newsletter on intellectual freedom

IFC ALA

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your right to know: how far does it go?

Following are edited texts of remarks by Jim Lehrer, co-anchor of the MacNeil-Lehrer NewsHour and author of A Bus of My Own *and other books and plays, and Marlene Sanders, former CBS and ABC newswoman, author of* Waiting for Prime Time: The Women of Television News, *and currently professor of journalism at New York University, presented at a program co-sponsored by the American Library Association Intellectual Freedom Committee and the Association of American Publishers Freedom to Read Committee during the American Library Association's 1992 Annual Conference in San Francisco. The program was supported in part by a grant from the Freedom Forum, dedicated to free press, free speech, and free spirit. Lehrer and Sanders were asked to address the question of journalistic ethics and editorial prerogative when journalists are faced with the choice of serving the public's "right to know" versus invading the privacy of public or private figures.*

remarks by Marlene Sanders

What viewers of television news learn about the world around them has been drastically affected by changes in the industry over the last few years. Jim, I feel sure, will deal with public television, and though I spent the last few years on local public TV, most of my career has been with two networks, ABC & CBS.

Last year I was in Japan in connection with a feminist conference. Yes, Japan has many professional women, and they are trying to get ahead. In the course of my trip, I was interviewed on an NHK program . . . the equivalent of public TV, more or less. The other panelists, all professional women, could not comprehend my resume. All those job changes. Why didn't I stay in one place? They have what amounts to civil service-guaranteed jobs, yes, even in television. The anchor woman told me afterwards, though, that as she got older, she would be moved off the air and into a production job. So some things are the same. This is my first year, since 1955, without a full-time broadcasting job. I can't prove that age has anything to do with it, but I have my suspicions. And while some of the network women are now around 50, their challenge is close at hand. My feeling is that we'll know the problem has been solved when there is a woman anchor out there who looks like David Brinkley.

More about such matters later. My plan today is to discuss your right to know from

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Published by the ALA Intellectual Freedom Committee, Candace Morgan, Chairperson.

in this issue

targets of the censor

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IFC report to ALA council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council, delivered on July 1 at the 1992 Annual Conference in San Francisco by outgoing Chair Arthur Curley.

At the Conference, the IFC proposed and the Council approved resolutions on reauthorization of the Corporation for Public Broadcasting, loyalty oaths, shield laws, and in recognition of The Huntington Library's release of the Dead Sea Scrolls materials. The texts of these resolutions follow the Committee's report on page 173.

At the Conference, the IFC also adopted a set of Proposed Guidelines for the Development of Policies Regarding User Behavior and Library Usage, which are being circulated for comments to all ALA units and state chapters. The text of these proposed guidelines appears on page 135. Finally, the IFC completed a draft of a new interpretation of the Library Bill of Rights *entitled "Economic Barriers to Information Access," which is being circulated for comments. The text of this draft interpretation may be found on page 172.*

I am pleased to report to you on the activities of the Intellectual Freedom Committee since the Midwinter Meeting and at this Annual Conference.

Corporation for Public Broadcasting reauthorization

As many of you are aware, the Corporation for Public Broadcasting (CPB) has come under Congressional attack and threats to reduce or cease funding altogether. Although funding has been reauthorized, Senate amendments to the reauthorization bill imposed "decency" limitations on scheduling. The Intellectual Freedom Committee believes strongly that CPB is crucial to the cultural and intellectual life of our democracy, to public access to information, and to the provision of information services in libraries. We offer a resolution in support of CPB, expressing our concern about limitations attached to funding which infringe on scheduling and content of programming.

The resolution (see page 173) urges Congress to drop decency requirements and other ideological strings from the reauthorization bill for the CPB and the Independent Television Service (ITVS), the funding agencies for the Public Broadcasting System. Congressional threats to curtail or cease funding altogether have been based patently on ideological concerns. Conservatives charged PBS with exhibiting a liberal bias. Ironically, the ITVS was created to enable the production of independent projects liberated from what filmmakers perceived as PBS' "establishment" tilt. It is our understanding that no ITVS project has yet been completed, so ideological concerns from Congress would have to be based only on titles of the works in progress. CPB has provided, through PBS, and will provide, through ITVS, some of the most challenging and important television viewing in the history of the medium.

review of intellectual freedom policies

In the late 1970s and early 1980s, ALA undertook a recodification of its policy manual. Old section 103 was referred to the IFC for review, redrafting, and replacement in the newly recodified manual. It was recently discovered that a few of these policies had been removed from the policy manual, placed in the historical file, and not brought back to Council with IFC's recommendation for recodification. We have completed the task at this Conference. Two of the old policies date from the 1970s, and deal with Loyalty Oaths and Tests and Shield Laws, issues which are still relevant, but which have evolved sufficiently to require modernization of our policies. We owe a debt of gratitude to two students of the University of Illinois Graduate School of Library and Information Science, Karen G. Schneider and William T. Fischer, for calling to our attention the still extant problem of Loyalty Oaths and Tests administered to potential library employees. Ms. Schneider and Mr. Fischer drafted a new resolution for our consideration. We adopted it with some revisions and now offer it to Council for approval and readmittance to the policy manual (see page 173).

Similarly, recent events involving the harassment and jailing of reporters remind us of the necessity to reiterate our support of Shield Laws which protect journalists from inquiries into their sources. Such inquiries could have a chilling effect on reporting (see page 174).

The remaining two policies brought to our attention — on the first Commission on Obscenity and Pornography from 1971, and on the non-destruction of libraries generally, also from 1971 — are, in our opinion, appropriately housed in the historical file and need no action at this time.

recognition of the Huntington Library's release of the Dead Sea Scrolls material

As you know, last fall the Director, William Moffett, and the Trustees of The Huntington Library took an historic and widely praised step by opening unrestricted access to the archival photographs of Dead Sea Scrolls materials. Since there is no record of official recognition of this action from our Midwinter meeting, we offer a resolution recognizing and commending this action (see page 173).

Guidelines on User Behavior and Library Usage

On Saturday night, the IFC sponsored a second hearing on the preparation of guidelines regarding patron behavior and library usage, affording another opportunity for individuals to contribute to the discussion. We were particularly pleased to have as a speaker the Honorable H. Lee Sarokin, Judge of the United States District Court for the District of New Jersey, who provided insight on the legal issues and helped foster better understanding of the procedural setting

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FTRF report to ALA council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered June 29, 1992, at the ALA Annual Conference in San Francisco by incoming President Gordon M. Conable.

As president of the Freedom to Read Foundation, it is my pleasure to report to the Council of the American Library Association on the activities of the Foundation since the Midwinter Meeting.

Kreimer v. Morristown

The Foundation has had an extraordinarily successful spring in the courts. First, on March 23, the United States Court of Appeals for the Third Circuit adopted the reasoning of the Freedom to Read Foundation's *amicus* brief in *Kreimer v. Morristown*, ruling that libraries are designated public fora for the purpose of access to information, that there is a First Amendment right to receive information, and that the public has a First Amendment right to some level of access to a public library. At the same time, the Court adopted our argument that public libraries have the right to institute reasonable rules governing the use of their facilities, in support of their significant interest in providing access to information for all (see *Newsletter*, May 1992, p. 73).

This case generated substantial and heated discussion among our professional colleagues and the Foundation's position has frequently been misunderstood and misreported in the press and among librarians. The persistent but erroneous perception was that this case was about Richard Kreimer's behavior in the Morristown Library — it was not. It was, at the Library's request, about the facial constitutionality of the Library's rules and whether libraries are institutions which should have a special place in the realm of First Amendment law. The Freedom to Read Foundation is very proud of its success in this case, establishing for the first time legal recognition of the public library as a designated public forum for access to information — a principle explicitly opposed by the Morristown Public Library. This ruling will prove invaluable in combatting censorship in public libraries while at the same time providing libraries the support they need to institute reasonable rules governing the use of their facilities.

We should note, however, that this case may not be over. The United States Court of Appeals for the Third Circuit has denied Mr. Kreimer's petition for rehearing. We understand that his pro-bono attorney has elected not to continue as counsel. We do not know whether Mr. Kreimer plans to proceed with an appeal on his own or with other counsel. Further, the question of whether Morristown's rules were constitutionally *applied* to Mr. Kreimer could still be open for dispute in the lower federal courts or in state courts. The Foundation will continue to monitor this case and will seek other opportunities to reaffirm the status of libraries as institutions which dwell at the center of the sphere of First Amendment law.

ALA v. Thornburgh II

The Foundation, the American Library Association and other co-plaintiffs won a total victory in *ALA v. Thornburgh II*, a challenge to the Child Protection Restoration and Penalties Enhancement Act of 1990 (see page 156). ALA and the Foundation's dispute with the federal government over this legislation began in 1989, with our joint challenge to the Child Protection and Obscenity Enforcement Act of 1988 in a case called *ALA v. Thornburgh I*. We won a substantial victory at the district court level in that case, striking down onerous record-keeping and forfeiture provisions. These would have been applicable against publishers and distributors, including libraries, of constitutionally protected sexual images of adults. On February 21, 1992, however, the United States Circuit Court of Appeals for the District of Columbia ruled that the plaintiff group in this case did not have standing to challenge the forfeiture provisions of the Act because they did not show that they were under imminent threat of prosecution. But, the Court also found, as the plaintiff group had argued, that the rest of the government's appeal was moot due to the passage of the more recent statute, which we successfully challenged in *ALA v. Thornburgh II*. At the initial hearing on our request for a Temporary Restraining Order enjoining the government from enforcing the new law, the court indicated its willingness to enter such an order, whereupon the government agreed not to enforce the Act until final regulations interpreting it were issued. Those final regulations were at last issued on April 24, 1992, immediately reactivating our challenge to the constitutionality of the law itself. On May 26, Judge Stanley Sporkin of the Federal District Court declared that the Act was unconstitutional as applied to producers or distributors who had used "due diligence" to satisfy themselves that their materials do not contain images of minors. In effect, the Court held the law unconstitutional as applied to constitutionally protected sexual images of persons over 18. This represents a complete victory for the Foundation, ALA and our co-plaintiffs in their long battle against this attractively titled but hopelessly misdirected legislation. The law was designed to give the impression that the government is acting to protect children when in fact it was targeting the publication and distribution of constitutionally protected materials for adults. This case, however, is not over either. We have not yet heard whether the government intends to appeal Judge Sporkin's decision.

In Re: R.A.V.

Last week, the United States Supreme Court decided *In re: R.A.V.*, the case involving the St. Paul, Minnesota "hate symbol" ordinance, under which a juvenile had been charged for burning a cross on the lawn of an African American

family (see page 149 and 151). While First Amendment organizations were unanimous in their condemnation of the hateful conduct involved, many saw a threat to free expression in the speech-related ordinance used to punish that conduct in this case, particularly where ample criminal sanctions unrelated to the communication of ideas were available to punish that conduct. The Foundation had joined in an *amicus* brief limited to a defense of the "overbreadth" doctrine, a longstanding element of First Amendment jurisprudence which has been a very useful tool in challenging oppressive laws. Under the overbreadth doctrine, laws which sweep within their scope conduct which may not be constitutionally proscribed, even if they address other conduct which may permissibly be punished, are unconstitutional.

The Court's 5-4 decision, according to our counsel, gave no indication that the Court had so much as read our brief, nor any of the others, including those submitted by the parties. While the end result of the ruling was to strike down the hate-speech ordinance as unconstitutional, the Court's reasoning bore little resemblance to any previously established First Amendment doctrine or to any of the arguments put forth by the parties of *amici*. The Court appears to be in the process of designing a new test, that if a law is addressed to the content of speech, it is *per se* unconstitutional and the inquiry ends. On the other hand, the *R.A.V.* opinion seems to suggest that the ordinance in question was impermissible because it banned only *certain* offensive speech, and not all—that it was "underinclusive" rather than overbroad. That a broader ban would still be based on the content of the speech seemed to elude the Court despite its "content-based" analysis. The end result is a ruling that makes the status of hate speech laws and academic codes far less certain than many of the news reports about the decision seem to have implied.

Rust v. Sullivan

At the Midwinter Meeting, there was much discussion of the potential implications of the Supreme Court's ruling in the *Rust v. Sullivan* case, in which the Court upheld ideological restrictions on the provision of information about abortion in family planning clinics supported by Title X funds. There have been new congressional efforts to overturn the "gag rule," each time passing by margins insufficient to override a Presidential veto. A new version now has been proposed in the Senate.

Stanford v. Sullivan

In the meantime, you may recall that the Freedom to Read Foundation extended an invitation to the American Library Association to add its name to an *amicus* brief that was being prepared in a case entitled *Board of Trustees of Stanford University v. Sullivan*. In that case, the United States District Court for the District of Columbia had found that a clause requiring Stanford researchers to secure government approval prior to publishing or discussing research constituted an unconstitutional prior restraint. In making that ruling, the Court distinguished the *Rust* opinion and, in fact, found that this situation landed squarely within the one area of heightened constitutional protection recognized by the Court in *Rust* — university campuses. There was to have been an appeal, and it was in connection with this appeal that we were to have filed an *amicus* brief. The National Institutes of Health, however, canceled a separate contract to manufacture the device which was to be used in the research in question, effectively mooting the case and rendering an *amicus* brief unnecessary. There has been no word on whether the government will seek to vacate the district court's opinion, an opinion widely hailed as a potential buffer to expansion of the *Rust* doctrine to other areas of governmentally supported expression.

In new litigation, the Foundation anticipates an invitation from People for the American Way to file a joint *amicus* brief in *Brown v. Woodland Joint Unified School District*, a case brought by the American Family Association against the use of the *Impressions* series in the Woodland, California, schools. The case was decided by the District Court on April 2, but the AFA has announced its intention to appeal that decision. The *amicus* brief would be filed in connection with that appeal.

awards

The Foundation is pleased to report that its 1992 Roll of Honor Awards were presented to R. Kathleen Molz and Elliot and Eleanor Goldstein at the Opening General Session of this conference on Saturday. We are proud to recognize the many contributions of these long-standing and stalwart friends who have provided insight, guidance and financial and moral support to the Foundation's efforts for many years.

In closing, I wish to say that it has been my privilege to serve as President of the Freedom to Read Foundation during a period when the Foundation has achieved some of its greatest victories in the courts. The precedent established in *Kreimer* will protect and preserve the freedom and right to read in libraries across the nation for years to come. Thank you. □

BANNED BOOKS WEEK

September 26 — October 3

ALA conference
Judge Sarokin speaks

Following are remarks presented by the Honorable H. Lee Sarokin, judge of the U.S. District Court for the District of New Jersey, at an opening hearing to receive comment on proposed guidelines for the development of policy on user behavior and library usage. The hearing was held on June 27 during the American Library Association Annual Conference in San Francisco. Judge Sarokin rendered the District Court opinion in Kreimer *v.* Morristown. *Portions of his opinion were later reversed by the U.S. Court of Appeals for the Third Circuit in Philadelphia. Judge Sarokin was appointed to the bench by President Carter in 1979. He is a graduate of Dartmouth College and Harvard Law School and served as County Counsel in Union County, New Jersey, and for twenty-five years as an active trial lawyer.*

I come willingly into the lion's den because most of the librarians I have ever known are kind and gentle people willing to listen, and I hope that is true tonight.

Frankly I am pleased to have this opportunity — not only to discuss the important principles involved here, but hopefully to convince you that I am not the ogre that the press has portrayed. Even the respected *New York Times* made me sound like a library anarchist — that single-handedly I was about to destroy all of the libraries in the country simply by ruling that regulations which permitted exclusion of persons had to be clear.

I am not here, however, to defend my opinion or to criticize its reversal in any way because that would be totally inappropriate, but rather to discuss the larger and real issues which have been lost in these editorial outbursts and distorted reports.

I would like to begin by reading a quote involving libraries with which I assume most of you would agree:

> One cannot dispute the right and obligation of library trustees to assure that the library is used for the general purposes for which it is intended. Libraries cannot and should not be transformed into hotels or kitchens, even for the needy. The public has the right to designate which of its institutions shall be utilized for particular purposes . . . .No one can dispute that matters of personal appearance and hygiene can reach a point where they interfere with the enjoyment of the facility by others.

Do you know who wrote that? I did. And do you know where it appears? In the *Kreimer* opinion. Since that may surprise you, let us discuss what this case decided and what it did not, and, more importantly how it affects you and libraries all over this country.

First, what my opinion did *not* decide: It decided *nothing* about Mr. Kreimer or his conduct.

The only issue that was presented to me was the facial validity of the regulations. The case could have been brought by any patron. Nothing in my decision dealt with, and certainly nothing in my opinion condoned, any of the actions allegedly committed by Mr. Kreimer. Furthermore, it did not say that persons could *not* be excluded from libraries. It certainly did not say libraries could become shelters for the homeless or anyone else or that anyone was free to disturb or drive patrons out of the library without consequence.

So what did the case really involve? I found that the First Amendment was implicated because of a citizen's right of access to information. The Court of Appeals agreed. I found the regulations vague. The Court of Appeals did not.

Some discussion of the concept of vagueness is necessary. A law which defines speeding as "going too fast" is vague. Vague laws are unjust and unconstitutional.

Persons who drive automobiles are entitled to know when they are breaking the law. Police officers must know when the law is being broken before they can act. Thus, the requirement of clarity is fundamental to a government of laws, otherwise the existence of violations would be left to the whim and possible bias, prejudice, or caprice of its enforcers.

However, holding that a law or regulation is vague is not the equivalent of condoning or permitting the conduct which it seeks to control or prohibit. Concluding that a statute is vague because it defines speeding as "going too fast", does not mean that speeding is permissible and cannot be controlled.

I am incensed, as you should be, that the press insists upon putting this spin on judicial decisions, particularly this one.

Lest the role of the courts be forgotten — when we uphold the rights of a person accused of a crime, we do not condone the crime; when we protect offensive speech, we do not adopt its content; and when we invalidate a law or regulation because it is vague, we do not forever legalize the conduct which it seeks to prohibit. We merely require greater precision.

I am certain that for every one of you, banning a person from using your library is a serious, upsetting, and very difficult decision. Certainly the patrons are entitled to know what it is that will subject them to ouster, but you, as well, want to know what warrants or even requires it.

Precision and clarity in these matters are as much for your benefit as the patron. It is easy to determine if someone does not have on shoes or a shirt or is playing a radio. But what about: "Patrons not engaged in reading, studying, or using library materials may be asked to leave."

Let's forget these judges in our ivory towers deciding these questions. Are you satisfied after reading this that you know when you can ask someone to leave?

And let us not deceive ourselves. If I get off the train in my 3-piece suit and sit in the library waiting to be met, nobody is going to ask me to leave even if I'm dozing in a chair. Well — maybe if it's me, they would — but what about some other well-dressed person?

In an editorial on the *Kreimer* case, *The New York Times* suggests that fair enforcement cures any vagueness. I have no difficulty in concurring with the assumption that librarians are fair and decent people.

But the law does not permit vagueness to be cured by fair enforcement. I cannot help but wonder if the *Times* would be as content with this casual standard if the issue were the banning of books or newspapers rather than people.

I ask you — you must enforce these or similar regulations on a daily basis — are they precise enough for you to know when you are acting within your authority and when you are not? Because no matter what we judges say, you are the ones who must enforce them. Writing clear regulations on these issues is not an easy matter. I do not envy your task, but the quest for greater precision and understanding of all aspects of this problem should be everyone's quest.

I repeat what I said in the *Kreimer* opinion: "The public library is one of our great symbols of democracy. It is a living embodiment of the First Amendment because it includes voices of dissent."

We all are interested in maintaining that view of our libraries. We do not want to deny anyone the right to enjoy the many benefits of our libraries or permit anyone to deny that right to others. But before we deny the privilege to anyone, we must make certain that the action is warranted and the rules are clear. Those goals will protect both those who use the library and those who administer it.

Someday in the future, if it has not happened to you already, there will be a cold, snowy day, and an obviously homeless person will come into your library to get warm. He or she will go through the motions of reading a newspaper or a magazine, but eventually settle in rather than face the bitter cold. Other patrons will display their displeasure and may complain to you directly. How you handle that situation requires a balancing of interests and compassion of the highest order. It is a dilemma not to be envied.

I assure you that neither I, nor any court, wishes to make that decision any more difficult. We must make certain that persons are not excluded from libraries merely because they are poor. On the other hand, no one should be permitted to interfere with the use of libraries by others. Clarifying where that line is drawn protects patrons, librarians, the First Amendment, and the buildings which embody and symbolize it — our public libraries.

I hope that I have tamed the lions and convinced you that I am not the ogre the press has portrayed. Thank you for inviting me and giving me this opportunity. □

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proposed guidelines for the development of policies regarding user behavior and library usage

introduction

Libraries are faced with problems of user behavior that must be addressed to insure the effective delivery of service and full access to facilities. Library governing bodies must approach the regulation of user behavior within the framework of the ALA Code of Professional Ethics, the *Library Bill of Rights* and the law, including local and state statutes, constitutional standards under the First and Fourteenth Amendments, due process and equal treatment under the law.

Publicly supported library service is based upon the First Amendment right of free expression. Publicly supported libraries are recognized as limited public forums for access to information. At least one federal court of appeals has recognized a First Amendment right to receive information in a public library. Library policies and procedures that could impinge upon such rights are subject to a higher standard of review than may be required in the policies of other public services and facilities.

There is a significant government interest in maintaining a library environment that is conducive to all users' exercise of their constitutionally protected right to receive information. This significant interest authorizes publicly supported libraries to maintain a safe and healthy environment in which library users and staff can be free from harassment, intimidation, and threats to their safety and well-being. Libraries should provide appropriate safeguards against illegal behavior and enforce policies and procedures that address such behavior when it occurs.

In order to protect all library users' right of access to library facilities, to insure the safety of users and staff, and to protect library resources and facilities from damage, the library's governing authority may impose reasonable restrictions on the time, place, or manner of library access.

guidelines

The American Library Association's Intellectual Freedom Committee recommends that publicly supported libraries use the following guidelines, based upon constitutional principles, to develop policies and procedures governing the use of library facilities:

1. Libraries are advised to rely upon existing legislation and law enforcement mechanisms as the primary means of controlling behavior that involves public safety, criminal behavior, or other issues covered by existing local, state, or federal statute. In many instances, this legal framework may be sufficient to provide the library with the necessary tools to maintain order.

2. If the library's governing body chooses to write its own policies and procedures regarding user behavior or access to library facilities and resources, the policies should cite statutory authority and/or criminal statutes upon which those policies are based.

3. Library policies and procedures governing the use of library facilities should be carefully examined to insure that they are not in violation of the *Library Bill of Rights*.

4. Reasonable and narrowly drawn policies and procedures designed to prohibit interference with use of the facilities by others, or to prohibit activities inconsistent with achievement of substantial library objectives, are acceptable.

5. Such policies and the attendant implementing procedures should be reviewed regularly by the library's legal counsel for compliance with federal and state constitutional requirements, federal and state civil rights legislation, all other applicable federal and state legislation, and applicable case law.

6. Every effort should be made to respond to potentially difficult circumstances of user behavior in a timely, direct, and open manner. Common sense, reason and sensitivity will go a long way to resolve issues in a constructive and positive manner without escalation. If problems are not addressed in their early stages, they may become compounded and lead the library into indefensible positions, confrontation and litigation.

7. Libraries should develop an ongoing staff training program based upon their user behavior policy. This program should include training to develop empathy and understanding of the social and economic problems of some library users. Training of this nature will increase the likelihood that staff will be able to defuse difficult situations and achieve a satisfactory resolution of actual and potential conflicts.

8. Policies and regulations that impose restrictions on library access:
   a. should apply only to those activities that materially interfere with the public's right of access to library facilities, the safety of users and staff, and the protection of library resources and facilities;
   b. should narrowly tailor prohibitions or restrictions so that they are not more restrictive than needed to serve their objectives;
   c. should attempt to balance competing interests and avoid favoring the majority at the expense of individual rights, or allowing individual users' rights to supersede those of the majority of library users;
   d. should be based upon actual behavior and not upon arbitrary distinctions between individuals or classes of individuals. Policies should not target specific users or groups of users based upon an assumption or expectation that such users might engage in behaviors that could disrupt library service;
   e. should not restrict access to the library by persons who merely inspire the anger or annoyance of others. Policies based upon appearance or other behavior that is merely annoying or which merely generates negative subjective reactions from others, do not meet the necessary standard unless the behavior would interfere with access by an objectively reasonable person to library facilities. Such policies should employ a reasonable, objective standard based on the behavior itself;
   f. must provide a clear description of the behavior that is prohibited so that a reasonable, intelligent person will have fair warning and must be continuously and clearly communicated in an effective manner to all library users;
   g. to the extent possible, should not leave those affected without adequate alternative means to access to information in the library;
   h. must be enforced evenhandedly, and not in a manner intended to benefit or disfavor any person or group in an arbitrary or capricious manner.

