

newsletter on intellectual freedom



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free speech on line

The exchange of obscene material on computer networks has college officials grappling with free speech issues on their campuses and concerned about public support for building new networks. In recent months, newspapers have reported that the Federal Bureau of Investigation has been looking into whether a Cornell University student has exchanged child pornography on the Internet with other users. Disciplinary action against five Brigham Young University students who viewed pornography on the network has also made headlines.

Elsewhere, students have complained about people who view sexually explicit images on computer screens in public laboratories. In one case, a dean at Camden County College was disciplined for watching an X-rated video on his office computer.

Complaints also have focused on the propriety of having sex-related discussion groups on campus networks. In some cases, computer-center officials have removed the groups, while others have sought direction from campus committees that are responsible for setting standards of conduct for students and faculty members.

Among the discussion groups that some find offensive is ALT.SEX, which features discussions on subtopics that include bestiality, bondage, masturbation, and adult videos. Provocative drawings and photographs are available in a scrambled format that requires the user to have software to decipher it.

ALT.SEX received much attention in the Canadian press last year when some university students complained about a number of files, including one that contained an account of how to torture women. The controversy led Carleton University and the University of Manitoba to block access to the group, while McMaster University and the Universities of Ottawa and Waterloo cited free speech rights and continued to permit access.

Computing officials at colleges and universities in the U.S. have pointed out that the offensive material represents a tiny portion of all the resources — library catalogs, books, and scholarly discussion groups — available on the Internet. The officials also note that computer networks are no different from other media; they will be used by those who want to discuss topics that others find offensive.

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yet more Madonna

The controversy over pop star Madonna's book of erotic photographs, *Sex*, continued to resonate as libraries across the country struggled with conflicting demands to remove the book and demands to acquire it. The following is a brief survey of some of the activity not previously reported in these pages (see *Newsletter*, January 1993, p. 1; March 1993, p. 37)

- In Monroe, Michigan, the board of trustees of the Monroe County Library System voted 4-0 January 19 to keep *Sex* following a 3½-hour meeting that at times degenerated into a screaming match. Since the library's decision last October to purchase five copies of the book, the board had been blasted by hundreds of irate residents.

Gordon Conable, director of the system and President of the Freedom to Read Foundation, defended the decision. "Not purchasing this book, given the attention it was receiving and local demand, would fall short of the mission of the library," he said. By the time of the meeting, Conable told the board, the library had received 97 requests for the book, enough to keep it in circulation until 1994.

"The First Amendment cannot be partitioned," Conable declared. "It applies to all or it applies to no one."

The decision did not end the turmoil, however. Having failed to sway the library board, opponents of the book sought support from the County Board of Commissioners. But, although the library board is appointed by the commissioners, the commissioners have no governing authority over the library. Still, almost all the commissioners voiced their opposition to the book, at another raucous public meeting February 2. "We pledged to protect our Constitution, but also pledged to protect our citizens," declared Commissioner Dale Zorn.

The next day, the continuing controversy prompted Judith See, chair of the library board, to announce her resignation. She said the issue was affecting her work as a 4-H youth agent. Some 4-H families and affiliated clubs were threatening to pull out of the 4-H program because of her position on keeping the book, she said.

"For the majority of my adult life, I have served two causes: advancement of the Monroe County Library System and youth development," See stated in her resignation letter. "I currently fear the continuing Madonna controversy may jeopardize my ability to provide leadership to Michigan's largest and probably finest county 4-H program. I will not allow that to happen." The commissioners, however, refused to accept See's resignation.

- The situation in Monroe was repeated in Ingham County, Michigan, where public outcry prompted the County Board of Commissioners to ask the Ingham County Library Board to review the procedure by which it purchased the Madonna book. On February 2, the library board reviewed a report that concluded the purchase was consistent with selection policy.

"All material will remain available with unlimited, unrestricted access for all ages," the report stated. "Should a court determine that Madonna's book or any other item in the Ingham County Library collection is legally harmful to minors or obscene, the Ingham County Library Board will reconsider that item's inclusion in the collection."

The library board submitted the report to the commissioners. The next week, the commission's Human Resources Committee met and, before a packed room, urged the library board to restrict access to the book. But, barring a court ruling that the book is "harmful to minors," the library board refused.

- A similar situation developed in Omaha, Nebraska, where despite two votes by library trustees to keep *Sex* in circulation, the controversy refused to abate. Acting Library Director Verda Bialac decided November 20 to place a donated copy of *Sex* in circulation after City Council member Steve Exon and others had voiced opposition. Faced with criticism, the board agreed to review the decision and policy toward sexually explicit materials in general.

On January 13, the board carried out its first review of the issue and voted 8-1 to affirm its Collection Department Policy. "A library's hallmark is free access," said Anne Rismiller, board vice president. "I am the person best able to decide what I should read — not a well-meaning special interest group or the government or a librarian."

By that time, the library had four donated copies of the book, all of which were checked out, with a waiting list of 125. Those under 18 were not allowed to borrow the book.

Still, Exon and his supporters vowed to keep fighting to remove the book. The board received more than five hundred protest letters, prompting yet another board meeting February 10. At that meeting, the board voted 8-0 to retain the book. Still, critics made clear that they would continue to fight for restriction. "This is not over," vowed Pat Loontjer, an organizer of a group called Citizens for Traditional Community Values.

- At the Downers Grove Public Library in Du Page County, Illinois, a vaguely worded letter from the State's Attorney's office advising the library about the provisions of the state's Harmful Material Act, prompted the library to reconsider its original decision to make the book available to all patrons.

