over parts in question, but the Bureau said no, explaining that "it might imply infringement on First Amendment rights." Then Shrem offered to print "For compliance requirements part of this painting has required disguising." That, too, was rejected because it would lead the public to believe that the Bureau was acting as censor! So, as a local paper reported, "With the wine waiting to be bottled, Shrem did the only thing possible that would satisfy the feds, and cropped the label, castrating Dubuffet's masterpiece."

In July, the Bureau censored words as well as pictures. It forbade the giant G. Heileman Brewing Company from selling a new malt liquor under the name "Power Master." The Bureau claimed that the name gave the impression of a powerful product.

In fact, Power Master is a powerful malt liquor whose 5.9 percent alcohol content compares to the 5.5 percent of most malt liquors and the 3.5 percent of American beer. Apparently, while the Bureau is concerned to protect American drinkers from overdoses of art, it is less concerned about how much alcohol drinks contain — as long as they are not perceived to be too strong. Reported in: *San Francisco Weekly*, July 10.

Washington, D.C.

According to a July 30 article in the *Village Voice*, the U.S. government has been attempting to hush up news about the environmental damage caused by the Persian Gulf war. Scientists have found evidence that the smoky pollution from Kuwait's oil fires has reached Wyoming, but government agencies have been told to keep the information secret.

As *Scientific American* first reported in May, the Department of Energy (DOE) on January 25 instructed all its facilities and contractors to "discontinue any further discussion of war-related research and issues with the media until further notice." In April, the DOE ordered a researcher at its Lawrence Livermore Laboratory in California not to present a computer simulation of the burning oil wells' effects at a scientific conference in Vienna. When researchers in Boulder, Colorado, tentatively found Kuwaiti oil soot in clouds overhead, the Environmental Protection Agency blocked a press release announcing the finding. Reported in: *Village Voice*, July 30.

foreign

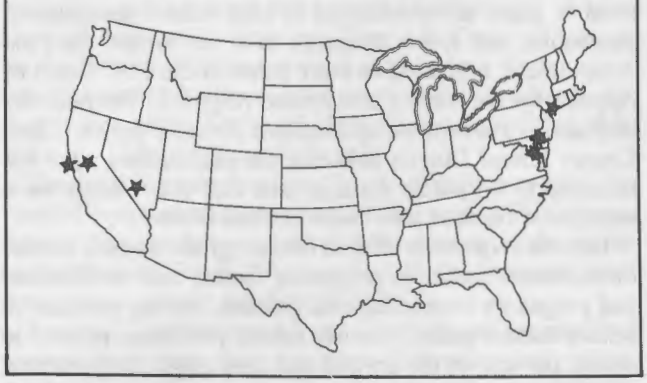
Kuwait City, Kuwait

The Kuwaiti government does not plan to stop censoring the local press, Kuwait's information minister said in August. The daily *Al-Watan* reported that the official, Badr Jassem al-Yacoub, said a new publications law will be submitted to the Council of Ministers for approval. The law was expected to cover licensing of new publications and censorship, which began in Kuwait after the Emir dissolved parliament in 1986.

"There is no intention of lifting censorship on the press for the time being," the newspaper quoted al-Yacoub as saying.

During the Iraqi occupation, Kuwait's seven daily newspapers and thirty weeklies and monthlies disappeared and were replaced by underground publications. One such paper, which later took the name *February 26*, published after the war ended, but was shut down by the government. Reported in: *Editor & Publisher*, August 24. □

from the bench



colleges and universities

Stanford, California

Stanford University won a major court battle against government censorship September 26 when a federal judge ruled that barring government-financed researchers from describing their findings in scientific journals violates the First Amendment. The decision could affect more than $500 million in research contracts that the government awards each year to medical centers across the country.

U.S. District Court Judge Harold H. Greene in Washington ordered officials at the National Institutes of Health to return to Stanford a $1.5 million heart research contract the agency had withdrawn when the university refused to promise it would submit the scientists' preliminary findings for approval by the agency before publishing them.

The project called for developing and testing a new version of an artificial heart device that has already been used as a temporary measure to save the lives of patients awaiting transplants. The contract would permit Dr. Philip E. Oyer, a cardiac surgeon at Stanford's medical school, to perfect a new version and test it on animals and humans so it could be implanted permanently.

The NIH contract contained a confidentiality clause that would have barred Stanford scientists from discussing their "preliminary" research results or any data that had "the possibility of adverse effects on the public." Stanford policy has long barred all restrictions on the right of its researchers to talk freely about their research and to publish results whenever they believe they are ready. When Stanford refused to accept the confidentiality clause, the contract was awarded to another university that would accept it. Stanford then filed suit on First Amendment grounds.

The Stanford lawsuit involved some of the same issues as those the Supreme Court ruled on last May in the abortion case of *Rust* v. *Sullivan*. In *Rust*, the court ruled that the federal government could properly prevent doctors and counselors in federally financed family planning clinics from giving patients information on abortions. Judge Greene ruled, however, that the *Rust* case involved the government's right to make sure that people spend government money the way that Congress intended, and that the Supreme Court did not intend to limit free expression in universities. In the case of the Stanford contract, Greene ruled that the government health agency was insisting on an unconstitutional right to limit the ability of scientists to talk freely about their work with other scientists.

"Few large-scale endeavors are today not supported, directly or indirectly, by government funds," Greene wrote. "If [the *Rust* ruling] were to be given the scope and breadth defendants advocate in this case, the result would be an invitation to government censorship wherever public funds flow." Reported in: *San Francisco Chronicle*, September 27.

New York, New York

A federal judge ruled September 4 that City College of New York (CCNY) cannot punish Professor Michael Levin for espousing the view that blacks are intellectually inferior to whites. The judge also ordered the college to prevent others from disrupting Levin's classes. The decision came down the day before CCNY opened an investigation of Professor Leonard Jeffries, head of the black studies department, for making anti-Semitic remarks.

Levin, who did not teach his theories in class, was euphoric, noting ironically that his own court victory might "in a broad way" help Jeffries. "This shows that it is still possible to make statements construable as critical to blacks and still be protected by the First Amendment," Levin said.

The decision by U.S. District Court Judge Kenneth Conboy found that CCNY officials violated Levin's constitutional rights by seeking to "retaliate" against him for his statements. Levin complained that after his views became public, the college established a "shadow section," or alternative classes, to Levin's for students who did not want to be in his class. The court found the special classes were set up "with the intent and consequence of stigmatizing Prof. Levin solely because of his expression of ideas."

"Where university administrators retaliate against a teacher based solely upon the content of his protected writings or speech as a teacher, such conduct is, as a matter of law, objectively unreasonable," Judge Conboy wrote.

Levin also charged the school had deliberately failed to take action to stop disruptions of his classes by those who objected to his views. Conboy ordered college officials "to take reasonable steps to prevent disruption" of Levin's classes.

A special City College panel investigated both Levin and Jeffries last year and decided that neither should be disciplined. Reported in: *New York Post*, September 5.

Fairfax, Virginia

Ruling that even racist and obnoxious student performances are protected by the First Amendment, a federal judge overturned the suspension of a fraternity at George Mason University that had run an "ugly woman" contest where a white man dressed in drag and black face. On August 27, U.S. District Court Judge Claude M. Hilton rejected the university's argument that the Sigma Chi fraternity should be suspended for two years.

The university contended that the skit, held in a school cafeteria during a week of fund-raising activities, was disruptive and should not be considered protected expression. "This skit contained more than a kernel of expression," Judge Hilton countered, "therefore, the activity demands First Amendment protection."

The incident occurred last April 4 when sorority members helped dress eighteen fraternity members in wigs and dresses, and then paraded them before an audience of students. One of the 18 came out in black face, wearing a black wig with curlers and pillows tied to his chest and buttocks.

Kenneth E. Bumgarner, associate vice president and dean of student services at George Mason, said minority students who were in the cafeteria were offended and sent him a letter of complaint. While he investigated, tensions on campus rose and continued to rise after members of the fraternity publicly apologized. On April 19, the dean announced that he had suspended Sigma Chi for two years. He also suspended, for one year, the Gamma Phi Beta sorority, whose members had costumed the black-faced contestant. The court ruling did not affect that suspension, but Bumgarner said he would now review it.

"There is no doubt that the ugly woman contest was inappropriate and offensive," said Victor Glasberg, an ACLU attorney who represented the fraternity. "Something had to be done about it, but the university did it in a grossly inappropriate manner."

"This decision is a reasoned admonition to college and university administrators against overstepping and possibly treading on the First Amendment rights of students," commented Sheldon E. Steinbach, general counsel to the American Council on Education, which represents most of the nation's colleges and universities.

The decision reflected the increasing difficulty college administrators are facing as they try to protect minority groups and women from harassment while also guarding the First Amendment rights of all students. Many campuses have passed special codes barring obnoxious or harassing speech and behavior, only to find these challenged and sometimes overturned in federal courts. George Mason has not adopted any sort of speech code, but administrators say they intend to keep the atmosphere on the state university campus free from bigotry. Reported in: *New York Times*, August 29.

schools

Las Vegas, Nevada

A Nevada school district's refusal to allow Planned Parenthood to place advertisements in high school newspapers, yearbooks, and sports programs does not violate the First Amendment, a divided *en banc* panel of the U.S. Court of Appeals for the Ninth Circuit ruled August 7. The majority in *Planned Parenthood of Southern Nevada, Inc.* v. *Clark County School District* held that the publications were not intended to be public forums, and that the refusals were reasonable because they were content-neutral.

The ads in question offered routine gynecological exams, birth control methods, pregnancy testing and verification, and pregnancy counseling and referral. Acting pursuant to school district policy, various school principals refused to accept the ads on the ground that they might be perceived as putting the school's imprimatur on one side of the controversial issue of birth control.

Analyzing the case under *Hazelwood* v. *Kuhlmeier*, the court noted that the district had a general policy allowing principals to control the content of school-sponsored publications. It said that in accepting advertising, the schools were not motivated by a desire to provide a forum for ideas, but merely wanted to defray the costs of these publications. Thus, there was no "clear intent to create a public forum," in the words of *Hazelwood*.

The justification for refusing the ads was reasonable, the court ruled, because it was viewpoint neutral. The ads involving birth control information were rejected in order to maintain a position of neutrality on a sensitive and controversial issue, and to avoid opening up these publications to the debate on both sides of the abortion issue.

"Controlling the content of school-sponsored publications so as to maintain the appearance of neutrality on controversial issues is within the reserved mission" of the school, wrote Judge Pamela Rymer for the majority.

Four dissenting judges accused the majority of misreading *Hazelwood* and the Supreme Court's other public forum cases. In their view, the school district had opened up its publications to advertisers indiscriminately, and thereby created a limited public forum, exclusion from which is subject to heightened scrutiny.

Planned Parenthood had complained that its submissions were the only ads ever rejected under the district's policy. Ads for Las Vegas-area casinos, political candidates, and churches were often accepted, the group noted. Reported in: *United States Law Week*, August 27; *Wall Street Journal*, August 8.

broadcasting

Washington, D.C.

A federal appeals court refused August 28 to reconsider its ruling striking down the federal government's 24-hour ban on "indecent" broadcasts. The U.S. Court of Appeals for the District of Columbia denied the Federal Communications Commission's request for reconsideration either by the three-judge panel that ruled May 17 (see *Newsletter*, July 1991, p. 118) or by the full court.

The panel had ruled that the Congressionally mandated ban violated constitutional protections of free speech. FCC deputy general counsel Renee Licht said the agency might appeal to the Supreme Court. The ban was not implemented pending outcome of the legal challenge.

The FCC defines broadcast indecency as language or material that "depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." The FCC has always barred all broadcast of material judged legally obscene and has barred the use of indecent material between 6 a.m. and 8 p.m. Reported in: *New York Post*, August 29.

begging

San Francisco, California

A federal judge September 25 struck down California's anti-begging law, declaring that the law violates the free speech rights of the poor. U.S. District Court Judge William H. Orrick, Jr., of San Francisco also ruled that the criminal statute violated a homeless man's constitutional right to equal protection.

The decision marked the first successful challenge to California's anti-begging law, which dates to 1891. The law prohibits begging "in any public place or in any place open to the public."

"A request for alms clearly conveys information regarding the speaker's plight," Orrick wrote. "That the beggar represents himself and not an organized charity should not render his speech unprotected."

The case stemmed from a 1989 lawsuit by Celestus Blair, Jr., who claimed that San Francisco police officers violated his constitutional rights when they arrested him five times in 1988 and 1989 for begging while he was unemployed and homeless. On each occasion, the district attorney declined to press charges. Blair, now a city bus driver, sued with the help of the ACLU.

Special Assistant City Attorney George Riley argued that begging is not a form of speech. He complained that the ruling would "further erode efforts to protect citizens from coercive and intimidating behavior, and will undermine government efforts to deal with the problem of homelessness." He said the city would carry the case to the U.S. Court of Appeals for the Ninth Circuit.

Orrick acknowledged that the government has a strong interest in protecting the public from people who are coercive or threatening. But he pointed out that there are numerous statutes to protect the public from threatening conduct, including laws against robbery, assault, battery, and the willful or malicious obstruction of thoroughfares."

In addition, the judge determined that four of Blair's five arrests were unconstitutional because officers lacked probable cause to believe he committed a crime. The case will proceed to trial to decide if the city or the officers are liable for the false arrests.

"It's a strong and principled decision that protects the constitutional rights of the most vulnerable people in California," said Margaret Crosby of the ACLU. "Judge Orrick recognized that when the homeless seek alms, they convey a message to society: that extreme poverty exists in the midst of affluence. It is a disturbing message, but that doesn't mean that the government may silence the poor." Reported in: *San Francisco Chronicle*, September 26.

publishing

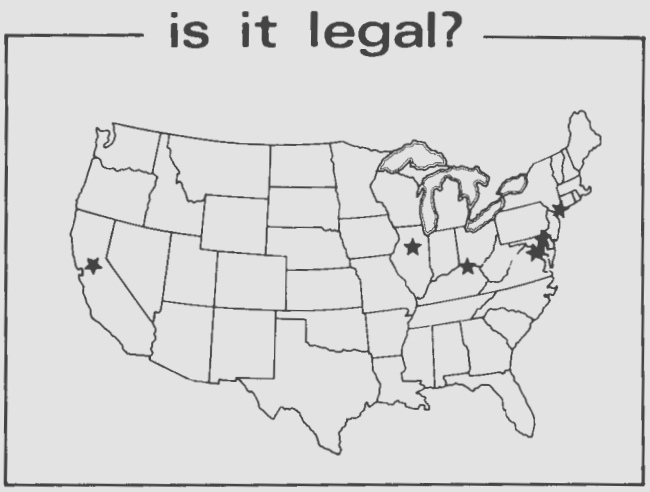
San Francisco, California

Publishers cannot be held accountable under strict liability or negligence principles for failing to investigate allegedly inaccurate information in books that they publish, the U.S. Court of Appeals for the Ninth Circuit ruled July 12. Product liability law simply does not encompass ideas and expression in books, the court said.