The user behaviors addressed in these guidelines are the result of a wide variety of individual and societal conditions. Libraries should take advantage of the expertise of local social service agencies, advocacy groups, mental health professionals, law enforcement officials, and other community resources to develop community strategies for addressing the needs of a diverse population. □

Stegner declines arts medal in protest

Pulitzer Prize-winning author Wallace Stegner joined composer Stephen Sondheim in turning down a National Medal for the Arts to protest what he called the Bush administration's political pressuring of artists. Bush was to present the medal, which is administered by the National Endowment for the Arts (NEA), at a ceremony in July.

The 84-year-old Stegner, who has written about the Old West for sixty years, wrote the NEA, telling the board he was "troubled by the political controls placed upon the agency." His decision came shortly after acting NEA Chair Anne-Imelda Radice rejected two grants for arts projects that contained sexual images, prompting two panels of artists selected by the NEA to judge grant applications to resign in protest (see *Newsletter*, July 1992, p. 101). Reported in: *Oakland Tribune*, May 22; *Miami Herald*, May 26. □

censorship dateline

libraries

West Hartford, Connecticut

Charlotte Evarts caught her 8-year-old son poring over a story from the Duffy School library about a woman who contemplates serving her husband the liver from a corpse. Andrew Evarts, a Duffy second-grader, likes scariness, but "this was gross," she said. "It was just trash. Violence. Goriness." Among other passages she found were a description of spiders coming out of a boil on a child's face and an account of a voodoolike doll created by two boys that comes to life and kills one of them.

Evarts responded by asking that two books by Alvin Schwartz, *Scary Stories to Tell in the Dark* and *Scary Stories 3: More Tales to Chill Your Bones*, be removed from elementary and middle school libraries. Evarts said the Schwartz books, designated fifth grade level, are better for high school students.

The books were to be reviewed by a committee of principals, teachers and librarians, but school board chair John W. Lemega said the complaint was justified. "It is good that these parents know they have a right to ask questions," he said. "They are not crazies who say 'burn books.' They are people legitimately concerned with violence and horror for second-graders, and that is reasonable." Reported in: *Hartford Courant*, June 15.

Springfield, Illinois

Springfield parent Mike Heyen complained in May to Lincoln Library officials about a compact disc checked out by his 15-year-old son. The CD was *Efil4zaggin*, by N.W.A. After reading some of the song titles, such as "To Kill a Hooker," Heyen said, "He [his son] never got to listen to it."

The CD, stickered with a parental advisory, has lyrics filled with obscenities and graphic descriptions of murder, sex and gang rape. After questioning why such material was available, Heyen said he was told the library supports ALA's *Library Bill of Rights*. "I'm for the Bill of Rights," he responded. "I just don't see the connection. I'm not an old prune worrying about what books are in the library. I think the library was made for books."

"This is a free country," Heyen added. "Anyone can make any type of music that they want, but the public should be able to control what the public library buys with public money." Reported in: *State Journal-Register*, May 28.

Slidell, Louisiana

The St. Tammany Parish School board voted 12-2 June 11 to ban from school library shelves the book *Voodoo and Hoodoo*, by Jim Haskins. In March, Slidell resident Kathy Bonds called on the district to ban the book (see *Newsletter*, July 1992, p. 106), but a school committee disagreed. Bonds then appealed to St. Tammany Parish Superintendent Terry Bankston, who formed a system-wide committee that recommended the board restrict the book to reserve shelves. Under that plan, endorsed by Bankston, the book would have been available with parental consent to students in eighth grade and above.

Before the board could vote on the administration's recommendation, however, member Robert Womack moved that *Voodoo and Hoodoo* be taken off the shelves. The board also rejected a substitute motion that would have banned the book from the school, but would have donated the copies to the public library system.

"I wouldn't want my eighth grader reading this garbage," Womack said. "If a majority of the parents read the book, it would be soundly defeated because it's nothing but trash. It's not reference material, it's a how-to manual. At a time when there is a resurgent interest in the occult and the supernatural, we do not need books like *Voodoo and Hoodoo* in our libraries."

Opponents of the book charged that it contained several "voodoo recipes" telling how to kill humans and animals for ritual sacrifice. The book's defenders said that apart from a small controversial section, the book provided important information on the development of African culture in America. Reported in: *Slidell Sentry-News*, April 22, May 28, June 12, 13; *New Orleans Times-Picayune*, June 13.

Westminster, Maryland

A Westminster resident supported by a state senator was circulating petitions in June asking the Carroll County Public Library to remove all ten of its copies of a widely praised short story collection, *Getting Jesus in the Mood*, by Anne Brashler. Mary Hood and Sen. Larry Haines (R-Carroll) charged that the book is "smutty" and contains pornography aimed at Jesus Christ.

The controversy began when Hood wrote a letter to the editor protesting the book that was published in the *Carroll County Times*. The letter also was sent to library officials, who responded that the book would remain in circulation. Hood said the title story, about a woman who was abused as a child and seeks solace in the Bible, fantasizing an erotic relationship with Jesus, is blasphemous and "should not be in a tax-supported library." She also complained about another story that she said "promotes child sex and child molestation."

"Every Christian I know that has read the book has had the same reaction," Hood said. "But it's not just a Christian issue. It's really an issue of decency, and if we don't stand up for some kind of value, we'll go down the tubes."

Hood, who has a doctorate in education and is active in the home schooling movement, denied that she was advocating censorship. "I do not at all regard myself as a book censor. I just think it's really important for the community to understand what's going on. This is not a censorship thing. The public library is tax-supported and it should have some standard of moral decency," she asserted.

Hood said she had mapped out strategy with Sen. Haines. "My plan is first of all to establish a baseline of support, and I don't want to just remove the book," she said. "I want some standards written in the library's collection development policy regarding decency and values. I also want some formation of a citizen panel that can review new books and be part of the decision-making process. I'm complaining because I love the library so much. I respect the librarians. I just think they have blinders on about this issue."

Sen. Haines acknowledged that he had not read the book, but said that, like Hood, he was concerned about it being displayed in an area where children can easily read it. "I think parents need to protect children from harmful literature," he said. Reported in: *Carroll County Times*, June 20.

Amherst, Ohio

Although no formal complaint was filed, an effort has begun to remove the videotape of Martin Scorsese's film *The Last Temptation of Christ* from the Amherst Public Library. Library director Judith Dworkin said in early July that a Vermillion resident, Sandra West, had voiced objection to the movie. "She told us she was going to tell her clergyman and file a formal complaint over it. I don't know if it's going to happen, but I expect there could be some action soon."

There was also a rumor circulating that former Amherst mayor Toney DePaola was planning to circulate a petition against the video and the library. DePaola denied the petition charge but threatened other action. "God's taken a beating lately in the courts and the Amherst Library and I'm not happy with it," he acknowledged. "But I'm not going to circulate a petition because it wouldn't do any good. I'll be more direct. I'm not sure if I can do anything, but I'll try. Here's a movie that movie houses voluntarily removed when the people said they didn't want it. Now here's the public library giving it out for free." DePaola threatened to work against a library funding initiative.

Dworkin said the video has been in the library collection for nearly two years and was available to residents on a rotating basis because the library shared a copy with other libraries. "The video has circulated 22 times this year and there have been no complaints about it," she said. Reported in: *Amherst News-Times*, July 8.

Fairfield, Ohio

Two weeks after settling one challenge to educational materials, the Fairfield City School District found itself reviewing other materials that some parents found objectionable. In late June, Barbara and Tim Bundus filed a challenge to the *Wizards, Warriors and You* series of books in South Elementary School's library and, with another couple, challenged the third-grade Esteem Team presentation.

The complaint against the *Wizards* series asked the district to remove the books from the library, criticizing what the Bunduses called "central themes of wizardry and violence" in the books, aimed at fourth- and fifth-grade students, which put a reader in a wizard's role. They cited several passages from the books as examples of "violent deaths." "We feel these books promote violence and acceptance and involvement in occult practices," the couple's complaint stated.

The Esteem Team complaint centered on a program for third-graders sponsored jointly by the school district and the Butler County Alcoholism Council, where students listen to speeches about working hard to achieve goals instead of wishing for success. The Bunduses and Rev. and Mrs. Thomas Sawhook objected because they said "children are encouraged to view their family situations in a negative light and are encouraged to disclose personal information or feelings. The students are also led to believe anyone can accomplish anything by will power."

Earlier in the month, the school board settled a complaint against the "Tribes" self-esteem program used in the drug prevention program at the district's elementary schools. The Esteem Team presentation is also used in drug prevention. Reported in: *Hamilton Journal-News*, June 25; *Cincinnati Enquirer*, June 27.

College Station, Texas

An angry group of students, upset over a painting displayed in the Sterling C. Evans Library at Texas A & M University, began a petition drive to remove it from public view. The painting, entitled "Desert Traders," depicts a semi-nude woman being sold as a slave. "I don't think it should be in a public place like that," said senior English major Amy Owen. "To me, it's just condoning rape."

"I am not for censorship at all, but it's not an art museum," Owen added. "It's in a public place — a place that's supposed to be a home to all students."

Irene B. Hoadley, director of the library, said there have been other protests since the painting was donated by a prominent alumnus in 1952. "We occasionally get complaints that the painting is degrading to women," Hoadley said. "But, we will not take it down."

Hoadley said the painting should be treated like a controversial book. "I feel students need to be exposed to all different kinds of information," she said. "There are a number of paintings hanging that I don't particularly like, and some are even offensive to me, but they're not going to be offensive to everyone. A library should represent as many different viewpoints as it can."

Hoadley said she would be willing to move the painting to a less prominent location, but its large size limited the alternatives. Owen said that when enough signatures are gathered on the petition it would be given to the campus chapter of the National Organization for Women, who will turn it over to library officials. Reported in: *Battalion*, April 28.

Hampton, Virginia

Books on voodoo, witchcraft and astrology were back on the library shelves at Forrest Elementary School in early June, but after a parent's complaint there were restrictions on who can read them. The books were placed on reserve, and only those children who receive permission from a parent will be able to check them out, according to assistant superintendent for instructional services Billy Cannaday. The Rev. David A. Wade, the parent who asked that the books be banned, said he was pleased.

"I would have liked a total withdrawal from the school system," said Wade. "However, I think Dr. Cannaday made a very wise decision. I really think he's made everybody happy."

The books, a series of eight published in 1977 and purchased by the school in 1981, were pulled in November for review after Wade asked that they be banned as too explicit. He complained that the books are rich in detail. For example, one lists recipes for spells and another gives a detailed explanation of tarot card reading.

A similar set of books at Tarrant Elementary were removed so that administrators could use them in their review of the Forrest complaint. But Cannaday said his decision applied only to Forrest because the grievance was filed there. Tarrant librarian Lagoldia Williamson had revealed earlier that she had placed the books behind a counter "out of view" of students sometime after she started working at the school because she found them "questionable." The books were listed in the library's catalog and available for students to check out, she said, but no one ever did. Had someone asked for them, Williamson said, "I really don't know what I would have said." Reported in: *Newport News Daily Press*, May 13, June 3.

Snohomish and Island Counties, Washington

The Sno-Isle Library System Board decided June 22 that a rap tape would remain banned when no one would second a motion to return it to the shelves. It was the fourth time the board considered the tape, *Efil4zaggin*, by the rap group N.W.A.

The controversy began in April with a request by Michael Caldwell of Lynnwood that the tape be removed from the collection. "This is the type of sexually perverse material that should not be available to children without parental consent," Caldwell said. "The material is racist, sexist and has no artistic value."

On April 14, media librarian Patricia Shaw wrote to Caldwell that "the library believes it is the individual's right to determine what is appropriate for themselves or their children and that it is not the library's right or responsibility to take that choice away."

Unsatisfied, Caldwell appealed. On April 27, the board agreed by a 3-2 vote, with two members absent, to support Caldwell by removing the tape. The decision was made based on the titles of the songs only — just one board member had listened to the tape — and prompted angry criticism from library staff and community members.

The board held a public hearing on the matter on May 26 at which defenders of the recording blasted the earlier decision. "I was surprised and disappointed," George Janecke of Lynnwood said. "The board should represent all the people." Nanette Denouden, who described herself as "an American, a taxpayer, a library patron and library staff member," told the board she was "outraged that my taxes are used to ban material."

Teenager Amy Davies of Stanwood told the board: "My parents let me listen to what I want. They don't always like it, but we discuss it. They may change my mind, and I may change theirs. By removing N.W.A., you've removed my choice. You've taken away my right, my choice."

"I had this child, and it is my responsibility to care for her," added Davies' mother, a library staff member. "Every parent needs to take that responsibility. Your vote said I was not to be trusted."

But board vice-chair Stan Schaefer stuck to his guns. "I don't care if this is in your hands or my hands but not a little kid's," he said. "If that is censorship, have at it. My friends, you can call this book burning if you want. This is pornography."

Following the meeting, the board agreed to hold a retreat on June 13 to listen to the tape. "Nobody could look at anybody else because we were all embarrassed," said trustee Judy Engman, a retired librarian. "The language was bad enough, but the message of violence was more than I could take."

Although board members appeared in agreement at the June 22 meeting that they didn't personally like the tape, they also agreed with library staff that the system's policy on material selection was so broad they might be compelled to

put it back on the shelves. "I think we're caught in our own rules," complained Schaefer.

When it came time to vote, chair Lillian Noren had a hard time finding someone to make a motion to rescind the ban. Finally, Hal Fogman, who was attending his first board meeting, did the deed, "with considerable reluctance" since just moments before he had called the tape "a miserable piece of crap." When Noren called for a second, however, no member in attendance would respond. Of the two board members who opposed the ban in April, one had retired, and the other was absent. "I guess we'll leave it at that," Noren declared. "In other words, the tape has been banned."

"This is an emotional issue," commented Engman. "We're going to get crucified for this, I'm sure."

"I think they'll be hearing from our attorney," responded Barbara Dority, executive director of the Washington Coalition Against Censorship. The Washington ACLU also said it would examine the ban, and the Washington Campaign for Freedom of Expression issued a formal protest.

Schaefer blamed the controversy on library staff members who alerted the media to the issue. "This was a private meeting," Schaefer said. "The staff blew this completely out of context."

"A private matter?" retorted David Schraer of the Washington Campaign for Freedom of Expression. "It's a public library system, isn't it? Or is it a private library system."

About half the library district's 300 employees signed petitions protesting the ban. Merrie Hiatt, secretary to Library Director Tom Mayer, told trustees she quit her job because of the ban. Reported in: *Everett Herald*, May 11, 27, 31, June 23; *Seattle Times*, May 12, June 15, 23; *South Whidbey Record*, June 30; *Whidbey News-Times*, June 27.

Eau Claire, Wisconsin

A continuing battle over a book about adolescent sexuality was set to go to the Eau Claire School Board after two people filed appeals of a May 6 decision to keep the book in the Memorial High School library.

Vicki Hamilton, who had served on the district's strategic planning committee, originally requested that *Changing Bodies, Changing Lives*, by Ruth Bell, be banned from Eau Claire school classrooms and libraries. That request was denied by the district's Reconsideration of Instructional Materials Committee, although the committee also ruled in an 8-1 vote that the book should be retained until it can be replaced "as soon as possible" by a more up-to-date text. The book was first published in 1980. The school's copy is a 1987 revision.

While disappointed, Hamilton took some solace from the ruling, only filing an appeal to the school board after Jay Tobin appealed the decision to seek a replacement. Tobin deemed the committee ruling an unwarranted concession to book banners and called on the board to acquire additional copies of the book.

Hamilton offered a list of objections to *Changing Bodies, Changing Lives* that ranged from its graphic language to her perception that the book condones abortion, homosexuality and incest. "To teach abstinence and then having this sort of resource available to our students is simply talking out of both sides of our mouths," she told the reconsideration committee.

Hamilton was supported by Sandy Rowe of the Manz School PTA, who testified that the book "woos our children away" by encouraging them to ignore parental advice when making decisions about their sexuality.

"I would like my child to have the opportunity to read this book," countered Tobin. "I want him exposed to the world we live in, not some fantasy world of the PTA." Allison Sandve of Planned Parenthood of Wisconsin also testified in support of keeping the book.

The school board review of both appeals was scheduled for July 28. Reported in: *Eau Claire Leader-Telegram*, May 1, 6, June 17.

schools

Modesto, California

The works of Mark Twain and John Steinbeck were attacked in May by a Modesto man who wants them removed from high school reading lists because of their purported use of offensive and racist language. Mack Wilson, a parent of two Modesto High students, asked the Modesto City Schools Board of Education to remove *The Adventures of Huckleberry Finn* and *Of Mice and Men* from the district's required reading list because the word "nigger" appears in both books.

Wilson said the word is a "disparaging and depreciatory term that has no place in our classrooms. The word not only offends the sensibilities of black Americans, but all Americans and people who respect the heritages, cultures and ethnicities of people in this country," he said in a complaint filed with the district.

Wilson, who is also education committee chair for the Modesto chapter of the NAACP, asked the district to keep the books in the library for students to read if they choose. All eleventh graders are required to read *Huckleberry Finn* and tenth grade English teachers can assign either *Of Mice and Men* or *The Pearl*, another Steinbeck novel.

Wilson's request was turned down by school officials, on the recommendation of the district's language arts chairs, but he appealed to the school board, where at least one board member had expressed sympathy for his position. Reported in: *Modesto Bee*, May 11.

San Lorenzo, California

The author of a book that was removed from a San Lorenzo high school reading list said that while his novels about

desegregation and interracial friendships have sparked controversy in the past, censorship of them was unusual.

The Moves Make the Man, by Bruce Brooks, was pulled from Arroyo High School's eighth-grade reading list in April after a parent complained that racist terms in the dialogue were offensive to black students. The novel is told from the viewpoint of a black high school student who attends an all-white school in the early 1960s.

Brooks, who is white, grew up in a conservative North Carolina town, where he said he was exposed to racist attitudes. He said the superintendent of a school in Georgia once banned *The Moves Make the Man*, his first novel, on grounds that profane language in the dialogue was inappropriate. But Brooks contended the real concern was desegregation.

"What they are really afraid of are not the words, but of something else happening, of kids talking and thinking," he said.

San Lorenzo Superintendent Alden Badal said his district was acting out of a need to be sensitive to parents' concerns about school curricula. "In this particular day and age, when you have a multicultural society and when concerns are expressed, these concerns have to be listened to."

Critics said that Badal's decision to remove the book allowed one parent to alter the curriculum. Some teachers said that while they agreed the district should be sensitive to concerns about literature, books like *Moves* are valuable in dealing with attitudes about race.

"Our idea is not to be defensive," said Mary Camezon, chair of Arroyo's English department. "There is some validity to not wanting your child to read the word 'nigger.' But if you're going to teach a quality program with a meaningful, rich curriculum, you're going to deal with this." Reported in: *Hayward Daily Review*, June 15.

Santa Barbara, California

Santa Barbara health educators called it censorship. Craig Parton called it complying with state education codes. "It" was Parton's request, supported by others, to remove a video called *Sex Education: The Puberty Years* from the viewing list for fifth and sixth graders in Santa Barbara elementary schools. Parton, who is Peabody School PTA president, believed the video does not encourage abstinence, as required by the state education code and was inappropriate for use in elementary grades. He also wanted a committee formed to review books, films and other sex education materials before they are used in elementary classrooms.

Sex education supporters disputed Parton's claims. They said the video did not promote abstinence because it was not mainly about pregnancy and birth control, but about the changes associated with puberty. "What we're seeing are people who are against sex education or favor a limited form of it," said Scott McCann of Planned Parenthood. "Many of these people are fundamentalist Christians who think people should think like they do. We're defending parents' and teachers' rights to choose."

The school district began offering the 30-minute video this past school year to replace an outdated film. An integral part of the video is a group discussion involving boys and girls about the physical changes and typical situations associated with puberty. Nowhere in the discussion is abstinence mentioned.

Parton challenged the benefits of the discussion. "I was embarrassed for the kids," he said. "Their modesties were totally violated. I think they need to have certain facts, but it needs to be taught in an environment that is healthy." To Parton, healthy environment means dividing the boys and girls and holding separate discussions.

Elementary district nurse Lois Capps said the film was appropriate. Abstinence, she agreed, "belongs in the discussion, but it doesn't belong everywhere" in the sex education curriculum. "In my mind," she concluded, "*Puberty Years* talks more about what it feels like to be that age. I think it's appropriate for most sixth and seventh graders. It's up to the teacher to determine whether the class is mature enough."

Parton said a review committee would ease many parents' concerns about sex education. "What bothers me a lot about sex education material is they always catch us off guard," he said. But school officials noted that all materials are previewed and that all students enrolling in sex education classes must have parental permission. Reported in: *Santa Barbara News-Press*, June 22.

Tulare, California

Valley Continuation High School students went to court in June to stop Tulare school officials from shelving a video they produced that contains some profanity. Trustees of the Tulare Joint Union High School District ordered the offensive words in Melancholieanne" deleted before the video can be shown in classrooms. Made by students, the video deals with the problem of teenage pregnancy.

ACLU attorney Peter Goodman, who filed suit on behalf of students Sarah Valenzuela, William Lopez, Oscar Maldonado, and Adriann McGrew, said the profanity was minimal. "The true irony is that by choosing to attack a social problem involving their age group, the students are demonstrating a level of maturity that shows they don't need protection from a few vulgarities," Goodman said. District officials declined comment on the suit. Reported in: *Fresno Bee*, June 20.

Augusta, Georgia

An African-American poet who wears her hair in dreadlocks was the target of a campaign in May by people who alleged that she taught students to worship the devil. Atlanta poet Alice M. Lovelace cut two days off her stint

as Artist in Residence at Evans Elementary School, charging that fliers calling her a devil worshipper circulated by four parents were racist. Lovelace was at the school under a program sponsored by the Georgia Council for the Arts.

"If you're going to look at my hair and jump to the conclusion that I am a voodoo worshipper, that is racism to me," Lovelace said. "If you look at the titles of my works and say they are satanic, that is racist to me. I've run into prejudice before, but fortunately that was with people who were intelligent enough to get to know me and to see that I'm good at my job. This was from people who didn't want to get to know me, and it's because I'm black that I wasn't given that courtesy." Reported in: *Atlanta Constitution*, May 22.

Jefferson, Georgia

The Jackson County School Board voted unanimously June 9 to keep the controversial book *Fallen Angels* on high school library shelves, but to restrict its use as supplemental classroom reading material. The board vote upheld a media committee recommendation to restrict the book from use as a supplemental text. The board further mandated that parents of students in classes where the book is to be offered must be notified that it may contain sensitive material and undesirable language, and a list of alternate books must be made available.

The decision came after an appeal hearing of a challenge made by Jimmy and Geraldine Smith in February after their daughter Emily was assigned to read *Fallen Angels* in an English class. The Smiths formally requested that the book be withdrawn from all use at the school. "Our schools have free reign to do what they want with our children's minds," Geraldine Smith told the board. "I think you can tell Emily how sorry you are that she was subjected to this for three weeks by voting unanimously to take this book out of the school system." Reported in: *Athens Banner Herald*, June 10; *Jackson Herald*, June 10.

New Bern, North Carolina

Patsy and Ray Gatlin said they were shocked when they flipped through a copy of son Kenny's tenth grade reading assignment. On the first page of Alice Walker's *The Color Purple* 14-year-old Celie tells God about when she was raped by her stepfather.

"If someone wants to read this book at home on their own, that's up to them," said Patsy Gatlin. "But when you take a child who has no choice and tell him he has to read it, that's different. Kenny's not going to read this book, not in school or anywhere else."

"I plan on pushing it until it's out of our system," added Ray Gatlin.

After hearing the Gatlins' complaint, New Bern High School principal Bill Dill appointed an ad hoc committee, which reviewed the book and allowed selection of a different text for Kenny Gatlin. It also modified the way the book will be taught to other students.

But the Gatlins were not satisfied. "I'm still going to push," said Ray Gatlin. "I'm not going to back away. It might cause my family embarrassment, but my wife and I want to push. My wife feels just as strongly as I do." Reported in: *New Bern Sun Journal*, May 7, 8.