On February 9, the board was told that the county was investigating whether the book violated obscenity laws. The announcement to the board followed library director Christopher Bowen's receipt, on January 21, of an advisory letter from John J. Kinsella of the State Attorney's office that read in part: "It has come to our attention that your library has purchased a copy of Madonna's book entitled *Sex* and that you are not restricting access to persons under the age of 18. Please be advised that the Harmful Material Act . . . prohibits the knowing distribution of harmful material to persons under 18 years of age. . . . Although this office has not rendered an opinion as to whether the above

referenced book falls within the scope of the Harmful Material Act, we thought you should be advised as to this law and evaluate it in conjunction with your circulation policy for this book."

"To open and read that letter was chilling," Bowen said. "It says we're liable for criminal prosecution under the Illinois code." After Bowen reported on the letter, the board voted 3-2 to restrict access to those over 18, at least temporarily. Reported in: *Chicago Tribune*, February 11; *Lansing State Journal*, February 4, 18; *Monroe Evening News*, February 3, *Omaha World-Herald*, December 10, January 14, February 11; *Toledo Blade*, January 20, February 3. □

in review

Free Speech in an Open Society. Rodney A. Smolla. Alfred A. Knopf, 1992. 429 pages. \$27.50

This timely, important book should be in most libraries with collections on the First Amendment. The author is Professor of Law and Director of the Institute of Bill of Rights Law at the College of William and Mary. He is probably best known for his book, *Jerry Falwell v. Larry Flynt: The First Amendment on Trial*, published in 1988. He holds degrees from Yale and Duke Universities and has authored a number of other titles on the subject.

Smolla addresses the most troubling constitutional tensions of our time. He lucidly explains the Supreme Court's meandering through First Amendment problems, identifying difficulties, and predicts somewhat the course for the future. He offers valuable insights and constructive suggestions on contemporary issues.

He forces the reader to examine the idea of tolerating speech that may spread intolerance. Are our moral imperatives for tolerance in conflict with our value of free speech? His comprehensive exposition attempts to answer the question, "What should freedom of speech mean in a democracy?"

The author identifies short-term interests and values, such as national security, personal reputation and privacy, eliminating racism and sexism, instilling decency in children, controlling the influences of money on the political process, and bringing order to global electronic communications, as being threats to the freedom of speech. He explains how the freedom of speech is connected to all that defines the human spirit—imagination, creativity, enterprise, rationality, love, worship, and wonder.

An extremely important point the author makes is that even seemingly reasonable regulation of speech may progress toward censorship. He looks very closely at hate speech and truth and falsehood in political campaigns. He probes governmental funding of the arts, education, and broadcasting. The last part of the book deals with specific events such as the

Noriega tapes and other lessons in prior restraints, censorship of the press in the Persian Gulf conflict, the challenges of the new technologies, and toward an international marketplace of ideas. There are forty-five pages of notes documenting this excellent examination of First Amendment issues.

This reviewer has read a large number of books on the First Amendment but this is probably the best. Readers will find the book thought-provoking, educational and, believe it or not, entertaining. They will find it difficult to put down and will find themselves returning to it for rereading time and time again. It is truly a "call to arms" on why we should vigorously defend our endangered First Amendment rights. Rodney A. Smolla has done a brilliant job!—Reviewed by Gene D. Lanier, Professor, Department of Library Studies and Educational Technology, East Carolina University, Greenville, North Carolina.

American Chameleon: Individualism in Trans-national Context, ed. Richard O. Curry and Lawrence B. Goodheart. Kent, Ohio: Kent State Univ. Press, 1991.

Most First Amendment controversies share the underlying struggle between American society's desire to preserve individual liberty and, at the same time, respect the needs of special groups and the general public. So, for example, when an Amish man disobeyed a Minnesota law requiring display of what he considered to be an overly garish orange reflective triangle on his buggy, the Minnesota courts had to decide between protecting individual freedom of religion and the state's responsibility for general public traffic safety. In this case, the Minnesota Supreme Court happened to decide in favor of the Amish in *Minnesota v. Hershberger* (1990), but each case is weighed anew with the same attempt to balance conflicting interests.

American Chameleon's collection of scholarly historical and political essays about nineteenth-century American individualism reminds us of the rich intellectual complexity of this struggle. As editors Curry and Goodheart are quick to point out, the rhetoric surrounding the concept of individualism "has often served to conceal or minimize the limits that factors such as class, gender, and race have placed on personal or group development" (p. 1). But they also assert that such criticism emphasizes the great power of the concept of individualism on the American psyche. The "chameleon" in the title refers to the editors' belief that individualism "affects diverse aspects of American life in fundamentally different ways" (p. 2).

Drawing on the work of English political theorist Steven Lukes, the editors define "individualism." Interestingly, they go beyond Locke's English liberalism to consider other sources and adaptations: the *Bible*; Thoreau; Adam Smith; and Max Weber. Curry and Goodheart believe that the concept was never embraced as uncritically in France, England,

and Germany because of desire to preserve traditional class barriers. It is also clear, however, that such influential thinkers and American visitors as Tocqueville feared that "individualism" would make people withdraw from their responsibility to larger public participation; and the word itself was negatively coined in 1820 by Frenchman Joseph deMaistre, who feared the Enlightenment as religiously divisive.

Further chapters show how the idea of individualism shaped a unique United States culture—from the Constitutional Convention to the present, but focusing on the nineteenth-century. Several authors touch upon a current "hot topic" in historiography: that "republican virtue"—not Lockean liberalism—was the motivating philosophy of the American Revolution. Classical republicanism, which glorified the suppression of individual self-interest for the greater good of a civic life with benefits shared by all, lost out to the enlightened self-interest of English Enlightenment liberalism at the Constitutional Convention. Some historians believe that this first rejection of social responsibility in favor of individualism is a source of today's racism, sexism, and economic inequality. *American Chameleon* is relatively well balanced in the points of view presented on this controversy. James Henretta's contribution is one of the best, as he documents the strength of classical republicanism in New York State and asserts that while Lockean liberalism prevailed, it was also transformed as citizens realized that it was in their best interests as individuals to sacrifice some autonomy to the interest of the state.