Two plaintiffs in the case of *Winter* v. *G.P. Putnam's Sons* consulted *The Encyclopedia of Mushrooms* in gathering and cooking mushrooms. They became so seriously ill after eating them that both had to undergo liver transplants. They sued the publisher, alleging that the book contained erroneous and misleading information.

The court ruled, however, that product liability law is limited to tangible items. Attaching strict liability to publication of words and ideas in books, it said, would "seriously inhibit" the unfettered exchange of ideas that society values highly.

The plaintiffs argued that the mushroom book was comparable to aeronautical charts or instrument information, which have been held to be "products" for liability purposes. The court, however, said such charts are more like a compass. Both may be used to guide one "engaged in an activity requiring certain knowledge of natural features." "Computer software that fails to yield the result for which it was designed may be another [such product]," the court suggested. By contrast, the judges ruled, the mushroom book embodied "pure thought and expression," like a book on how to use a chart or compass. Reported in: *United States Law Week*, July 30. □



National Endowment for the Arts

Washington, D.C.

Government documents released September 17 showed that the National Endowment for the Arts yielded to political pressure last year in overturning grant recommendations for four sexually explicit performance artists, according to a coalition of civil rights groups that obtained the materials. The documents were released as part of a lawsuit filed in U.S. District Court in Los Angeles challenging the endowment's denial of grants to performers Karen Finley, John Fleck, Holly Hughes, and Tim Miller.

In one of the documents, the transcript of a closed meeting of a grant-recommending panel in May, 1990, John E. Frohnmayer, chair of the endowment, was quoted as asking members "if in the very short political run," it is more important to support the controversial performers or to save the endowment "in some sort of recognizable form."

Another transcript quoted a member of the National Council on the Arts, the Presidentially appointed body that advises the endowment chair, as referring to the performance artists as "hand grenades." Other council members were quoted as recognizing that their decision must be made in a "political world" and amid "political considerations."

At the time of the meetings, the endowment was under fire from some members of Congress and conservative political and religious groups for having supported art that some considered obscene or blasphemous. In June, 1990, Frohnmayer was reported to have told a meeting in Seattle that "political realities" made it likely he would have to veto some of the recommended grants. He denied making the remark, however, and contended that politics played no part in his decision.

The legislation that established the arts endowment specified that the sole criterion for endowment grants is aesthetic merit. The performance artists contend that this does not permit political factors to be taken into account.

"Congress constructed the endowment specifically to insulate it from political interference," said David Cole, professor of law at Georgetown University and a staff attorney for the Center for Constitutional Rights. "More importantly, it violates the First Amendment for the government to create a forum for the support of artistic expression and then employ political considerations in picking and choosing which art to support."

In February, 1990, a theater panel of the endowment reviewed about 95 applications for grants in a category called Theater Program Fellowships for Solo Performance Theater Artists and Mimes, and recommended approving 18 of them in amounts ranging from $5,000 to $11,250. On May 4, Frohnmayer reconvened the panel via a telephone conference call and discussed with the members his misgivings about a few of their recommendations.

On May 13, 1990, the 26-member National Council on the Arts took the unusual step of postponing its decision until more information could be obtained about the four controversial artists. Frohnmayer supported the postponement. Then, on June 29, Frohnmayer announced that a majority of the council members had urged him to approve only 14 of the 18 recommended grants, and that he had accepted their verdict and overruled the panel on grants to Finley, Hughes, Fleck, and Miller. According to endowment records, in the seven years before 1989, the chair of the endowment had reversed just 35 of approximately 33,700 panel recommendations.

The documents released in September included transcripts of the May 4 conference call and the May 13 meeting of the council, and a summary of telephone calls from the endowment's former general counsel to council members.

On May 4, according to one transcript, Philip Arnoult, chair of the solo theater panel, told Frohnmayer that the panel had decided not to "bring political issues that are clearly there into this discussion." A few minutes later, Frohnmayer said, "I guess the question is that, trying to put it as crassly as I possibly can: If in the very short political run, the question were, is it more important to fund one or more of these people, or to have the endowment continue in some sort of recognizable form, what do I do?"

According to another transcript, Nina Brock, a council member, said in a phone conversation that any standard used by the council must be "weighed against the political situation we find ourselves in." In another transcript, council member Bob Johnson referred to the controversial performers as "hand grenades on the table." He also said, "politically, we don't win either way."

A member of the endowment staff complained that the artists' supporters were quoting from the transcripts out of

context. The official pointed to a paragraph in a press release that quoted the painter Helen Frankenthaler, a council member, as saying, "Why ask for more trouble?" In fact, the official noted, Frankenthaler voted against all 18 recommended applications.

"Numerous of the comments reflected in that same memorandum," the official continued, "demonstrate that many council members were dissatisfied with the quality of the panel's review of this category." Reported in: *New York Times*, September 18.

anti-abortion

Albany, California

Two anti-abortion protesters displaying photos of aborted fetuses at an Albany street fair were arrested by city police September 8 and charged with violating state and local pornography laws. Robert Powers and Steven Butler were arrested at the "Solano Stroll" street fair, which annually attracts over 50,000 people, after police fielded complaints about their placards.

"People were offended that this type of thing was being displayed where children were present," said Albany police lieutenant Ron Patton. "We were also concerned that they were attracting a hostile crowd of parents and local merchants."

Powers and Butler were cited under a state law that calls for a fine of up to $2,000 and up to one year in prison for exhibiting "harmful matter" to children. The two were also cited on a city statute that prohibits the use of the nude human form for advertising purposes. Reported in: *San Francisco Chronicle*, September 9.

Baltimore, Maryland

The removal of a student from school for wearing an anti-abortion T-shirt prompted a federal lawsuit accusing the Baltimore County school system of violating the student's First Amendment rights. The suit, filed August 9 in U.S. District Court, accused two Woodlawn High School administrators of false imprisonment and forcible removal of senior Gregory A. Baus in May "solely on the basis of certain political and religious views espoused" by the shirt.

Baus, who has graduated, was joined by his younger brother, Jeffrey, who is still a Woodlawn student. Their action seeks a court order assuring the right of Jeffrey to wear the anti-abortion shirt to school in the future and $30,000 in damages.

The shirt that sparked the controversy was decorated by Baus with a drawing depicting a dismembered fetus with the caption, "'Kinda' looks like murder doesn't it? It is murder, and it is legal. It's abortion."

Baus said he had worn the T-shirt to school frequently. It sparked occasional discussion, he said, but administrators appeared to take no notice until May 17 when he solicited an opinion from Assistant Principal P. Delores Mbah at the suggestion of a teacher.

"She kind of looked at it for a second and said, 'Take it off,' expecting me to comply. Then when I expressed to her I wasn't going to take it off, I posed this question. 'What if I want to protest taking off the shirt,' and she informed me, 'I'll protest your butt right out of here.'" After refusing to remove the shirt, Baus was escorted home by the school principal. Several days later, Baus again wore the shirt and was taken out of his first morning class. Reported in: *Baltimore Sun*, August 11.

rock music

Bremen Township, Illinois

Should public funds be used to advise parents that the music their children are listening to is dirty and perverted? An anti-censorship group called Parents for Rock and Rap objects to the use of town funds for classes against "dirty rock songs" offered by Bremen Youth Services.

The agency's anti-violent rock presentation warns parents that heavy metal and rap music twist the minds of impressionable teenagers, and even throw them over the edge to suicide in some instances. Donald Sebek, executive director of Bremen Youth Services, said those styles of music "glorify violence, sexual perversion, drug and alcohol abuse and Satanism."

Part of the class consists of a half-hour videotape produced by Parents Music Resource Center, a group founded by Tipper Gore, wife of U.S. Sen. Al Gore (D-TN) and Susan Baker, wife of Secretary of State James Baker. Kathleen Ryan, a social worker, said she believe the tape promotes a specific "political viewpoint." She also said the classes give parents a distorted picture of the dangers of heavy metal and rap.

"It's a scare tactic aimed at panicking parents," Ryan said. "The Parents Music Resource Center is very political. It's inappropriate for a social service agency funded by public money to be propagandizing." Bremen Youth Services receives $125,000 annually from Bremen Township and over $170,000 from the Illinois Department of Alcoholism and Substance Abuse. Reported in: *Harvey Star*, June 30.

libel

New York, New York

News organizations are increasingly likely to lose libel suits that go to a jury, and if they lose they are increasingly likely to face multimillion-dollar damage judgments, according to a new study by a New York-based organization. The Libel Defense Resource Center said in a report released September

26 that news organizations lost two-thirds of the libel trials in which they were involved in 1989 and 1990, and that the average award was just under $4.5 million. That was a ten-fold increase from the average award of $432,000 in 1987-88, when defendants won half of such trials.

The report also estimated that about 90 percent of libel actions against the news media are dropped, settled or dismissed before going to trial.

For a decade, the center has analyzed trends in libel law biannually, and the most recent two-year period reflected a renewed hostility to news organizations not seen since President Ronald Reagan's first term. From 1981 to 1984, the average damage award was more than $2 million. In the 1985-86 period, the average declined to $1.2 million, and in 1987-88, the average dropped further to $432,000. The giant leap in the average damage award in the past two years to $4.5 million suggests that juries are again inclined to punish news organizations. However, an average of only fifteen libel actions went to trial each year in 1989 and 1990, compared with an average of about thirty each year in the earlier 1980s. Reported in: *New York Times*, September 26.

privacy

Cincinnati, Ohio

A sweep of telephone records to track news leaks regarding Procter & Gamble Co. (P&G) was much more extensive than previously disclosed. According to a June 17 subpoena issued by the Hamilton County Common Pleas Court, Cincinnati law enforcement authorities had access to the phone records of hundreds of thousands of Ohio residents. The court ordered Cincinnati Bell to identify "all 513 area code numbers" that dialed the office or home phone number of *Wall Street Journal* reporter Alecia Swasy between March 1 and June 15.

That meant the phone company had to search by computer some 655,297 home and business telephone lines and at least 35 million calls. The number of calls identified in the search was not released.

While the use of phone records to identify news sources has raised basic First Amendment issues, the broad scope of the subpoena had troubling implications for privacy rights, attorneys said.

"There's no reason for the subpoena to be this broad. It's cause for alarm," said Robert Newman, a Cincinnati attorney specializing in First Amendment issues. "P&G doesn't have to intrude in the lives of P&G employees, let alone everyone else."

P&G said its complaint was triggered by a June 10 article in the *Journal* disclosing the resignation of the head of a troubled division and a follow up article the next day saying the company might sell part of the division. The company said it went to court only after conducting an internal investigation aimed at identifying who leaked the information, but the subpoena was issued just four days after the second article appeared, raising questions about the thoroughness of P&G's search.

The company said it was interested only in pinpointing employees who might be "disclosing company business secrets," and cited an Ohio statute that prohibits such disclosures by current employees. Reported in: *Wall Street Journal*, August 15. □

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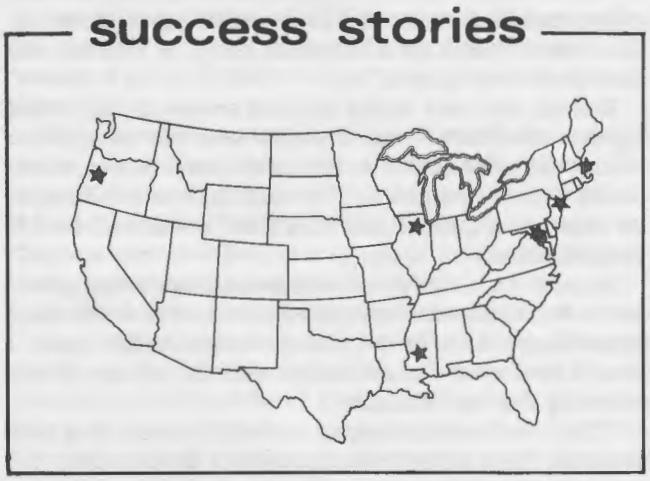
success stories



libraries

Birmingham, Alabama

The Birmingham Public Library agreed July 10 to lift a ban on six pieces of art by Jean and Teresa Campbell that depicted a woman breast-feeding a baby. "The artists are coming to put in the pictures that were heretofore deemed controversial," said library secretary Pauline Werth.

The artworks, part of an exhibit called "Momart," were shown at an invitation-only opening reception July 6 but had been banned from the rest of the exhibit, which was scheduled to run through July 28. "We did not feel they were appropriate for this public library setting," said Anne Knight, the library's coordinator for research services. "The two artists were very concerned that we were censoring their work because it was somehow pornographic, and we made it very clear to them that we thought that was not the case."

The exhibit, which included paintings, sculptures and drawings, chronicled the mother-child relationship from pregnancy into early childhood, Jean Campbell said, and breastfeeding is part of that development. "What we're trying to say with this is that a lot of society seems to have a strange attitude toward breast-feeding, and it's such a natural, beautiful thing. I've seen women show a lot more cleavage than this in a low-cut dress," she added. "It was very subtle and not anything anybody would have been offended by."

"For the most part, I think most of the people at the library are real supportive," Campbell said. "I think there are just a few people up there that feel like it is their responsibility to save the public from whatever they feel it needs saving from." Reported in: *Mobile Press*, July 11.

Oak Lawn, Illinois

At its July 9 meeting, the Oak Lawn Public Library Board of Trustees voted 6-1 to keep in circulation two books that had been subjects of complaints. One of the books, *The Limerick: 1,700 Examples With Notes, Variants and Index*, by Gershon Legmon, contained bawdy limericks with explicit sexual references. The other book, *Beverly Malibu*, by Katherine Forrest, is a mystery in which the sleuth is a lesbian.

The books came under scrutiny when the library received one complaint against each last spring. An elderly woman who is a former librarian filed a complaint against *Beverly Malibu* and an elementary school principal complained that a student researching limericks for a school paper was given *The Limerick* by librarians who had not read the book. The complaints prompted a review by a committee that recommended retention of both works.