Carlisle, Pennsylvania

When a senior English class at Boiling Springs High School chose to read *A Prayer for Owen Meany*, by John Irving, according to Superintendent Robert Miller, they made an honest mistake. Miller said that for the past five years students in the class have selected a novel to read for a project, with approval by the instructor. But, for the first time, administration officials received complaints from parents about the book's content, primarily its strong language. As a result, Principal Stephen Andrejack and Miller ordered students to read an alternative assignment, *The Catcher in the Rye*, by J.D. Salinger.

Miller and Andrejack said the issue was not censorship, but procedure. New books slated for approval are to be reviewed by the school board, and *Owen Meany* never was. Andrejack said the book "likely will be in the library in the future." But that did not help the students who were disappointed by the ruling. "There's not the readiness there was before" to read the book, said Patrick Thompson. "We chose [*Owen Meany*] because we really wanted to read it."

Thompson said he and his classmates want to let other school districts know about their experience. "Hey, this could happen tomorrow to them," he warned. Since the book was removed, Thompson said he had been researching censorship laws and issues. "This has given me a cause for the rest of my life," he said. Reported in: *Carlisle Sentinel*, May 2.

Kittanning, Pennsylvania

A Pentecostal minister who unsuccessfully fought to have the Apollo-Ridge School Board ban a book from the eighth-grade curriculum took her case to court June 4. Elder Sylvia Hall asked for an injunction prohibiting use of the Newberry Award-winning book *Dragonwings*, by Laurence Yep. The court agreed to hold a hearing on the appeal August 24.

Hall began her campaign against the book earlier in the spring after she encountered it while helping her son with his homework. Hall objected to the frequent use of the word "demon" in the book, which tells the story of a Chinese boy who comes to the United States in the early 1900s.

"The occult and satanism is active," she said. "I'm concerned over the terminology in the book. It utilizes the word demon and things like dragon and beast. If you have an impressionable 12- or 13-year-old and someone asks him if he wants to go to a cult meeting, he may be curious enough to go because he learned about it in school." Hall said she also disapproved of references to reincarnation and other allusions to eastern religion in the book.

"There may be children who will commit suicide because

they think they can be reincarnated as something or someone else," she said. "I don't see where there is any Christian values in this book."

The school board voted 9-0 on May 26 to reject Hall's request. "Most of the school board read the book and were very pleased with the language," said Apollo-Ridge superintendent Roy Cogar. "They couldn't understand why she was making such a commotion. This is an outstanding piece of literature. She's trying to say it's about religion, but it's about prejudice and treating people in different ways. It helps kids learn to be sensitive to differences." Reported in: *Apollo News-Record*, April 29; *Kittanning Leader Times*, June 2; *Oil City Derrick*, June 10; *Philadelphia Inquirer*, April 30.

Fairfax, Virginia

When a sophomore at W.T. Woodson High School in Fairfax County insisted on using a frog in his mural design — a satirical scene depicting a science class preparing for a lesson on dissection — school administrators told him no. Dissecting frogs reflects cruelty to animals — or at least to vertebrates. They told Sean Murray to paint an invertebrate, like a worm, a test tube, or nothing.

It all began when a faculty committee chose Murray's mural design in a "school beautification" contest. "I drew kids standing around a tray with a frog," said Murray. "They all had scalpels, getting ready to dissect the frog, and they were acting as if they didn't want to do it. They have their tongues stuck out and feet in the air and there is a teacher fuming."

But when Murray got his winning design back from the committee, it had a note asking whether he could use "another organism instead of a frog." A science teacher told him an invertebrate might leave people "less offended." Murray said he took that as a suggestion, but because the students he spoke with were not bothered by the frog, decided to go ahead and paint one. "Later on, the same science teacher said some administrators had seen the frog and were upset about it, and wouldn't allow me to do any animal at all," Murray said. "They suggested a test tube."

"The only problem I had with it was [that] it was my artwork and my idea. . . . I didn't like them changing one thing here and there," he said. "If they didn't want the frog, they should have told me to come up with another idea. I was told some people would think it was in bad taste. There will be people out there who will be offended no matter what you do. They don't have to look at it. It was a common joke. Kids who don't want to dissect frogs because they think it's icky."

Murray said the issue was censorship.

"It's not so much censorship as it is a controversial issue," responded Assistant Principal Paul McKendrick. "It's an issue surrounding the curriculum. It goes right back to the ethical treatment of animals." McKendrick said biology classes no longer use frogs because of ethical and environmental issues. Instead, fetal pigs are now used. "Fetal pigs are a byproduct of the slaughtering house," McKendrick explained. "At least you're not going out and slaughtering fetal pigs to place them in a lab for high school students."

Of course, no one suggested that Murray draw a pig. Who knows whom that might offend! Reported in: *Washington Post*, June 12.

Hillsville, Virginia

Carroll County High School students will be formally permitted to read *The Floatplane Notebooks*, by Clyde Edgerton, but the issue was only decided by the tie-breaking vote of the Carroll School Board chair and the practical outcome was that the book would not be used in the classes in which it originally had been assigned and provoked protest.

The June 23 vote ended a lengthy and complicated controversy that began in March when evangelist J.B. Lineberry and others began to circulate petitions demanding the firing of the county teacher of the year, Marion Goldwasser, because she used the novel in two eleventh grade English classes (see *Newsletter*, May 1992, p. 84). Principal Harold Golding moved to defuse the controversy by removing the book from classes, but Goldwasser responded on April 20 by filing a grievance. She said she had gone through established procedures to adopt the book for classroom use, and school officials should not be allowed to ignore those procedures to remove the book.

Parents Wade and Wanda Humphrey, who had originally called Lineberry's attention to the book, then decided to file their own formal complaint about the book so it could go through an established review process, which was what Goldwasser had requested. Sixty-seven of the school's seventy-one teachers had signed a petition saying they wanted the committee review process followed.

The screening committee met and decided by an 8-1 vote May 29 that the novel was not appropriate for eleventh grade students but could be used as supplemental reading in two English classes taught in conjunction with Wytheville Community College and an advanced English class for college-bound seniors, with alternate reading materials available in case any parents objected. The one dissenter said the book should remain available at the eleventh grade level where Goldwasser had used it as supplemental reading for three years without difficulty.

Although Goldwasser pronounced herself "pleased with the decision," its practical effect was to virtually ban the book from the curriculum. The curriculum for the Wytheville classes is established by the college and the advanced class studies English literature rather than American literature.

Nevertheless, the Humphreys were not happy and appealed to the school board, which narrowly voted to sustain the committee decision. The board minority said that upholding the recommendation would be the same as upholding the book.

Reported in: *Carroll News*, May 6, June 3; *Galax Gazette*, April 29, May 11, June 26; *Roanoke Times & World-News*, May 8, 29, 30.

student press

Anchorage, Alaska

The story was perfect for a school newspaper — smokers sneaking cigarettes behind the band room at Clark Junior High School. So Shana Price wrote an editorial for the *Falcon Flash*, once named the best junior high paper in the country. "I don't care if they smoke at home, or in their cars — that's their business," she wrote. "They sit in that room, puffing away at their Marlboro or Camels, while we all get sick from the smoke coming into our room."

The smokers were teachers, however, not students, and Shana learned a lesson in censorship. Principal Louis Sears banned publication of her "student commentary," ordering *Falcon Flash* faculty advisor Dennis Stovall to kill the story. Stovall did so, reluctantly. "It's very rare that we don't print something," he said.

Although some teachers described the little room behind the band room as a designated smoking area, it is not. There is an absolute ban against any smoking in Anchorage school buildings.

Shana told Sears that she would send her story to the *Anchorage Daily News* and the *Anchorage Times*. "He got really furious," she said. "He threatened to censor every piece of work the *Falcon Flash* does next year and kind of made like it was my fault." Shana called his bluff and the story of both the illegal smoking and the censorship was read by 80,000 Alaskans. Reported in: *Anchorage Daily News*, June 13.

Burney, California

A black mark used to delete a word in 285 school yearbooks led outraged students and parents at Burney High School to accuse new principal Cord Angier of violating their First Amendment rights. When the yearbooks were delivered in late May, Angier read a photo caption under his picture that, he thought, gave the impression he didn't support the school's art program or student art. In what he described as a rash and emotional decision, he marked out an offending word.

"It was a poor judgment call and I'm really sorry," he said, after writing an apology to the entire student body. "I shouldn't have done that. I should have left it alone."

Last September, the students made a backdrop for a pie-throwing fund-rasier that included a painting of a woman in a skimpy bathing suit. Angier asked students to paint in more clothing, and they complied. But as the principal was standing by the backdrop, a yearbook photo was taken and when published its caption read, "Mr. Angier gives his negative opinion of student art."

Angier, who had been trying to build up the school's art program and had named the art instructor teacher of the year, was insulted and systematically went through the books marking out the word "negative."

Eleventh graders Shellie Guiles and Jeremy Donahoo said the principal had defaced their publication and violated their rights, and they circulated a petition to the school board calling for his removal. "Those were our books," Guiles said. "He had no right to go through them. I'm not satisfied with the apology. If I'd done what he did, a sorry would not have gotten me off."

In fact, Angier's action violated the California Education Code, which bars school administrators from censoring student expression as long as it is not obscene, libelous, or incites to the commission of unlawful acts or disrupts the orderly operation of the school. District policy provides that "a school official intending to censor must tell the students the reasons for any deletions in advance in terms the students can understand."

Many parents said the incident was particularly unfortunate because in his first year as principal Angier had won considerable praise for instituting "so many wonderful changes." According to one parent, "He's trying to get the school back to where it should be." Reported in: *Inter Mountain News*, June 3.

West Chicago, Illinois

Journalism students and school officials at West Chicago High School met May 5 to try to resolve differences over how the school's newspaper should handle stories on controversial topics. The sides had been at odds since Principal Alan C. Jones met with student editors of *The Bridge* during the winter and asked to be notified of potentially controversial articles before the paper is published. The students said that was censorship.

"What he asked us was to read the articles before, and we refused," said Alicia Garceau, one of the paper's editors. But Jones said his request was in the spirit of providing input on the stories, not to ban them. "I've never been interested in prior restraint or stopping an article," he said. "I am interested in the quality of the newspaper." Reported in: *Daily Herald*, May 6.

Wheaton, Illinois

Readers of the Wheaton College literary magazine, *Kodon*, distributed May 13 saw white space instead of nude sketches intended to enhance a poem in the publication. They also found a message from the magazine's staff.

Student editor Kate Faber said college administrators gave her the choice of pulling the nude sketches of a man and a woman or postponing publication pending further review. With graduation just days away, she said, the latter option could not be taken. "Rather than sacrifice the entire issue, we sacrificed those two sketches," Faber said.

The issue arose after the college-funded magazine was sent to the printer without the usual sign-off from its faculty adviser. Someone at the printer, whose owner is an alumnus of the conservative Christian college, contacted the Wheaton alumni office about the sketches. The issue was subsequently approved, but the matter of the sketches nonetheless wound up before the college committee on student publications, which issued the ultimatum to the magazine. Reported in: *Daily Herald*, May 14.

Bigfork, Montana

An advisory committee empowered to "censor" the Bigfork High School student newspaper was appointed by the school board April 9. The committee was formed after the publication of several controversial articles in the March issue of the newspaper, *The Norse Code*. Two of the articles dealt with the subject of killing cats and cat killers, another story detailed ways to inflict self-injury.

Norse Code adviser Vernon Pond said the articles were intended as satire and admitted they were "in poor taste." In an open letter to the community, he suggested an editorial board be formed to guard against future problems.

But Bigfork resident Larry Baer said that was not enough. Noting that a similar incident had occurred the previous year, Baer blamed Pond for the problem. "Mr. Pond should not serve as adviser. I'm saying that to your face Mr. Pond. I don't think you're capable," Baer said.

Trustee Dan Kurz said that an advisory board for the paper was a good idea, but only if it was granted the power to censor articles. "We need to spell out that they have censorship authority," Kurz said. "This is not a private paper, this is in effect a public paper," added trustee Shirley Baer. "The public has a right to censor it."

Pond said his intention was to give every member of the board full power to throw out any article. He said if any member of the board was against an article, it would be pulled. Trustee Baer, high school principal Steve Racki, Pond, two other teachers, and two students were appointed to serve on the board. Reported in: *Bigfork Eagle*, April 15.

Butler, Pennsylvania

Questions of censorship at Seneca Valley High School were raised at a school board meeting May 11 when five staff members of the *Seneca Scout* asked the board to set a policy to determine who controls the newspaper's content. The students charged that since March 1991, Principal Thomas Norris has required the staff to put page proofs on his desk two days before printing. Norris has censored a story about the junior prom, a survey on public versus private schools, and a student's food column that gave a local restaurant a bad review.

"We don't believe that censorship is being handled properly and we would like it resolved before next year," said Christen Rivera, who has written for the award-winning paper for two years. "It's been very discouraging to the morale of the staff."

The *Scout* has won third place in a competition run by the Pennsylvania School Press Association. Reported in: *Butler Eagle*, May 14.

recording

Los Angeles, California

Rap/heavy-metal performer Ice-T announced at a July 28 press conference that the song "Cop Killer" would be dropped from his *Body Count* album at his request because the record company distributing the album had received death threats. Warner Brothers Records said it would immediately "cease the manufacture and distribution" of the album "as it now stands" and would replace it with a version without the song.

Warner Brothers said that all copies previously distributed but as yet unsold were to be returned. Along with the song lineup, the album cover, which showed a demonic cartoon figure with the words "Cop Killer" on his chest, was to be changed.

The song, which includes the lyrics "I've got my 12-gauge sawed off... I'm 'bout to dust some cops off...die, pig, die," provoked a storm of protest from law enforcement groups and political figures, including President Bush and Vice President Dan Quayle. California's attorney general threatened legal action against the company, and several efforts to promote boycotts of its films, records, and other products, including *People* magazine, were underway.

While Time Warner Inc., the record company's parent firm, had maintained an official stance of refusal to withdraw the album, there were widespread reports that its board was uncomfortable with the situation and was seeking a mutually acceptable resolution.

Bob Merlis, Warner vice president and national publicity director, said that Ice-T made his decision after representatives of the label met with him July 24 and "gave him a background report on what the situation was, up to that moment." He said the label had not pressured the performer to drop the song and instead was "quite surprised" when Ice-T offered to do so.

"We showed him various news clippings and explained what the reaction was to his TV appearances and so on," Merlis said. "It was a fairly brief encounter. He came up with this suggestion pretty early in the meeting."

In June, Time Warner president and co-chief executive Gerald M. Levin declared in an op-ed article for the *Wall Street Journal* that it would set "a destructive precedent" for the company to give in to critics of the song. "It would be a signal to all the artists and journalists inside and outside Time Warner that if they wish to be heard, then they must tailor their minds and souls to fit the reigning orthodoxies," Levin wrote.

Announcing the album changes, Ice-T noted "death threats against Warner Brothers records" and said that he would give away free copies of the song during his concerts to prove it wasn't released just for profit.

Protest against the song came most vigorously from law enforcement groups, including the New York Patrolman's Benevolent Association, the Boston Police Patrolman's Association and the Combined Law Enforcement Associations of Texas, along with the National Rifle Association and Oliver North's Freedom Alliance. Mark Clark, a leader of the Texas group, said in early July that his organization and others would lead a boycott of all Warner products and would encourage pension funds to divest themselves of "several hundred million dollars" worth of company stock.

"We want to apologize for their decision and stop the distribution and promotion of the record 'Cop Killer,'" said Clark in announcing a demonstration that was eventually held at the Warner stockholders meeting July 16. "Time Warner is making a corporate decision to make a profit off of a song that advocates the murder of police officers and they are the ones we are going to attempt to hold accountable."

"Cops are an easy target, and they're just trying to capitalize on what went on in Los Angeles," echoed Bob Sheehan, president of the Hillsborough County Police Benevolent Association in Tampa, Florida. "You can't make a blanket argument that censorship is inappropriate. If this album advocated re-creation of the Holocaust, they wouldn't sell it."

Politicians also joined the fray. Sixty members of Congress, mostly Republicans, wrote a letter to Time Warner calling the lyrics "despicable." Alabama Governor Guy Hunt called for a ban on the record, declaring that Ice-T "may think he has the right under the First Amendment to record this kind of filth and degradation, but this album goes beyond the basic principles of human society." California's attorney general, Republican Dan Lundgren, asked record store chains in the state to voluntarily remove the record from their shelves.

President Bush called the record "sick," and Vice President Dan Quayle charged that by selling an "obscene record" Time Warner had shirked its corporate responsibility. "They are making money off a record that is suggesting it's OK to kill cops, and that is wrong," Quayle told a meeting of the National Association of Radio Talk Show Hosts. "Where is the corporate responsibility here? I'm not going to tell them what to do, but I know that...that is wrong."

In response to the pressure, at least three national record store chains withdrew the record. On June 19, the Dallas-based Sound Warehouse chain decided to stop selling *Body Count* at its 145 stores in fourteen states. Earlier, Trans World Music, which operates 600 stores in the East, announced that it had stopped selling the album, and Atlanta-based Super Club Music said it was pulling the album from 300 stores in nineteen states.

Ice-T had earlier responded to the criticism by saying the song was not an attempt to make people commit a crime, but represented an expression of rage and anger. "At no point do I go out and say, 'Let's do it,'" he said. "I'm singing in the first person as a character who is fed up with police brutality. I ain't never killed a cop. I felt like it a lot of times, but I never did it." The lyrics, he added, were "poetic license, and obviously these ignorant pigs don't know nothing about music."

These sentiments were endorsed in more moderate terms by some minority law enforcement groups. The National Black Police Association, based in Washington, and the Los Angeles-based African-American Peace Officers' Association opposed actions against the album and Time Warner, citing the right to free speech. Ice-T, the National Black Police Association said, "is entitled to voice his anger and frustration with the conditions facing oppressed people."

"Law-abiding people, not only African-Americans and Latinos but pockets in the white community, are angry with the police service in this country," said Ronald E. Hampton, executive director of the 35,000 member group. "These police organizations claim Time Warner has a moral obligation not to promote or condone the kind of words by Ice-T, but we say they have a moral obligation to not allow police brutality. We ought to have an even stroke across the board."

Although opponents of the record claimed that its distribution could harm police officers, their efforts mainly served to increase sales. The album sold 100,000 copies in just a month after the controversy broke, and by the time Ice-T announced that the offending song would be withdrawn, sales had reached at least 330,000 copies of approximately 500,000 shipped to distributors.

The performer's surprise announcement touched off a final run on the remaining copies in several cities, with some buyers saying they thought the recording might become a collector's item. "It's done better with all the press," said a New York record store clerk. "We get businessmen picking it up now. It didn't really sell that great when it first came out. But then you had all the publicity and by talking about it, Bush did a good promo."

In an impassioned commentary published in the *New York Times* shortly after the song's withdrawal, popular music critic Jon Pareles decried the censor's victory:

"Pressure groups everywhere can rejoice now that Ice-T has bowed to the protests of police associations and others and agreed to remove 'Cop Killer' from his first heavy-metal album, *Body Count*. A parental advisory label was not enough to satisfy music critics with badges; neither was the removal of the album from the shelves of hundreds of stores. The song had to go. Ice-T fought no law, but 'the law', or some of its guardians, won....

"Now that 'Cop Killer' has been withdrawn, a new mechanism is in effect: if police groups don't like a song, they can make it disappear. Especially in an election year, politicians (up to the Vice President in this case) will line

up with the police; fear and hatred of crime, and a lack of solutions can be displaced onto an easy target. As usual, popular music — especially popular music by blacks — makes the easiest target of all.

"Imagine the uproar if law-enforcement groups successfully squelched a play, a novel, or a film. After all, police officers die in recent hit movies from *Basic Instinct* to *Batman Returns*. . . .

"Since the popular music audience is treated as if it can't distinguish lyrics from propaganda, it might also be worth imagining police action against other songs, like "I Shot the Sheriff" or "Pretty Boy Floyd." American culture has a long-established anti-authoritarian streak that often casts the police as symbols of oppression. Ice-T's detractors would like to purge popular music of any such impulses.

"The suppression of 'Cop Killer' doesn't merely encourage pressure groups. The police aren't just any pressure group; on or off duty, they belong to the armed force of the state. And the campaign against 'Cop Killer' has now established a new bottom-line taboo, one that only die-hard free speech enthusiasts would think of questioning, against singing about the murder of police officers: against not just the evil deed, but also the word. In a 1990s culture where political correctness has become a buzzword and a punching bag, we now have something new: police correctness. It's not on the books, but clearly it's enforceable." Reported in: *New York Times*, July 8, 29, 30; *Washington Times*, June 20; *Tampa Tribune*, July 2; *University of Alabama Crimson White*, June 24; *St. Petersburg Times*, June 28.

television

Orlando, Florida

An Orlando television station was besieged by phone calls because it decided not to air *The Lost Language of Cranes*, a drama about homosexuality that was broadcast on public television throughout much of the country in June. Malcolm Wall, executive vice president of WMFE-TV, said the station had received almost 200 calls, six to one in favor of airing the show. WMFE chose not to run the production because of negative reaction to its broadcast in July, 1991, of *Tongues Untied*, a documentary about gay black men.

Wall also said the station objected to the "treatment" of homosexuality in *Cranes*, which he called "very suggestive and explicit and would not be in the community's best interest." He did note, however, that the program could be broadcast later. "We want to listen to the people," said another station executive. "We want to hear what they have to say."

WMFE was one of three public television stations in Florida, including WSRE in Pensacola and WFFP in Bonita Springs, that chose not to air the program. Reported in: *Miami Herald*, June 26.

colleges and universities

Northfield, Minnesota

A Carleton College student group has demanded that sexually explicit magazines be removed from the campus bookstore because their presence constitutes sexual harassment. A group calling itself Resources Against Pornography wants the Carleton Bookstore to stop selling *Playboy, Penthouse* and *Playgirl.*

"We believe we've all been harmed by it," said group member Alice Braverman. "Pornography makes the claim, tacitly, to speak for women by supposedly explaining what women want." In order to illustrate their point, the group displayed pictures from the three magazines in a dining area for two weeks, generating 400 signature on a petition. "People can't look at these pictures and think 'Oh, that's not bad,'" Braverman said.

Bookstore manager Dan Bergeson said censorship was not the solution. He responded to the display with one of his own in the bookstore about freedom of speech. The display included an open letter to the group in which Bergeson wrote, "The motivation for your request is because of a concern for issues of a sexual nature, both sexual harassment and sexual exploitation. However, requests for the withdrawal of books or other written or photographic material are also made for political, racial and other gender issues."

The debate reached a peak June 3 when, in response to the petition, faculty and students both for and against the ban met with Vice President and Treasurer Carol Campbell to discuss a charge of sexual harassment directed at Bergeson. Earlier, a faculty committee ruled 5-1 to keep the magazines on the shelves as long as there is a demand for them and they are legal. Campbell's decision was pending. Reported in: *Northfield News*, June 5.

Columbus, Ohio

The women's studies program at Ohio State University dropped a novel that includes explicit sex between two women after a conservative state legislator complained that it was "garbage." Susan Hartmann, director of the university's Center for Women's Studies, said that *Good Enough to Eat*, by Leslea Newman, was not "good literature" and no longer would be allowed as required reading for students in the program.

The decision to drop the book came after Rep. Lynn Wachtmann (R-Napoleon) included excerpts from it with a letter he sent to members of the Ohio House and Senate Finance Committees.

"Just as many thought the Mapplethorpe display was an inappropriate use of tax money, so too is the use of tax money for forcing our students to read this garbage in order to pass a course," Wachtmann wrote. He said the excerpt was brought to his attention by his secretary, who took the course as a part-time student.

Professor Hartmann said the book had been chosen by a highly-regarded, second-year teaching assistant without the knowledge of her supervisor. She said "only a small fraction" of the 3,500 to 4,000 students in the women's studies program were in the instructor's class and required to read the book. The teaching assistant has completed her degree and left the university. Reported in: *Toledo Blade*, June 26.

art

Fresno, California

Fresno artist Ramiro Martinez said he didn't think his work would be censored when he agreed to exhibit a collection of his paintings in Fresno's new City Hall. But Martinez became angry when three nude paintings, including a self-portrait, were not allowed in the display.

"We're talking about three pieces of art," he said. "Two female nudes and one male nude. They're not gross or anything like that. They're just nudes. It's art, and I don't believe art should be censored. They were part of the whole theme" of the show, he said.

Martinez and another artist, Alberto Zancudo, agreed to exhibit their work in early May and were given no limits. But when city officials found nudes among the pictures, they ordered the removal of Martinez's three works and one by Zancudo.