Those interested in the evolution of "right to privacy" and the status of "obscene" literature in regard to the First Amendment will want to read Goodheart's essay about the 1873 Comstock Law, one of the first to grant broad federal enforcement and prohibition over mailing and selling "obscene" materials and birth control devices. Because Comstock led this crusade in the name of fundamentalist Christian principles, the National Liberal League became the first national civic liberties organization to challenge the law

in the name of separation of church and state.

Well-known historian Linda Kerber asks, "Can a Woman Be an Individual?" and concludes that "the language of individualism helped them very little" (p. 166). While I believe Kerber's point of view currently dominates the field, I wish the editors had included at least one other perspective on this very important issue for women's history.

The editor's concluding essay looks at the decline of nineteenth-century individualism during a twentieth century concerned with reforming and limiting some of the "robber baron" individualism prevalent in urbanization and industrialization. Goodheart and Curry believe that the New Deal marked the shift away from "rugged individualism" (p. 192). Also, the authors correctly point out that while the Reagan White House promoted *economic* rugged individualism, the secrecy and censorship policies on classification of government documents were an unprecedented attack on political individualism.

American Chameleon deals comprehensively with nineteenth-century individualism, to be sure. The full title, however, is misleading; there is very little "trans-national context." With the exception of Tocqueville, the subject matter of most of the essays concentrate solely on the American experience of individualism. There is thus a disappointing lack of information in such potentially fruitful areas as comparative government policy towards dissemination of birth control devices, and the problem of women and individualism in the French, American, and Russian revolutions.

But for those interested in *American* individualism and First Amendment issues, *American Chameleon* provides a critical historical background for the issue at the heart of so many battles over individualism versus social responsibility. While these essays make no explicit links to current issues, the authors have set out the issues so clearly that the reader will have no trouble making those connections. — *Reviewed by Barbara M. Jones, Director, Schaffer Library, Union College.* □

mailbox

Dear Editor:

I am a sophomore in college. I am a pre-law student, majoring in either history or political science. Your newsletter is subscribed to by my college library, and this afternoon I picked it up. The title grabbed me, as I am always in pursuit of intellectual perspectives. As I intently read your newsletter, however, I began to wonder who you feel you are liberating with this outlet. I am 100% in favor of the freedom of speech in this fine country. Our county has thrived on it. I do, however, believe adults need to exhibit responsibility in their authoring, recommendation, use, and purchasing of children's literature. We have the responsibility

of nurturing the children of this county in ways which they will carry on the capitalist, Protestant work ethic (not referring to religion) which made this nation great. Books which dissent the majority's firmly-held values should be limited. Where do books advocating the "normalcy" of homosexuality, for example, belong in the public-supported libraries, when homosexuality is *not* normal in the animal kingdom, to which humans belong? A library and a school are to educate children, not to be advocates of minority social causes. As I was reading each page, I became more and more aware of the lack of concern you have for the education and welfare of children, and the overwhelming concern you exhibit for the irresponsible, adult authors of many of the books

mentioned in your newsletter. Place the welfare of the children first, and I think you will understand where concerned parents and conservatives such as myself are coming from.

Sincerely,
Jennifer J. Winters

The Editor responds:

I am delighted, Jennifer, that you will be studying history or political science as a pre-law student. In your studies (assuming the material available has not been censored!), you will discover the rich and informative history of free speech and censorship in the United States. In your letter, you have made a common, but mistaken assumption: that libraries endorse or advocate a cause just by making information about it available. To the contrary, libraries do not "advocate" or endorse the materials in their collections. The presence of materials in a library collection does *not* constitute an endorsement of the content of those materials. Libraries regard it as their responsibility to provide a broad diversity of ideas and information from all points of view, representing the en-

tire spectrum of social and political thought and human expression, so that library users may choose for themselves, without guidance from the government or from self-appointed censors or guardians of other people's children, what they should read.

People will disagree about what books are appropriate for children and what information should be made available to children. The American Library Association supports the rights of parents to guide their own children's library use. We regard such guidance as a parental responsibility. You believe that dissenting or minority opinions should be limited — and it is your prerogative to restrict *your own* children from such views — but to limit access across the board would violate the rights of parents who *value* "dissenting" or "minority" views! The First Amendment exists to protect dissenting, minority and unpopular speech, which often turns out to be a catalyst for positive change and social progress. You make the assumption that those who share your views are a majority who should have a government-enforced right to limit the access of others to the opinions of those who disagree with you. That is censorship, pure and simple, and your support for it belies your professed devotion to free speech. □

(on line . . . from page 63)

"These issues are certainly not new or unique to information technology," said Robert R. Blackmun, director of computing services for the University of North Carolina at Charlotte. "It's simply that information technology makes it much easier for people to engage in controversial behavior."

Virginia E. Rezmierski, a computer specialist at the University of Michigan, said the use of computers to transmit and view pornographic or otherwise "offensive" materials is a controversial issue that administrators should confront before it explodes. "It's going to be hotter if people don't deal with it up front and get people thinking about it before they get hit," she said.

Michigan is developing an interpretation of campus rules that would permit offensive material on computers provided it is hidden from those who do not want to see it. Computer users would be discouraged from viewing or printing sexually explicit images in the university's laboratories, but discussion groups like ALT.SEX would still be accessible to those who wanted to look for them on the network.

"What we want to do is keep users in power as much as possible and have them make a positive choice both to access and not to access" the material, Rezmierski said. "This is very much in line with the values of the community."

Rezmierski said she opposed censoring what is on the networks and believed educators should use conflicts over

offensive materials to teach ethics and to explore why pornography is so popular in America. "I want us to think about this and figure out what's going on with us as a community," she said.

M. Stuart Lynn, vice president of information technologies at Cornell, agreed that censorship should not be the favored policy, but suggested that universities have the right to decide how to spend their resources. Cornell stopped including on its computers the discussion group that the FBI contends was used by a student to transmit child pornography. "That's not one of the things that was very high on the list of ways we serve our community," Lynn said.