Library trustee Nancy Czerwiec, who has been active in trying to remove sexually oriented materials from the library since a controversy over the sex education book *Show Me!* ten years ago, was the sole board member voting to remove the books. "There is an uproar in this country against [certain kinds of] music, art and literature, which is evidenced by these complaints," she said. "The choice-making is poor, and I think what people want is . . . a bent toward material that is uplifting and enriching and enhancing to their lives."

In April, trustees Lois Gasteyer and Bob Honkisz won election to the board, unseating two Czerwiec allies, on a platform of opposition to any form of censorship or restricted access for minors. They voted to retain the two books, declaring that librarians and library trustees should not impose their own standards on the community. "We live in an age where [lesbianism] is a lifestyle which you may not approve of, but it's part of our culture," Gasteyer said. "*Beverly Malibu* may not be something everybody wants to read, but I think it would serve some of the people in this community." Reported in: *Southtown Economist*, July 21.

Lakeview, Oregon

A complaint filed against the book *Being Born*, by Sheila Kitzinger, by parent Cliff Carlson was rejected by the Lakeview School District Board of Directors June 11. Carlson has two boys in third grade and one of them checked the book out from the school library. He said he became disturbed when the boy asked "rather pointed questions" about childbirth. Carlson said his concern was not with the quality of the book, but with its relevance for his child's age group. After hearing comments from Carlson and an advisory committee of a librarian, a teacher, and the school principal, the board decided not to pull the book from the shelf. Reported in: *Lake County Examiner*, June 20.

schools

Anne Arundel County, Maryland

Author-singer Barry Louis Polisar became a minor censorship celebrity last year when Anne Arundel County school officials banned his playfully subversive children's books, recordings and performances (see *Newsletter*, November 1990, p. 210). On September 11, however, Polisar, whose songs include "My Brother Threw Up on My Stuffed Toy Bunny" and "Never Cook Your Sister in a Frying Pan," signed an agreement with the school district that effectively lifted whatever ban had been in place. Polisar's books will remain on school library shelves, his recordings will be submitted to a neutral committee that reviews instructional materials, and he is free to perform in schools that choose to book him.

"I'm somewhat amazed that it has taken an entire year to resolve," said Polisar. "I don't want to be in the position to gloat. I'm satisfied that an agreement has been reached. I'm pleased that I got everything that I asked for."

School officials always maintained that Polisar's work was never banned, only deemed inappropriate for use as instructional material — a designation that barred teachers from using his work in class. However, as a result of the September 1990 decision, Polisar's name was dropped from a list of performers approved for use in the schools, where he had performed regularly since 1976. The controversy caused the singer to lose concert bookings, although he gained national attention from it. Reported in: *Washington Post*, September 12; *Anne Arundel County Sun*, September 12; *Baltimore Sun*, September 12.

college

Long Island City, New York

One day after a student art exhibit supporting abortion rights was covered over with black paper, LaGuardia Community College officials ordered that the exhibit remain on display until its scheduled end on August 29. Students had contended that the college in the New York City borough of Queens was engaging in censorship when, in response to complaints from students and politicians, the display was covered over.

The exhibit, called "Beatitude," used religious imagery to support abortion rights, incorporating photographs of women, some of them nude, with wooden rosary beads, a statue of the madonna and child, wire hangers, crosses, candles and collage reproductions of newspaper articles about anti-abortion protests. Susan Bastian and Lillian Pons, two photography students who assembled the exhibit, said the message was both aesthetic and political.

"This is about a woman's choice to have a baby or to have an abortion," Bastian said. "Women have been persecuted for their beliefs. I don't think government has any business telling men or women what to do regarding childbearing. This exhibit was to get a discussion going: to look at it and form your own opinion."

Students and some faculty mounted petition drives for and against the exhibit. Some students said they thought the display was anit-Catholic because of the symbols used; others said it was anti-religious. "We used the symbols because we were raised Catholic, and were most familiar with them," Pons explained.

Bruce Brooks, a professor who oversees the lobby gallery where the exhibit was displayed, said he covered it with black paper August 13 after the school administration "made it clear" that it was uncomfortable with the pressure it was receiving from politicians.

"They were acknowledging political pressure at a time when the city is in dire financial straits," Brooks said. "No one said, 'Take it down,' but the hint was clear that was what the administration wanted. I did not want to take the exhibit down. When I put up paper covering it, I thought I was buying time until I could come up with another decision."

Soon after the exhibit was covered, students, complaining about censorship and the lack of academic freedom, tore the paper down. The dean of students, William Hamilton, said that when the issue came to be censorship, he instructed Brooks to uncover the exhibit despite his initial concern that there might be violence or a disturbance by those opposed to it.

"I called Professor Brooks and told him the exhibit must stay up. . . because the matter was beginning to be interpreted as censorship," Hamilton said. "It has been the administration's position that the students had a right of expression through art. We never said the exhibit had to come down."

Brooks and Hamilton both said that at least three Queens members of the New York State Assembly had objected to the exhibit. Reported in: *New York Times*, August 15.

film

Boston, Massachusetts

Titicut Follies, a documentary film depicting abuses of mental patients at Bridgewater State Hospital that despite being banned for more than two decades was influential in transforming mental health care nationwide, may now be shown without the last restrictions placed on it two years ago.

Judge Andrew Gill Meyer ruled in early August that the film may now be shown in public without alteration. The ruling reversed Judge Meyer's own 1989 order in which he permitted public showings, but ordered that the faces of certain patients be blocked out. The film's maker, Frederick Wiseman, argued through his lawyer, Harvard law professor Kathleen Sullivan, that the blocking out was not technically feasible on film, and Meyer concurred.

"I am very pleased that the film will be available to be shown without restrictions," Wiseman said. "I have waited 24 years for it. And I am pleased not just for myself, but because it is an affirmation of the value of the First Amendment."

When it was completed in 1967, *Titicut Follies* raised a storm of protest from state officials and others. The Massachusetts attorney general at the time, Elliot Richardson, succeeded in banning public showings; however, the film was seen over the years by special audiences of physicians, nurses and mental health workers.

In allowing the film's unrestricted release, Meyer wrote, "A quarter of a century has passed since the film was made...and I have seen no evidence of harm to any individual as a result of the film being exhibited....However, the names and addresses of those individuals shown in the film shall continue to be kept strictly confidential." Reported in: *Boston Globe*, August 2.

books

Boston, Massachusetts

After determining that the books were not obscene, the U.S. Attorney's office in Boston on June 14 released a shipment of a lesbian photo book seized by Boston Harbor customs officials ten days earlier. "We made a determination that the book is not obscene within the meaning of the statute in question and the book shipment will be released," an office representative announced.

The shipment of 1,056 copies of American photographer Della Grace's *Love Bites* was published by GMP Publishers U.K. and imported by gay and lesbian publisher Alyson Publications of Boston. Publisher Sasha Alyson said the incident was a case of "homophobia disguised as censorship. We import pretty tame stuff and no one anticipated this. This book is absolutely not obscene. We're glad they've released the books but I want to know why and how one homophobic individual at the customs office can tie up a taxpayer's time and money in a pointless exercise like this."

The book contains sixty photographs ranging from gay pride marches to women holding hands. According to Alyson, several photos suggest sexual activity but do not show it. Reported in: *Publishers Weekly*, June 28. □

SUPPORT
THE
FREEDOM
TO
READ

(Morristown brief . . . from cover page 187)

Receipt of information and ideas is an essential component of speech itself. "Freedom" of speech would mean little if audiences were not as free to listen as speakers were to speak. Moreover, unless individuals are free to hear and learn, the quality of their own speech, opinions, and private contemplations will be correspondingly impoverished. For these reasons, the United States Supreme Court has long recognized that the First Amendment extends protection to the process of communication itself — and thus to recipients of information and ideas no less than to speakers. There is simply no basis for Morristown's contention that the right to receive information is merely a governmental obligation to avoid *content*-based censorship. To the contrary, the Supreme Court has subjected content-neutral regulation of *receipt* of information to the same scrutiny it accords content-neutral regulations of *dissemination* of information.

Public libraries have long been dedicated to the very principles that animate the First Amendment right to receive information and ideas. In the Nineteenth Century, the trustees of the Boston Public Library — on which today's public and free libraries are modeled — declared that "it is of paramount importance that the means of general information should be so diffused that the largest possible number of persons should be induced to read and understand questions going down to the very foundations of social order." The American Library Association has formally resolved that "libraries serve the function of making ideas and information available to all members of the society, without discrimination,...including the indigent or the economically disadvantaged.... The right of free access to information for all individuals is basic to all aspects of library service."

For these reasons, public libraries are quintessential public forums for access to information. The public has a First Amendment right of access to public library property to receive information just as it has a right to attend criminal trials held on public property. The Supreme Court has made clear that "[t]he right of access to places traditionally open to the public...may be seen as assured by the amalgam of the First Amendment guarantees of speech and press...and assembly."

Although the public has a First Amendment right of access to public libraries, libraries are not entirely without power to regulate such access in furtherance of substantial government interests. Content-neutral time, place or manner regulations, and regulations of non-expressive elements of public presence in the library that "incidentally" affect access to information, may be valid if they satisfy exacting First Amendment requirements. Content-based regulation of access to information in public libraries is presumptively valid and must satisfy even stricter judicial scrutiny....

I. Receipt Of Information Constitutes An Exercise of A Fundamental First Amendment Right.

The Supreme Court has held explicitly that "the protection afforded [by the First Amendment] is to the *communication*, to its source *and to its recipients* both." *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, (emphasis added). On numerous occasions, the Court has reiterated that the public has a First Amendment "right. . . to receive suitable access to social, political, esthetic, moral, and other ideas and experiences." *Red Lion Broadcasting Co.* v. *F.C.C.*; *see Martin* v. *City of Struthers*; (the First Amendment "necessarily protects the right to receive" information); *Griswold* v. *Connecticut*, ("[t]he right of freedom of speech and press includes not only the right to utter or to print, but. . . the right to receive, the right to read. . . and freedom of inquiry [and] freedom of thought"); *Stanley* v. *Georgia*, ("[i]t is now well established that the Constitution protects the right to receive information and ideas")' *see also Kleindeinst* v. *Mandel*. Relying on this long line of Supreme Court decisions, the district court recognized that the First Amendment safeguards the right to receive information. For that reason, the district court correctly concluded that "the library policy at issue in this case, which conditions access to public reading materials, necessarily falls within the purview of First Amendment jurisprudence."

The Morristown Public Library challenges the district court's conclusion regarding a "right to receive" information, arguing that "[t]he court's entire ruling is premised on a mischaracterization of a so-called 'right to receive information,' which until now has been found to exist only in cases involving content-based censorship." That argument misapprehends both the holdings of the cases upon which it relies and the nature of the right protected by the First Amendment.

The Supreme Court has never held, or even suggested, that the right to receive information applies only when the government seeks to "censor" or deny access to information of specific content. Because the First Amendment protects "*the communication*, . . . its source and. . . its recipients both," *Virginia State Board of Pharmacy* (emphasis added), there can be no basis for maintaining that the recipient is somehow less protected than the speaker. To the contrary, it is clear that the receipt of and quest for information is entitled to protection from content-neutral, as well as content-based, restrictions. . . .

The right to receive information is and ought to be accorded this paramount place in our scheme of constitutional liberties. A public free to read and learn is fundamental to speakers' realization of the rights to disseminate their messages to all who would hear; and, in turn, the freedom to read and otherwise acquire information is fundamental to the reader's own effective exercise of his or her right to apprehend, synthesize, and disseminate information and ideas. As the American Library Association Council has stated in an Interpretation of the *Library Bill of Rights*, ALA's basic policy statement on intellectual freedom, "[p]ublicly 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." Access to information and ideas is also an essential component of each individual's participation in this Nation's celebrated "marketplace of ideas." The First Amendment, therefore, stands as a bulwark against governmental denial, to *any* citizen, of the right to sample the wares in that extraordinary and "unfettered" marketplace.

II. Access To Information In Public Libraries Is Guaranteed By The First Amendment.

As with the right to speak or otherwise disseminate information, the right to receive information does not necessarily entail a right to do so on publicly owned property, or confer on government the obligation to accommodate or facilitate the exercise of that right. Where, however, government has created a forum for the exercise of expressive rights, its power to restrain them is circumscribed. The Morristown Public Library — like all public libraries throughout the United States — is a public forum for the receipt of information. The First Amendment, therefore, protects library patrons' right of access to the library for that purpose.

In *Richmond Newspapers, Inc.* v. *Virginia*, the Supreme Court established that "[t]he right of access to places *traditionally open to the public*. . . may be seen as assured by the amalgam of the First Amendment guarantees of speech and press. . . and assembly." The Supreme Court began with the proposition that "[f]ree speech carries with it some freedom to listen," and recognized that the First Amendment protects a "right to receive information." In holding that access to criminal trials — and to public property utilized for that purpose — is guaranteed by the First Amendment, the Court relied upon the long history of openness of criminal trials and the "public" nature of those proceedings. Critical to the Court's analysis was the fact that historically "one thing [had] remained constant: the public character of the trial at which guilt or innocence was decided." Given its historically "open" and "public" character and its importance to the exercise of expressive rights, the Court ruled that "the right to attend criminal trials is implicit in the guarantees of the First Amendment."

The *Richmond Newspapers* Court recognized that claims of a right to enter public facilities to gather information must be determined according to the facilities' degree of openness to the public. Penal institutions, to which public access has generally been denied, "by definition are not 'open' or public places" and "do not share the long tradition of openness." Openness to the public for receipt of information is thus the essential ingredient in determining whether a First Amendment *right* of access exists.

The Court noted in *Richmond Newspapers*, that "[p]eople assemble in public places not only to speak or to take

action, but also to listen, observe, and learn." The public library is quintessentially such a public place, and access to it for the purpose of receiving written and other information available there is entitled to the protection of the First Amendment, as the Supreme Court and this Court have previously indicated....

Like the public trial, the public library is an open and public institution that has historically served to provide access to information. Indeed, public libraries have long served as the primary public forum for access to written and recorded information. The first public library in the United States was founded in 1833 in Peterborough, New Hampshire. The Boston Public Library, seeking to serve an even greater populace, was established in 1852. Almost a century ago, the trustees of the Boston Public Library made clear that the core function of a public library is to provide *access* to reading materials to *all* members of the community, particularly those unable to secure such information elsewhere....