"I don't know if we did the right thing or not," said deputy city manager Robert Quesada. "But we were placed in a compromise position. Art is in the eye of the beholder, and that makes things very difficult. City Hall is a functional city building where a lot of business is conducted. It's not an art gallery."

Meanwhile, Martinez shook his head and rolled his eyes. Fresno wants to be a twentieth century city, but it's not allowing twentieth century art," he said. Reported in: *Fresno Bee*, May 17.

Morro Bay, California

A bare-breasted mermaid was at the center of a censorship dispute. Betty Usher, a twenty-year member of the Morro Bay Art Association, said the group refused to let her hang a watercolor painting of a mermaid. "I find the censorship absurd, and a violation of my right to free expression," Usher said June 29. "This isn't a church group, this is an art association. We should have all kinds of art."

According to association bylaws, the show director has complete authority to decide which paintings will be hung. Show director Dorothy Fost said the fact that the mermaid was semi-nude was not a factor in her decision. The work was refused, she said, because it wasn't "compatible with the other work that we show in the gallery."

Art Association President Frankie Hays said she supported Fost. She said that Fost was not alone in objecting to Usher's work. "Several other people did not think it was appropriate for the gallery," she said. "It's just not in good taste." Although Hays admitted the group had no policy barring nude or semi-nude art, she said the gallery had complaints about such work in the past. Reported in: *Morro Bay Sun-Bulletin*, July 2; *San Luis Obispo Telegram-Tribune*, July 1.

Watsonville, California

Two Watsonville city officials refused in May to display the work of three artists, saying the works contained nudity and "political overtones." The works were to have appeared in an exhibit of Latino artists organized by Arte Latino at Watsonville City Hall. "We won't ever do it again. We won't do any more shows where art will be censored," said the group's director, Julie Arizmendi.

Included among the rejected works were three photographs taken by John Gilberto Rodriquez. One showed a woman breastfeeding her baby with images of alcoholic beverages superimposed in the background. Another showed the same woman holding the baby while tears stream from her eyes. The third showed a man holding a Purple Heart above a war wound scar on his bare buttock. Also barred from exhibit were works by Trinidad Castro and Alberto Zancudo.

"At first I was thrilled over the censorship because I knew it would be more publicity for me," said Rodriguez. "Then I thought, This isn't right. Art shouldn't be censored just because it addresses social or political issues — that's part of art."

City Clerk Lorraine Washington, who was appointed to review public art along with City Manager Steve Salomon until a committee is formed, said the works probably would have been approved if the committee had already been established." Because we were serving as an interim measure, we told the director of the exhibit that we would be very conservative," she said.

The city council adopted a new art policy in April after city employees and some residents complained about an earlier exhibit in City Hall. That show, "Spirit of El Salvador," was called "un-American" by some. The new policy prohibits nudity or any works that would "condone violence against an individual or group."

Artist Ed Ramos withdrew his paintings when he learned of the city's policy. His work criticizes the 500-year anniversary of Columbus' arrival in America. "People just don't want to deal with issues that are going on today. They don't want to get upset," Ramos said. "But as we've been learning recently, people are being faced with reality whether they like it or not." Reported in: *San Jose Mercury-News*, June 2; *Santa Cruz Sentinel*, May 16.

(continued on page 176)

from the bench

U.S. Supreme Court

The Supreme Court June 22 unanimously struck down a St. Paul, Minnesota, hate crimes law, casting doubt on the constitutionality of scores of other state and local laws and on campus speech codes that punish students for offensive remarks. The court was united in its conclusion that the ordinance, which included a restriction on cross burning and swastika displays, violated freedom of speech. But the justices were bitterly divided in their reasoning. The five-justice majority, led by Antonin Scalia, adopted a far-reaching approach that experts said might be used to invalidate other laws that prohibit cross burning — in place in fifteen states and the District of Columbia — or to strike down other statutes that impose stiffer penalties on crimes such as vandalism, arson and assault when they are motivated by racial, religious or other bias. In its zeal to show minority groups that it abhors prejudice, Scalia said, government is not allowed to selectively silence speech on the basis of its content.

Four justices — Byron R White, Harry A. Blackmun, Sandra Day O'Connor and John Paul Stevens — agreed with the result but blasted the majority's reasoning, calling it "folly" that threatened to undermine rather than cement free speech protections.

The decision in *R.A.V.* v. *St. Paul* came at a time of national debate over hate speech laws and campus speech codes that many conservatives and some liberals see as imposing a regime of "political correctness." With the desire to punish racist intimidation colliding with free speech concerns, the case split groups that are normally allied. Some organizations — the Anti-Defamation League, the NAACP and People for the American Way — supported the law's constitutionality; others, including the American Civil Liberties Union and the American Jewish Congress, argued against it.

The case had its start in the early morning hours of June 21, 1990, when Russ and Laura Jones, a black family who had recently moved onto an all-white block of east St. Paul, awoke to see a crudely made cross burning in their yard. Robert Viktora, then 17, was charged with violating a city ordinance similar to those adopted by many localities in recent years in an effort to combat prejudice. It prohibited the display of offensive graffiti or symbols likely to arouse "anger, alarm or resentment in others on the basis of race, color, creed, religion or gender," and specifically cited the Nazi swastika and burning cross. The Minnesota Supreme Court upheld the law, saying it applied only to speech that was so incendiary as to constitute "fighting words" — conduct that "itself inflicts injury or tends to incite immediate violence." The high court, in earlier cases, had said such "fighting words" — like speech that is obscene or libelous -- do not merit protection under the First Amendment.

But Scalia said that even within the category of "fighting words," the government cannot penalize some words and omit others based on their content. "The government," he said, "may not regulate use based on hostility — or favoritism — towards the underlying message expressed." The problem with the St. Paul ordinance, he said, is that "displays containing abusive invective, no matter how vicious or severe, are permissible unless they are addressed to one of the specified disfavored topics. Those who wish to use 'fighting words' in connection with other ideas — to express hostility, for example, on the basis of political affiliation, union membership, or homosexuality — are not covered. The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects."

Although the city might want to send a message to citizens that racial and religious intolerance is bad and display its "special hostility towards the particular biases thus singled out," Scalia said, "that is precisely what the First Amendment forbids. The politicians of St. Paul are entitled to express that hostility — but not through the means of imposing unique limitations upon speakers who (however benightedly) disagree."

"Let there be no mistake about our belief that burning a cross in someone's front yard is reprehensible," he added. "But St. Paul has sufficient means at its disposal to prevent such behavior without adding the First Amendment to the fire." Scalia said the youth could be prosecuted for arson, criminal damage to property and other crimes. Chief Justice William H. Rehnquist and Justices Anthony M. Kennedy, David H. Souter and Clarence Thomas joined the opinion.

The concurring justices, in opinions that sounded far more like dissents, accused the majority of going out of its way

to rewrite First Amendment law. In an opinion by White, they said the ordinance could easily have been found invalid under the court's "fighting words" precedents, on the ground that it was "fatally overbroad because it criminalizes not only unprotected expression but expression protected by the First Amendment." White warned that the majority approach turned on its head the general "strict scrutiny" method of judging free speech cases: that restrictions on expression must be supported by a compelling interest (in this case, all justices agreed that protecting members of historically disadvantaged groups sufficed) and be as narrowly written as possible.

Instead of narrow bans on speech, White said, the majority view would result in broader prohibitions. "Under the majority's view, a narrowly drawn, content-based ordinance could never pass constitutional muster if the object of that legislation could be accomplished by banning a wider category of speech. This appears to be a general renunciation of strict scrutiny review, a fundamental tool of First Amendment analysis."

In a separate concurrence, Justice Blackmun said the majority "manipulated doctrine to strike down an ordinance whose premise it opposed, namely that racial threats and verbal assaults are of greater harm than other fighting words." Blackmun added, "I fear that the court has been distracted from its proper mission by the temptation to decide the issue over 'politically correct speech' and 'cultural diversity,' neither of which is presented here."

"I see no First Amendment values that are compromised by a law that prohibits hoodlums from driving minorities out of their homes by burning crosses on their lawns," Blackmun said, "but I see great harm in preventing the people of Saint Paul from specifically punishing the race-based fighting words that so prejudice their community."

Justice Stevens also looked outside the courtroom to the streets of Los Angeles in arguing that the court erred in tying officials' hands to punish hate speech. "One need look no further than the recent social unrest in the nation's cities to see that race-based threats may cause more harm to society and to individuals than other threats," he said. "Although it is regrettable that race occupies such a place and is so incendiary an issue, until the nation matures beyond that condition, laws such as St. Paul's ordinance will remain reasonable and justifiable."

Justice Stevens said that Justice Scalia's premise that distinctions on the basis of content are presumably invalid "has simplistic appeal, but lacks support in our First Amendment jurisprudence." Stevens said that St. Paul had drafted its law "in recognition of the different harms" presented by different types of speech, a calibration he said would have been legitimate had the law not been too sweeping."

Most states have enacted laws in the past few years to punish the sort of activity the St. Paul law prohibited. But they approach it differently. Many use a model law, drafted by the Anti-Defamation League of B'nai B'rith, that enhances the penalties for other offenses — vandalism, trespassing, assault — when the crime was motivated by hatred based on race, ethnicity, religion, and, in some cases, gender and sexual preference.

Michael Lieberman of the Anti-Defamation League and Jack Tunheim, chief deputy attorney general in Minnesota, expressed optimism that laws providing enhanced penalties for bias-related crimes will survive under the new test. The court did not specifically address such laws. In those situations, Tunheim said, "the conduct involved is already a crime. There is an additional element of bias toward a particular person for whatever reason that is not, at least in my view, the kind of speech-related regulation that is clearly implicated in the ordinance."

But Marc Stern of the American Jewish Congress said that the penalty-enhancement statutes are "very doubtful after today. . . . If you enhance for race and not for sexual orientation, you have the same content basis you have here" that invalidated the St. Paul ordinance.

"I think what it means is that statutes of that sort are going to have to be written in content-neutral terms," said Steven Shapiro of the American Civil Liberties Union. "A law that says you can't deface property is clearly okay. A law that says you can't deface property by painting swastikas but not any other kind of defacement is probably unconstitutional. . . . The only thing you can say for sure is that people are going to be suing over this stuff." Reported in: *Washington Post*, June 23; *New York Times*, June 23; *Milwaukee Journal*, June 23.

A bitterly divided Supreme Court on June 24 prohibited officially sponsored prayers at public school graduations, declaring that they coerce youngsters into participating in religious exercises in violation of the Constitution. Justice Anthony M. Kennedy, writing for the 5-4 majority, said that even non-sectarian benedictions and invocations — a staple at graduation ceremonies in public school systems nationwide — violate the First Amendment bar against government establishment of religion.

It was the court's first major school prayer ruling since 1985, when it struck down Alabama's law allowing a "moment of silence" in the schools. It also surprised many observers, who thought that a court so dramatically reconstituted by Presidents Reagan and Bush might go the other way, breaking with its historically strict view on this church-state issue. Two Reagan appointees, Kennedy and Sandra Day O'Connor, were joined in the majority opinion by Bush's first Supreme Court nominee, David H. Souter, along with Justices Harry A. Blackmun and John Paul Stevens.

Kennedy said that although attendance at commencement and participation in the prayers may be voluntary, the real-world effect is to force impressionable students into participating in a religious activity. "The Constitution forbids the state to exact religious conformity from a student as the price of attending her own high school graduation," Kennedy wrote. "This is the calculus the Constitution

court excerpts
adding free speech 'to the fire'

Following are excerpts from the Supreme Court opinions in R.A.V. v. City of St. Paul, *in which the court declared unconstitutional the St. Paul Bias-Motivated Crime Ordinance, which says: "Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender, commits disorderly conduct and shall be guilty of a misdemeanor."*

Justice Antonin Scalia's opinion for the court, joined by Chief Justice William H. Rehnquist and Justices Anthony M. Kennedy, David H. Souter and Clarence Thomas:

. . .The ordinance is facially unconstitutional. Although the phrase in the ordinance, "arouses anger, alarm or resentment in others," has been limited by the Minnesota Supreme Court's construction to reach only those symbols or displays that amount to "fighting words," the remaining, unmodified terms make clear that the ordinance applies only to "fighting words" that insult, or provoke violence, "on the basis of race, color, creed, religion or gender." Displays containing abusive invective, no matter how vicious or severe, are permissible unless they are addressed to one of the specified disfavored topics. Those who wish to use "fighting words" in connection with other ideas — to express hostility, for example, on the basis of political affiliation, union membership, or homosexuality — are not covered. The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects.

In its practical operation, moreover, the ordinance goes even beyond mere content discrimination, to actual viewpoint discrimination. Displays containing some words — odious racial epithets, for example — would be prohibited to proponents of all views. But "fighting words" that do not themselves invoke race, color, creed, religion, or gender — aspersions upon a person's mother, for example — would seemingly be usable *ad libitum* in the placards of those arguing in favor of racial, color, etc., tolerance and equality, but could not be used by that speaker's opponents. One could hold up a sign saying, for example, that all "anti-Catholic bigots" are misbegotten; but not that all "papists" are, for that would insult and provoke violence "on the basis of religion." St. Paul has no such authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensbury Rules.

. . .One must wholeheartedly agree with the Minnesota Supreme Court that "it is the responsibility, even the obligation, of diverse communities to confront such notions in whatever form they appear," but the manner of that confrontation cannot consist of selective limitations upon speech. St. Paul's brief asserts that a general "fighting words" law would not meet the city's needs because only a content-specific measure can communicate to minority groups that the "group hatred" aspect of such speech "is not condoned by the majority." The point of the First Amendment is that majority preferences must be expressed in some fashion other than silencing speech on the basis of its content.

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commands."

"The First Amendment's religion clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the state," Kennedy wrote. "The lessons of the First Amendment are as urgent in the modern world as in the eighteenth century when it was written," he continued. Kennedy said that "one timeless lesson" was that if citizens are "subjected to state-sponsored religious exercises," the government itself fails in its "duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people. . . . To compromise that principle today would be to deny our own tradition and forfeit our standing to urge others to secure the protections of that tradition for themselves."

Justice Antonin Scalia, in a particularly acerbic dissent joined by Chief Justice William H. Rehnquist and Justices Byron R. White and Clarence Thomas, assailed the majority for a ruling "as senseless in policy as it is unsupported in law." A somber-sounding Scalia underscored his unhappiness by announcing his dissent from the bench, a tool the justices reserve to signal extreme disagreement. Reading aloud the actual prayer at issue, Scalia said it was "sad that a prayer of this sort is sought to be abolished."

In his written dissent, Scalia said the decision "lays waste a tradition that is as old as public-school graduation ceremonies themselves, and that is a component of an even more longstanding American tradition of non-sectarian prayer to God at public celebrations generally." The nondenominational benediction and invocation at issue in this case, he said, "are so characteristically American they could have come from the pen of George Washington or Abraham Lincoln himself."

Church-state relations are an area of the law in which the court has been closely divided in recent years. A majority of the justices, including Kennedy and O'Connor, had expressed unhappiness with the test the court had used since 1971 to judge when government involvement with religion ran afoul of the Constitution. Many observers had anticipated that the high court, prodded by the Bush administration and others, might use the case, *Lee* v. *Weisman*, to make a major change in the law. Instead, led by Kennedy, the court explicitly rebuffed the invitation to do so.

court excerpts
school prayer

Excerpts from the opinion for the Supreme Court majority in Lee *v.* Weisman, *written by Justice Anthony M. Kennedy and joined by Justices Harry A. Blackmun, John Paul Stevens, Sandra Day O'Connor and David H. Souter*:

The policy of the city of Providence is an unconstitutional one.... The government involvement with religious activity in this case is pervasive, to the point of creating a state-sponsored and state-directed religious exercise in a public school.... It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which "establishes a (state) religion or religious faith, or tends to do so." The State's involvement in the school prayers challenged today violates these central principles. That involvement is as troubling as it is undenied. A school official, the principal, decided that an invocation and a benediction should be given; this is a choice attributable to the State, and, from a constitutional perspective, it is as if a state statute decreed that the prayers must occur. The principal chose the religious participant, here a rabbi, and that choice is also attributable to the State. The reason for the choice of a rabbi is not disclosed by the record, but the potential for divisiveness over the choice of a particular member of the clergy to conduct the ceremony is apparent....

The State's role did not end with the decision to include a prayer and with the choice of clergyman. Principal Lee provided Rabbi Gutterman with a copy of the "Guidelines for Civic Occasions," and advised him that his prayers should be nonsectarian. Through these means, the principal directed and controlled the content of the prayer....

The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to either be proscribed or prescribed by the State. The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere, which itself is promised freedom to pursue that mission....

Though the efforts of the school officials in this case to find common ground appear to have been a good-faith attempt to recognize the common aspects of religions and not the divisive ones, our precedents do not permit school officials to assist in composing prayers as an incident to a formal exercise for their students. And these same precedents caution us to measure the idea of a civil religion against the central meaning of the Religion Clauses of the First Amendment, which is that all creeds must be tolerated and none favored. The suggestion that government may establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds strikes us as a contradiction that cannot be accepted....

The undeniable fact is that the school district's supervision and control of a high school graduation ceremony places public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the Invocation and Benediction. This pressure, though subtle and indirect, can be as real as any overt compulsion.... Finding no violation under these circumstances

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The case involved a challenge to the Providence, Rhode Island, public schools' practice of having a clergyman deliver an invocation and benediction at junior high and high school graduation ceremonies. At the June 1989 graduation from Nathan Bishop Middle School, Rabbi Leslie Gutterman delivered a non-sectarian invocation and benediction that referred to God. Daniel Weisman, whose daughter Deborah was among the graduates, filed a lawsuit in federal court, contending that the inclusion of the prayers violated the First Amendment. At an elder daughter's graduation, the Weismans, who are Jewish, had heard a minister invoke Jesus Christ in his prayer. The lower federal courts agreed with the Weismans, saying that the prayer violated the existing three-part test the courts have used to judge separation of church and state cases.

That test, known as the Lemon test after the court's 1972 ruling in *Lemon* v. *Kurtzman*, states that to comply with the First Amendment, a challenged practice must have a secular purpose, a primary effect that neither advances nor inhibits religion, and not foster "excessive government entanglement with religion." The Bush administration, entering the case on the side of the Providence school board, urged the court to get rid of the test, which has resulted in numerous rulings barring various religious activities. The administration said it was unworkable and should be replaced with a more lenient standard: allowing "civic acknowledgments of religion in public life . . . as long as they neither threaten the establishment of an official religion nor coerce participation in religious activities."

Kennedy, who in the past has suggested such a coercion test, said the prayer at issue went too far under that or any other test. While rejecting the administration's proposed standard in the context of this case, he did not necessarily foreclose a future reexamination or even reversal of *Lemon* in other contexts.

Specifically, Kennedy took care to say that the rationale of the decision in this case did not necessarily extend to cases involving adults who object to a government religious practice. "We do not hold that every state action implicating religion is invalid if one or a few citizens find it offensive," he wrote, adding, "A relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution."

Nevertheless, the opinion was striking for its pointed refutation of the administration's central arguments. For example, the administration had argued that because no student had to attend the graduation ceremony, no one could be said to have been coerced into joining in the prayers. "The argument lacks all persuasion," Kennedy said. "Law reaches past formalism. Everyone knows that in our society, and in our culture, high school graduation is one of life's most significant occasions."

He also refuted the argument that nondenominational religious observance on public occasions is no more than a benign "civic religion" that should offend no one. "The suggestion that government may establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds strikes us as a contradiction that cannot be accepted," Kennedy wrote.

"It is beyond dispute that, at a minimum, the government may not coerce anyone to support or participate in religion or its exercise... The undeniable fact is that the school district's supervision and control of a high school graduation ceremony places public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the invocation and benediction," he said. "This pressure, though subtle and indirect, can be as real as any overt compulsion."

Scalia derided this approach as "the court's psycho-journey" and "psychology practiced by amateurs," and said the court was treating religion as "some purely personal avocation that can be indulged in entirely in secret, like pornography, in the privacy of one's room." He said the majority was worrying too much about the Weismans' concerns and too little about the community's interest in public proclamation of its faith in God, something that Scalia said had marked American public life since Washington's first inaugural address.

The case "involves the community's celebration of one of the milestones in its young citizens' lives, and it is a bold step for this court to seek to banish from that occasion, and from thousands of similar celebrations throughout this land, the expression of gratitude to God that a majority of the community wishes to make."

The case was noteworthy because it marked the first votes by Souter and Thomas on the subject. Thomas, who stated several times at his confirmation hearings last year that he had "no quarrel" with the Lemon test, joined Scalia's effort to replace it. Souter, in a separate concurring opinion, joined with O'Connor, who wants a standard of constitutionality that is similar to the existing one: whether the government's action endorses religion. In fact, although they joined Kennedy's opinion, the four other justices in the majority made clear that they believe government action that simply endorses religion, and not only government action that coerces participation in it, violates the Constitution.

The ruling was applauded by civil liberties groups and some religious organizations that had been braced for a major rewriting of the court's test on separation of church and state, which they feared would drastically lower the wall of separation between government and religion. "It's terrific," said Steven Shapiro of the American Civil Liberties Union, which represented the Rhode Island family that challenged the commencement prayer.

"It should end any lingering debate about prayer in school, which a majority of the court has clearly and strongly held once again is unconstitutional," Shapiro said. "Given this court and given its drift in religion cases this is really an important restatement of core principles about the importance of separation between church and state."

Conservative groups and other religious organizations that thought they could count on a win from the solidified conservative majority on the high court expressed feelings of anger and betrayal. "This is constitutional psycho-babble at its worst," said Thomas L. Jipping of the Free Congress Foundation. "Of the five new justices added to the court by Presidents Reagan and Bush, three joined in today's travesty," said Family Research Council President Gary Bauer. "At that rate, one has to wonder why liberal interest groups bother fighting Republican nominees to the court. Why not just support them and watch them 'grow'?"

Solicitor General Kenneth W. Starr, who on behalf of the Bush administration had urged the court to allow the prayer, said he was "disappointed" and "surprised" by the court's "willingness to strike down a well-settled traditional and historical practice." But Starr said he did not interpret the opinion as placing an absolute barrier to prayer at school graduation ceremonies, suggesting that student-initiated prayers, unsupervised by school officials, might be permissible.

Some observers who were cheered by the ruling expressed concern that Kennedy might join with the four dissenters to allow more government involvement with religion outside the school context — for example, in cases challenging official displays of creches and other Christmas symbols. Kennedy "appeared to leave a back door open to a weaker standard, particularly outside the public school setting," said Elliot Mincberg, legal director of the liberal People for the American Way.

The Supreme Court is likely to indicate soon whether or not it will take a fresh look at the Establishment Clause in other contexts. Cases involving church-state questions had been piling up for more than a year, ever since the justices agreed to review the Providence case. These range from the display of a Hanukkah menorah in a public park in Vermont to the use of religious imagery on city seals in Illinois and Texas to Hawaii's declaration of Good Friday as an official state holiday. Reported in: *Washington Post*, June 25; *New York Times*, June 25.

The Supreme Court June 26 allowed airports to ban religious and political groups from soliciting money from travelers but said airports must permit the groups to hand out literature. The court was splintered in both its reasoning

and result in the case, a challenge by the Hare Krishna religious group to rules against solicitation and leafleting at New York's three metropolitan airports. Voting 6-3, the court allowed the solicitation ban, saying it did not violate the constitutional guarantee of free speech. Then, dividing 5-4, it struck down the prohibition on distributing literature.

Justice Sandra Day O'Connor, announcing the complicated lineup and result from the bench, prompted laughter in the normally sedate courtroom when she summed up: "Now, if anyone can figure that out, they're doing well." O'Connor was not the author of the ruling upholding the solicitation ban but drew the assignment because the author, Chief Justice William H. Rehnquist, was away at a judicial conference.

In upholding the rule against soliciting, Rehnquist, joined by Justices O'Connor, Byron R. White, Antonin Scalia and Clarence Thomas, said the ban was justified because an airport is not a public forum similar to city streets or parks. In previous cases, the court disallowed most restrictions on speech in public arenas. But if an area is not considered to be a public forum even if it is owned by government, the court has said, a restriction on speech need only be reasonable. Rehnquist said the "tradition of airport activity does not demonstrate that airports have historically been made available for speech activity." He said the solicitation ban was reasonable because of the risk that traffic flow would be impeded and that travelers would be pressured to contribute.