At Brown University, officials adopted policies similar to those being considered at Michigan. Don C. Wolfe, vice president for computing and information services, said warning students about the nature of some material on the network is better than taking a restrictive approach, which would require the college to define what is offensive. Censorship is also likely to be futile, Wolfe said, because blocking access to one discussion group does not mean that the offensive material will not pop up somewhere else. "What we try to do is go after the behavior," he said. "Our approach is to encourage people to be good citizens."

Some college officials fear that the public and members of Congress may react negatively to publicity about computer pornography. They worry that the National Science Foundation, which maintains an important segment of the

(concluded on page 84)

A map of the United States with stars indicating the locations of the 20 study sites. The stars are distributed across various states, including Washington, Oregon, California, Nevada, Arizona, New Mexico, Texas, Colorado, Kansas, Oklahoma, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, Vermont, New Hampshire, and Maine.

Pearce, Arizona

The trouble started when Superintendent Pete Lewiston's ten-year-old son gave his mother the book, which he had borrowed from the county bookmobile. In a letter to County Librarian Donna Gaab, Lewiston complained that the book contained not only "prevalent use of the 'F' word and other patently offensive language, but at least four separate acts of intercourse and oral copulation. . . . Such material is no less than full-blown pornography," he charged.

School board president Edward Curry expressed the board's opinion in backing Lewiston's decision. "I know the bookmobile is very valuable," he said. "But when they have things set up so that [students] can walk in there and pull a book off the shelf and find descriptions of lewd sexual acts, I've got a problem with that."

"We feel we do our best to serve all readers from our bookmobile. We try to direct students to good books but we really feel that is the parent's responsibility. I doubt very much the book was in the children's section," Gaab said. She added that other districts had not expressed any dissatisfaction with the service. Reported in: *Arizona Daily Star*, February 1, 5.

The controversial children's book about a gay parent, *Daddy's Roommate*, by Michael Willhoite, is under attack by a minister in Gainesville, who is seeking the book's removal from the Alachua County public libraries. In late January, the Rev. Trent Wheeler's Alachua Church of Christ placed an ad in a local newspaper urging people to write Library Director Ann Williams, urging the book's removal. The ad said the library was proving "just another forum for the homosexual rights movement to try to place their message before impressionable children."

Williams said that by early March, she had received about sixty formal complaints against the book, mostly motivated by the church ad. "The library does not try to make decisions for other people," she said. "Our role is to provide as much information as we can on any given issue or subject and then let our users come and partake of that information in any manner they wish to and then draw their own conclusions and come to their own decisions."

Live Oak, Florida

A Suwannee County parent who found that an elementary school librarian routinely erased words from books asked the school board February 18 for a policy prohibiting arbitrary censorship and book defacement. The censored words were "heck" and "hell," said parent Claudia Johnson, who compared censored and regular versions of *The Indian in the Cupboard*, by Lynne Reid Banks.

"It's astonishing that this would be done. Books paid for with taxpayers' money are being damaged and defaced. This cannot go on," Johnson said. "I'm not after somebody's job and I'm not naming names, but the person was very candid with me and said it has been going on for twenty or thirty years and that it's routine procedure that any word this librarian deems objectionable is rubbed out." Johnson, a playwriting and screenwriting instructor at Florida State University, also charged that a recent production of the play *A Raisin in the Sun*, by Lorraine Hansberry, was modified to remove profanity. She asked for policy changes to prohibit such action without formal review by a committee.

Johnson is a member of a district committee that reviews books challenged by parents. She noted that in 1991, the board had refused to cave into demands that a John Steinbeck book be censored, and she expressed hope that the issues she was raising could be resolved. Reported in: *Gainesville Sun*, February 19.

Manatee, Florida

Faced with complaints from members of the public, the Manatee Public Library agreed in February to move the controversial gay children's book *Daddy's Roommate*, by Michael Willhoite, from the children's to the adult section. Library Director John Van Berkel said he had to balance the complaints against demand for the book. "We came up with a decision we felt comfortable with," he said.

Before the book came out, Van Berkel said, several people had asked him for children's literature dealing with gay or lesbian parents. So when *Daddy's Roommate* was published in 1990, the library bought two copies and put them in the children's room at the central library and one branch. But after several complaints and five written requests to move the books, the library quietly pulled them from the children's room. "The number of complaints made us reconsider our original decision," Van Berkel explained. Reported in: *Sarasota Herald-Tribune*, February 15.

Carrollton, Georgia

A woman whose son checked out a book from the Carrollton High School library with instructions on how to use drugs to enhance the sexual experience asked the city school system to review, and possibly remove, the book and others like it. Kathy Black said she was shocked when she saw her son Ryan had checked out *Managing the Drugs in Your Life*. She was particularly upset by a section on "Sex and Drugs" in a chapter entitled "Getting High."

"All I want them to do is get the thing off the shelf, and go through the books regarding drugs and sex and get this kind of thing out of the school," she said. "I am not a proponent of censorship. I believe the school is not a proper place for this type of literature, and it does not need to be in the hands of children."

Principal Larry Harmon complained that rather than approaching the school, Black had instead called an Atlanta TV station, which aired a news report about the book. "Once you start taking books off the shelf without a process to follow, you open the floodgates," Harmon said. "You open up the opportunity for any number of books to be pulled for any number of reasons."

"For me, the core issue is children shouldn't have access to this literature in schools or public libraries," said Black. "This is adult book store material." Black said she would file a petition to have the book removed and request formation of a committee "to see if there are any other types of material like this in the library that need to be removed." Reported in: *Carrollton Times-Georgian*, January 19.

Schaumburg, Illinois

Judy Blume's teenage romance *Forever* has been in junior high school libraries in Schaumburg Township for a dozen years without incident. But on February 25, Barbara Cross, mother of an Eisenhower Junior High School student, appealed to the school board not to let the book be read by seventh and eighth grade students and to remove it from district libraries. Earlier, school and district level committees voted to keep the book on the shelves.