Public libraries, therefore, were established to provide free access to information for all. These early institutions, as well as their successors, have been guided in their mission by the "belief that public libraries, through their provision of free access to information, make a significant contribution to the development of the informed citizenry that is considered essential in sustaining a democracy."

The *Library Bill of Rights* constitutes the American Library Association's basic policy on intellectual freedom. The rights there enumerated have long included a public right of access to library materials and a concomitant responsibility upon the library to facilitate access:

> 1. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves....
>
> 4. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.
>
> 5. A person's right to use a library should not be denied or abridged because of origin, age, background, or views."

The ALA *Library Bill of Rights* also acknowledges specifically libraries' "responsibility to provide information and enlightenment."....

Thus, public libraries serve — and have long been intended to serve — as crucial links in the "marketplace of ideas" for dissemination of information to the public. Libraries are "public" to enable individuals to fully exercise their First Amendment right to *receive* information.

The Morristown Public Library is by definition dedicated to achievement of this objective for all potential patrons. As its very name makes clear, the Joint Free Public Library of Morristown and Morris Township was established as both "public" and "free." Indeed, the preamble to the Patron Policy at issue in this case makes clear that library policymakers intended to "allow *all* patrons of the Joint Free Public Library of Morristown and Morris Township to use its facilities to the maximum extent possible during its regularly scheduled hours." A more explicit designation of openness would be difficult to find. Thus, under the principles articulated in *Richmond Newspapers*, access to the information maintained by the Morristown Public Library is guaranteed by the First Amendment.

Accordingly, the public library is for *access* to written or recorded information what traditional and designated public forums are for *dissemination* of information. Whether by "tradition" or by "designation," public libraries hold themselves out as providing non-discriminatory and free access to expressive materials, just as, by tradition, "streets and parks" are publicly available for virtually any expressive activity, and by designation public auditoriums, university meeting facilities, and state fair grounds may be available, respectively for theatrical performances, gatherings of university affiliated groups, and distribution of literature and information consistent with reasonable rules and regulations.

Every expressive forum is not the same, however, and First Amendment rights within different forums differ according to their nature. The "existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue." It is the "nature of a place, the pattern of its normal activities, [that] dictate the kinds of regulations" that are reasonable. As the Court observed in *Richmond Newspapers*, "[i]t is far more important that trials be conducted in a quiet and orderly setting than it is to preserve that atmosphere on city streets." More directly pertinent here, in *Grayned* the Court recognized that "[a]lthough a silent vigil may not unduly interfere with a public library... making a speech in the reading room almost certainly would. That same speech should be perfectly appropriate in a park." Thus, unlike a park or city street, a public library is *not* a "traditional" public forum for the purpose of allowing the public to *disseminate* information and ideas. A public right of *access* to read and watch and learn, however, is inherent in the very notion of a public library.

III. Public Libraries Retain A Limited Power To Regulate Conduct In Library Facilities.

Access to public libraries to seek and receive information is guaranteed by the First Amendment, and thus public libraries may not create "exclusions" that violate First Amendment rights of access. Nevertheless, public libraries, such as the Morristown Public Library, may adopt policies to ensure that all patrons may exercise their First Amendment right to use the facilities unhampered by the conduct of other patrons. Even in a public forum, government may adopt content-neutral regulations of (1) the time, place or manner of expressive activity, and (2) non-expressive

elements related to protected activity, in furtherance of an important or substantial government interest. Government may regulate the content of expressive activity in a public forum only if regulation is "narrowly drawn to effectuate a compelling state interest."

Amicus does not express any view on whether the library policies at issue here satisfy these constitutional requirements. However, because the constitutional rules that are applied to *this* controversy may affect libraries and library patrons nationwide, *amicus* will discuss the appropriate framework for legal analysis of these questions.

The Supreme Court has held clearly that "even in a public forum the government may impose reasonable restrictions on the time, place or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.'" Public libraries may therefore adopt policies that restrict access to regularly scheduled hours; restrict use of some materials to the library premises; and otherwise reasonably regulate the time, place or manner of access to information consistent with the elements of that First Amendment doctrine.

In addition to reasonable time, place or manner regulations, government is generally free, under the First Amendment, to regulate "non-speech elements" associated with protected activity in the furtherance of any substantial government interest. See *U.S.* v. *O'Brien*. As with time, place or manner restrictions, regulations valid under *O'Brien* generally may be imposed in a public forum....

In *O'Brien*, the Supreme Court made clear that the rationale for such "incidental" restrictions must be weighty and the regulations must meet a four-part test:

> a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Thus, public libraries — institutions "dedicated to quiet, to knowledge, and to beauty" — may adopt specific policies that prohibit talking loudly or playing of radios in the reading room; prohibit damage to materials and library resources; close stacks; and prohibit other conduct that interferes with use of the facilities by other patrons or staff.

Avoiding "actual disruption," as the District Court observed, is a "substantial government interest" in the public library context that would support regulations otherwise meeting the *O'Brien* test. Nothing in *O'Brien*, however, necessarily restricts public libraries to the sole rationale of halting disruptive behavior after it has begun. If, in a particular case, a public library could demonstrate that other substantial interests — including public safety, compliance with state or local laws of general application, etc. — support a particular regulation, that regulation could be upheld *if* the library could also demonstrate that the library's interest is unrelated to the suppression of freedom of expression and that the regulation's "incidental" effect on access to information is no greater than is necessary to further that other interest.

Public libraries are quintessential public forums for *access* to materials. Thus, any content-based regulation of access to information in libraries must be "necessary to serve a compelling state interest" and be "narrowly drawn to achieve that end." Only in truly extraordinary circumstances could a content-based restriction within a public forum satisfy this strict scrutiny.

In sum, this Court should squarely rule that receipt of information and access to public libraries to secure information are fundamental rights guaranteed by the First Amendment. As such, the Morristown Public Library may enforce "exclusions" only if those exclusions (1) are reasonable content-neutral time, place or manner restrictions narrowly drawn to achieve a significant government interest, and leave open ample alternative forums for access, (2) are content-neutral regulations that satisfy the *O'Brien* test, or (3) are content-based restrictions that are narrowly drawn to serve a compelling state interest. □

(kids have rights, too . . . from page 190)

mention that the courts draw distinctions on the rights of students based upon their age. I will focus on students in grades kindergarten through 12, and will not discuss college students, which would raise different issues.

The cornerstone of student rights and the basis for my presentation this afternoon is the First Amendment to the United States Constitution. It states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." We must look to the courts' interpretation of this amendment to examine the rights of students.

It was during a time of increasing protests against the Vietnam war that the United States Supreme Court rendered its seminal decision regarding student rights. In 1969, the court decided the case of *Tinker* v. *Des Moines Community School District*, 393 U.S. 503 (1969). It is from *Tinker*, that we derive the famous phrase, "It can hardly be argued that...students...shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

In *Tinker*, as part of a plan formulated by students and their parents to protest the war in Vietnam, two public high school students and one junior high student wore black armbands to school. The students were aware that the school district

a few days earlier had adopted a policy that any student wearing an armband to school would be asked to remove it, and that if he or she refused would be suspended until the student returned without the armband. The students were sent home and suspended from school until they would come back without armbands.

The United States Supreme Court held that the wearing of the armbands by the students was akin to pure speech and entitled to comprehensive protection under the First Amendment to the United States Constitution. Under the circumstances presented in the case, the court found that there was no evidence that the wearing of the armbands would substantially interfere with the work of the school district or impinge on the rights of other students.

The school district suspended the students because of a fear of a disturbance from the wearing of the armbands. However, the court stated that undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. The Court further explained that in order for school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. The Court stated that there must be a finding that the forbidden conduct would, "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school..."

The Court concluded that there was no such finding and that, in fact, the school district's actions seemed to have been based upon an urgent wish to avoid the controversy that might result from the expression.

Justice Fortas, writing for the majority of the Court, stressed that state-operated schools may not be "enclaves of totalitarianism." Justice Fortas furthered articulated the rights of students by declaring, "Students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved." As an aside, this language is particularly relevant in examining the controversy on today's college campuses concerning what is politically correct speech.

The *Tinker* decision was hailed by many as a great victory for student rights. Some, however, viewed the decision as a stunning blow to school authorities. Justice Harlan in his dissent stated, "After the Court's holding today some students...in all schools will be ready, able, and willing to defy their teachers on practically all orders...Turned loose with lawsuits...against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools."

Observe this afternoon, the various, often polar interpretations of the fundamental tenets set forth in *Tinker*. As we discuss the cases that follow *Tinker* in the various areas of student rights, ask yourself what are the reasons for the widely differing interpretations. One area to focus on is the social and economic setting of the various Supreme Court decisions. Remember, *Tinker* was decided in 1969, a period of active, often violent expression of First Amendment rights, a time overshadowed by our country's involvement in the Vietnam War, and a time focused on racial and sexual inequalities. Compare 1969 to the setting of the other cases we will discuss.

Another area to explore is the Supreme Court of 1969. It is not the same as today's Court either in membership or philosophical viewpoint. Our Constitution is a living, breathing document that comes to life with the various interpretations developed by the individual Supreme Court justices. We should not deceive ourselves into believing that the justices do not impose their own philosophical views on their interpretations of the Constitution, especially in their interpretation of the First Amendment.

Do students have the right to prevent a school board from removing library books from a school library? Does the First Amendment give students the right to read and be exposed to controversial thought and language? Or, to frame the issue in a different way, does the First Amendment impose limitations upon the exercise by a local school board of its discretion to remove library books from its library shelves? These issues were discussed in the Supreme Court's 1982 decision, *Board of Education, Island Trees Union Free School District No. 26* v. *Pico*, 457 U.S. 853 (1982). The Supreme Court rendered a five to four plurality decision, consisting of seven diverse opinions, which gives us few answers to these questions.

In *Pico*, two school board members attended a conference in September, 1975, sponsored by a politically conservative parents organization concerned about education. At the conference, the board members obtained lists of books described as objectionable. Upon returning to their school district, the board members learned that their high school library contained nine of the books and the junior high library contained one. At a meeting with the superintendent and the principals, the board gave direction to remove the listed books from the library shelves so that the board members could read them. The nine books removed from the high school library were: *Slaughterhouse Five*, by Kurt Vonnegut, Jr.; *The Naked Ape*, by Desmond Morris; *Down These Mean Streets*, by Piri Thomas; *Best Short Stories of Negro Writers*, edited by Langston Hughes; *Go Ask Alice*, of anonymous authorship; *Laughing Boy*, by Oliver La Farge; *Black Boy*, by Richard Wright; *A Hero Ain't Nothin' But A Sandwich*, by Alice Childress; and *Soul on Ice*, by Eldridge Cleaver. The book in the junior high school library was *A Reader for Writers*, edited by Jerome Archer. Another book, *The Fixer*, by Bernard Malamud, was found to be included in the 12th grade curriculum.

After the books were removed from the library shelves, the board issued a press release justifying its actions,

characterizing the removed books as "anti-American, anti-Christian, anti-Semitic, and just plain filthy," and concluded by saying, "it's our duty, our moral obligation, to protect the children in our schools from this moral danger as surely as from physical and medical dangers."

Shortly thereafter, the board appointed a "Book Review Committee", consisting of four parents and four members of the school staff, to read the books and to recommend whether the books should be retained, taking into account the books' "educational suitability", "good taste" "relevance" and "appropriateness to age and grade level." The Committee reported to the Board that five of the books be retained: *The Fixer, Laughing Boy, Black Boy, Go Ask Alice*, and *Best Short Stories by Negro Writers*. The committee recommended removing two books from the library, *The Naked Ape* and *Down These Mean Streets*. The Committee could not agree on two books, *Soul on Ice* and *A Hero Ain't Nothin But a Sandwich*, took no position on one, *A Reader for Writers*, and recommended that one, *Slaughterhouse Five*, be made available to students only with parent approval.

The board substantially rejected the Committee's recommendation, deciding that only one book, *Laughing Boy*, should be returned to the high school library, that another, *Black Boy*, should be made available subject to parent approval, and that the remaining nine books be removed from elementary and secondary libraries and from use in the curriculum. Four high school students and one junior high school student brought suit alleging that the board's actions denied them their rights under the First Amendment.

Justice Brennan, writing for the majority, recognized that school boards have broad discretion in the management of school affairs and must be permitted to establish and apply their curriculum in such a way as to transmit community values. At the same time, citing *Tinker*, the Court recognized that the discretion of school boards must be exercised in a manner that comports with the imperatives of the First Amendment. However, although the Court cited and quoted from *Tinker*, it set forth a different test as to when a school board can infringe on the First Amendment right of students. The Court stated that schools should not intervene unless "basic constitutional values are directly and sharply implicated."

The Court emphasized that the special characteristics of the school library make that environment especially appropriate for the recognition of First Amendment rights of students: "A school library, no less than any other public library, is a place dedicated to quiet, to knowledge, and to beauty. . . students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding. The school library is the principal locus of such freedom."

Although the Court recognized the special role of the school library, it concluded that the school board does not have absolute discretion in removal of library books from its shelves. The Court noted that the Constitution does not permit the official suppression of ideas and, therefore, the removal of books from the library depends on the motivation behind a board's actions. If the board intended its removal decision to deny students' access to ideas with which the board disagreed, and if this intent was the decisive factor in the board's decision, then the board violated the constitution. The Court stated that it would not be an unconstitutional motivation to remove the books because the books were pervasively vulgar or educationally unsuitable. Justice Brennan concluded by holding "that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in these books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion."

The Court, in reviewing the disputed facts concerning the school board's motivation for removing the books, remanded the case to the district court for a trial on whether the Board's removal decision was based on constitutionally valid concerns. But then, the school board voted to return the banned books to the library to be available unrestricted to any student. The board added, however, that librarians must send notices to the parents of such students advising them that their child has withdrawn a book which "may contain material which the parents may find objectionable."

In *Pico*, faced with competing interests of the school board to represent the values of its community through its library selections, and the rights of students to receive information, the Court attempted to balance the competing interests. The result is a decision very narrowly drawn giving little direction to school boards or librarians.

One of the fundamental rights guaranteed under the First Amendment is the freedom of speech. We saw in *Tinker* that one form of speech included the wearing of black armbands. The Supreme Court revisited the issue of a student's right to freedom of speech in 1986, in its decision, *Bethel School District No. 403* v. *Fraser*, 478 U.S. 675 (1986).