Justice Anthony M. Kennedy also voted to uphold the solicitation ban, but on a different ground. Kennedy said the airport is a public forum and accused the majority of a "flawed" approach that would cut off free-speech protections. "In a country where most citizens travel by automobile, and parks all too often become locales for crime rather than social intercourse, our failure to recognize the possibility that new types of government property may be appropriate forums for speech will lead to a serious curtailment of our expressive activity," he said. However, Kennedy said, he would uphold the solicitation ban as a "narrow and valid regulation of the time, place and manner" of speech.

Justices David H. Souter, Harry A. Blackmun and John Paul Stevens voted to strike down both the solicitation and leafleting bans, saying the First Amendment "inevitably requires people to put up with annoyance and uninvited persuasion."

In overturning the leafleting prohibition, Souter, Blackmun and Stevens were joined by Kennedy and O'Connor. Rehnquist dissented, joined by White, Scalia and Thomas. "The weary, harried or hurried traveler may have no less desire and need to avoid the delays generated by having literature foisted upon him than he does to avoid delays from a financial solicitation," he said.

Hare Krishna spokesman Anuttama Dasa called the ruling in *International Society of Krishna Consciousness* v. *Lee*, "a terrible blow to everyone who values the right of free speech" and a "blow to religious freedom." Dasa said that "as a grass-roots minority religion in this country, this decision severely curtails our ability to share our message." But Stanley Brezenoff of the Port Authority of New York and New Jersey, which runs the three airports, praised the ruling: "The millions of people who use these airports are the true beneficiaries of this ruling." Reported in: *Washington Post*, June 27.

In a case from a racially troubled Georgia county, the Supreme Court on June 19 overturned an ordinance requiring demonstrators to pay up to $1,000 a day for police and administrative costs. Splitting 5-4, the justices said the ordinance of Forsyth County violated free speech guarantees by giving "uncontrolled discretion" to the county administrator to set permit fees.

Forsyth no longer can base the cost on the content of demonstrators' speech or the degree of hostility it may provoke, Justice Harry Blackmun wrote for the majority. Under the ordinance, he said, "those wishing to express views unpopular with bottle-throwers, for example, may have to pay more for their permit. . . Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob."

Justice Blackmun was joined by Justices Kennedy, O'Connor, Souter, and Stevens. In dissent were Chief Justice Rehnquist and Justices Scalia, White and Thomas. Reported in: *Miami Herald*, June 21.

The Supreme Court agreed in early July to hear in the Fall term an appeal by a pornographer convicted under the federal racketeering law. The appeal challenges the constitutionality of an obscenity conviction under the Racketeer Influenced and Corrupt Organizations (RICO) Act. Under a 1984 addition to the law, a person convicted of obscenity under RICO faces huge fines, staggering prison sentences and the seizure of an entire business operation, for the sale of pornographic materials that may even amount to no more than a minute fraction of a company's inventory. Federal prosecutors have maintained that seizing a pornographer's business assets is no different than seizing the proceeds and assets of a drug dealer.

Because the Justice Department has shown a willingness to threaten to prosecute dealers for selling magazines such as *Playgirl* and *Penthouse*, many in the media fear that if the Supreme Court upholds the law, their businesses could be next. Under RICO, as some courts have interpreted the law, two obscenity convictions against a mainstream bookstore for selling sexually explicit material in a conservative community could result in the forfeiture of all the assets of the entire chain.

The petitioner to the Supreme Court, Ferris Alexander, operated a chain of bookstores, theaters and video stores in the Minneapolis area. In May, 1990, a jury found that he had violated the RICO-obscenity law by selling four magazines and three videotapes valued at less than $200.

As a result, Alexander was sentenced to six years in prison, fined $200,000 and forfeited a $25 million business. Much of his inventory included material that was not sexually explicit, much less obscene, but it was still destroyed by the federal government.

Alexander's appeal asks the Supreme Court to overturn the conviction on the ground that the punishment was "shockingly disproportionate to the offense" and to rule that since books and videotapes are protected by the First Amendment, they are constitutionally different from drugs. Seizing and disposing of inventories that have never been found obscene is an impermissible prior restraint, the appeal argues.

The federal appeals courts have split on the law. The U.S. Court of Appeals for the Ninth Circuit has limited the assets that prosecutors can seize to those "traceable to or substantially intertwined with the obscenity racketeering enterprise." The Eighth Circuit in Minneapolis, which upheld Alexander's conviction, and the Fourth Circuit in Virginia, the first to address the issue, both ruled that unlimited forfeiture was valid under RICO as long as there was a link between the "ill-gotten gains from racketeering activity and the protected materials forfeited." Reported in: *Wall Street Journal*, July 8.

"hate speech"

Madison, Wisconsin

The Wisconsin Supreme Court ruled 5-2 June 24 that the state's hate-crimes law is unconstitutional because it limits the free thought and speech guaranteed by the First Amendment. The 1988 law allowed judges to add up to five years to the sentence of a criminal who picked a victim because of the victim's color, ancestry, national origin, sexual orientation, disability, religion or race.

"The hate crimes statute violates the First Amendment directly by punishing what the Legislature has deemed to be offensive thought, and violates the First Amendment indirectly by chilling free speech," Chief Justice Nathan Heffernan wrote for the court. "The hate crimes statute enhances the punishment of bigoted criminals because they are bigoted. Punishment of one's thought, however repugnant the thought, is unconstitutional."

The Wisconsin court acted on an appeal by Todd Mitchell, a black Kenosha man whose maximum sentence for aggravated battery was increased to seven years in prison, from two, because the jury found that he had vocally encouraged a group of black teenagers to attack a 14-year-old white boy on the basis of race.

"The use of the defendant's speech, both current and past, as circumstantial evidence... makes it apparent that the statute sweeps protected speech within its ambit and will chill free speech," Heffernan wrote.

Eunice Edgar, executive director of the ACLU of Wisconsin, said the decision indicated that a proposed hate-speech rule for students in the University of Wisconsin system was likely to be overturned. "It makes dead meat of the regents' rule," she said. Regents of the 160,000 student system have proposed disciplining students who utter "fighting words" intended to provoke others because of their race or other minority status (see page 159 and *Newsletter*, May 1992, p. 93). Reported in: *Wisconsin State Journal*, June 24; *New York Times*, June 25.

National Endowment for the Arts

Los Angeles, California

A federal judge in Los Angeles ruled June 9 that a law requiring the National Endowment for the Arts (NEA) to "take into consideration general studards of decency" when making grants is unconstitutional. Ruling in a lawsuit brought by four performance artists, U.S. District Court Judge A. Wallace Tashima said the law violated the First Amendment because it was too vague and broadly worded, "sweeping within its ambit speech and artistic expression which is protected by the First Amendment." The ruling also cleared the way for a trial in the effort by the artists to reinstate grants denied to them two years ago.

"The right of artists to challenge conventional wisdom and values is a cornerstone of artistic and academic freedom, no less than the rights of scientists funded by the National Institutes of Health," Tashima declared. "The fact that the exercise of professional judgment is inescapable in arts funding does not mean that the government has free rein to impose whatever content restrictions it chooses."

The so-called decency standard was the basis of a compromise two years ago that ended a long Congressional debate over whether to extend the life of the arts endowment. While placating conservatives, however, the provision became a red flag for many artists who denounced it as government intrusion into their work.

Jill Collins, director of public affairs for the NEA, said that lawyers for the agency were "reviewing the judge's decision" and that grants would continue to be made "on the basis of artistic excellence." Artistic excellence is a nebulous and subjective standard that acting endowment chair Anne-Imelda Radice cited in May as a basis for rejecting proposals from two university art galleries (see *Newsletter*, July 1992, p. 101).

Rep. Ralph Regula (R-OH), an architect of the decency provision, said: "I disagree with the court. I don't think it's a First Amendment issue. When you involve taxpayers' money, Congress historically has had a right to impose conditions." But Regula added that he thought the ruling would make little difference because Radice favored the decency standard and would continue to employ it "under the rubric of artistic excellence."

Legally, the NEA chair is the ultimate arbiter of artistic merit, and getting any court to second-guess those evaluations is likely to prove difficult.

In arguing the case, the Justice Department relied in part on the U.S. Supreme Court's ruling in *Rust* v. *Sullivan* that the government may forbid physicians in federally funded clinics from discussing abortion with their parents. But Tashima observed that in *Rust* the Supreme Court had said that some kinds of expression were so fundamental that they could not be controlled by the government. One such form of expression, Tashima held, is federally funded art. "Artistic expression, no less than academic speech or journalism, is at the core of a democratic society's cultural and political vitality," he said. Reported in: *Los Angeles Timess*, June 10; *Washington Post*, June 10; *New York Times*, June 10.

obscenity and pornography

Washington, D.C.

On May 26, U.S. District Court Judge Stanley Sporkin declared unconstitutional a federal requirement that producers of sexually explicit films and photographs of adults keep elaborate records about their actors or models. The decision was the second in three years to find that the requirement, part of a federal child pornography law, violated the First Amendment.

The original record-keeping provisions were struck down on similar grounds in 1989 by U.S. District Court Judge George H. Revercomb. Congress then passed a slightly modified version in the closing days of its 1990 session, and it was this version that Judge Sporkin rejected.

Both successful legal attacks on the statute — *ALA* v. *Thornburgh I* and *ALA* v. *Thornburgh II* — were led by the American Library Association and the Freedom to Read Foundation with the support of the American Booksellers Association, the Council of Periodical Distributors Associations, artists' organizations and others.

The law required primary producers of sexual films and photographs to check each model's photo-identification and record each model's name, date of birth regardless of age, all aliases, nicknames, and stage names. All those names had to be cross-indexed so that they could be retrieved by every alias and by the title of every book or film in which the model appeared. All secondary producers, like distributors, publishers or even artists who used other people's sexually explicit work, had to obtain copies of those records from the primary producer and then maintain them. Failure to comply with the requirement was a felony punishable by up to two years in prison and a fine.

Judge Sporkin called the requirement "a dragnet approach." He said the legislation would chill the exercise of constitutionally protected rights to free expression. "Far from being an act narrowly tailored to achieve a significant legislative goal, it is more akin to off-the-rack legislation concocted to suit a government interest made from whole cloth," he wrote.

"Many of the aritsts and adult models engaged in sexually explicit visual imagery have an interest in maintaining their anonymity" to avoid "stigmatization, harassment and ridicule from others," the decision said. Under the law, "adults engaging in unpopular but protected expression are required to affirmatively come forward and subject themselves to the possibility of public harassment."

The judge also said the law placed "virtually insurmountable burdens" on some artists who photograph sexually explicit materials produced by others and combine them with other images to "produce strong feminist or political messages" critical of pornography. Such artists would have been required to go to the original pornographer to obtain records required for producing their art legally.

Judge Sporkin said that both he and the plaintiffs condemned child pornography and that if the record-keeping requirement had been limited to material involving models who were under age, "it would be constitutional."

"It becomes impermissible," he stated, "only because the act reaches all individuals engaged in sexually explicit conduct regardless of age." He barred its enforcement against anyone who exercised "due diligence to satisfy themselves that the subjects in these images are over eighteen years of age." Reported in: *New York Times*, May 28.

Washington, D.C.

A federal appeals court ruled on May 26 that the prosecution of a North Carolina mail order company on charges of obscenity was improper because its true aim was to stop the distribution of material that was sexually explicit but not obscene. The decision by the U.S. Court of Appeals for the Tenth Circuit in Denver will make it difficult for the Justice Department to pursue its controversial strategy of bringing simultaneous or successive indictments against distributors of sexually explicit materials in two or more conservative jurisdictions (see *Newsletter*, March 1992, p. 60).

Philip D. Harvey, president of Adam & Eve, a Carrboro, North Carolina, mail-order distributor whose $20 million business was found not to be obscene by a local jury in 1987, has been one of the government's three chief targets. In July, 1990, Washington, D.C., federal Judge Joyce Hens Green ruled that Harvey had made credible allegations that prosecutors had violated the First Amendment and acted in "bad faith" by using threats to try to force him to drop distribution of all sexually related material, including *Playboy* magazine.

Soon after, the Justice Department brought obscenity charges against Harvey in Utah. There, a federal trial judge rejected his claim that the new prosecution was an attempt to retaliate for Judge Green's ruling and aimed to prevent Harvey from selling non-obscene material.

That ruling was overturned by the Denver appeals court in a 2-1 decision written by Judge Ruggero J. Aldisort, who said that Harvey had shown that "the indictment is the tainted

fruit of a prosecutorial attempt to curtail [Adam & Eve's] future First Amendment protected speech."

The appeals court sent the case back to the trial court, ordering that it be dismissed if the government fails to show that it can bring an indictment not motivated by retaliation for Judge Green's ruling or for the ulterior purpose of stopping sales of sexually explicit but not obscene material.

The Justice Department, under the direction of then-Attorney General Edwin Meese, adopted the hardball prosecution strategy in 1985 to "test the limits of pornographers' endurance," the court said, quoting from a government document. Under the strategy, the department's Obscenity Section, which has doubled in size since the new approach was adopted, files multiple suits in socially conservative areas of the country, taking advantage of the Supreme Court's 1973 ruling in *Miller* v. *California*, which defined obscenity as a violation of locally determined community standards. Once under indictment, distributors are told that they would have to stop selling all kinds of sexually explicit materials, including publications not considered obscene, such as *Playboy* and sex manuals like *The Joy of Sex*, available in mainstream bookstores.

The strategy has been highly effective because the distributors can't afford the legal fees to fight obscenity charges in different states. Moreover, under a 1988 racketeering law, prosecutors can threaten to seize all the assets of distributors, even if just a few of their publications or videotapes are found obscene (see page 154), thus raising the stakes for those who do not accede to government demands. At least seven major distributors of sexually explicit material have been forced out of business after pleading guilty and agreeing not to sell any sexually explicit — but legal — materials again.

The approach has come under harsh criticism from First Amendment lawyers, booksellers and videotape producers, who charge that the tactic is a version of forum shopping that violates free speech rights and due process protections by bullying distributors into self-censorship of materials that have never been found by a court to be obscene and are not likely to.

In a separate case, Harvey won another victory in late May when a federal trial judge in Washington, D.C., ordered the government to hand over documents detailing its strategy.

David Ogden, a partner with Jenner & Block in Washington, who represented Harvey in the Tenth Circuit appeal, said the two rulings "have put the federal government in the position of holding off on" all of its cases brought under the multiple prosecution strategy. Reported in: *Wall Street Journal*, May 29.

schools

San Jose, California

A judge refused June 4 to ban the Channel One in-school television station from San Jose classes but ordered a trial on whether it may keep showing commercials. State Superior Court Judge Jeremy Fogel denied a preliminary injunction sought by the state that would have immediately barred San Jose's East Side Union High School District from using Channel One. Fogel said the suit would go to trial on September 2 to determine if ads belong in programs designed to teach current events.

"I was impressed by the content of Channel One," the judge said. "But when the ads came on, I have to tell you I was jarred. But it may well be it is necessary. The school now has the burden of proving they can't do it any other way."

The case is being followed closely by school districts around the country that use the service. About 7.1 million students in nearly 11,800 public and private high schools in 45 states watch its broadcasts each school day. Proponents say Channel One programs teach students about current events and stimulate them to read newspapers and that its operator, Whittle Communications, provides schools with high-tech video equipment they couldn't otherwise afford to buy. But critics say the people who put the broadcasts together want a captive audience for ads for such things as candy bars and cars.

California schools superintendent Bill Honig sued in December to ban Channel One from the San Jose district, which adopted the service in violation of a state education department ruling (see *Newsletter*, July 1992, p. 121). Honig said that showing students advertising when they are required to be in school infringes on academic freedom and violates students' rights to be free of unlawful confinement.

Joining the lawsuit were the California Congress of Parents, Teachers, and Students and two teachers who object to the channel being required at the district's William C. Overfelt High School. The lawsuit said students are forced to watch the channel and teachers have been threatened with discipline if they shut it off. Overfelt principal Elias Chamorro said the programs are a valuable teaching tool. Reported in: *Boston Globe*, June 5.

Trenton, New Jersey

Putting schoolchildren in front of a television set to watch Channel One's mix of news and commercials violates New Jersey Law and should be discontinued, an administrative law judge ruled in June. Reported in: *Idaho Statesman*, June 25.

confidentiality

Phoenix, Arizona

A U.S. District Court Judge in Arizona has reaffirmed for book authors the same First Amendment protections regarding confidentiality of sources enjoyed by journalists. The June 8 decision by Judge Roger Strand came in a case involving the book *Birthright*, by Ronald J. Watkins. The book

deals with the activities of the Shoen family, owners of U-Haul International. Watkins' source material had been subpoenaed in connection with a libel action brought by some members of the family against other family members.

Watkins said the decision lifted "a huge weight off my shoulders after many months of expensive court battles that diverted me from the book project and threatened my ability to pursue it to completion." Reported in: *AAP Monthly Report*, June 1992.

resident aliens

Houston, Texas

Deciding for a Palestinian who is fighting deportation, U.S. District Court Judge Joyce Hens Green ruled May 28 that resident aliens are entitled to the same First Amendment protections as U.S. citizens. Judge Green ruled that the government violated the rights of Fouad Yacoub Rafeedie, who runs several Blockbuster Video outlets in Houston, when it sought to deport him because he supports a terrorist organization.

"Although the government plainly may have a legitimate interest in regulating subversive conduct, it cannot broadly prohibit teaching or advocating unpopular tenets, or association with an organization that teaches or advocates such doctrines," Green wrote.

The Immigration and Naturalization Service (INS) had contended that Rafeedie's attendance in 1986 at a two-week meeting in Syria of the Palestinian Youth Organization showed that he supports the allegedly terrorist organization. The INS also maintained that Rafeedie has raised money and recruited members for the Popular Front for the Liberation of Palestine.

One major issue in the case was INS use of the seldom-applied "summary exclusion" provision of the McCarran-Walter Act against Rafeedie on the basis of confidential information. Because of the secrecy allowed under that provision, "Rafeedie has been given only one opportunity to submit information and argument on his own behalf, and even that opportunity has, thus far, been exercised in ignorance of the nature of the confidential information with which he has been charged," Green wrote.

"He has, in essence, been afforded virtually none of the procedural protections designed to minimize the risk that the government may err in excluding an alien," she said. Reported in: *Washington Post*, May 30.

etc.

Washington, D.C.

The National Park Service may not ban leafleting on sidewalks near the Vietnam Veterans Memorial, a three judge panel of the U.S. Court of Appeals for the District of Columbia Circuit ruled May 22. The court upheld a District Court decision that the ban on leafleting violated the First Amendment.

The ban had been challenged by David Henderson, a Christian evangelist, who wanted to hand out literature during the Desert Storm Victory Parade in Washington on June 8, 1991. He won a court ruling that the sidewalks are a traditional public forum. The government unsuccessfully argued that leafleting must be banned on the sidewalks near the memorial to protect is tranquility. Reported in: *Orlando Sentinel*, May 23. □

(is it legal? . . . from page 160)

measured by contemporary community standards" is allowed between 8 p.m. and 6 a.m. by the Federal Communications Commission. The courts have struck down Congressional attempts to prohibit such programming around the clock. Reported in: *Washington Times*, June 4.

obscenity and pornography

Alexandria, Virginia

The ACLU June 3 charged that federal prosecutors were "bullying" two northern Virginia bookstores into removing adult magazines from their shelves. "What is most disturbing is that this sounds like federal grandstanding," said Kent Willis, executive director of the organization's Virginia Chapter. "If they move in and intimidate bookstores, they don't have to go through the step-by-step process of proving something obscene."

The comments came after bookstores in Alexandria and Falls Church halted the sale of all adult magazines, including publications such as *Playboy* and *Penthouse*, after being served with a federal search warrant for obscene materials. The stores are the focus of a federal grand jury investigation, said John K. Zwerling, an attorney for Kathy Eckstein, who owns both stores.

Zwerling said his client decided to remove the magazines from the stores because it can not be determined, short of a criminal trial, which are obscene and which are not. "She does not want to commit a crime," he said. "But she wants to exercise her rights under the First Amendment." He said many of the magazines seized during a search of the Falls Church store "are the kind of things you can find at airports or in hotels." Reported in: *Richmond Times-Dispatch*, June 4. □

is it legal?

libraries

Springfield, Oregon

A city librarian said June 19 that she would take time to decide whether to accept two books donated to the library to test a city charter amendment prohibiting the city from "promoting, encouraging or facilitating" homosexuality. Children's librarian Judy Harold said she would use the same guidelines she always follows.

The books — *Daddy's Roommate* and *Heather Has Two Mommies* — were given to the library by Scott Seibert, a member of OUTPAC. Seibert's group donated the books in an effort to force a legal test of the charter amendment passed on May 19. The amendment was sponsored by the Oregon Citizens Alliance (OCA), which had named the books as ones they believed should not be available to young readers.

"In fact, we also held a public reading of the books in a meeting room at the Springfield Utility Board, which as a city agency is subject to the terms of the charter amendment," Seibert said. "When we signed up for the room, we specifically stated the purpose was to conduct a reading and discussion to promote, encourage and facilitate homosexuality."

OCA had contended that placing the two books in the library would violate the charter amendment, but a representative of the organization said the group would not become involved in a battle to keep the books out. "We're not going to do anything unilaterally, but if some Springfield parent decides to challenge these books, we will give support and assistance to that effort," said OCA communications director Scott Lively.

"At this point, the existence of these books in the library is a concern of the Springfield community," Lively continued. "We just assisted the citizens of Springfield in establishing a pro-family standard to be upheld by the government of the city. For now, we're just as much spectators as anyone else.

Previously, Lively had said that voter approval of the amendment meant that the community did not support the public availability of books that promote homosexuality. "If we find that a book about homosexual lifestyle like *Heather Has Two Mommies* is in a library," he said, "we will do everything we can to get it out of there."

Dave Fidanque, director of the Lane County chapter of the ACLU, said his group would also watch the selection process. "If she rejects the books because they violate the terms of the charter amendment, we will file a suit to challenge that decision," he said. "Frankly, we expect the city to accept the books. If they don't we expect they will use some other reason not tied to the OCA measure."

In April, the Oregon Library Association passed a resolution responding to a similar initiative that the OCA has placed on the statewide ballot in November. Passage of a statewide measure that declares homosexuality "abnormal, wrong, unnatural, and perverse" would "pose a threat of censorship of library collections, eliminating literature by gay or lesbian writers, or about homosexuality," the resolution said. The association also raised the possibility that anti-homosexual laws could result in firing of library personnel suspected of being gay or refusal of services to people assumed to be so. Reported in: *Eugene Register-Guard*, May 26, June 20.

"hate speech"

Madison, Wisconsin

University of Wisconsin system regents will vote again — in September — on a rule allowing the disciplining of students who taunt others into violence for racial and other reasons, the president of the Board of Regents announced July 7. President George K. Steil said he had the fifteen-member board polled, and a "substantial majority" asked for another vote on the controversial "hate speech" rule. The rule was revised and readopted after an earlier one was ruled unconstitutional (see *Newsletter*, May 1992, p. 93).

Steil said system officials would take the legal steps needed to have the rule take effect, "but we agreed there will be no enforcement" until the September vote. Steil said the board wanted a chance to review the rule again because of two recent court rulings striking down "hate speech" laws. Both the U.S. Supreme Court and the Wisconsin Supreme Court found laws aimed at punishing racist and bigoted speech unconstitutional (see page 149 and 155). Reported in: *Milwaukee Sentinel*, July 8.

recordings

Baton Rouge, Louisiana

Governor Edwin Edwards vetoed a bill July 1 that would have imprisoned a store clerk who sells musical recordings with warning labels to minors. Edwards said he killed the bill, authored by Rep. Ted Haik (D-New Iberia), because it is unconstitutional and would cost the state money to defend in court.

The bill, which flew through the Legislature, would have set a penalty of up to $1,000 in fines or six months in jail for anyone who sold a labeled record to any unmarried person under age 17. If signed into law, Edwards said it might lead the music industry to stop voluntarily labeling records.

"Under the terms of the bill," Edwards commented, "if the record is labeled offensive and sold to minors then it would be a violation of the law. If it is not labeled and sold there would be no violation."

"I am concerned about the potential problems for our children that may be caused by some music that is available today," Edwards said in his veto mesage. "I am convinced that [the Haik bill] as a cure is far worse than the disease. The fatal flaw inherent [in the bill] is censorship. Censorship betrays the faith our founding fathers recognized in individuals. Censorship attacks our fundamental right of freedom of expression and cannot be the public policy of our state."