"This book contains graphic sexual scenes," Cross said. "It's basically a sexual 'how-to' book for junior high students. It glamorizes [sex] and puts ideas in their heads." Reported in: *Des Plaines Daily Herald*, February 25.

Marysville, Kansas

Six of author Ken Follett's books were banned from the Marysville High School and Marysville Junior High School library by the USD 64 Board of Education March 8. The action came after the Rev. Calvin Reyburn of Victory Baptist Church presented a written request, passed out photocopies of excerpts from the books, and discussed the issue with the board. He said the books were pornographic. The vote was 6-0, with one board member abstaining.

The six books are *The Pillars of the Earth*, *Triple*, *The Key to Rebecca*, *Night Over Water*, *Eye of the Needle*, and *Lie Down With Lions*.

Librarian Vicki Pillard said she was upset that the board did not follow school policy in removing the books. According to the policy, after a complaint is filed, the material is removed from the library and a committee is appointed to make a recommendation. Appeals may be made through the superintendent to the school board. Pillard said that had the policy been followed and the books banned by a properly constituted committee or after consideration through the appeals process, she would not object. "My complaint is with the way it was handled."

Reyburn said the issue arose when a student checked out *Night Over Water* for a report in teacher Sam Phillippi's class. The student showed the book to another teacher, who took it to the assistant principal. Reyburn described the sex

scenes in the books as "just trash" that have nothing to do with the plot. "It ought to trouble us tremendously that our young people are reading this," he said.

Phillippi said the book was one of about two hundred available for students to choose for a book report. He said he told the student who selected *Night Over Water* that it contained explicit sex and told him not to take the book if he or a parent would be offended. However, the teacher said, "I really have a problem with censorship."

"Once you start this, *Huckleberry Finn* can go, and various other books will go," Phillippi said. "I've come to the point that I will not assign another book report. If they want to go through the library they're going to have to do it on their own. I'm not going to do it for them."

Board member Bobbi Price, who abstained from the vote, later called the removal "censorship in its purest form. During the meeting we were told if we voted 'no,' we would be voting to keep pornography in our schools. And I don't think reading excerpts from a book at 1 a.m. in the morning to a group of people who had no prior knowledge of this, that intelligent decisions can be made."

The board requested that Pillard and Phillippi attend a special board meeting for teacher evaluations. "I think we are dealing with far right religious politics," Phillippi concluded. "I think Marysville High School is the only place in the world Ken Follett's books are banned." Reported in: *Marysville Advocate*, March 11; *Beatrice Daily Sun*, March 11; *Manhattan Mercury*, March 12.

Red Creek, New York

In a unanimous vote, the Red Creek School board voted to remove the book, *The Boy Who Lost His Face*, by Louis Sachar, from the Cuyler Elementary School library. Cuyler Elementary School Principal Randall L. Lawrence recommended the action after receiving complaints from parents. "While it is an excellent story," Lawrence said, "the age level and use of some swear words may make it inappropriate to younger children."

The story deals with a teenager and his friends who are involved in a pattern of destructive behavior. According to board member Edgar Denton, although the board thought it was a good story and had a good moral, it was more appropriate for junior high or high school readers. The book was transferred to the junior high and high school library. Reported in: *Red Creek Herald*, February 11.

Wall Township, New Jersey

According to a policy established by Superintendent of Schools Mark Franceschini, several copies of *Go Ask Alice*, the anonymously published diary of a teenage girl who died of a drug overdose, were removed in late January from the library at the Wall Township Intermediate School.

"I hate to come across as some kind of Hitler banning books," said Franceschini, "but I feel the public schools

have a responsibility to exercise discretion in what they make available to youngsters." *Go Ask Alice*, he charged, contains "inappropriate" language and "borders on pornography."

The superintendent objected particularly to passages in which the sexual experiences of a second drug user are described in language that he called "filthy and demeaning." He said the book's antidrug message was surely valid, but students should not have to wade through objectionable language to learn it.

Board member Patricia V. Smith agreed. "There are a lot of other books that deal with the same topic in other ways, and we should use those instead," she said.

The superintendent explained that he had received an anonymous letter about the book in 1987, after which he ordered the title removed from a summer reading list at Wall Township High School, from the school library there, and from all reading lists and classroom book collections at the Intermediate School. He said he was not aware that copies of the book had remained in the Intermediate School library. "I thought we'd got rid of them all about five years ago," he said. Reported in: *Allaire Herald*, February 3.

Elizabethtown, North Carolina

Although the Bladen County Library Board of Trustees voted 6-1 January 21 to confirm support of a selection process that resulted in the shelving of three books with gay themes, and to deny a request by the book's opponents for a public hearing, the controversy surrounding the books continued to build. The Bladen Coalition of Christians vowed to continue the fight against *Daddy's Roommate*, *Heather Has Two Mommies*, and *The Duke Who Outlawed Jelly Beans*.

On February 15, the Bladen County Board of Commissioners heard a presentation by the coalition and agreed to schedule a meeting with the library board to discuss policy, but not to hold an open hearing.

"We detest the use of our money to purchase indecent material to corrupt the minds of our children," said the Rev. Bob Boone. Boone urged more than a hundred people at a March 1 meeting to continue recruiting members and getting every member a library card. That way, he said, "We can check out one and keep them out as long as the law allows." Reported in: *Fayetteville Observer-Times*, January 22, March 2; *Bladen Daily Journal*, February 17.

Goshen, Ohio

The board of trustees of the Clermont County public library system postponed a decision February 10 about the gay-oriented periodical *The Advocate* after residents spoke out both for and against the presence of the publication in the library.

The Rev. Randy Worthington of the Springvale Baptist Church said he did not want the children of the community

exposed to the ideas and advertisements found in the magazine. He said he had collected more than 1,500 signatures on a petition opposing the magazine. But others warned the board not to yield to pressure.