In *Bethel*, a 17-year-old senior at Bethel High School in Pierce County, Washington, delivered a nominating speech for a fellow student at a school assembly. The purpose of the student-directed assembly was to nominate candidates for offices in the student government association. The text of speech was as follows:

> I know a man who is firm—he's firm in his pants, he's firm in his shirt, his character is firm—but most of all, his belief in you, the students of Bethel, is firm. Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts—he drives hard, pushing and pushing until finally—he succeeds. Jeff is a man who will go to the very end—even the climax—for each and every one of you. So vote for Jeff for A.S.B. vice-president—he'll never come between you and the best our high school can be.

In the audience, were approximately 600 high school students, many of whom were 14 years old. Students were required to attend the assembly or to report to study hall. The assembly was part of a school-sponsored educational program in self-government. The student discussed the contents of the speech in advance with two of his teachers, who told him the speech was inappropriate, he probably should not deliver it, and the delivery of the speech might have severe consequences.

During the student's speech, a school counselor observed the reaction of the students. Some students hooted and yelled, some gestured in a graphic manner imitating some of the sexual activities alluded to in the student's speech. Other students appeared to be bewildered or embarrassed. One teacher reported that on the day after the speech she had to forgo a portion of the scheduled class lesson to discuss the speech.

The morning after the speech, the assistant principal called the student into her office and told him she considered the speech to be a violation of a high school disciplinary rule. The assistant principal suspended the student for three days and removed his name from the list of candidates for graduation speaker at the school's commencement exercises. The student filed suit alleging violation of his First Amendment right of freedom of speech. The district court agreed with the student. In the interim, the student, who had been elected graduation speaker by write-in vote of his classmates, delivered a speech at the commencement ceremonies. The Circuit Court of Appeals for the Ninth Circuit agreed with the district court and the school board appealed to the Supreme Court.

Justice Burger, writing for the majority, began his analysis of the case by distinguishing the political message of the armbands in *Tinker* from the "lewd and obscene speech" in *Bethel*. Once Justice Burger distinguished the type of speech, he proceeded to discuss the level of First Amendment protection accorded the student's actions. According to Justice Burger, "The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's contervailing interest in teaching students the boundaries of socially appropriate behavior."

Justice Burger concluded that students have lesser First Amendment rights than adults and the determination of what manner of speech in the classroom or in a school assembly is inappropriate rests with the school board. The majority of the court held that the school board had not violated the student's First Amendment rights.

Is *Bethel* a narrow exception to *Tinker* allowing school district officials to punish sexually explicit lewd and indecent speech or is it a major departure giving wide discretion to local officials to punish any speech they consider offensive?

The First Amendment's protection of freedom of speech clearly extends to written materials. Newspapers, books, magazines are all forms of speech. However, when the written expression is that of a student, is the student entitled to the same First Amendment protection as adults?

This issue was addressed by the Supreme Court in the 1988 case of *Hazelwood School District* v. *Kuhlmeier*, 484 U.S. (1988). *Hazelwood* was the next major case after *Bethel* to revisit the issue of student rights and the doctrine set forth in *Tinker*. The case addressed the extent to which educators could exercise editorial control over the contents of a high school newspaper produced as part of the school's journalism curriculum.

The Hazelwood School District, located in St. Louis County, Missouri, offered as part of its curriculum, a Journalism II class at Hazelwood East High School. *The Spectrum*, was a school newspaper written and edited by the journalism class. It was published every three weeks and 4,500 copies were distributed to the students, school personnel, and members of the community. The Board of Education allocated funds from its annual budget for the printing of the *Spectrum*.

The practice at the high school was for the journalism teacher to submit the page proofs of each *Spectrum* issue to the principal for his review prior to publication. The principal, upon receiving the page proofs of one edition of Spectrum, objected to two of the articles scheduled to appear in that edition. One of the stories described three Hazelwood East students' experiences with pregnancy; the other discussed the impact of divorce on students at the school.

The principal was concerned that although the pregnancy story used false names to keep the identities of the students a secret, the pregnant students might be identifiable from the text. He also believed that the article's references to sexual activity and birth control were inappropriate for some of the younger students in the school. In addition, the principal was concerned that a student identified by name in the divorce story had complained that her father "wasn't spending enough time with my mom, my sister, and I" prior to the divorce, "was always out of town on business or out late playing cards with the guys," and "always argued about everything" with her mother. The principal believed the student's parents should have been given an opportunity to respond to these remarks or consent to their publication.

The principal believed there was no time to make the necessary changes to the stories before the scheduled press run and that the newspaper would not appear before the end of the school year if printing were delayed any significant extent. He concluded that his only options under the circumstances were to publish the newspaper without the two pages containing the two stories. Three students of the high school who were on the staff of the *Spectrum* filed suit alleging that their First Amendment rights had been violated.

Justice White, writing for the majority of the Court, used the court-created "public forum" doctrine to distinguish this case from *Tinker*. The Supreme Court concluded that the

degree of First Amendment protection for free expression on public property, such as a school, differs depending upon the nature of the use to which that public property is put. This is known as the "public forum" doctrine. There are three doctrinal categories: traditional public forum; limited public forum; closed public forum.

In the traditional public forum, under the First Amendment, the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content, although the government can place content-neutral regulations on the time, place or manner of expression so long as they promote orderly free expression and are otherwise compatible with the forum. A traditional public forum is found in such areas as streets, parks, and other sites generally open to the public for public use. Schools do not possess attributes of streets or parks and similar public places and are not traditional public forums.

A limited public forum can be created by government officials in charge of public property by simply designating that the property, or a portion of it is open for use as a general forum, or is open on a limited basis within certain restrictions. School officials can designate any public school or part of it to be a public forum or can close the forum down and create a closed public forum. However, a limited public forum is entitled to the same First Amendment protection as a traditional public forum.

A closed forum exists on public property that is neither a traditional or limited forum. Under a closed forum, the governmental entity can regulate speech so long as it is reasonable. This is a minimal amount of protection afforded to speech.

This discussion of the public forum doctrine is important because it is the basis for the Supreme Court's analysis in *Hazelwood* and becomes the underpinning for the analysis of future student First Amendment cases, one of which we shall explore shortly.

Getting back to *Hazelwood*, the Court wrestled with whether the school district intended to create a public forum in the *Spectrum* newspaper. The Court examined the relationship of the newspaper to the school district's curriculum, stating that it was part of the Journalism class and a regular classroom activity. The Court concluded that school officials did not intend to open the pages of the *Spectrum* to indiscriminate use by its student reporters and editors or to the student body, but reserved the forum for its intended purpose as a supervised learning experience for journalism students. Accordingly, the school officials were entitled to regulate the contents of the *Spectrum* in any reasonable manner.

This is how the court distinguished *Hazelwood* from *Tinker*. The Court considered the wearing of the black armbands in *Tinker* to have occurred in a limited open forum, triggering the strongest First Amendment protection. The speech in Hazelwood occurred in a closed forum, entitling school officials to regulate the newspaper in any reasonable manner.

There is a clear and significant difference between the First Amendment protection granted in *Tinker* and *Hazelwood*. The "public forum" doctrine is the vehicle the court used to achieve this result.

The Court attempted to distinguish *Tinker* from *Hazelwood* on other grounds. According to Justice White, *Tinker* involved the issue of a school official's ability to silence a student's personal expression that happens to occur on school premises. *Hazelwood* addresses the issue of whether the First Amendment requires schools to affirmatively promote particular student speech. The importance of the distinction, according to the Court, is that students, parents and members of the public might reasonably perceive the speech to bear the imprimatur of the school.

The Court in its holding, set forth a significant test for determining when a school may punish student expression. The Court held "that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."

It was not difficult, once the court had established this test, to conclude that the actions of the school officials at Hazelwood East High School were reasonably related to legitimate pedagogical concerns.

In a stinging rebuke of the majority opinion, Justice Brennan dissented. He criticized the majority for denuding high school students of much of the First Amendment protection granted by *Tinker*: "Instead of teaching children to respect the diversity of ideas that is fundamental to the American system...and that our Constitution is a living reality, not parchment preserved under glass...the Court today teaches youth to discount important principles of our government as mere platitudes....The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today."

The First Amendment also confers the right of association. Students' right to association has often been entangled in the context of the First Amendment's guarantee of separation of church and state. Throughout the 1980's, students had requested the right to hold devotional meetings in public educational facilities during noninstructional time. These requests presented the issue of whether the students' First Amendment rights to association permit them to hold such meetings on school property or whether they are prohibited by the First Amendment's separation of church and state.

In 1984, Congress addressed this issue by adopting the Equal Access Act. The Act stipulates that if federally assisted public secondary schools provide a limited open forum for noncurriculum student groups to meet during noninstructional time, "equal access" to that forum cannot be denied based on the "religious, political, philosophical or other content of the speech at such meetings." Under the Act, public high

schools can decline to establish a limited forum for student expression and thus deny access during noninstructional time to student groups except for those that are curriculum-related. If any noncurriculum group is allowed to use school facilities, then all student-initiated groups, including religious groups, must be provided equal access.

In 1990, the Supreme Court decided the case of *Board of Education of the Westside Community Schools* v. *Mergens*, 110 S. Ct. 2356 (1990), which not only discussed students' rights of association and the constitutionality of the Equal Access Act, but also dealt with the controversial issue of religion and schools. In *Mergens*, a group of students at Westside High School, in Omaha, Nebraska, requested permission to form a club that would meet at a school and engage in Bible discussions, prayer and fellowship. The school district denied the request, on the grounds that the meetings of a religious club at school would violate the establishment of religion clause of the First Amendment. The students brought suit alleging that the school district's actions violated the Equal Access Act and their First Amendment rights to freedom of speech, association and religion. The school district argued that the Act did not apply because it had a closed public forum since all student groups were curriculum-related and that even if the Act applied, it violated the establishment clause of the First Amendment by authorizing religious meetings under the auspices of the school.

Justice O'Connor, writing for the majority of the Court, first addressed whether the Act applied to the school district. She stated that if a high school allows only one noncurriculum-related student group to meet at the school, the Act's obligations are triggered. In examining the student groups at the high school, Justice O'Connor found that the scuba club was one example of a noncurriculum-related student group at the high school.

Since the court found that the Act applied, it did not address whether the school district's actions violated the students' First Amendment rights. However, the court did address whether the Act violated the establishment clause. Although a majority of the Court's justices concluded that the Act did not violate the establishment clause, they did not agree on the reasons why. A detailed discussion of the rationales of the various justices is beyond the scope of this speech. The Court, however, seems to be heading down the road of permitting closer association between religion and schools. It will not be long before the Court again addresses the issue of prayer in schools.

Let's return now to your dual role as librarian and school board member. Your staff meeting went as well as could be expected for someone whose mind was elsewhere. Let us examine the issues you face as a board member in view of the brief overview of student rights we just explored.

The first issue you face as a board member is the black headbands worn by some students to protest the war in the Persian Gulf. According to what we learned in *Tinker*, it can most likely be determined that the wearing of the headbands to protest the war is protected political speech. If we are to further rely on the teachings of *Tinker*, before the school district could bar the students from wearing the headbands, it would have to find that they would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." Does the fact that the vast majority of the students, staff and community supported this country's effort in the Persian Gulf impact the rights of the students to wear the headbands? Are the students rights to wear the headbands affected because their view was so unpopular as to actually cause threats of physical harm to themselves? Is the *Tinker* test still the valid test in light of Justice Burger's opinion in *Bethel*, in which he stated that "the undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."

Or is the *Tinker* test still valid in view of the court's "public forum" analysis in *Hazelwood*? Would the outcome of the students wearing black headbands be different if the school was a limited public forum versus a closed forum? We would hope that advocating opposition to our country's involvement in a war, even a most popular war, would still fall under the umbrella of student rights articulated in *Tinker*.

The second troublesome issue you face at tonight's board meeting is the superintendent's proposal to remove a book from your school's library shelves. The Supreme Court's discussion in *Pico* gives us little direction in deciding whether or not your school board can remove the book. Justices Rehnquist and O'Connor in *Pico* did not seem to be bothered by letting the local school board decide what books to add and what books to remove from the school's library. It is clear that the court views a local school board as representative of the morals, values and tastes of the community which they represent and will defer to their decision.

The Superintendent's recommendation to remove the book is based upon its controversial content, with which he disagrees. But should a school board be entitled to remove the book because the content is controversial, in fact, viewed by the vast majority as clearly revisionist thought? Justice Brennan in *Pico* stated that local school boards may not remove books from library shelves simply because they dislike the ideas contained in the books. Based upon the makeup of the current Supreme Court, it is likely that it would give great deference to a local school board's decision to remove the book from the library shelves.

You seem to be getting a handle on the issues. But they are not getting any easier. A student wants to give his opinion on the issue of AIDS in the form of a warning to the students in their future sexual experiences. You are concerned that the student will be talking about birth control and homosexuality, both of which are highly controversial subjects in your community. Although you don't know what specific words the student may use, the topics may be embarrassing to the board.

In view of the Supreme Court's decision in *Bethel*, you must look to whether or not the speech will cause any disruption to the educational process. The speech is to be given at graduation, not in a school assembly. You next consider the audience. All the graduates and their families will be present. There could be some young siblings in the audience. Is this subject appropriate for them? Will the community think that the school district advocates the views contained in the speech? If the speech does not contain any inappropriate language, can the Board ban the speech because of its content? The Board could probably ban the student from speaking, if it labels the speech "lewd and obscene," even though the objections are in part based upon the controversial content of the speech.

Finally, the newspaper you received this morning offended you because of some of the controversial stories it contained. You begin asking yourself, is this a student, school-sponsored newspaper? Is this material appropriate for high school students? Is it appropriate for a fundamentalist group to meet on school property? You don't recognize the paper, but others may think it is school-sponsored because of the way the school name is prominently displayed. You are concerned that community members may think the District advocates some of the fundamentalist teachings contained in the paper. Do we have to let fundamentalist groups onto school property? Your school only lets charitable groups meet at the school. What if other religious groups want to meet there?

Your board may only place time, place, and manner restrictions on the distribution of the student newspaper. Currently, your board has created a limited open forum and unless it shuts down the forum, it will have to let the group meet at the school.