At the same time as he announced his veto, Edwards called on record stores in the state to voluntarily withdraw from sale the controversial Ice-T album with the song "Cop Killer" (see page 145). "If this legislation had merely prohibited the sale of records that advocate killing cops or homicide or the use of drugs, I would have signed it even though there is a question about its constitutionality," Edwards said. Reported in: *Baton Rouge Advocate*, July 2; *New Orleans Times-Picayune*, July 2; *Shreveport Times*, July 2.

Seattle Washington

A law signed in March by Washington Governor Booth Gardner that bans the sale of "erotic" music to juveniles (see *Newsletter*, July 1992, p. 122) went into effect June 11 and was soon challenged in a lawsuit filed by record companies, retailers, music associations, recording artists and consumers.

"We intend to send a clear message to the forces of censorship around the country that censorship is un-American and this nonsense must stop," said Barbara Dollarhide, president of the newly formed Washyington Music Industry Coalition. The Coalition joined with the ACLU and the Recording Industry Association of America to challenge the law.

"Right now there are record stores already taking records off the shelves, even though none have been determined to be obscene," Dollarhide said. "We still believe this is a parental responsibility." Reported in: *Philadelphia Inquirer*, June 13; *Tacoma Morning News Tribune*, June 27.

student press

Madison, Wisconsin

Legislation to guarantee students freedom of expression in school newspapers was vetoed April 29 by Governor Tommy G. Thompson. "Since the school newspaper is a learning experience similar to history or English classes," Thompson declared, "these policies should be developed locally by school boards and administrators with input from teachers, students and parents. I remain wholeheartedly committed to our philosophy of local control."

The bill would have ensured student rights to free speech in school publications except expression that involves obscene or libelous material or that advocates violence or disruption in the school. Reported in: *Milwaukee Sentinel*, April 30.

broadcasting

Washington, D.C.

By a veto-proof margin, the Senate June 3 reauthorized the Corporation for Public Broadcasting for three more years at $1.1 billion, a fifty percent increase, but set new restrictions on the hours "indecent" programming can be aired. In denying a Republican bid to freeze federal funds for CPB to $825 million for 1994-96, the bill faced certain veto by President Bush. But the 84-11 margin of passage was enough to overcome a veto.

The bill passed the House by voice vote in November and was sent back by the Senate for action on several amendments, including one that would restrict adult programming to between midnight and 6 a.m. on both public and commercial television.

It was believed that the bill enjoyed bipartisan support in the House and there was optimism that a presidential veto could also be overridden there.

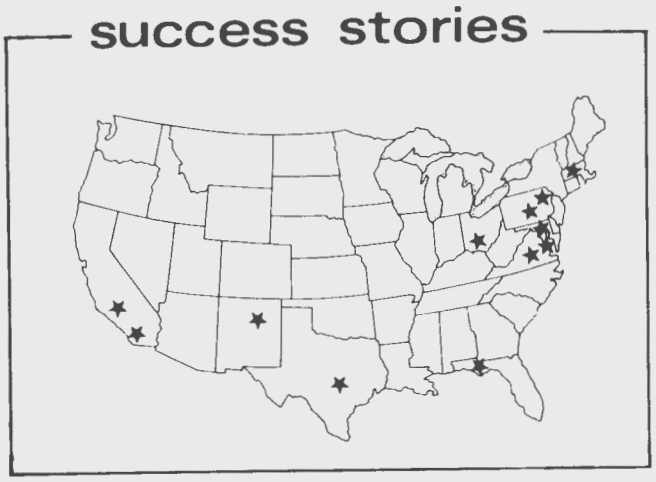
"Passage of this legislation is a reaffirmation of confidence in the current system, which enables public broadcasters to receive federal support through a private, independent organization, free from the concern of government interference in First Amendment-protected matters," said Sheila Tate, chair of the Corporation board.

After the bill passed the House, it remained stalled in the Senate because of Republican concerns about financial accountability and an alleged "left-wing" programming bias.

West Virginia Democrat Robert Byrd was the author of the amendment to restrict adult programming in both public and commercial television to the hours between midnight and 6 a.m., which passed 93-3. The three dissenters were Howard Metzenbaum (D-OH), Timothy Wirth (D-CO), and James Jeffords (R-VT). Currently, "indecent" programming, defined as involving descriptions of "sexual or excretory activities or organs" in terms "patently offensive as

(continued on page 158)

success stories



libraries

Fairbanks, Alaska

A committee of eight librarians voted unanimously May 21 to keep *Billy Budd, KGB*, a graphic novel written in France by Jerome Charyn and Francois Bouco, on the shelves of the Noel Wien Library. The book drew a complaint earlier in the month from a member of the library foundation who said it was too sexually explicit and violent. A graphic novel, like a comic strip, is comprised of illustrated sequential frames.

Candy Waugaman, who filed the complaint, objected specifically to four or five pages of the 124-page work that showed the main character having sex. She said she did not read the entire book. Waugaman charged that because the book looks like a comic, it is more appealing to children. She asked that at a minimum children be barred from checking the book out. A friend, whose ten-year-old daughter looked at the book, turned it over to Waugaman.

Library director Greg Hill said the committee checked reviews of the book, researched its authors, and read *Billy Budd, KGB* themselves. He said the committee found that the little sexual content in the book was not gratuitous. "The book had a powerful message, despite those aspects, that made it a very worthwhile book in my opinion." Reported in: *Fairbanks News-Miner*, May 7, 22.

Escondido, California

The Headless Cupid, by Zilpha Keatley Snyder, which came under fire from an Escondido couple because it contains references to the occult, will remain on the shelves of elementary school libraries, trustees decided April 30. The vote on the Escondido Elementary School District Board was 5-0.

"Please leave the books alone," parent Richard Brubaker told the board, as an audience of about 100 people applauded. Previously in April, the board decided that only they should make the decision to restrict library books after Superintendent Robert Fisher restricted access to *The Witches*, by Roald Dahl (see *Newsletter*, May 1992, p. 78). The trustees also voted to reconsider the restriction of the Dahl book.

Wayne and Gwen Ervin submitted a complaint in January about *The Headless Cupid*. Children who read the book, they charged, "may develop an unhealthy interest in the occult, thinking its practices are acceptable behavior." The complaint listed thirty objectionable references, including the sentence, "You have to be very relaxed and concentrate on thinking of absolutely nothing while I go into my trance." Reported in: *Escondido Times-Advocate*, May 1.

Tallahassee, Florida

Despite efforts to ban a gay and lesbian film festival at the Leon County Public Library, the show went on as scheduled June 15. County commissioners defeated a move June 9 to ban the festival, sponsored by the local Gay and Lesbian Pride Committee, and to review the library policy on meeting room use that allowed its showing. Commissioner Gary Yordon led the defeat by calling Commissioner Don Price's motion to cancel the films "bigotry at its worst." The vote was 4-2. Previously, the county's library advisory board had twice voted unanimously to go ahead with the planned festival.

Members of the American Family Association, which mobilized opposition on a daily radio show, led the protest against the festival. Randy Brienen, a representative of the group, charged that festival organizers and attendees would try to recruit children into a homosexual lifestyle. He asked the library board where they would draw the line if they allowed gay people to gain access to the library for their films.

"Can other groups, such as prostitutes, pedophiles, sex offenders and other deviants get in the library to promote their lifestyles?" Brienen asked. "And as far as how this is supposed to benefit the community, I don't see how these videos promote the educational, cultural or recreational benefits of the community."

"I considered the library a family-friendly place," added Flora McConki of a group called Family Issues Forum, "but on the night of June 15, our library will be the equivalent of an adult movie theater."

But festival co-sponsor Maureen Malvern said the films, "one of which was shown on PBS last fall, are not at all X-rated. The distributor of these films does not handle pornography, and a night of X-rated movies is not the kind of evening we had in mind."

Library officials reported that during the days preceding the film showings the library was besieged by threatening

and obscene telephone calls protesting the festival. On the night of the film program, five hundred people showed up at the library. Some protesters remained outside, but others tried to disrupt the program from inside. They did not succeed. In fact, many left the video dubbed by protesters "most likely to be obscene" with exclamations about how boring it was."Its's just a guy making furniture," one said in frustration. Reported in: *Florida Flambeau*, June 11; *Tallahassee Democrat*, June 9, 10, 16.

Amherst, Massachusetts

The Jones Library Board of Trustees unanimously voted May 21 to reject a request to remove a religious book from library shelves. Amherst resident Joel Stanley said *Life: How Did it Get Here*, published by the Jehovah's Witnesses, is given to libraries at no charge in an attempt to gain converts. A former Jehovah's Witness who has written his own book critical of the religion, Stanley said that because the book lists no authors or editors, there is no accountability for its statements.

Library Director Bonnie Isman said there is a Jehovah's Witness congregation in the town. "To single them out and exclude the book is inappropriate." Isman said the library contains other primary religious texts promoting the views of specific religions, including the *Book of Mormon* and Mary Baker Eddy's works on Christian Science. While she acknowledged that the book is "religious propaganda," Isman stressed the library's continuing commitment to reflecting a diversity of views. Isman also pointed out that Stanley's book was purchased by the library and is available to those seeking a differing view. Reported in: *Daily Hampshire Gazette*, May 22.

Roswell, New Mexico

The controversial children's book *Daddy's Roommate*, which sparked heated debate and disagreement, will remain in the children's section of the Roswell Public Library. The library's board of trustees voted 4-1 in late June to keep the book where it was originally placed. The board rejected a compromise suggestion to keep the book in the children's section but on a special shelf for books subject to parental discretion.

The book, by Michael Willhoite, is an illustrated story from a boy's perspective about his father's alternative gay lifestyle. Written for children ages 2-7, the book depicts the child, his father and father's roommate, Frank, after the boy's parents are divorced.

Controversy began when the wife of a Roswell minister complained to the library board about the book and asked that it be removed from the children's section. At that meeting, protesters marched outside the library in opposition to the book's removal while Rev. Kerry Holton and his wife, Becky, and about 150 supporters addressed the trustees. The Holtons presented a petition with an estimated 2,700 signatures calling for reshelving the book.

"I'm not trying to ban books from this excellent library which clash with my value system. I'm here today out of concern for the rights of parents and children," Ms. Holton said. "We want the library to respect our rights as parents to determine for our own children when we think they are ready to confront these controversial issues."

But board president Robert Belles said the board does not decide where books are shelved, nor does it pass judgment on library purchases. "Our policy is to allow free access to everything in the library,:" he said. Reported in: *Albuquerque Journal*, June 30; *Artesia Daily Press*, June 4; *Denver Post*, May 30; *Roswell Daily Record*, May 29.

Harrisburg, Pennsylvania

Parents opposed to *Daddy's Roommate*, by Michael Willhoite, a children's book depicting a gay relationship, gathered nearly 2,000 signatures urging the Dauphin County Library System to remove the book from its shelves, but library officials said the book would remain in the library and accessible to all patrons. "It appears [petition signers] want the library system not to carry any books which touch on homosexuality," said library director Richard Bowra. "What is important is that the library's role is to have material on any number of issues." Petition organizers Lu Ann Selcher of Middletown and Carol Kupp of Harrisburg said the book's intent "is indoctrination, not education, into a gay lifestyle."

By having *Daddy's Roommate* "we are reflecting what is out there in society," Bowra said. "It is our role to show several sides of an issue." Bowra said the book, geared to young children 2-7 years of age, had been taken out by library patrons 21 times without incident. The book "does depict two men hugging," Bowra acknowledged, but tries to explain to a child what "that relationship means. There is nothing in the book which says this is the best lifestyle there is."

"The people who signed the petitions will not be pleased the book will be remaining in the library," Bowra admitted. "What we may have to do is agree to disagree. They have to realize we are here to serve over 200,000 residents of Dauphin County. If the library were to remove and relocate all items that people might object to there would be vast open spaces." Reported in: *Harrisburg Patriot*, June 30.

Mechanicsburg, Pennsylvania

Two texts that drew fire from some Mechanicsburg parents will remain on school library shelves, Mechanicsburg Area School District officials said June 29. Two special committees of school administrators, board members, parents and teachers reviewed the books, which parents claimed contain profanity and references to death and witchcraft.

A group of five parents objected to *The Bridge to Tarabithia*, by Katherine Paterson, which won the 1978

Newberry Medal. The other work, *Out of the Cauldron*, by Bernice Kohn, a short history of witchcraft, was questioned by one parent. Reported in: *Harrisburg Patriot*, June 30.

schools

Los Alamitos, California

Just hours before a senior class art show was to open, a Los Alamitos high school student was allowed to exhibit her painting, an abstract work that depicts two nude women embracing. Letitia Houston, a senior at Orange County High School for the Arts, said the work addressed her homosexuality. School administrators who originally ruled that Houston must drape the painting with cloth, backed down after student and public pressure.

"We wish to be clear that we were not censoring this student's work on the basis of sexuality," said Ralph Opacic, the school's executive director. "To demonstrate our support of students' rights to self-expression, we are including the work in the show even though it did not meet specifications of the project, nor the timeline, and is unfinished."

The eighteen-year-old Houston painted the work as one of four she planned to contribute to the nine-person senior class exhibit. But, she said, Nancy Melbourne, director of the school's visual arts department, told her that she had to cover part of the work and change a statement she wrote to go with it. In her original statement, Houston wrote, "I don't want to live with the fear of going to hell because of loving another woman." In the reworded statement, "another woman" was to be changed to "another person."

Melbourne said she initially wanted to remove the painting from the show, but then agreed that it would be draped, after Houston and other students threatened to withdraw. Melbourne said she objected to the painting and statement because neither fit the theme of Houston's other submitted work — her struggle with Catholicism — and because the work was unfinished. "I felt [the painting] was not dealing with her theme of her struggle with religion and all of a sudden, four days before the show, she's throwing in another whole issue." Melbourne said two other works also were excluded because they were not completed, but Melbourne readily acknowledged that Houston's was the only one in which content was also a factor.

When word spread about the ban, other students said they would drape their work in solidarity. "I was going to cover some of my stuff," said Kasey Jenkins, who had eight pieces in the show. "I wanted to make my own statement of concern. Because who's to say what's offensive and what's not." Faced with such pressure, school officials backed down. The show opened May 22 with Houston's five foot by six foot canvas uncovered.

"This isn't about me," the young artist said. "It's about art. Ultimately, this has been one of the most wonderful experiences I've had as an artist." Reported in: *Los Angeles Times*, May 22; *Orange County Register*, May 23.

Frederick County, Maryland

The school superintendent in Frederick County decided in late June to keep the controversial *Impressions* reading series in the elementary school curriculum, despite protests from parents who charged that the books promote witchcraft. Superintendent Noel T. Farmer notified the parents who had objected to the series that he was rejecting their complaints that the books dwell on morbid subjects, are detrimental to the students' emotional well-being, and undermine American and family values.

"Students will benefit from the opportunity to read and respond to the selections in this series," Farmer wrote.

The parents said they would appeal to the school board, but a reversal appeared highly unlikely. Two weeks earlier, the board voted 6-1 to retain three books — *East of the Sun, West of the Moon,* and *Cross the Golden River* — that are part of the series. The three books had been inadvertently omitted from a review process when the school board first approved the series in 1987 (see *Newsletter*, July 1992, p. 110).

The board meeting on June 15 was dominated by supporters of the series, who rallied after opponents of the books mobilized an extensive campaign for their removal. Emily Daniel, who took part in a "read-in" by the Keep the Books Committee before the board meeting, said Halloween stories in the books were not offensive. "My kids enjoy Halloween as a time to dress up and be silly," she said. "I don't think they're going to join the occult."

The effort to remove *Impressions* began in October, 1991, when Teri Heger and another parent complained that children were reading material that is "occultic" in nature. Soon, parents and citizens filed nearly 300 requests for reconsideration of the series. More than 80 people turned out for a May 20 public hearing to ask the board to stop using the texts. Reported in: *Washington Post*, June 5, July 3; *Hagerstown Morning Herald*, June 17.

Hamilton, Ohio

The Hamilton Board of Education by unanimous vote on May 26 upheld a recommendation by a committee of parents and community members and returned John Steinbeck's classic novel *Of Mice and Men* to Hamilton High School's optional reading list. The novel was temporarily removed from the list following a complaint by Bob Barnett, vice president of the school's Parents Coalition, who contended it contains vulgarity and racial slurs (see *Newsletter*, July 1992, p.111).

"Christians should be mad," Barnett said. "Where were they tonight? The board showed their stupidity tonight." Barnett claimed that the book contains 108 profanities, 12 racial slurs, and uses God's name in vain 45 times.

The review committee had voted 8-0 to reinstate the book to the curriculum. Its deliberations were attended by about 150 parents, students and teachers, who overwhelmingly sup-

ported the book's retention. Thom Kuykendall, a senior at Hamilton High, brought petitions with 333 signatures in favor of keeping the book. He said *Of Mice and Men* "provokes the reader to explore his or her own morals. If that is not the goal of education, then I don't know what is. Every person has the right to think, to discern right from wrong.

"Speaking for the book's opponents was the Rev. Oscar Hughes. "Anybody that's got a child shouldn't want them to read this book," he said. "It should be burned up, put in a fire. It's not fit for a child to read. It's not even fit for a heathen to read."

"I did have a problem with the cursing in the book," acknowledged committee member Helen Carter. "I'm also a realist. I know people talk like this." Reported in *Cincinnati Enquirer*, May 14, 27; *Cincinnati Post*, May 13, 14; *Hamilton Journal-News*, May 6, 7, 14, 15.

Lynchburg, Virginia

The Lynchburg School Board June 2 rejected a challenge by parents to ban two books taught in middle and high school English classes. The board voted unanimously to retain *The Pigman*, by Paul Zindel, and *Homecoming*, by Cynthia Voigt, which were challenged by Chuck Edwards and Ralph and Nancy Brasure. Ralph Brasure is president of the Perrymont Elementary School Parent-Teacher Organization (PTO). Edwards is a former PTO president at Perrymont.

The complainants charged that both Zindel and Voigt presented readers with negative role models and values. "It's not that these books are big, gross, bad monster-types of things, but we feel that there are better choices that can be made," Edwards told the school board.

Both the Brasures and Edwards chose to have their children read other books. But Edwards chose also to challenge the books' presence in the city schools. Citing, among other things, 29 instances in *The Pigman* of what he called "destructive, disrespectful, antisocial and illegal behavior . . . placed in a humorous light, making it seem acceptable," he asked the board to take the "unprecedented" step of overruling a review committee that recommended retaining the books.

"Especially in light of the list of values adopted by the Values Education Task Force, . . . we feel that these books teach just the opposite," Nancy Brasure added. "Negative role-models are portrayed in a positive light, instead of a negative one, as they should be."

The school board disagreed. "If I got anything out of public education at all it was a real sense of the power of the ideas behind our own government, and especially the idea of freedom of speech," said board member Julius Sigler. "So I guess I'm inherently opposed to censorship other than the kind where parents can intervene, as these parents have, to move their children to other kinds of books." Reported in: *Lynchburg News & Advance*, June 3.

student press

Austin, Texas

Printing presses are rolling again for students at LBJ High School in northeast Austin. On June 1, journalism students working on the *Liberator* got the green light from Austin Independent School District administrators to proceed with a front-page story that was killed the previous week by Principal Dorothy Orebo.

"We are pleased they ruled in our favor," said LBJ journalism teacher and advisor Andy Drewlinger. "We knew all along that even though the story dealt with a sensitive issue, it was a good story. It wasn't biased, it was good journalism."

The story reported possible recruiting violations by two LBJ coaches. Although the paper was scheduled to appear with the story on the cover, students delayed its printing to appeal Orebo's decision to a three-member panel of district assistant superintendents. It was the first time the appeals process, created last year as part of a new policy giving principals the authority to censor stories before publication, was employed.

"We did not feel that it [the story] violated any of the reasons that would be legitimate to deny it," said assistant superintendent for curriculum Bonnie Lesley. Those reasons include being libelous, or causing a disruption in the school.

"I'm glad they decided our way," commented photo editor Lisa Gauger. "But that doesn't fix what's wrong with the policy. Journalism advisers have a more in-depth relationship with students and are better equipped than principals to decide these issues." Reported in: *Austin American-Statesman*, May 30, June 2.

government

Washington, D.C.

Basic information on birth control — removed from a popular health book on orders from the Bush administration — will be mailed to federal workers who received the censored version, Congressional sources said in early May. The reversal came a month after members of Congress criticized the decision to cut the chapter from all copies of *Taking Care of Your Child*, a best-selling health book sent free to 275,000 families in the Blue Cross-Blue Shield federal employee program (see *Newsletter*, July 1992, p. 120).

"This chapter should have been included in the first place," said Rep. William L. Clay (D-MO), chair of the committee that oversees federal employee benefits. Still, the Office of Personnel Management, which first ordered the chapter removed, demanded that it be mailed in specially marked envelopes.

The six-page chapter, called "Adolescent Sexuality: Preventing Unwanted Consequences," says nothing explicit about sex, contains no illustrations, lists various birth control methods and urges abstinence. It strongly encourages

parents to talk to their teenagers about sex.

The decision to pull the chapter was made by Curt Smith, OPM's associate director for retirement and insurance. "We didn't want to offend anybody," he said. "This is showing up in people's homes. It's not like you went out and bought it."

The reversal delighted Rep. Patricia Schroeder (D-CO), who had expressed shock that basic contraception information would be regarded as offensive in an era of AIDS and soaring teenage pregnancy rates. Reported in: *Charlotte Observer*, May 7; *Washington Post*, May 8.

(Sanders/Lehrer . . . from page 129)

several different viewpoints. Who reports the news and who sits in the decision-making chairs are both important, and women's exclusion, by and large, is an issue I'll pursue shortly. I will also tell you how deregulation has affected what you see, and what you don't see.

What I want to start with, however, is the Gulf War. What I want to do is tell you how we covered the war in Vietnam, which I did for a time in 1966. And when people ask me, as they often do, which story I covered was most memorable, without hesitation, of course, it was that war.

First of all, it was an undeclared war and there was no censorship. ABC News, for which I worked at the time, had its bureau in Saigon, as did the other networks. We came and went to the front as we wished, hitching rides with the military, usually on big C-130s. Once in, say, Danang, where the U.S. presence was the Marines, the public information officers were all co-operation. I stayed, along with my two-man Vietnamese crew—that's another story—at the press center, so-called, a former French brothel on the banks of the Saigon river. You could borrow a jeep, or get to where you wanted to go with the assistance of the PIO, often with the troops. I don't want to get started with war stories, because then we'd never talk about anything else. How did we get our film—no tape at the time—out of there? We put it on a plane to Saigon, and with great difficulty phoned the office and said to look for it. In the package would be the footage, the narration that I wrote, my stand-up comments, and interviews. It would be in script form, with suggested sound bites. It was complete, but not developed film, or, of course, edited. If it was not urgent, once the bureau got it, it went by plane to the west coast. Breaking news went to Hong Kong or Tokyo, where an ATT satellite was hired, and the story was fed from there. In neither case did the military know what we were writing. It wasn't instant. No scuds were falling. You didn't see the research, the uncertainty. We did that off-camera, fact-checking, all of the things needed to make a piece make sense. Now in the occasional instance where, after the film had been shipped out, a correction was needed—we went to the radio sound booth—atop a strange old building in Saigon that only our drivers could find, and you could re-record your narration. We were there regularly anyway, feeding radio spots. So, in general, thinking time, research time was there.

By the time of Granada, Panama, and the Gulf War, the government had learned a few lessons. They wanted to control the media, and they have done a good job in doing so. In 1985, the Twentieth Century Fund financed a Task Force on the Military and the Media, called Battle Lines. It was an effort to outline ways the media and the military could work together. . . . and it got nowhere. At the time of the Gulf War, lawsuits were filed against the government in an effort to get access to the story, but only by fringe media: *The Nation, The Village Voice*, etc. The main newspapers and magazines, for reasons best known to them, stayed out.

The new technology, available to CNN world-wide, and to others who want to spend the money, is immediate transmission of news. So what did we learn? We saw a lot that was meaningless. Reporters scurrying around in gas masks, scuds hitting or not hitting targets. A kind of live action adventure show without much context. And we never did solve the problems of censorship. Former FCC Commissioner Newton Minow calls it "information overload without information substance." We can pursue this issue together later.

Now let us return to television news of the past. When I began, in 1955 on a local station in New York, it was a time of great idealism on the part of those of us starting out. I had been a kind of oddball kid growing up in Cleveland. A premature political junkie, a fortunate teenager who was profoundly influenced by a high school history teacher. I read Upton Sinclair's Lanny Budd series and must have identified with the hero somehow . . . there were no female role models out there. To make a long story short, I ended up in television news, and moved up the ladder. At the time I began, we all believed that the way the Federal Communications Commission described the industry was really true. Broadcasting was a public utility, using the public air waves. Its mission was "to serve the public interest, convenience and necessity".