"We feel we should have some input before materials are put into the library," Worthington said. "This is not censorship, but community accountability." If the board does not restrict access to the magazine, Worthington threatened a citizen boycott and a movement to repeal the library tax.

Branch manager Joann Tudor said the library began receiving *The Advocate* in late December, after she "perceived a user group for it." In January, the complaints began. Tudor said 105 review requests had been submitted. She said the library also received 34 letters of support for the acquisition.

"We're going to offend a great number of people no matter what we do," said board president Robert Linder. Reported in: *Clermont Sun*, February 11; *Cincinnati Community Journal-Press*, February 3, 10; *Milford Advertiser-Press*, February 17.

schools

Encinitas, California

A San Dieguito Union High School District trustee on January 21 requested a revision of the district's reading curriculum after parents complained about controversial books. "It's time to turn our back to the evils of the day," said trustee Sherry Hodges, who protested J.D. Salinger's *Catcher in the Rye* and William Golding's *Lord of the Flies*.

Hodges suggested a review of the curriculum following a report by Angelina Allen, district English curriculum director. The report came in response to protests by parents Paul and Becky Cacace, who requested people attend the board meeting in a letter to the local newspaper protesting the books. The Cacaces said they were concerned that students were required to read books that "promote foul language, sexual immorality and murder."

"We're not trying to ban the books from schools," Becky Cacace said. "If they're in the library for children to choose, it's all right." But Cacace said students who are required to read *Catcher in the Rye*, *Lord of the Flies* and *I Know Why the Caged Bird Sings* should be given alternative choices. "We're not trying to censor; we just want children to have a choice," she said.

Revision of the district's English curriculum is not scheduled until 1995, when an eight-year review cycle is over. The board last reviewed the curriculum in 1987. It remained unclear whether any immediate action would be taken. Reported in: *North County Blade-Citizen*, January 20, 22.

Sidell, Illinois

In a clear example of how censorship pressures can negatively affect curriculum even when they are nominally defeated, Jamaica High School teacher Janet Puzey

announced in January that she would no longer teach J.D. Salinger's *Catcher in the Rye* in her senior English class. "The administration felt that we might have to go through the same protest procedure that we had last year, that the community still felt the same way, and I didn't want to put my curriculum on hold again," Puzey said.

When Puzey distributed the novel in February, 1992, a group asked the board to eliminate it from the curriculum because of its profane language and allegedly immoral message. The board left the book on the senior reading list but directed Puzey to review possible replacements.

"I'm disappointed in the fact that I don't think we had a well-rounded, total community statement on the book," Puzey said. "I never did hear from the rest of the community on how they felt about the book." Puzey said she would not rule out using the book again. Reported in: *Champaign News-Gazette*, January 11.

McPherson, Kansas

McPherson High School's controversial Fantasy Literature class will be replaced in 1993-94 by three electives to be chosen, in part, by a survey of students. According to an English Department memo, submitted to the school board January 11, Fantasy Literature had become troublesome to teachers and some parents.

"In recent years, we have had a lot of difficulty finding appropriate materials for the course and the controversial nature of the materials often is constantly challenged by parents and church groups," the memo said. Reported in: *McPherson Sentinel*, January 12.

Arcadia, Louisiana

A parental protest against classroom use at Arcadia High School of a book charged with racial bias resulted in the removal of *Roll of Thunder, Hear My Cry* from the ninth grade reading list. The book by African-American author Mildred D. Taylor won the Newberry Medal in 1976.

Principal James Tilley defended the book and teacher Lorene Dupree. "She is not racist. There is no racism in the classroom," he said. But, he added, "We're not going to allow any student to have any problem in the classroom." Several days after defending the book, however, Tilley said he had read it and pulled it from the reading list. When asked if he considered the book racist, he said, "I'm not going to comment on that."

Some parents, including Misty Hall, had complained to Tilley and wrote a letter to a local newspaper after reading some passages they said were anti-white. Hall said black students openly taunted white students when the passages were read in class.

"I can't see how this book will do anything but create a rift between black and white," Hall said. "They have to go to class together and share lockers and share the same bathroom. In the schools, you don't need a rift." Reported in: *Bienville Democrat*, February 25.

Chicopee, Massachusetts

Some students at Chicopee High School denounced the removal of a best seller from their English class reading list. The students acknowledged that *The Handmaid's Tale*, by Margaret Atwood, contains profanity and sex, but said they could handle it. "As far as English books go, it's the best one I ever read. It's the only one I read cover to cover," said Shane Duclos.

The students said teacher Cecilia Costello asked the senior English students to return their copies of the book on February 3, after School Superintendent Herbert Curry reported a parental complaint about the novel. Curriculum assistant Farideh Seihoun said the book was ruled out as a required text because it lacked approval by a school committee. She said it could still be used as optional outside reading, however. Reported in: *Quincy Patriot Ledger*, February 5.

Hunterdon County, New Jersey

A group of parents asked the Hunterdon Central Regional Board of Education February 22 to reconsider a request to stop showing R-rated movies like the Oscar-winning *Ordinary People* and to stop assigning "perverse literature" like J.D. Salinger's *Catcher in the Rye* in classes.

"Why are R-rated movies being shown at Central? Why not study and discuss the classics, grammar, etc.?" said a January 19 letter to the board from the 22-member Hunterdon County Evangelical Pastors Association. The Rev. Robert J. Moore, Jr., of the Calvary Baptist Church in Flemington and parent Lynda Sparks of East Amwell initiated the controversy.

"It really made me sick," said Sparks of the Salinger book. "I started the first couple of pages and it already had profanity in it, and I don't read stuff like that. This is not a Christian issue," added Sparks, who said the book's language conflicts with her religious values. "I think the Jewish and non-church-going parents would be offended if we thought we were the only parents who cared about what their kids are reading."