"Students have rights, too." We have seen that students have rights protected by the First Amendment to the United State's Constitution. However, we also have seen that these rights are subordinate to the rights of school districts and adults, especially when the exercise of the rights create controversy. It would probably be more accurate to say students have rights too, provided the exercise of these rights do not stray from mainstream social and political thought. □

remarks by Frances McDonald

Frances McDonald is Professor of Library Media Education at Mankato State University in Mankato, Minnesota. Her teaching areas include young adult materials, school library media services, and censorship and intellectual freedom. Over the past ten years, Ms. McDonald has written extensively on intellectual freedom, and has given frequent presentations on that subject. She has served as a member of the ALA Intellectual Freedom Committee, is a past Chair of the AASL Intellectual Freedom Committee, and is the Chair-Elect of the ALA Intellectual Freedom Round Table.

This is a special opportunity — to talk to one another as librarians about our roles, our professional responsibilities and the rights of kids. Today, we speak as family, openly and frankly, about how we exercise our responsibilities. We can have a serious heart-to-heart talk.

I will use "librarian" to mean school library media specialist or any other term used to describe the person who serves kids in schools and public libraries.

You all remember "the right book for the right child at the right time." Librarians connect the child with a need to know with information to satisfy that need. The terminology we use says much about our approach to the process. Some say we *arrange* the connection. Others say we *allow access*. Still others call librarians the *gateways* between information and the user. Our attitudes about the process are in the words: *arrange, allow, gateways*, implying opening them, but also closing them.

Librarians approach the process of connecting kids with information in one of two ways: either as protectors of kids, (notice, I did not say protectors of kids' rights) or as advocates for kids. Adults who make decisions about the information and ideas young people may read or express, make their decisions as advocates or protectors of the young. Rarely are adults middle-of-the-roaders on this issue. Either they encourage access to information and ideas and student expression or they limit access and expression. Because of respect for kids, adult advocates foster and guide student exploration of ideas. Because of personal inclination or because of an assumption that the community wants them to protect the minds of children, as well as protect them physically, adult protectors restrict ideas.

Adults who fear ideas, who fear giving young people too much freedom, who fear the power of the printed and spoken word, who fear youth, and who want to control youth assume the stance of protector. Adults who value ideas, who value the expression of ideas, the process of sorting and evaluating ideas, and who want to empower young people, assume the stance of advocate.

Protectors of kids make sure that the information with which kids connect is the proper kind. They make sure that what is available for kids to use is safe and will not cause harm. Their instincts are that children, as lesser persons, are not capable of making the same decisions that adults make; that they are not to be trusted to make good uses of information; that they are not capable of making wise choices when confronted with a wide open collection.

Advocates for kids, on the other hand, seek to make sure that the information kids need is available; they trust that the kids will be able to sort it out and evaluate it. Advocates empower kids. As Dorothy Broderick wisely said, advocates allow kids to make decisions, knowing that sometimes the decisions will not be the same decisions adults might have made. Advocates know that although some choices might not be wise, all they can do is provide as much information as

possible; they cannot make decisions for the kids.

Adults who protect kids have the best interests of children in mind. They tell you that. But they also have their own skins in mind. Most would not admit that, or perhaps do not view self-interest as their motive. What makes adults so uneasy when kids do what kids will do—try to shock the adults in charge, spread their wings, do what others dare not do? What makes the adults uneasy is that perhaps the people on Main Street will think that the adults in charge in the library approve of this behavior. Maybe they even read books like that themselves. What makes the adults uneasy is what citizens might think and say about the librarian. So while they say they are protecting kids, they are really protecting themselves.

The barriers erected between kids and information are not put there by outsiders; they are the result of rules, regulations, and administrative decisions, and adult behavior — the behavior of librarians. No parents, school principals, or city council members erected the barriers, the librarians did — by regulation, for adult convenience, and because of the personalities of librarians.

We all know that librarians remove books. We know that librarians are guilty of self-censorship when they select materials. Contrary to American Library Association policy and their professional ethic, librarians limit access to resources based on age. Some resources are available for adults, but not for kids. Adults can check out some formats, but kids cannot. Unfortunately, we know that the connections between kids and information, in some communities, can be made with less hassle in the public library than in the school library. In some public libraries, kids are just like any other person. They can use whatever is in the library. In other libraries, kids are treated as "special" persons. They are limited to collections specified for them and they may not use all the resources the library has to offer. In some libraries, kids can use VCRs to look at video tapes; in other libraries, they can't. In some libraries, kids can even check out video tapes; in other libraries, they may not until they are 12 or even 18. John Christenson, of the Traverse des Sioux Library System in Minnesota, who conducts his own campaign about format-based restrictions to information finds it strange that in some libraries, a kid can't check out a 19.95 video tape to take home in the $12,000 car he is driving. In some libraries, adults can use interlibrary loan, and kids can't.

What influences librarians to act as protectors of kids and restrict what they may read, look at and hear? What influences other librarians to act as advocates of kids and empower them to read, view and listen freely? Why are some libraries free and open to all regardless of age, while others impose age restrictions?

Based on observations and conversations with many individuals, I have reached some conclusions. I believe that personal characteristics, fear or unwillingness to risk, discomfort with ideas, a victim mentality, and lack of respect for kids influence librarians' lack of commitment to their professional ethic.

We do not know very much about the characteristics of librarians who censor, and those who oppose censorship. Robert B. Downs speculated that perhaps there is something in the psychological makeup or personality of librarians that leads to different approaches to selection and restriction of library resources. Dorothy Broderick, talking about parental reactions to young adult books, speculated about whether censors have ever achieved the formal operations stage in their cognitive development. Charles Busha found a positive correlation between authoritarian beliefs and procensorship attitudes. John J. Farley concluded that librarians censor because of a pressure they cannot define. And I have found a correlation between level of moral reasoning and attitudes toward intellectual freedom and censorship. The Office for Intellectual Freedom describes four factors influencing censorship behavior: family values, political views, religion, and minority rights. The fact is we do not know.

The library community knows that librarians hold more positive attitudes toward intellectual freedom than negative attitudes toward censorship. Fiske told us that in the 'fifties and Farley verified her findings in the 'sixties. During the 'seventies, Busha affirmed the findings and added information about the characteristics of librarians with censorious inclinations. McDonald told us in the 'eighties that while attitudes toward intellectual freedom are quite positive, attitudes against censorship are weak.

Librarians know the *Library Bill of Rights*, they know the principles in it, but they do not apply them. Do they value the principles as their professional ethic?

When librarians ask me questions, they give clues about why they censor. A few examples will suffice. A librarian says, "I live in a conservative community." What kind of justification for censorship is that? I have never seen a definition of conservative that says "conservative — person who endorses censorship". Maybe the conservatives are getting a bum rap, being blamed for the timidity of librarians. Why do we equate conservative with censor? Amazing. I actually know some conservatives who believe strongly in freedom to read. My brother is a conservative, at least that is what he labels himself. He appears to me to be quite moderate — sort of like I am. But I believe in allowing individuals to attach their own labels to themselves. So he says he is a conservative — fine. His point of view is that the government has no right to tell him what he may do, and that includes what he may read. That's a true conservative position. So, why do librarians conclude that conservative communities want a lot of censorship? Think about it the next time you do not select something because you live in a conservative community.

I am avoiding the entire question of how a community can be called conservative. From my perspective *every*, underline *every*, community calls itself conservative. Well, I guess I did not hear the people in Yellow Springs, Ohio, say they

were conservative. But then I did not ask. This is a puzzlement. How are we so omniscient that we know a community is conservative? Every citizen in the community? Or, do the people who consider themselves moderates and liberals not patronize libraries, or do they not read? Strange...

A second example: A librarian says, "My principal has told me to be cautious when selecting books, and I don't want to be accused of being insubordinate". Why does the librarian conclude that the principal means to censor? A librarian says, "I know that my principal would not approve of that book." How does the librarian know that as a certainty? Librarians blame principals for their self-censorship. I wonder if the principals know they are the cause of so much censorship? Have they actually said to the librarian "You — be a censor?" Yes, I will grant that some principals have told librarians to remove certain books or magazines. In fact, some principals have been known to remove books and magazines themselves. But is that a reason for the librarian to justify not purchasing a book the principal has not ordered the librarian not to purchase? I think principals are blamed for what the librarian wanted to do in the first place.

Another question I am frequently asked is "How far do I have to go?" Other times it is stated, "How much do I need to risk?" People asking those questions are looking to me to give them permission to censor. They want me to agree with them that there are limits to how vigorously they must defend the rights of kids to read. They also want me to agree with them that the limits they have set for themselves are exactly the right limits. When the question includes the idea of risk, the person is coming close to the real reason librarians censor. It is not the principal, it is not the conservative community, it is the perception that there is a risk involved for the librarian if the librarian provides unrestricted access to information for kids. Risk — there we have it. Librarians who advocate kids' rights are taking risks. "How much do I need to risk," implies that there is a limit, a line between what a librarian should do and the amount of restricting that is allowed. How much do you need to risk to protect the rights of kids? Comfort in our working environment? The favor of your colleagues? The disfavor of your principal? Being thought to be insubordinate? Being thought to agree with the weird ideas in the books you make available? Your jobs? The risk, if that is what it must be called, comes with the territory. It is part of the profession. It is what defending the right to read is all about.

I wonder whether librarians who ask how much they need to risk are in the right profession? I wonder whether persons who are inclined to restrict should maybe consider a career change? Perhaps individuals not committed to the right to read for everyone, including kids, should not be part of the profession.

The difference between the protector and the advocate is that protectors have more concern about what others might think than about the information needs of the kids. Librarians fear, not for children, but what others might think of them; they fear what others might think about the ideas in the books made available for the kids.

When librarians talk about difficult books, they *never* say, "that book is too mature for children or that book has information children do not yet need." Instead, they *always* say "I could never buy that in my community." Or, "The parents would never allow that book." So? Librarians who restrict, restrict what disturbs them, they restrict what makes them uncomfortable. Today, librarians seem to be most disturbed by the mysteries of sex, by street language, by the occult and witchcraft. Librarians aren't thinking about the needs of the kids, they are thinking about their own comfort level. The next time you are inclined to self-censor, look at the topic of the book. If I were a betting person, the topic will be something that makes you uncomfortable, something you would not want another adult to think that you purchased for the kids.

Another reason librarians censor is that librarians have adopted a victim mentality. They view themselves as victims of those who challenge resources. They view themselves as victims of the communities in which they live, the people with whom they work, and their superiors. Victims believe that power has been taken from them. Because they view themselves as powerless, victims do not have to act. They are excused from protecting the right to read because they have been victimized by those who criticize books.

School librarians teach young people to evaluate and use information. They then apparently mistrust the skills they have taught because they make sure there is nothing in their collections that students might raise questions about. They don't seem to have faith in their ability to help children acquire the skills of critical reading, and viewing and listening. They have no respect for the ability of kids to use the skills they have taught them.

It is not for librarians to decide what the human mind can understand and/or absorb. It is not for librarians to set limits. Individuals must set their own limits. If parents want to set limits, let them; but don't do it for them. Librarians must allow kids to experience information, to examine or to reject it, to understand or not understand it. Librarians must respect kids enough to allow them to move freely in libraries, to experience information for themselves.

In early June, Bill Moyers interviewed the Dalai Lama and what he said reflects what I feel about my purpose today: "You came here with some expectation. I have nothing to offer you—nothing more than you already know within yourselves."

I can only remind you of what you already know. The question today is the rights of children. Who will protect the intellectual rights of children? You know the answer to the question. Your responsibility is to respect the rights of children. To protect the rights of kids, you must examine your own professional behavior. You must make sure that those with whom you work also understand the need to protect the rights of kids.

We express disgust at the politicians who wrap themselves in the flag. We think about all the times when, after the campaigns are over or the victory celebration parade has passed, the same politicians violate the principles the flag stands for. Librarians do the same thing when they wrap themselves in the *Library Bill of Rights*, when they rally against outsiders who challenge resources. Rather than wrap yourself in the *Library Bill of Rights*, stand as a defender of the rights of kids. Go on a campaign to protect kids' rights. If the adults in charge do not assume responsibility for protecting the rights of kids, who will? The only rights the kids have are the ones their advocates are willing to defend for them — or allow them to experience.

Will you continue to protect yourself? Or, will you become an advocate for kids' rights? □

remarks by Pat Scales

Pat Scales is the Media Specialist and Librarian of the Greenville Middle School, and is also an adjunct instructor in the Department of Education at Furman University, both in Greenville, South Carolina. She has developed several programs for children, including "Communicating Through Literature" and "Dial an Author," that have been featured in numerous books, articles, and on several television programs. Ms. Scales is the author of Teachers Guide for Three Adolescent Novels and "Book Strategies", a regular column in Booklist magazine. She has served on the ALA Council, and has held a number of other posts in ALA and other national and regional professional organizations.

When I was asked to speak today on kids' rights, and programming in libraries to help protect those rights, I thought perhaps I should title this, "Serving the New Age" or "What the Heck Is the New Age?" We have heard, at this conference and across the nation, that we are in the midst of fighting problems with the so-called "New Age" movement.

I want to begin today with a quote from a thirteen-year-old that was printed in our local newspaper this spring: "I just hate for somebody to tell us what we can and cannot read because that's one of the few things where we can choose what we do. Pretty soon everyone is going to find something wrong with one book or another, and you'll look in the library and all the shelves are going to be bare."

This eighth grader is a thinker, has an opinion, and along with many other students in my city this spring, is willing to express it. One local school board member responded to these students when they came before the school board, by saying, "These little children shouldn't be allowed to speak. In my day, children were to be seen and not heard."

It's rather ironic that I'm standing before you today speaking in the name of these kids, or as Mr. Dill refers to them, "these little children." When I agreed over a year ago to come here today and talk about programming and the advocacy of kids' rights, little did I know that I would be here during one of the biggest, most serious censorship cases of my career. Let me briefly outline what has gone on this spring in our school district.

At a local high school, one parent objected to five books being taught in the school curriculum. He had done his homework, and was quick to say he did not wish to remove access to the books; it was okay for them to remain in the library, although we suspect that removing them from there was probably the next step. He just wanted them out of the English curriculum. I wish I could tell you that these were books you've never heard challenged before, but I can't. They were the *Grapes of Wrath, Of Mice and Men, East of Eden, Second Heaven*, and one book that was in a middle school, *My Brother Sam's Dead*; all of these, we know, have been on the hit list many, many times.