The founders of the three networks were proud of their public affairs efforts. Bill Paley of CBS touted Ed Murrow and his documentaries, troublesome as they sometimes were. His social status derived from that kind of product, not the game and quiz shows that made the big bucks. Documentaries were, and are to this day, relatively cheap, compared to producing drama. They never got ratings to speak of, but they got a quality audience. And one thing you may not be aware of is that if a documentary was unsponsored, it didn't count in the ratings. So even unsponsored, there was a plus—low numbers didn't affect the network's standing that night.

The other reason for documentaries was to be sure that each network's 200 or so affiliated stations would get its license renewed. The FCC required a certain ration of news and public affairs programs, and in those days when local

stations had small news staffs, they looked to the networks to provide some of those brownie points. I might add here that no matter what subject we did, we could never get what was considered a decent audience...about 20 million viewers. I wonder whether those same people who didn't watch, will flock to the tube if Ross Perot's plans materialize. They would settle down and patiently watch someone's presentation on, say, the budget deficit, and then phone in their vote. Sure. My bet is they'd be tuned into something else, no matter what they say.

Now to the changes. Local news departments grew, as stations discovered they could produce local newscasts, sell the time themselves, not share the profits with the networks, and even get good ratings. Dependence on the networks for news product declined. But mostly, it was deregulation during the Reagan presidency that did in documentaries. Reagan's FCC director, Mark Fowler, saw broadcasting not as a public service. He described television as, and I quote, "a toaster with pictures". Just a thing. An appliance without any social obligations attached to it. And so the rules regulating news and public affairs were scrapped. News departments shrunk. Some radio stations now do no news at all. And local TV news could shun respectability and go for the gold—murder, rape, crime of all kinds, as well as the inevitable fires. Deplore it if you will, it gets viewers. One of the things I discovered while I was doing my late, lamented program in New York—which was a round up of the week's local news with reporters, much like Washington Week in Review—was that not one local TV station in New York City had a full-time reporter in the state capital. So much for keeping up with what state government is doing. Better cover the latest subway mugging.

But in defense of local news directors, who usually last under two years in their jobs: If they don't get ratings, they get fired.

So now we have all hour-long documentaries gone from the networks. Public television is the only place left that does them.

Well, what about all those segmented magazine shows—the 60 Minutes, 20/20, and their less newsworthy offshoots? Some are quite good; others provide more entertainment than news. And the network evening news programs have not been immune from the same commercial pressures that the local stations are feeling. Tabloid tendencies have crept in, along with cute animal stories and personal tearjerkers of all kinds.

Even religion on the tube has changed. At ABC I used to do some interesting documentaries on a series called Directions. Those are gone now. And how did we suddenly come to see all those fundamentalists up there on the screen? Where did they come from all of a sudden? Before deregulation, the FCC required the networks to give free time to established religious groups—even if it wasn't the best time of day. But now, after deregulation, the networks, or cable stations, could be paid for their air time, and who had the money? Not the Catholics, Protestants and Jews, but the televangelists. Some were religious hucksters who bilked a gullible public. And it was certainly unforgettable television when Jimmy Swaggart and Jim Bakker tearfully confessed their sins. THAT made local and network news! That almost made de-regulation worthwhile!

I have not forgotten that my remarks here today were to be focused on the right to know. You can see from what I've said so far that what we see on television, by and large, does not contribute to an informed public. And I find it hard to believe that that is not at least partly to blame for low voter turnout.

I have not been encouraged over the last year, when I have been teaching television reporting at New York University, to learn that a great many of my students yawned at the thought of covering politics. I find it inconceivable that journalism students could be bored by the stuff that I have loved to cover: social problems, government, war, health and environment issues. There is, I fear, a preoccupation not only on the part of young people but adults as well, with celebrity, with gossip. Cotton candy for the brain.

And this takes me, indirectly, to another issue I was asked to touch on—a subject we are all sick and tired of, one way or the other. The so-called "character issue". Now let's get it straight what we're talking about here—we're talking about sex. We aren't talking about the varied dictionary definitions: integrity, moral or ethical qualities, courage, compassion or humanity. And I'm not going to go over well trod ground. But there is one aspect of the subject that is worth reviewing and is little known. And that is how the subject of candidates' sex lives finally became grist for the journalistic mill. And it wasn't Gary Hart.

It goes back to 1980 when a writer for *The New Yorker* magazine who also free lanced, was commissioned by *The New Republic* to write a piece, which it then refused to publish. The author was Suzannah Lessard and the piece was called "Kennedy's Woman Problem. Women's Kennedy Problem." The editor of *The New Republic* at the time, Mike Kinsley, who commissioned the piece, resigned because it wasn't published. For a time, Lessard thought no one would print it, though the *Washington Monthly* finally did, after much arm twisting. What was the problem? Well, it had to do with Teddy Kennedy's womanizing as a political issue. And here is what Lessard said: "This was not an article that was frightening in any way other than I suggested that — compulsive womanizing was one issue one would take into consideration, considering supporting a presidential candidate. I was very careful to say that one would take many other issues into consideration as well, that Kennedy had the better record on women's rights, for example, than any of the other candidates. And nobody would publish this...the fear seemed to be that by associating with this issue, one would label themselves as a member of the Bible belt, as naive, credulous, and indeed the feminists that I spoke to in my research for the article refused to be identified for that reason. They felt that it would just show that they were not

one of the boys, and I think that was a realistic fear at that point. So, that was 1979, and it was four years later when Gary Hart happened. By then the atmosphere was radically different''. In a panel that I moderated on this subject, a male journalist who had reported from Washington for many years conceded that an all male press corps knew about drinkers, womanizers, etc. and treated those issues with a wink and a nudge. They knew about President Kennedy's escapades, and wouldn't dream of reporting them.

I also think that when only one or two women reporters are out there, nothing changes. When many women are in the press corps, lots of things change. A double standard just won't do. The idea that what the guys in power do after working hours doesn't matter, is nobody else's business, is not sustainable. The follow-up question to that is, yes, but is it relevant? Political consultant Ann Lewis says, yes, the personal is political...how candidates treat those around them...their staffs, their spouse, etc. We can then make a judgement about just how relevant such things are to someone we entrust with power.

What do I think? I've changed my mind a dozen times on this. But I guess I always come down on full disclosure and let the voter put it all together and decide.

You may have assumed, correctly, that I believe that somehow or other, women reporters make a difference. Since this is not an all male, all white world, I believe that the people who report the news should reflect that increasingly diverse world. Believe it or not, that is not necessarily a view shared by those who run our industry. I'm not saying they are bad people, purposely keeping those unlike themselves out. No. Mostly it's because they just don't think about it. In my recent public television show, I told my small staff that among our four panelists, I did *not* want to be the only woman, and that I did want to see more non-white faces. Since we used print reporters who covered the major stories of the week, there was a certain amount of moaning and groaning at first, because the obvious candidates were usually white men. But with a little searching about, a little effort, we found wonderful women and others, and soon I no longer had to say anything. It was understood that those efforts should be made. That, alas, is what it takes. During the 1970s, when the women's movement was flourishing at the networks, affirmative action was not a dirty word. One of the techniques used at CBS News worked wonderfully. The president, Richard Salant, said bonuses paid to department heads would in part rest on their finding more women and minorities. And...surprise. They were remarkably successful.

After the growth in the 70's, however, where those of us involved worked hard, took chances in our organizations, we more or less fell back in exhaustion by 1980. And, of course, the administration in Washington had also changed. While I have been involved in the broadcast end of all of this, obviously what happens in newspapers is also important.

Obviously there needs to be some kind of monitoring system in place. In 1989, feminist author Betty Friedan, a visiting professor at USC on a part-time basis, and Nancy Woodhull, then President of the Gannett News Service, founded Women, Men & Media, with the support of what is now the Freedom Forum. I became involved, first as a panelist on one of the regular seminars conducted, and now that I have time, as director of its programs. We do a study annually. The title of the latest one is: *The Face of the News is Male*. The analysis of the facts in this, the fourth study, is not encouraging. A few quick words about how we did this study, which was conducted during a random choice of month, February of this year. Both newspapers and the TV network newscasts were examined. In the front page newspaper study, 20 papers were examined from both major and smaller markets. The front page and the first page of the local section were measured by bylines (how many women writers) and photos, as well as the op ed, or equivalent page—bylines only. Also counted were the number of women interviewed.

The 3 network evening newscasts were judged on the basis of the number of female correspondents reporting and how many people interviewed were women.

In the network survey, men reported 86% of the broadcast news stories, and were news sources 79% of the time. The number of women correspondents reporting the news overall dropped from 16% to 14% this year. The one slight plus is that during the survey period, the number of females interviewed increased from 1 in 10 in 1989 to about 2 in 10 this year.

Before discussing the breakdown network by network, a word about the newspaper results. Female bylines in the 20 newspapers averaged 34% and women were in photos 32% of the time. Men were interviewed 87% of the time, even being featured in stories about silicone gel breast implants.

The small and medium size newspapers did better than the big dailies like the *Washington Post* and the *New York Times*, both of which came in near the bottom, the *Post* second worst, the *Times* last. What seems to be happening is that in smaller communities, where newspapers face stiff competition from community papers and local television, editors are recognizing they need female readership to survive.

In the 1970s, as I mentioned earlier, there was a major effort by those few of us in broadcast news to get more women into the important jobs, and by and large we succeeded. The big wave took place by what we call ''the class of '72'' when local stations hired people like Susan Spencer and Leslie Stahl. Others, like them, are now network stars. The unqualified, by and large, drifted away (unless management was looking only at such qualifications as were provided by gorgeous blondes and the like).

In fairness to my former employers, I called the networks to tell them of our findings and get their response. Most were shocked...yes, shocked, I tell you, to hear they were doing so badly. After all, a few women anchors are now making the megabucks of their male counterparts, and have

reached video stardom. Why, management asked, didn't we count week ends... when most of the women anchor.. or on the early morning shows? Because we counted only prime time. Further, they asked, why didn't we consider that on ABC, for example, Carole Simpson and several other women do America Agenda pieces which are longer and take more time to produce, so the women cannot be seen as often as those covering breaking news. Yes, but men do some of those long reports too, and that argument just doesn't sell.

The problem is that women make up only a quarter to a third of the correspondents corps. A few women cover the White House and a handful of other visible government departments. Others just don't get on the air often and their stories are relegated to non prime time programming or to syndication.

There has been progress in the number of women who are executive producers and broadcast producers. That's important because it means women have more voice in story choice, a very key role. At the vice presidential level, where hiring is involved, there are a pitiful number of women, usually one or maybe two to a network news division.

There is one more problem we don't like to talk about. Not all women in power are our friends. The need to be one of the boys, to be more Catholic than the Pope, as the saying goes, does exist. Some women are simply afraid to appear to tilt toward other women, afraid to be labeled feminists, afraid to be out of the loop, not one of the boys. The problem is, your right to know depends on who is deciding what information you will get. We lack power. Just as we were so obviously absent from the Senate Judiciary Committee, just as we are barely visible in the president's cabinet, just as we are tokens on the boards of corporate America, so we are largely unseen and unheard in the newsrooms of this nation. Groups like yours can be heard, however, and I urge you to use your influence when you are offended by what you see, or don't see. The powers that be will listen, if you write, or speak out. We share the same concerns... that a literate, informed public is vital. We need each other. Thank you for your patience. □

remarks by Jim Lehrer

I am delighted to be here with Marlene, an old friend whose work I have always admired, and with all of you wonderful people who make your livings and your passions with books. I am both a reader and writer of books and that makes me partial to you.

I am particularly partial to one librarian. Her name was Lois Parker. She was the librarian at Victoria College, a small, very small, junior college in south Texas where I spent my first two years in college in the 1950s. I was editor of the college newspaper because I was the only one who wanted the job. I walked in to the faculty advisor's office and said, "Is this where you apply to work on the paper?" He stood up, extended his hand, and said, "Congratulations, you are the editor."

My first story in the first edition under my editorship featured a screaming banner headline story: "VC enrollment soars to 320." Like I said, small.

But the journalism and writing bug was already in me by then. Miss Parker helped it along by asking me one day in the library if I had ever heard of H.L. Mencken. "No, ma'am." There's a biography of him over there on the shelf. Read it, she said. He was a newspaperman.

I read it, was enraptured. Read several books by Mencken and several others by and about other journalists, including Ernie Pyle, Robert Ruark and a fellow named Hemingway. And soon I was not only hooked and doomed forever to a life in journalism, but I was excited forever as well. With a large piece of help from a librarian named Lois Parker.

The subject this morning is not librarians, or even my life. It is "your right to know — how far does it go?" Be not disappointed or annoyed if I do not give you one straight, here-it-is answer to that. There are many answers, and some of those answers lead to even more questions. Many, many more questions. And since my main thing in life is asking questions rather than answering them, well....

One answer, for instance, is simply: it depends on when you ask the question. And I have another story from my life to illustrate that point. In the 1960s, I was working as a political reporter for what was then called a major metropolitan newspaper. I was covering a race for the U.S. Senate between an incumbent and a challenger. I was on a chartered DC-3 with the incumbent senator, his wife, and six or seven other reporters. Late in the evening after a campaign stop, the senator's wife went up front to the private cabin to lie down and rest. The other reporters stayed with the senator in the main cabin. We played some cards and had a few drinks. The senator was well known for being a lady's man, and before you knew it he was telling us stories about his girl friends: the one in Paris, the one who worked on his staff, the one who used to be on his staff.

We all laughed and drank and played cards while his wife slept a few feet away. I did not write a story about this senator's self-reported infidelity. Neither did anyone else in that press corps. That kind of personal information about a United States senator was not considered within the realm of the public's right to know. I knew it, the other reporters knew it. But our readers would not be told. Those were the rules and customs of those times.

Those rules and customs have now changed. And in my opinion, there is no question the change has been for the better some of the time, and for the worse some of the time. In fact, at this particular point in time, to borrow a phrase from the Watergate era, there are no rules or customs. Each

day these days, journalism seems to wake up to a new day.

Senator Smith, when he was fifteen years old in high school, was suspended from school for a week for having written with four other boys, a bad word — a short one for sexual intercourse — on the side of the school building with white chalk. He went on to be valedictorian of his class, captain of the football team, and to win scholarships to eight major universities and to a life in politics. He is now running for president of the United States. You are a reporter for the *Post*. Any *Post*. You have the story. Do you run it?

Too easy? Let's say, when he was seventeen he impregnated his high school sweetheart and then paid for and helped her obtain an abortion. The senator is now pro-choice. Is what happened when he was seventeen relevant? What if he was now on the other side, the anti-abortion, pro-life side? Is what happened when he was seventeen relevant? Should it be published?

And what if Senator Smith was the woman who had the abortion? Relevant? When, why and who decides?

My guess is that all of us in this room could play a game. Half of us make up stories about public figures. The other half play editors or news directors or executive producers and toss back and forth a lot of what if's. And what-would-you-dos. But, as you all know, we don't have to make up much.

Take the case of Arthur Ashe and the story about his having AIDS. He was in Washington a few weeks ago and made a speech at the national press club and he really let the press have it: "Are you going to be cold, hard, crass purveyors of the facts just for the sake of peoples' right to know or under the guise of freedom of the press, or are you going to show a little sensitivity about some things?"

He said journalists should "temper your definition of the public's right to know or the newsworthiness of something with sensitivity. Because it is better that you police yourself than that we have to use other means to do that and there soon may be a need to do that."

Arthur Ashe said it pretty straight: Knock off this personal reporting stuff, Mr. and Ms. reporters, or we, the public figures and celebrities most directly affected, may damn well do it for you. I have great sympathy for what happened to Arthur Ashe. A reporter for *USA Today* disregarded Ashe's request to continue to sit on the fact of Ashe's having AIDS. Arthur Ashe believes *USA Today* violated his basic right as an American to keep personal matters private.

What did the world of the press think? Well, there was a survey of newspaper editors done immediately afterward and it came back overwhelmingly with the fact that most other newspapers in the country would have done exactly what *USA Today* had done — which is gone with the story. Most of the editors justified it on simply newsworthy grounds. Famous athletes are news. AIDS is news. Put them together and it is even more news.

The Ashe story, in many ways, is a perfect laboratory case to examine the question of the public's right to know what and when. When and why is the fact of having AIDS news? Who makes the decision? The person who has it or the journalists who know it? Is it possible for any group of people, no matter what their wisdom and good intentions, to draw a set of rules that would cover it?

I doubt it. No, I more than doubt it. I know for a fact that nothing resembling a series of rules and guidelines could ever be constructed and agreed upon. I invite each of you to go through the exercise. Should Arthur Ashe's AIDS have been made public? No? Then what about Magic Johnson's? Johnson made the announcement himself and was immediately treated as a hero. And he got it through sexual promiscuity. What does that say about AIDS?

What about Gary Hart's womanizing? What about John F. Kennedy's? Should the American people have been told about General Eisenhower's girl friend? President Roosevelt's? Should the mainstream press have picked up the Gennifer Flowers charges against Bill Clinton?

What about the draft stories on Clinton? The Navy commitment stories on Ross Perot? How much do you want to know about Clinton, Perot and Bush? How much should you be entitled to know before electing somebody President of the United States? Where would *you* draw the line?

Ashe said he was no longer a celebrity, not involved in public life. Should he have been exempt from further scrutiny? He makes an interesting point. But some would say, "Wait a minute, now. Celebrities are made by the publicity they got in their earlier lives...."

Stories purporting to "tell all" about a movie star or a political figure or a rock singer or an athlete seldom really told all, particularly in the old days. With the exception of a few scandal sheets like *Confidential* magazine, most stories about famous people contained only those things the famous people themselves wanted known. And much of it was baloney, designed to make them famous and rich.

And so, this argument goes, you can't have it both ways, famous people. You either go for a public life or you do not. People who do not want to live in glass houses should not rent space in a glass house. The rules will change, as they have now. But those are the breaks, those are the risks you have to take. If you don't want your personal life gone over and gone through and known by any and by all, then do not go into acting, politics or big-time sports. Etc. Etc.

The problem I have with that argument is the same one Arthur Ashe has, and that is simply that there should be some distinctions made between public figures, between the relative importance and relevance of the information. And it has nothing to do with sensitivity — on that I disagree with Ashe.

There are many, many more people who are hurt much worse than he was by news stories every day. People whose fathers or brothers or mothers or sisters were arrested for murder or indicted for embezzlement or bribery, or whatever. My problem with going ahead with Ashe kind of stories have nothing to do with sensitivity. It has to do with importance and relevance.

The questions it raises concern when the public's right to know is used as an excuse to publish or broadcast information that caters only to the public's simple lust for gossip.

There was a raging debate in Britain a few weeks ago over the stories about Princess Diana's alleged bad marriage that had driven her to five suicide attempts. They have something in Britain called the press complaint commission. One of its officials said British journalism was stepping way, way over the line into "dabbling their fingers in the stuff of other people's souls." I believe the same thing is going on here.

And I also believe it must stop.

But it is not as easy as it may sound, particularly when it applies to political figures. Take the story about the senator talking about his girlfriends. Back then — no story; he had his right to that kind of privacy. But now, in the new world order, should such a story be run? Does the fact that he had the girlfriends reflect on his abilities as a U.S. Senator? Is it relevant to his functioning as a U.S. Senator? Does the public have a right to know that? Period. Or only if he has been a family values type candidate? Or only if he is stealing money to pay for his girl friends? Or only, or only . . . what?

What does it say about his character as a human being, and how important is that? Does the public have a right to know anything and everything that pertains to a candidate or officeholders' character? Who decides what good character or bad character is? Good questions, and there are more than one good answer for each.

I happen to believe that character is an important issue in any race for political office. I also happen to believe there is no such thing as a human being who has a perfect character. The best, the very best among our kind, are those who if you give them an instincts test — hit their character knees and judge their reactions — will do the right thing 7 out of 10 times, 8 at the most.

So what is it that we are looking for in character? What is the purpose of telling all about a person? Somehow we have created the idea — and by we I mean everyone, librarians and bus drivers and insurance adjustors as well as journalists — that only perfect people need apply for public service. And that the defining of character is restricted only to one's private life — sex, of course — and money.

I believe there are character issues to be raised and drawn based on the way people handle public policy positions, too. And some would argue they are a lot more important than the private life ones. They may be right.

But, as we say on the MacNeil-Lehrer NewsHour, they might also be wrong. Some of our critics say we are so even-handed if Jesus ever did come again, we would have Judas and King Herod on to give the other side. Those critics may be right, or, on the other hand, they might also be wrong. And there I leave it for the questions. □

(IFC report . . . from page 131)

of the *Kreimer v. Morristown* litigation (see page 134). Judge Sarokin's perspective was extremely helpful in focusing the issues. The IFC also wishes to commend the Task Force, led ably and even-handedly by PLA-IFC Chair Candace Morgan, for its work on the difficult project of developing guidelines in an atmosphere where many are clamoring for model policies of far greater specificity than could responsibly be provided. We also wish to thank and commend the many speakers and attendees who shared their views frankly.

Our task as a profession is to continue to work together, and with library boards and legal counsel in our own jurisdictions, to identify specific policies which comply with constitutional standards. The task force, however, does not end there. We must also ensure that the policies we develop are constitutionally applied in practice.

In connection with these concerns, the IFC has adopted the Proposed Guidelines, presented by the Task Force after revision in light of the comments received both via correspondence and at Saturday's hearing, for circulation to and comment from all ALA units and state chapters (see page 135). We hope that with their input, we may finalize these guidelines at Midwinter and circulate them on request to the profession at large.

Interpretation of Library Bill of Rights

As many of you will recall, in 1989, the Minority Concerns Committee asked the Intellectual Freedom Committee to review the *Library Bill of Rights* to ensure that it reflected principles of intellectual freedom without regard to language or economic status. That request launched a three-year review of all of the Interpretations of the Library Bill of Rights. Having completed that process with regard to the question of language, the Committee discussed whether a separate or new Interpretation specifically dealing with questions relating to economic status was needed. We are pleased to present, for Council's information, a draft of a new interpretation entitled "Economic Barriers to Information Access" (see page 172). This draft is our attempt to address the question of user charges which create barriers to access. We also address barriers to access created by restrictions attached to funding, which may create bias in the provision of library services. We welcome comment and will be receiving and considering any and all suggestions and criticisms on this draft between now and the Midwinter Meeting in Denver, when we hope to present a final version to Council for approval.

ALA v. Thornburgh II

This has been a good spring for intellectual freedom in the courts. As Freedom to Read Foundation President C. James Schmidt reported to you, ALA, the Freedom to Read

Foundation and their co-plaintiffs won a complete victory in their challenge of the Child Protection Restoration and Penalties Enhancement Act of 1990, commonly known as *ALA v. Thornburgh II*. The statute being challenged in this case would have imposed onerous record-keeping requirements and forfeiture provisions on producers and distributors of admittedly constitutionally protected sexual images of adults. On May 26, United States District Court for the District of Columbia Judge Stanley Sporkin ruled that the Act was unconstitutional as applied to images of persons over 18 (see page 156). Publishers, producers and distributors who exercise due diligence to satisfy themselves that their models are adults may not be prosecuted under this statute. We have yet to receive word on whether the government will appeal the decision.

federal legislation

In the area of federal legislation, a new version of the Pornography Victims Compensation Act has passed the Senate Judiciary Committee. This Act is based upon the faulty premise that expressive material can cause criminal behavior, an assumption which flies in the face of the tremendous weight of existing research, and which constitutes a profound threat to intellectual freedom. The members of the Media Coalition, including ALA and the Freedom to Read Foundation, succeeded in holding off this bill for fifteen months. However, the new version was introduced and passed out of the committee just last week. Its status could change at any minute. As soon as we have an opportunity, following this conference, to obtain a legal analysis of the newest version of the bill, we will communication with our colleagues on appropriate next steps.

programs

On Saturday afternoon, the IFRT, IFC and Intellectual Freedom Committees of the various divisions co-sponsored a lively program titled "Witches, Devils and Demons: Legitimate Resources or a Satanic Force; Your Right To Know." Speakers addressed the question of whether materials dealing with the occult should be available in public libraries, followed by questions and discussion. The featured speakers were Robert Hicks, Criminal Justice Analyst for the Commonwealth of Virginia and author of *In Pursuit of Satan: The Police and the Occult*, and Johanna Michaelsen, author of *Like Lambs to the Slaughter: Your Child and the Occult*.