"I don't believe in censorship," Sparks said, but "for children under the age of 18, the parents have the right to decide what they learn and what they won't learn."

Board President Edward J. Walkiewicz said that the district had no need to review the curriculum. "The course materials of the sophomore English curriculum have been used in our district for many years and includes the assignment of reading the book *Catcher in the Rye*, by J.D. Salinger, and viewing the movie *Ordinary People*," he said. "We believe the district has offered and continues to offer a well-rounded curriculum program in English."

Sparks and Rev. Moore told the board that they were disappointed in the lack of response to their requests. Moore said the association would consider a response. Reported in: *Bridgewater Courier-News*, February 18; *Easton Express*, February 21.

Asheboro, North Carolina

Four videos that make up part of the controversial Degraasi Junior High public television series will no longer be shown to students at Randolph County middle schools as part of the school system's basic instructional program. That decision was made last December 14 at a meeting of the Randolph County Board of Education, which acted on a challenge to the series by an area minister.

The board voted to continue to use the series but to exclude the four videos — all dealing with sexual issues. The videos will remain in school video libraries, however. Reported in: *Randolph Guide*, December 16.

Carlisle, Pennsylvania

In February, a parent asked the Carlisle Area School Board to remove the Mark Twain classic *The Adventures of Huckleberry Finn* from the ninth grade English curriculum. Rose Marie Thomas said the book's racial slurs are offensive to both black and white students, who told her they are uncomfortable reading the book aloud in class. Thomas stressed, however, that she did not want the book removed from the library.

"Kids are hesitating when they get to certain words and then everybody looks at the black kids," she said. "In 1993, you should be able to understand that." Thomas, whose daughter was not in the class assigned to read *Huckleberry Finn*, said she had heard complaints about the book for years. She said she had never read it and did not intend to do so.

Thomas's argument was countered by ninth-grader TaWanda Hunter, who like Thomas is African-American. She said the book should remain a required text because it is a classic. "I admit I do have a problem with some of the words used, but removing it from the bookshelves is not going to solve the problem," said she. Hunter's mother agreed. "I think as blacks we need exposure to all types of literature," she said.

Director of Secondary Education Wes James said the book should remain in the curriculum. But District Superintendent Gerald Fowler suggested that the board's education committee should consider forming a team to review books that are read aloud in classes. Reported in: *Carlisle Sentinel*, February 13, 19; *Harrisburg Patriot-News*, February 21.

Newton Square, Pennsylvania

A petition requesting the removal of a third grade teacher was signed by 58 parents after the teacher gave pupils allegedly sensitive reading material without discussing it and allowed the pupils to grade their own papers. "I am frustrated when my child comes home from school and he has papers that are corrected by himself and they are incorrect," one mother said.

The books in dispute were *Snow Treasures*, which parents said concerns the Nazis; and *Sadako and the Thousand Paper Cranes*, which they said concerns a girl dying of leukemia. The teacher had been a typing teacher at the high school for

twenty-five years before being transferred to Manoa Elementary School. Reported in: *Haverford County Press*, February 3.

Souderton, Pennsylvania

The Souderton Area School board voted 5-4 February 11 to ban the use of the Pulitzer Prize-winning novel *The Color Purple*, by Alice Walker, in a tenth grade honors English class. The book was allowed to remain in the school library. The board rejected the unanimous recommendation to retain the book of the district's Curriculum Council, which reviewed the use of the book after the district received complaints about its explicit sexual language.

The controversy began in early January when parents Ed and Cyndi Spencer called for a ban of the book after they discovered their son reading it over the Christmas break for his tenth grade honors class (see *Newsletter*, March 1993, p. 44). The Spencers objected to the novel's explicit language and graphic depiction of sexual encounters and rape. Rejecting the option of choosing an alternative assignment, they filed a formal protest. When other parents expressed similar concerns, district administrators decided to collect the book from all 67 students in the course while the matter was reviewed by a board subcommittee.

The honors course, and its reading materials, were approved by several committees — and by the board itself — during the previous school year. All books to be used in the class had been placed on public display at the Indian Valley library before the course was approved. But several board members said they had not read the book at the time they approved the course. "This committee was not made aware that there was anything in the curriculum that would be considered debatable," said board member Dorothy Lentz. "Not one word was said."

Dr. Marion Dugan, district director of curriculum and staff development, said the Curriculum Council received petitions opposing the book with a total of 297 names, but some names appeared more than once. Most of the petitions came from churches and about half from Grace Bible Church. The council also received eight complaint forms. Dugan received 12-15 letters in support of the book.

The angry board meeting and the close vote left the community divided. Ed Spencer said the decision showed that "those who would like to see the book stay in the classroom are a loud minority," and he called for the resignation of Dr. Dugan.

But tenth grader Amanda Lukens, who read the book when it was assigned, disagreed. "From what I have seen [those who wanted the book removed] were in the minority in the community," she said. "The Board should have seen the students' point of view. We were the ones who had to deal with the book."

An overwhelming majority of students in the class did not ask to be excused from reading the book and most supported

its retention. Many others not in the class were prompted by the controversy to obtain the book from the library or elsewhere. After the board vote, several members of the class left the session in tears.

"I thought the recommendations of the council gave good ideas and handled the issue in a good, mature fashion," tenth grade honors student Andrea Hosfeld told the board. "It's awful how our community handled this."

"It's ridiculous," commented high school senior Jim Lacovara. "It seemed like a morality issue. This is a public school; this shouldn't be centered on religion. I don't know who should decide what the good taste of the community is."

Parent James Lukens warned that the decision opened the door to the removal of more books. "You're saying anybody any time can challenge the procedure. That is an extremely dangerous policy." Reported in: *Souderton Independent*, January 13, 20, February 17; *Philadelphia Inquirer*, January 15, February 12; *Lansdale Reporter*, February 12, 13.