The unfortunate thing about this case is that it began over a year ago, and the school board delayed, thinking if they did not deal with it, it would go away. But ignoring the case only made it grow bigger. I don't want to paint a totally negative picture, because I think something very positive has developed out of this. For the first time in my career, and I've been in the field for nineteen years, I have seen the silent majority speaking out. They came before the school board to speak out — not only juniors and seniors in high school, but eighth graders, and not only in the school where this occurred, but all over the county — only to hear that they are little children, and should not be allowed to speak.

I got involved because of a program called Communicating Through Literature. I want to briefly outline that program, and tell you why I think that, as librarians, we need to work hard to develop proactive programs in our school to support intellectual freedom, so that when the time comes to fight censorship cases, we are ready and we are organized.

One of the problems I see everywhere is that people who are fighting the so-called "New Age" are already organized — they are organizing in the churches. They are mostly fundamentalists who already have organized to fight other issues in the community, which was our case with this man. He had already been arrested three times for picketing an abortion clinic in town, and he spent a few days in jail for that. He lost his job because he spent more time on his social issues then he did on work.

But Communicate, which is a program for parents that has been going on for over fifteen years in my middle school, was begun for reasons other than as a proactive way of dealing with censorship. I began that program because of my experiences working with younger kids. I found that when a child becomes an independent reader, the parent virtually bows out of the child's reading experience, leaving it totally up to them until a problem occurs. I wanted to encourage parents to better communicate with their children through the literature they read.

I began this program, and invited parents to come to the school library. We have different topics every month, for I found early on that if I don't give some structure to it, they didn't do their homework. We had brainstorming sessions on topics pertinent to adolescents, and we read children's and young adult novels that would help them better understand what their child was going through at this time. Topics included teenage sexuality, images of parents in young adult literature, death, gangs, the need to belong, and peer pressure. We have used books that have been on the so-called hit list throughout the entire nation, and we have never once had a censorship problem in my school.

If you had asked me when I started this program, I probably would have told you that I had a slight fear that opening up the literature would make parents question more. I felt it was well worth the risk and, as it has turned out, these parents have become a very proactive voice in the community in fighting censorship cases. When the school board asked the Instruction Committee to review these five books, hoping to override the Materials Review Committee and have the books removed from the English curriculum, my Communicate Through Literature group went to that meeting, picketed, and spoke out in favor of the books. Of course, if they had been removed, it would have affected every high school in town. The Instruction Committee recommended to the board that they uphold the Materials Review Committee, and retain the books on the list, but the school board still had to vote.

For the first time in my career, Communicate Through Literature has been put to a real test and, when the time came, they supported all aspects of intellectual freedom. The five books in question were retained, and the school board voted 9-2 to support the Materials Review Committee.

The conservative and fundamentalist movement now has struck again. The group we are battling represents a very conservative movement emerging throughout the nation, a group concerned with the "New Age." I'm not too sure what "New Age" is; I'm still looking for a definition of it. It's so ambiguous, it can be almost anything. I think we're supposed to be wearing crystals in all these meetings, or some such thing. Since the books challenge issue began, they have attacked the elementary school's Seed's Program. This is a program in which parents read books aloud to elementary school kids, and do projects with them, primarily concerned with critical thinking skills, a bad phrase right now among people opposing the "New Age."

One of the books in this program that they are attacking is *Sylvester and the Magic Pebble*. I received a call from the director of instruction in our school district to ask for help, which is a very positive result of Communicate Through Literature — at least they are calling us for help. This is the first time in my career I've been called directly, and actively recruited to speak before the school board.

Three days after I spoke before the school board, which probably was the most intimidating experience I've ever had in my life, because they were determined not to make any eye contact whatsoever, I received a call from one school board member asking, "Pat, is this really a censorship issue? Will you explain to me why it is?" I talked to her for one hour on the phone explaining that, yes, it was censorship, and why I thought so. She asked if I would be willing to have dinner with her so we could talk further about this.

Now, this is a lady who five years ago voted to remove page 14 from a sex education textbook published by Scott Foresman & Co. — the page that had information about condoms. Scott Foresman had perforated the pages of that book, encouraging school districts to tear out that page or any others that didn't fit their curriculum. This woman voted to tear out page 14, but in our school, we refused to tear the pages out, and just didn't use the textbook.

This woman asked me to have dinner with her, and then she called back and said there were two other people on the line. The book that was really bothering them most was *Second Heaven*, by Judith Guest. She asked if I would be willing to meet with all three of them. Well, I did, and I won't tell you I ate anything that night. I spent the entire evening talking with these three people who were all very much on the fence about which way to vote.

The board was meeting the following Tuesday night. Since I was teaching that night, I had to make it to the meeting in record time to be there before they voted. I knew they held off the most controversial votes until midnight, in the hope that everyone would have gone home by then. When I got there, they had not voted, and the guy who was most on the fence made the most beautiful speech I've heard made before that school board. We won the vote 9-2. The book was retained in the curriculum.

We still have battles to fight. I'm not going to tell you it's over. The board did tell the Instruction Committee to annotate every book in the English curriculum guide, and that this guide must be sent home to all parents at the beginning of the school year. One school board member wanted the books labeled on a rating scale, such as that used for movies. I spoke out against the labeling plan, and we have convinced them not to do that. My concern at the moment, however, is that they have hired people throughout the district, English teachers and librarians, to annotate the books.

Now the issue is the subtle language that can be used in an annotation to label a book. The implications for the future are tremendous, so we are really fighting this. The fight has gone to the elementary schools and the Seeds Program with *Sylvester and the Magic Pebble*, all of the fairy tales, anything that would encourage kids to use their imagination. I asked the director of instruction to tell me why they complained about *Sylvester*. I wanted to know if it was the same complaint (and I knew it wasn't) from the early '70's when the book came out, which was that the policeman in the book is a pig. This time it's because Sylvester has an out-of-body experience.

One mother complained about the entire program; she

wants the entire program taken out of the school, along with elementary school counseling programs that have anything to do with building self-image. She does not think that children should reach within themselves — they should go to a "higher being" for help. The fundamentalist parents called a meeting immediately after an article was printed in the newspaper, afraid that these books are a part of the "New Age" movement. The newspaper definitely has given more attention to the opposing side than to those who wish to retain the programs in the schools.

The parents in favor of retaining the programs are very upset. I even had a call from one of them asking if I would join their meeting. The most positive thing to come out of this entire issue is that these people have finally decided they're not taking it any longer, they're going to speak out. I've never seen people in favor of a book speak out like they're speaking out now. They invited newspaper reporters to their meeting, saying they wanted equal time. A reporter came, and stayed for the entire meeting. I won't tell you I thought she did a great job on the story, but it did have front page coverage.

The woman who had called to ask me to attend this meeting is a member of my Communicate Through Literature group. she doesn't have a child in our school at present, but she will in another couple of years. Her older child has gone on to high school, but she chose to remain part of the program. I feel that, once again, we've been asked to speak out because of the visibility this program has received.

In essence, we are being told we cannot encourage imagination, we cannot teach critical thinking skills. Yet, that's contradictory to what we're advocating in education now with the whole language approach and teaching kids to think. The other side believes we shouldn't allow kids to have any higher-level thinking skills, whatsoever. These people are asking kids to give up their right to the joy of asking.

In addition, they want to monitor the social studies and science curricula. They don't want students to learn about cultural differences, especially when it concerns religions other than Christianity. Yet, we are living in a global society, and we see multi-cultural aspects of society right in our own school. Even some families are multi-cultural. But we cannot teach the cultures of other countries.

During the Persian Gulf War, we had an Iraqi child in our school who was harassed by other students to the extent that we had to take some time during the school day to deal with it. If these kids had been taught at home, or even at school, about the cultures of his land, perhaps they would have welcomed, rather than harassed, him. His parents even had to remove him from school for a couple of days, because there was no understanding, whatsoever, of where he was coming from.

I recently viewed a television news program for teens, with teens evaluating the show. The teens said, "You have opened our eyes to other people. We want to see different cultures. We want to hear what others think, and we want to tell them what we think." We must give these kids the right to think, we must give them freedom to dream and, above all, we must develop programs in our libraries that will help parents understand how important it is to these kids to think and develop ideas at an early age.

I think that Communicate Through Literature has done that, and I hope that it is a program that parents will continue to use throughout their kids' high school years. Maybe, when they have grandchildren, they will continue reading and connect with them in this way.

I strongly believe that parents fear the unknown, and that's the problem we have in schools. If we open up the collections, open up programs, talk with parents, respect their intelligence, and respect their opinions, I think we can fight this censorship problem, and be further promoters of intellectual freedom.

I read that Steven Pico gave a speech to one of the state library associations, and ended his speech by saying he could forget the name calling he received during his case, and he could forget many of the things that happened to him during this time, but the one thing he would not forget as long as he lives, was that his teachers remained silent. He said that in the middle of the case, the head of the English department came to him one day and whispered, "Steven, you're doing the right thing." He said, "I shall never forget as long as I live that she felt the need to whisper."

We can no longer whisper. We have got to speak out. We've got to trust that the parents will listen to us, and we've got to develop programs to let them know how we feel. Above all, we've got to let these kids know that they have a right to speak. We've got to join together. I fight for kids by demanding that school curricula include skills to operate in our diverse society, so that we don't have problems like we did with the Iraqi kid in our school. Let's join together in helping kids retain their rights to imagine, to think and, above all, to dream. We must let the term "New Age" be an age of enlightened young people who know and understand their rights, and who learn at a very early age to stand up for their rights. □

(challenged books, blurred boundaries . . . from page 191)

take criticism seriously when it comes from thoughtful sources. "As a matter of fact," I went on, "the librarians criticized *My Side of The Mountain* so vigorously for my not having given Sam a strong motivation for running away from home, that I gave Julie an unwanted marriage to run away from." I paused and smiled. "No one, come to think of it, has complained about Julie not having a reason to leave."

"It's not her marriage," the reporter said after my lengthy defense, "your book is being banned because it teaches survival of the fittest. Do you want to defend it?"

That silenced me.

I finally answered, "No," I said, "I don't want to defend my book. People have a right to criticize it. What they have no right to do is ban a book. Ask them this — how can a child — or an adult for that matter, make an informed judgment on a book without reading it?"

"In my day," I continued, "teachers, librarians and my parents forbade us to read 'trash'." But eventually they reneged. They realized it was important to read *Deadeye Dick* in order to appreciate *Far From the Madding Crowd* and *Moby Dick*.

When I hung up, I thought perhaps I should defend *Julie of the Wolves* in a letter to the editor of the Miami, Ohio, paper. Then Bill Morris of HarperCollins called me to say *Julie* had been banned in a county in Texas, the name of which he could not remember.

"For the rape scene?" I asked, "or for teaching evolution?"

"Neither," he answered, "for animalism." This was followed by a long pause. "It's a first," he said with a twinkle in his voice. With that, I put aside all thought of trying to defend *Julie* on any score. Some people, somewhere, for prejudices of their own, will find something wrong with that book, or they will have no reason to ban it except that it was controversial, as did a principal of a Connecticut school.

Judith Krug summed it up. "Most often," she wrote, "a book such as *Julie of the Wolves* comes to the attention of adults when it becomes the cherished favorite of young people. It is the adults then who decide the book's material is objectionable and inappropriate for the very people who have grown to love it."

She is right. Before *Julie* was widely read, a young teacher at the Bank Street School in New York City phoned me after reading the book aloud to her fourth grade students.

"How did page 102 fare?" I asked.

"102?" she queried. "No one said anything about it. What did upset them was that Julie lost her father. The loss of a parent is insufferable pain."

If those children had censored this book instead of adults, they would have burned it when Julie's father did not return. They were relieved, the teacher said, when Julie returned to her father at the end of the story, even though he had killed Amaroq, the wolf leader and Julie's friend. A few children would have liked to see Julie go back to live with the wolves, but most were satisfied that she found her father. The teacher then told me that when she closed the book the children said: "We have been on a long journey and have just come back." What more can an author ask for?

As for me, I was worried about the reaction of the scientists. The animal behaviorists at the Naval Arctic Research Laboratory in Barrow, Alaska, had high standards. At that time, animal communication was a very new branch of biology and, in some instances, was controversial. I was eager for scientific reaction to the interaction between a human and a wolf because I believe children must be given accurate information. A few wolf scientists thought I should have made the wolf pack "a socialized pack" — that is, raised by humans. Such a pack, they reasoned, would be friendly to Julie. But I had been there. I had seen Dr. Michael Fox communicate with a wild, unsocialized wolf at the Barrow, Alaska, research station. I had gone howling in a Minnesota forest with Dr. L. David Mech, the world's foremost authority on wolves. Whatever he and I said as we howled in the moonlight was understood by the wolves. They answered and came from a great distance to gather around us, wag their tails and grin at our wolf talk. Furthermore, I had been told by Eskimos that the wolves were often their providers on the tundra. As much as I respected and wanted the approval of the scientists, I did not defend the book. I waited. Wolf research was going forward.

Time has taken care of Julie's friendly pack. Recently, I was pleased to read an article in the *Audubon Magazine* by Dr. Mech: "...there have been incidents of humans interacting positively with wild wolves in the High Arctic (above 70 degrees north latitude) where wolves are not persecuted by humans. For example, ornithologist David Parmelee once grabbed a wolf pup and carried it back to his tent. The mother wolf followed at his heels and slept outside his tent until he released the pup."

In another case, a Canadian biologist, G.A. Calderwood, surprised two wolves near the U.S. Canadian Arctic weather station. "The wolves rose to their feet but did not flee," his friend reported. "When Calderwood knelt on the ground to put film in his camera, one of the wolves, (thinking he was not a two-legged human, down on all fours as he was), approached, licked his face, uttered a gurgling sound, then turned and trotted off with the other wolf."

A reporter friend of mine told me that her grandmother, a Northwest Indian, took her sisters and her into the Washington wilderness every summer and set up a camp. In a few days, a mother wolf would walk into the clearing with her pups. The girls and the pups played and tumbled until the mother wolf decided it was time to leave. My friend has never forgotten the wonder of that experience.

When I heard her story I was glad I had not defended Julie. Eventually, time and research and education take care of the criticism.

I don't mean to say an author should not defend himself. There are times when the banning of a book is heresy and the creator *should* speak up. The two most famous defenders of their books are E.B. White for *Stuart Little* and Maurice Sendak for *In The Night Kitchen*. Fortunately, I write for HarperCollins, the publisher of those two books and my editor, Katherine Tegen, found White's and Sendak's defenses in the files.