On Monday, an extraordinarily large overflow audience heard a program co-sponsored by the Intellectual Freedom Committee and the Freedom to Read Committee of the Association of American Publishers, entitled "Your Right to Know: How Far Does It Go?", featuring journalist Jim Lehrer of the MacNeil/Lehrer Newshour and Marlene Sanders, former CBS newswoman (see page 129). The audience was obviously delighted to hear the perspectives of these two distinguished journalists exploring the question of how far the press should go in reporting personal information, and how and when journalists balance newsworthiness and invasion of privacy.

cooperative projects

computers, freedom and privacy conference

The IFC, through the Office for Intellectual Freedom, has joined forces with several new and important organizations working on the frontiers of intellectual freedom. Intellectual Freedom Committee member Molly Raphael was on the planning committee for the second Computers, Freedom and Privacy conference held in March in Washington, D.C. The Library Information and Technology Association (LITA) was a conference co-sponsor, as was the American Library Association. This was the second in a series of conferences addressing intellectual freedom and privacy on the new frontier of electronic communications and data access, an area in which the IFC feels very strongly that ALA should be actively involved. At the IFC's recommendation, the ALA Executive Board has agreed that ALA will co-sponsor the third Computers, Privacy and Freedom conference, scheduled for March 9-12, 1993, in San Francisco.

banned books week

The official theme for Banned Books Week 1992 is "Censorship: Old Sins in New Worlds." Posters illustrate challenges to free expression in the areas of the new world order, the new worlds of electronic information and technology, and censorship issues related to the banning of non-European cultural expression and the Columbus Quincentenniary.

conclusion

In closing, I wish to say that it has been an extraordinary year and that I have been pleased to serve as chair of the Intellectual Freedom Committee during a time of public and professional tension in the area of First Amendment rights. Intellectual freedom is the core of our profession, and an area in which there can be no compromise of principle. While we may have our differences on how to carry out the principle in practice, we are united by our professional obligation and mission in support of the free access to library materials. The Intellectual Freedom Committee, the Task Force on Preparation of Guidelines and the Office for Intellectual Freedom are dedicated to upholding those principles. I commend them to you and urge your continuing support and involvement in these issues, which are the very heart of our profession. Thank you. □

Economic Barriers to Information Access

An Interpretation of the Library Bill of Rights

DRAFT

The publicly supported library is established by law to provide free and equal access to information for all persons of the community the library serves. This concept of library service is based on the First Amendment right of all persons to free expression and the corollary right to receive the constitutionally protected expression of others. Publicly supported libraries thus serve as limited public forums in which all persons of the community may exercise their right to receive information.

While the roles, goals, and objectives of publicly supported libraries may differ, they share this common mission. To support this mission, the American Library Association has enumerated certain principles of library service in the *Library Bill of Rights.*

Section I
Principles Governing Fines, Fees and User Charges

Article I of the *Library Bill of Rights* states: "Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves."

Article V of the *Library Bill of Rights* states: "A person's right to use a library should not be denied or abridged because of origin, age, background, or views."

Libraries that adhere to these principles systematically monitor their programs of service for potential barriers to access and strive to eliminate such barriers when they occur. As libraries approach the 21st century, changes in technology and methods of providing information access in libraries create the temptation and risk of replacing free library service with fee based service. This change fundamentally alters the mission of the library since fees create economic barriers to access. Shifts in service models, coupled with the erosion of financial support for existing models of library service, are significantly increasing the pressure to impose new and greater user charges in libraries.

All library policies and procedures, particularly those involving fines, fees, and/or other user charges, should be scrutinized for potential barriers to access, and alternatives sought to eliminate such charges. All services should be designed and implemented with care, so as not to infringe on or interfere with the provision of information and resource delivery for all users. Services should be reviewed and evaluated on a regular basis to ensure that the library's basic mission remains uncompromised.

Librarians and governing bodies should resist the temptation to resort to the easy or obvious solution of imposing user fees to alleviate immediate financial pressures or to establish new services, at long term cost to the integrity of the institutional mission. Library services that involve the provision of information, regardless of format, technology, or method of delivery, should be made available to all library users on a equal and equitable basis. Charging fees for the use of library collections, services, programs, or facilities that were purchased with public funds raises barriers to access. Such fees effectively abridge or deny access for some members of the community because they create distinctions among users based on their ability and willingness to pay.

The American Library Association opposes the charging of user fees for the provision of information and services by all libraries that receive support from public funds. All library resources, regardless of technology, format, or methods of delivery, that are provided directly or indirectly by the library, should be equally and equitably accessible to all library users.

The Association's historic position in this regard is stated clearly in a number of Association policies: 50.4 *Free Access to Information*, 50.9 *Financing of Libraries*, 51.2 *Equal Access to Library Service*, 51.3 *Intellectual Freedom*, 53 *Intellectual Freedom Policies*, 59.1 *Policy Objectives*, and 60 *Library Services for the Poor.*

Section II
Principles Governing Conditions of Funding

Article II of the *Library Bill of Rights* states: "Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

Article III of the *Library Bill of Rights* states: "Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment."

Article IV of the *Library Bill of Rights* states: "Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas."

Libraries and governing bodies should examine carefully any terms or conditions attached to library funding, particularly those which attempt to proscribe particular subject matter or viewpoints. Because of the tendency to introduce bias into the provision of library service, such limits create barriers for users who depend on libraries for information access. Libraries and governing bodies should oppose all attempts to limit full and equal access to all information that are imposed as a condition of funding. This principle applies equally to private gifts or bequests and to public funds. In particular, librarians and governing bodies have an obligation to reject such restrictions when the effect of the restriction is to impose orthodoxy or restrict access to the full range of opinions and viewpoints on any issue, topic, or theme for any or all library users.

The American Library Association opposes any legislative or regulatory attempt to impose content or viewpoint restrictions on library resources, or to limit user access to information, as a condition of funding for libraries and information services. □

Resolution on Reauthorization of the Corporation for Public Broadcasting

Whereas, The Corporation for Public Broadcasting (CPB) and its divisions and affiliates represent a unique democratic institution; and

Whereas, The CPB provides educational and informational programs which often would not be produced or broadcast on commercial television; and

Whereas, Congress created the Independent Television Service (ITVS) in 1988, which is funded by CPB, to bring more innovation and minority representation to public television; and

Whereas, The ITVS was established to develop the work of independent U.S. producers who traditionally have felt constrained by corporate sponsorship and by the typical public television series format; and

Whereas, The principle established by the Supreme Court in *Rust v. Sullivan*, if applied to the funding of the CPB or ITVS, could restrict the content of their programming, thereby adversely affecting public access to information; and

Whereas, Article III of the *Library Bill of Rights* states, "Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment;" and

Whereas, H.R. 2977, which reauthorizes the CPB, was amended by the Senate to include a clause which restricts commercial and non-commercial broadcasters from airing programs described as "indecent" between 6:00 a.m. and midnight; and

Whereas, The indecency standard unconstitutionally restricts speech protected by the First Amendment of the U.S. Constitution and demonstrates a government interest in controlling the content of television programming which is funded by the government; now, therefore, be it

Resolved, That the American Library Association support the reauthorization of the Corporation for Public Broadcasting without restrictions on the scheduling or content of programming developed by the corporation for Public Broadcasting or the Independent Television Service; and be it further

Resolved, That copies of this resolution be transmitted to appropriate congressional committees and the chairman of the Corporation for Public Broadcasting.

Adopted by the ALA Council, July 1, 1992. □

Resolution on Loyalty Oaths

Whereas, A democracy must preserve freedom of thought and expression if it is to survive; and

Whereas, Librarians have a unique responsibility to provide information on all sides of controversial issues, but cannot do so if intellectual conformity becomes a factor affecting their employment or tenure; and

Whereas, Loyalty tests can easily lead to the violation of the constitutional rights of library employees by allowing inquiries into their personal affiliations and beliefs; and

Whereas, Requiring library employees to sign loyalty oaths contributes to an atmosphere of suspicion and fear and places constraints on intellectual freedom by implying that it is hazardous for library employees to hold or express views other than those condoned by the employer; and

Whereas, Loyalty tests or oaths are sometimes required as a condition of employment requirements in libraries, thus effectively compelling many potential employees to sign meaningless and ineffective affirmations of allegiance; therefore, be it

Resolved, That we, the American Library Association, protest conditions of employment predicated on inquiries into library employees' thoughts, reading matter, associates, or membership in organizations. We also strongly protest compulsory affirmations of allegiance as a condition of employment in libraries. We call on libraries not to impose loyalty tests or oaths as conditions of employment.

Adopted by the ALA Council, July 1, 1992. □

Recognition of The Huntington Library's Release of the Dead Sea Scrolls Material

Whereas, Libraries of all kinds have a fundamental responsibility to provide access to information; and

Whereas, Prior to September, 1991, access to the unpublished Dead Sea Scrolls material was restricted to a select group of scholars; and

Whereas, In September, 1991, at the recommendation of William Moffett, Director of The Huntington Library, the Trustees of the Library opened access to the archival photographs of the Dead Sea Scrolls without restriction, thus ending the monopoly on access to this important information; and

Whereas, This action was widely praised because of the unique significance of the Dead Sea Scrolls in the history of the world; now, therefore, be it

Resolved, That William Moffett, Director, and the Trustees of The Huntington Library be commended for their courage, perseverance, and dedication to the principles of intellectual freedom by opening access to the unpublished Dead Sea Scrolls material; and be it further

Resolved, That copies of this resolution be transmitted to the Director and Trustees of The Huntington Library.

Adopted by the ALA Council, July 1, 1992. □

(continued next page)

Shield Laws

Whereas, The privilege of authors, journalists and broadcasters to protect the confidentiality of their sources of information is an accepted principle in the United States, and

Whereas, This privilege has come under frequent attack in the courts, resulting in the abridgement of freedom of information, and in the harassment and/or jailing of reporters and writers who decline to disclose their sources; and

Whereas, The *Library Bill of Rights* cannot be implemented when information is being suppressed at its source, and

Whereas, The United States Congress and state legislatures from time to time consider measures, commonly known as shield laws, intended to establish by statute the privilege of confidentiality, now, therefore, be it

Resolved, That the American Library Association supports the enactment by Congress of a broad and effective federal shield law, and be it further

Resolved, That the Association exhorts its chapters to work vigorously for the enactment of broad and effective shield laws in every state.

Adopted by the ALA Council, July 1, 1992. □

(R.A.V. . . . from page 151)

. . . The reasons why fighting words are categorically excluded from the protection of the First Amendment is not that their content communicates any particular idea, but that their content embodies a particularly intolerable (and socially unnecessary) mode of expressing whatever idea the speaker wishes to convey. St. Paul has not singled out an especially offensive mode of expression — it has not, for example, selected for prohibition only those fighting words that communicate ideas in a threatening (as opposed to a merely obnoxious) manner. Rather, it has proscribed fighting words of whatever manner that communicate messages of racial, gender, or religious intolerance. Selectivity of this sort creates the possibility that the city is seeking to handicap the expression of particular ideas. That possibility would alone be enough to render the ordinance presumptively invalid, but St. Paul's comments and concessions in this case elevate the possibility to a certainty. . . .

[T]he only interest distinctively served by the content limitation is that of displaying the city council's special hostility towards the particular biases thus singled out. That is precisely what the First Amendment forbids. The politicians of St. Paul are entitled to express that hostility — but not through the means of imposing unique limitations upon speakers who (however benightedly) disagree.

Let there be no mistake about our belief that burning a cross in someone's front yard is reprehensible. But St. Paul has sufficient means at its disposal to prevent such behavior without adding the First Amendment to the fire.

Excerpts from Justice Byron R. White's concurring opinion, joined by Justices Harry A. Blackmun, Sandra Day O'Connor and, in part, by John Paul Stevens:

I agree with the majority that the judgment of the Minnesota Supreme Court should be reversed. However, our agreement ends there. This case could easily be decided within the contours of established First Amendment law by holding, as petitioner argues, that the St. Paul ordinance is fatally overbroad because it criminalizes not only unprotected expression but expression protected by the First Amendment.

. . . The majority casts aside long-established First Amendment doctrine without the benefit of briefing and adopts an untried theory. This is hardly a judicious way of proceeding and the Court's reasoning in reaching its result is transparently wrong.

. . . Today the Court has disregarded two established principles of First Amendment law without providing a coherent replacement theory. Its decision is an arid doctrinaire interpretation, driven by the frequently irresistible impulse of judges to tinker with the First Amendment. The decision is mischievous at best and will surely confuse the lower courts. I join the judgment, but not the folly of the opinion.

Opinion of Justice Harry A. Blackmun concurring in the judgment:

I fear that the Court has been distracted from its proper mission by the temptation to decide the issue over "politically correct speech" and "cultural diversity," neither of which is presented here. If this is the meaning of today's opinion, it is perhaps even more regrettable.

I see no First Amendment values that are compromised by a law that prohibits hoodlums from driving minorities out of their homes by burning crosses on their lawns, but I see great harm in preventing the people of St. Paul from specifically punishing the race-based fighting words that so prejudice their community.

I concur in the judgment, however, because I agree with Justice White that this particular ordinance reaches beyond fighting words to speech protected by the First Amendment. □

(graduation prayer . . . from page 152)

would place objectors in the dilemma of participating, with all that implies, or protesting. We do not address whether that choice is acceptable if the affected citizens are mature adults, but we think the State may not, consistent with the Establishment Clause, place primary and secondary school children in this position. Research in psychology supports the common assumption that adolescents are often susceptible to pressure form their peers towards conformity, and that the influence is strongest in matters of social convention. . . To recognize that the choice imposed by the State constitutes an unacceptable constraint only acknowledges that the government may no more use social pressure to enforce orthodoxy than it may use more direct means. . .

There was a stipulation in the District Court that attendance at graduation and promotional ceremonies is voluntary. . . . The argument lacks all persuasion. Law reaches past formalism. And to say a teenage student has a real choice not to attend her high school graduation is formalistic in the extreme. . . . Everyone knows that in our society and in our culture high school graduation is one of life's most significant occasions. . . .

The Constitution forbids the State to exact religious conformity from a student as the price of attending her own high school graduation. This is the calculus the Constitution commands. . . .

Our society would be less than true to its heritage if it lacked abiding concern for the values of its young people, and we acknowledge the profound belief of adherents to many faiths that there must be a place in the student's life for percepts of a morality higher even than the law we today enforce. We express no hostility to those aspirations, nor would our oath permit us to do so. A relentless and all pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution. We recognize that, at graduation time and throughout the course of the educational process, there will be instances when religious values, religious practices and religious persons will have some interaction with the public schools and their students. But these matters, often questions of accommodation of religion, are not before us. The sole question presented is whether a religious exercise may be conducted at a graduation ceremony in circumstances where, as we have found, young graduates who object are induced to conform.

No holding by this Court's suggests that a school can persuade or compel a student to participate in a religious exercise. That is being done here, and it is forbidden by the Establishment Clause of the First Amendment.

Excerpts from the dissenting opinion written by Justice Antonin Scalia and joined by Chief Justice William H. Rehnquist and Justices Bryon R. White and Clarence Thomas:

Three terms ago, I joined an opinion recognizing that the Establishment Clause must be construed in light of the "government policies of accommodation, acknowledgment and support for religion that are an accepted part of our political and cultural heritage." That opinion affirmed that "the meaning of the Clause is to be determined by reference to historical practices and understandings." It said that "a test for implementing the protections of the Establishment Clause that, if applied with consistency, would invalidate longstanding traditions cannot be proper reading of the Clause." These views of course prevent me from joining today's opinion, which is conspicuously bereft of any reference to history. In holding that the Establishment Clause prohibits invocations and benedictions at public-school graduation ceremonies, the Court — with nary a mention that it is doing so — lays waste a tradition that is as old as public-school graduation ceremonies themselves, and that is a component of an even more longstanding American tradition of nonsectarian prayer to God at public celebrations generally. . . .

Today's opinion shows more forcefully than volumes of argumentation why our Nation's protection, that fortress which is our Constitution, cannot possibly rest upon the changeable philosophical predilections of the Justices of this Court, but must have deep foundations in the historic practices of our people. . . .

The history and tradition of our Nation are replete with public ceremonies featuring prayers of thanksgiving and petition. . . . In addition to this general tradition of prayer at public ceremonies, there exists a more specific tradition of invocations and benedictions at public-school graduation exercises. . . . The invocation and benediction have long been recognized to be "as traditional as any other parts of the school graduation program and are widely established. . . ."

The Court presumably would separate graduation invocations and benedictions from other instances of public "preservation and transmission of religious beliefs" on the ground that they involve "psychological coercion". . . . The Court's argument that state officials have "coerced" students to take part in the invocation and benediction at graduation ceremonies is, not to put too fine a point on it, incoherent. . . .

The deeper flaw in the Court's opinion does not lie in its wrong answer to the question whether there was state-induced "peer-pressure" coercion; it lies, rather, in the Court's making violation of the Establishment Clause hinge on such a precious question. The coercion that was a hallmark of historical establishments of religion was coercion of religious orthodoxy and of financial support by force of law and threat of penalty. Typically, attendance at the state church was required; only clergy of the official church could lawfully perform sacraments, and dissenters, if tolerated, faced an array of civil disabilities. . . .

The Establishment Clause was adopted to prohibit such an establishment of religion at the federal level (and to protect state establishments of religion from federal interference).... There is simply no support for the proposition that the officially sponsored nondenominational invocation and benediction read by Rabbi Gutterman — with no one legally coerced to recite them — violated the Constitution of the United States. To the contrary, they are so characteristically American they could have come from the pen of George Washington or Abraham Lincoln himself....

I see no warrant for expanding the concept of coercion beyond acts backed by threat of penalty — a brand of coercion that, happily, is readily discernible to those of us who have made a career of reading the disciples of Blackstone rather than of Freud....

The narrow context of the present case involves a community's celebration of one of the milestones in its young citizens' lives, and it is a bold step for this Court to seek to banish from that occasion, and from thousands of similar celebrations throughout this land, the expression of gratitude to God that a majority of the community wishes to make. The issue before us today is not the abstract philosophical question whether the alternative of frustrating this desire of a religious majority is to be preferred over the alternative of imposing "psychological coercion," or a feeling of exclusion, upon nonbelievers. Rather, the question is whether a mandatory choice in favor of the former has been imposed by the United States Constitution. As the age-old practices of our people show, the answer to that question is not all in doubt....

The Baptist or Catholic who heard and joined in the simple and inspiring prayers of Rabbi Gutterman on this official and patriotic occasion was inoculated from religious bigotry and prejudice in a manner that can not be replicated. To deprive our society of that important unifying mechanism, in order to spare the nonbeliever what seems to me the minimal inconvenience of standing or even sitting in respectful nonparticipation, is as senseless in policy as it is unsupported in law. □

(censorship dateline . . . from page 148))

Washington, D.C.

Fresh from controversies in Sacramento and San Francisco, California (see *Newsletter*, March 1992, p. 50; May 1992, p. 88; and July 1992, p. 127), and in North Carolina, artist Dayton Claudio did it again in Washington. On June 1, he provoked federal government officials into again banning one of his paintings from a government office building.

"I consider what I'm doing a public service because I'm forcing the First Amendment issue," said Claudio, a teacher at Butte Community College in Chico, California, adding candidly, "I'm hoping to benefit from the publicity as well as stand up for the cause."

Having obtained a routine permit to exhibit his work at a General Services Administration (GSA) building in Washington, the artist showed up with one large painting — and an attorney. The canvas depicted an American flag at the top, a naked woman in the middle and along the bottom some slightly larger than life sex organs (male and female). Also a bunch of contraceptive devices.

The painting hung for about thirty seconds. Then the building manager told Claudio to take it down. "It was creating a disturbance," said GSA official Philip Horowitz.

Claudio has begun making a virtual career of such confrontations. The Public Buildings Cooperative Use Act permits "any person or organization" to apply to use federal space "for cultural, educational and recreational activities." The artist began acting on that provision in November, 1991, in Sacramento where he arranged an exhibit at a government building that innocently included a "classical" nude. The GSA covered the nude, but Claudio got a lawyer and the government relented.

The next incident came in San Francisco. This time, the disputed pictures were a nude and a painting of John F. Kennedy on a morgue table. The GSA again removed the pictures, Claudio's counsel intervened, and the GSA again relented.

When he got to Raleigh, North Carolina, Claudio brought "Sex, Lies and Coathanger," depicting a nude female, a fetus, and a hanger. The GSA played true to form, and Claudio responded with heavy legal firepower. But this time, the GSA would not back down and the attorneys are "strongly considering" a suit.

"The work he did in North Carolina was political," said attorney Deborah Ross. "It was clearly an abortion theme. Just because some people might find it offensive doesn't mean that it isn't an acceptable expression of First Amendment rights."

So far, no one at the GSA seems to have figured out that Claudio is not planning to hang a bowl of fruit when he applies for a permit. "I kind of half expected they would know who I was in D.C.," he said. "But I guess they didn't make the connection with the name."

The artist retained Washington counsel to appeal the decision there. Reported in: *Washington Post*, June 2.

Normal, Illinois

Vandalism and a threatening letter prompted an Illinois State University student-artist to remove her exhibit from the University Galleries and replace it with an exhibit of her vandalized vehicle headlights and letters of criticism and support. The unidentified vandals left a letter threatening artist Ila Minson's person and property if the exhibit were not removed.

University Gallery workers described the controversial exhibit as a picture of Jesus praying in a garden with an overlay of newspaper articles about pedophilia, rape, and pornography and a quotation from the Bible reading: "God made man in his own image." Previously, Minson experienced similar harassment when she displayed another piece, a Bible with "1,000 and 1 Jokes" painted on it.

When Minson found her vandalized truck on April 22 there was a note reading, "This is only the beginning. Remove your lieing (sic) piece of work now. If you choose to ignore us, your truck will continue to be at risk. Listen or you will be sorry!"

Minson removed the exhibit. In its stead were placed the broken headlights, a letter from gallery officials, and other notes and letters in varying degrees of support and disgust. "University Galleries does not necessarily condone the removal of an artwork from an exhibition, but we understand Ila's decision to do so — she is simply trying to protect her property and her person from further harm and threats of harm," the gallery's letter stated. The letter also invited comment, and paper, pens and thumbtacks were supplied. Reported in: *Daily Vidette*, April 29.

Columbus, Ohio

A state representative sent a letter June 30 to Governor George V. Voinovich expressing outrage at the Columbus Art League's Spring Exhibition in the Rhodes State Office Tower. Rep. Richard Rench (R-Milan) enclosed photographs of the art he found offensive and explained what he disliked about each one.

Rench wrote that he was "appalled" by the display. "At best, some of it should be seen only in the privacy of one's house and perhaps would fit better in someone's outhouse."

Among the works criticized by the legislator was a metal sculpture of a robotic man with an enlarged penis done by Columbus artist William Rains. Rains said the work, entitled "Digital Fertility," was intended as a modern-day Dionysian fertility symbol. Reported in: *Youngstown Vindicator*, July 1.

foreign

Moscow, Russia

In a major attack on newly won press freedoms, the head of the Russian parliament proposed July 14 that the government take over ownership of the country's leading newspaper, *Izvestiia*, and resume state censorship of all other news media. The Presidium of the legislature quickly adopted the law. President Boris Yeltsin said he would urge the full Parliament to reject the measure.

In introducing the proposal, Ruslan Khasbulatov, head of the Parliament, accused the Russian press of "waging war against the state" and of being interested only in "political nitpicks, squabbles, jokes and utter obscenities." Khasbulatov said a parliamentary committee should oversee the news media and restrictions should be especially tightened on how the press writes about "the activities of the highest organs of power and government."

Pavel Goutiontov, president of the Commission for Freedom of Speech and Journalists' Rights, said the proposed law marked "the beginning of a fight for the wheel, to see who controls the press."

Igor Golembiovsky, editor-in-chief of *Izvestiia*, vowed to resist any government effort to take over the paper. *Izvestiia* used to be the official newspaper of the Soviet state until August 23, 1991, when, in the wake of the failed coup, the employees of the paper declared themselves to be the owners and elected their own editors. It has emerged as one of the country's most independent publications.

The Russian press started to take steps toward freedom in the mid-1980s with Mikhail Gorbachev's policy of "glasnost." It took a major leap in 1990 with the passage of a law abolishing censorship, except in cases involving military secrets. The law proposed by Khasbulatov, if passed by the full parliament, could go a long way toward reversing the law.

"Many people whom we called 'democrats' were anti-Communists or Yeltsinites or anti-Gorbachev, but not democrats," said Goutiontov. "It turns out there were very few real democrats." Reported in: *Boston Globe*, July 15. □

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