The first person to respond to the criticism of *Stuart Little* was Katherine S. White., E. B. White's wife. She writes Mrs. Gothlin, an offended mother of a nine year old daughter:

"Dear Mrs. Gothlin:

"Harper's has forwarded your letter to my husband and I am answering it for him because he is away on another world and therefore unable to answer the mail. Naturally, he would be sorry that *Stuart Little* disturbed your daughter; from the letters he gets each day from children, the book seems to have given much pleasure to other nine-year-olds, so I can't believe your little girl's reaction is a typical one. The book is a work of the imagination, not a factual story, and most children seem to know this and to take the leap into a world of fantasy in that first sentence. A librarian of a school in New York City has described in a letter how she read the book aloud to her nine-year-old children and how some of them discussed whether a woman could give birth to a mouse and decided that of course this couldn't be and that this was a fairy story. Her children were enthusiastic about the book, which was why she wrote about it. Perhaps you should point out to your daughter that the book does not say Stuart is a mouse — he isn't, of course, anymore than Toad in *Wind in The Willows* is a toad."

And here is E. B. White's masterful reply in an article for the *New York Times* in 1966:

"Stuart Little, himself quite a traveler, came into being as the result of a journey I once made. In the late 'twenties, I took a train to Virginia, got out, walked up and down in the Shenandoah Valley in the beautiful springtime, then returned to New York by rail. While asleep in the upper berth, I dreamed of a small character who had the features of a mouse, was nicely dressed, courageous and questioning. When I woke up, being a journalist and thankful for small favors, I made a few notes about this mouse-child — the only fictional figure ever to have honored and disturbed my sleep.

"I had eighteen nephews and nieces. As a young bachelor-uncle I used to be asked now and then to tell a story. At this task I was terrible. Whole minutes would go by while I tried to think of something. In self-protection I decided to arm myself with a yarn or two, and for this I went straight to my dream-mouse. I kept these stories in a desk drawer and would pull them out and read them on demand. As the years went by, I added to the tale. Book publication never crossed my mind. These were the golden days before television, when children got their entertainment not by twisting a dial but twisting an elder's arm."

I will delete the incidents leading to publications and get on to the action.

"Harper accepted the book, and Stuart was off at last, after a pardonable delay of some fifteen years. Garth Williams was brought into the enterprise and began turning out the drawings that were to give shape to my diminutive hero.

"A few weeks later, back home in Maine, a letter arrived for me from Anne Carroll Moore, children's librarian emeritus of the New York Public Library. Her letter was long, friendly, urgent, and thoroughly surprising. She said she had read proofs of my forthcoming book called *Stuart Little* and she strongly advised me to withdraw it. She said, as I recall the letter, that the book was non-affirmative, inconclusive, unfit for children, and would harm its author if published. These were strong words, and I was grateful to Miss Moore for having taken the trouble to write them. I thought the matter over, however, and decided that as long as the book satisfied me, I wasn't going to let an expert talk me out of it. It is unnerving to be told you're bad for children; but I detected in Miss Moore's letter an assumption that there are rules governing the writing of juvenile literature — rules as inflexible as the rules for lawn tennis. And this I was not sure of. I had followed my instincts in writing about Stuart, and following one's instincts seemed to me was the way a writer should operate. I was shook up by the letter but was not deflected.

"*Stuart* was published in October and other surprises were in store for me. Miss Moore's successor at the Library had some misgivings of her own about the book, and Stuart met with a cool reception. He got into the shelves of the Library all right, but I think he had to gnaw his way in. The press, to my astonishment, treated the book almost as though it were adult fiction. The daily *Times* gave it a full-scale review by Charles Poore, who praised it. Malcolm Cowley, in the *Sunday Times*, said it was a good book but disappointing — should have been better. This exactly expressed my own feelings about it.

"A couple of days after the book appeared, Harold Ross, my boss at the *New Yorker*, stopped in my office. His brief case was slung over his shoulder on a walking stick and he looked unhappy. 'Saw your book White,' he growled. 'You made one serious mistake.'

"'What was that?' I asked.

"'Why, that mouse!" he shouted. 'You said he was born. God damn it, White, you should have had him adopted.' The word 'adopted' boomed forth loud enough to be heard all down the corridor. I had great respect for Ross's ability to spot trouble in a piece of writing, and I began to feel uneasy. After he left the room I sat for a long while wondering whether Miss Moore had not been right after all. Finally I remembered that Harold Ross was not at home in the world of make-believe, he was strictly for the world of Forty-third Street, and this cheered me and revived my spirits.

"My next encounter was with Edmund Wilson, who stopped me in the hall. 'Hello, hello!' he said, in his wonderfully high and thrilling voice that sounds like a coaching horn. 'I read that book of yours. I found the first part quite amusing, about the mouse, you know. But I was disappointed that you didn't develop the theme more in the manner of Kafka.'

"I thanked Edmund and wandered back to my room to chuckle at the infinite variety of the *New Yorker*; the editor who could spot a dubious verb at forty paces, the critic who was saddened because my innocent tale of the quest for beauty failed to carry the overtones of monstrosity. What a magazine! There's never been anything like it.

"Despite the rough time the author was having, Stuart

himself seemed to be doing all right. The book drew generally favorable reviews, and by October 24th Harper had sold 42,000 copies.

"The next thing that happened was that three fellows turned up claiming that *their* name was Stuart Little, and what was I going to do about that? One of them told me he had begun a children's story; the hero was a rat, and the rat's name was E. B. White. I never learned how far he got with this splendid project, but I know he phoned Ursula Nordstrom at Harper's, to alert her.

"The real returns came when the letters began arriving. Many were from children. Some were from teachers. They expressed pleasure, along with a fairly steady stream of abuse about the book's ending, which fails to tell whether Stuart found the bird. The letters have not stopped coming. Of the many thousands I've received, only two, I believe, questioned the odd fact of Stuart's arrival in this world and the propriety of an American family's having a boy that looked like a mouse. After twenty years, I am beginning to relax.

"I learned two things from the experience of writing *Stuart Little*: that a writer's own nose is his best guide, and that children can sail easily over the fence that separates reality from make-believe. They go over it like little springboks. A fence that can throw a librarian is nothing to a child."

I go on to read Maurice Sendak's defense of *In the Night Kitchen* in a speech at Carnegie Hall.

"In the fall of 1970, when my hero Mickey slipped out of his clothes and into cake batter in *Night Kitchen*, a critic peevishly queried: 'Why couldn't Mickey have *at least* kept his underpants on?' Apparently, this critic had never dreamt himself naked — and thereby lies a tale. As it turned out quite a few librarians across the country preferred Mickey Fruit-of-the-Loomed; his raw condition struck a raw nerve and they self-righteously concluded that Mickey must be cleaned up. To protect the children, of course. So they diapered, draped, and frilled him out with magic marker and paint brush. In some cases (I have a number of copies smuggled out to me by embarrassed librarians), his quaint quickie briefs are downright kinky. It's easy to imagine curious children holding the book up to the light and tracing out the obvious. Worth a giggle, I suppose, though I never saw the humor in the situation. It reduced a book I had worked on for over three years to nothing more than sheer idiocy.

"On June 9, 1972, my fierce and beloved editor, Ursula Nordstrom, sent out a press release denouncing this outrageous mistreatment of *In The Night Kitchen*. Let me read what it says, which, alas, holds more true today than ever.

"'On behalf of Maurice Sendak, Ursula Nordstrom, Publisher of Harper Junior Books, recently sent out the statement quoted below to some 380 librarians, professors, publishers, authors and artists throughout the country. The response was extraordinary; 425 signatures. Many were accompanied by personal notes underlining the signer's indignation at this reported exercise of censorship by a librarian through alteration of the illustrations of *In The Night Kitchen*. It is hoped that this protest will alert all those concerned with children's books to the invidiousness of such censorship.

"The following news item, sent to *School Library Journal* by a Louisiana librarian and published in a recent issue of that magazine, *without any editorial comment*, is representative of several such reports about Maurice Sendak's *In The Night Kitchen*, a book for children, that have come out of public and school libraries throughout the country:

"'Maurice Sendak might faint but a staff member of Caldwell Parish Library, knowing that the patrons of the community *might* object to the illustrations in *In The Night Kitchen*, solved the problem by diapering the little boy with white tempera paint. *Other libraries might want to do the same.*'

"At first, the thought of librarians painting diapers or pants on the naked hero of Sendak's book might seem amusing, merely a harmless eccentricity on the part of a prim few. On reconsideration, however, this behavior should be recognized for what it is: an act of censorship by mutilation rather than by obvious suppression.

"A private individual who owns a book is free, of course, to do with it as he pleases, even paint clothes on any naked figures that appear in it. But it is an altogether different matter when a librarian disfigures a book purchased with public funds — thereby editing the work of the author — and then presents this distortion to the library's patrons.

"The mutilation of Sendak's *In The Night Kitchen* by certain libraries must not be allowed to have an intimidating effect on creators and publishers of books for children. We, as writers, illustrators, publishers, critics, and librarians, deeply concerned with preserving First Amendment freedoms for everyone involved in the process of communicating ideas, vigorously protest this exercise of censorship.'"

Sendak went on to say Ursula Nordstrom's famous letter did little good, and Mickey's privates have grown way out of proportion. Mickey's penis grows in response to the lie that is censorship; the lie that says children must be protected from such a sight. Mickey stands tall and asks to be counted. And if he shouts brazenly — as he does — 'Cock-a-doodle-doo,' well, that's his democratic birthright. Enough. The metaphor dwindles. Just this. No one has to look at Mickey. No one has to listen to Mickey. But one mustn't castrate Mickey, and thus deny him that birthright.

When I look over the list of the most frequently challenged children's books as identified in a study of news service data, I see a changing world. *The Adventures of Huckleberry Finn*, by Mark Twain; *The Chocolate War*, by Robert Cormier; *Go Ask Alice*, Anonymous; *A Light In The Attic*, Shel Silverstein; *Deenie, Then Again Maybe I Won't*, and *Forever*, by Judy Blume.

My son-in-law turned to my granddaughter, Rebecca, after a sexually explicit discussion of AIDS on a TV program and

asked her if she knew what sex was.

"No," she answered, "and please don't tell me about it."

Ask her next year or the next, and she will be ready to listen.

We really don't know the child when teachers ban William Cole's anthology *I'm Mad At You*. It was placed on the restricted shelves for teacher use only in North Kansas City, because of Eve Merriam's poem, "Mean Song."

I am going to read it to you, because I feel that if this poem is banned we just better not let children read at all.

> Snickles and podes,
> Ribble and grodes;
> That's what I wish you.
> A nox in the groot,
> A root in the stoot,
> And a gock in the forebeshaw, too.

I'll wager Rebecca, would put "snickles and podes" right back on the kid's library shelf and write a few hoxes and wodes of her own. □

1991 Hefner First Amendment Awards

The Playboy Foundation announced September 9 that Sydney Schanberg, Franklin Siegel, Bella Lewitzky, Debbie Nathan, James Dana, Traci Bauer, Allan Adler and Inez Austin were the recipients of the 1991 Hugh M. Hefner First Amendment Awards, in recognition of their individual contributions to protecting and enhancing First Amendment rights.

Allan Adler received the award in the book publishing category for his extensive work in promoting the public's right to obtain and disseminate information. He is the author of *Using the Freedom of Information Act: A Step-by-Step Guide*, and, for the past nine years, has edited the annual editions of *Litigation Under the Federal Freedom of Information Act and Privacy Act*, a well-known handbook for practicing attorneys in the field of access law.

In the category of individual conscience, Inez Austin was honored for her courage in blowing the whistle on attempts by her employer to cover up reports which revealed the danger of disposing millions of gallons of radioactive and chemical wastes. Austin determined that a procedure to dispose nuclear wastes might result in a life-threatening explosion.

Traci Bauer, editor-in-chief of Southwest Missouri State University's student newspaper, was recognized in the law category for her successful efforts to extend the accessibility of campus crime reports so that students may make informed decisions about their safety. After hearing of an alleged rape on campus, Bauer requested copies of the crime report to confirm the details. When campus officials refused, Bauer filed a suit in Missouri's federal court. The result was a landmark decision in Bauer's favor.

For his extraordinary efforts to inform and educate Michigan citizens about repressive legislation that would threaten accessibility to Constitutionally protected materials, James Dana received an award in the education category. Owner of The Bookman, a bookstore in Grand Haven, Mich., Dana received boycott threats when he refused to comply with a demand from the American Family Association to stop selling certain materials. In 1989, he helped to found the Michigan Booksellers Association, a coalition of 100 bookstores statewide, and the Michigan Intellectual Freedom Coalition.

Seventy-five-year-old choreographer Bella Lewitzky was honored in the arts and entertainment category for challenging the National Endowment for the Arts' attempts to restrict the First Amendment freedoms of arts organizations receiving funding. The Lewitzky Dance Company, founded in Los Angeles in 1966, was awarded a $72,000 grant from the NEA in 1990. To receive the grant, Lewitzky was required to sign a pledge stating that the funds would not be used "to promote, disseminate or produce materials which. . . may be considered obscene." When Lewitzky refused to sign the pledge, the NEA withheld the funds. In response, Lewitzky filed suit against the agency and its chair, John Frohnmayer, alleging that the pledge violated the First Amendment. In 1991, a California District Court judge upheld Lewitzky's claim and the NEA released the grant monies. In addition, the NEA removed the anti-obscenity pledge from its funding terms and conditions.

In the print journalism category, investigative reporter Debbie Nathan was recognized for using her First Amendment rights to defend victims caught in the wave of "ritual child sexual abuse" accusations and the "witch trial hysteria" surrounding the ensuing court cases, beginning with the notorious McMartin case. Nathan challenged the prevailing attitudes of the media and the public, which leaned heavily toward presuming the defendants' guilt, and unveiled the right-wing fundamentalism, anti-sexual hysteria, judicial and prosecutorial misconduct and overall doubt surrounding many of the cases.

New York Newsday columnist and associate editor Sydney Schanberg, and Franklin Siegel, staff attorney for the Center for Constitutional Rights, a nonprofit legal and educational organization, together received the award in the government category for defending the public's right to have access to government information. Siegel was a prime mover in a lawsuit that protested the Pentagon's control of news coverage during the Persian Gulf War, and sought injunctions barring the use of press pools. Schanberg, who joined Siegel and other plaintiffs in the lawsuit, used his column to challenge readers, the Bush Administration, the Pentagon and the mainstream media. □

intellectual freedom bibliography

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