Charleston, South Carolina

A fuzzy, blue-green puppet seems an unlikely villain. But Pumsy the Dragon and the school counseling program built around it have breathed flames of controversy in Charleston. "There's no question, once this group [opposed to the program] wants to light the bonfire and once the bonfire starts, it's going to be a never-ending process," warned Charleston County School Board chair Robert New.

"Pumsy in Pursuit of Excellence" is a five-year-old program for elementary school students designed to boost their self-esteem and positive thinking skills. Supporters call the program an effective, harmless tool that helps pupils develop their self-confidence. But critics, who angrily denounced Pumsy at a school board meeting on January 11, call the program an unwarranted religious intrusion into the public schools. They claim the program incorporates Eastern mysticism, hypnotism, and New Age philosophy. "This is seriously, psychologically dangerous," said Maureen Bryant, who has campaigned against Pumsy for more than a year.

The program is optional and used on a limited basis in Charleston County. Parents have the right to remove their children from class when the program is taught, and they receive permission slips from the school notifying them of the class beforehand. School guidance counselors heatedly deny charges that exercises recommended in the teachers guide promote "mind control."

But school board member John Graham Altman supported opponents of the program and predicted that the board would remove it. "The problem with Pumsy," he said, "is it's part of text material that is inimical to the Judeo-Christian thought and it's contrary to what most parents want to teach their children."

New, who called opponents of Pumsy zealots, said he feared that opposition to the program could launch a broader assault on textbooks, library materials, and the health education curriculum. "What these people are saying is that we

cannot allow imagination, or open expression or creativity in the schools, because that fosters disobedience," he said. Indeed, although the controversy was for the moment limited to Pumsy, speakers before the board also criticized parts of a Junior Great Books program. Reported in: *Charleston Post and Courier*, January 17.

student press

Claremont, California

Following a January 21 incident of censorship, the adviser of the Claremont High School newspaper said she would resign her position. Jane Purcell, for nine years adviser to the *Wolfpacket*, said she and Principal Lonnie McConnell had different views on how censorship should be handled.

McConnell pulled an illustrated racist flier from the front page of the newspaper's January 21 edition just minutes before it was printed. The reproduction of the flier, which had circulated around the campus, was to accompany an article about racial tensions on campus. The article ran.

Purcell and the newspaper staff contended that had the staff been allowed to follow through on its own editorial policy, it would have made a responsible decision. "The process was not allowed to be played out," Purcell said.

In the space that was to have been devoted to the flier, the *Wolfpacket* editors placed an announcement that "the graphic intended for this space was censored by the administration fifteen minutes prior to our deadline yesterday" and an explanation from McConnell.

"If we had been able to intercede with those who were distributing the flier, they would have been disciplined. Then for us to allow publication of the same thing would be inconsistent," the principal maintained. Reported in: *Claremont Courier*, January 23; *Inland Valley Bulletin*, February 18.

Albuquerque, New Mexico

Two photo essays in the arts section of the *New Mexico Daily Lobo* prompted the University of New Mexico's student body president to seek a cutoff of some of the newspaper's funds. David Standridge said February 5 that campus reaction to the previous day's section, which featured a photo essay of a gay couple and a separate full frontal photo of a nude man with a stud earring piercing his penis, had been "very negative."

"I've heard from Christian student groups, the Black Student Union and others. I got ten phone calls about it at home last night," he said. "These people are totally appalled."

Standridge scheduled a meeting with university administrators to see about filing a complaint under the Student Standards and Grievance Procedure. He said he would also seek to pull the \$38,000 in undergraduate student fees that go to the *Lobo*. Reported in: *Albuquerque Journal*, February 6.

Emmaus, Pennsylvania

The Superintendent of the East Penn School District in late January censored a high school newspaper editorial that accused a school board member of cursing at a student reporter. Student journalists at *The Stinger*, the Emmaus High School newspaper, said they complied with Superintendent Alrita Morgan's order not to run the editorial critical of board member Mary Lou Stefanko.

"I was really angry," said Eric Doviak, *Stinger* opinion page editor. "My gut reaction was to run it anyway, despite the censorship. But if we run it, we could risk losing the whole issue."

The editors left white space in the editorial's place and ran a note in large print saying that the superintendent had ordered the removal. The editorial accused Stefanko, a former board president, of being "unprofessional," rude and not cooperative with student reporters when they call for comment. She called the accusations "lies" and "twisting of facts."

Morgan said Stefanko did not participate in the decision to spike the editorial. She said that she had made the decision herself, in consultation with the school principal. "I do have some meetings set up to try to come to a resolution of the concerns that have been expressed" about Stefanko, Morgan said. "If they write it now, it doesn't help to get a resolution. I don't think you'd call that censorship. I think you'd call that making a decision for the best resolution to the problem."

The editorial was initially slated to run in December. Students sent a letter to Stefanko along with a copy of the proposed editorial and asked for a meeting. Stefanko did not reply, however. "If they were arranging meetings, why haven't they contacted us?" Doviak said.

Two weeks after the incident, the paper's editors addressed the school board requesting that the board officially declare the paper a "public forum." According to the U.S. Supreme Court's 1988 decision in *Hazelwood v. Kuhlmeier*, a public forum is created when school officials by policy or by practice open a publication for use of all students. "In a public forum," *Stinger* editor Lisa Steele told the board, "school papers cannot be censored unless substantial distraction of the community or school occurs." Reported in: *Allentown Call*, January 27, February 10.

electronic bulletin board

White Plains, New York

For the fourth time in three years, the Prodigy on-line service pulled the plug on one of its electronic bulletin boards because the company objected to the contents of messages. The service shut down a board called "Frank Discussion" January 27, saying the messages left there by some of Prodigy's two million subscribers were "explicit descriptions of sexual acts and open sexual solicitations."

Free speech advocates and others have long criticized Prodigy, a joint operation of IBM and Sears that is based in White Plains, for censoring members. In 1989, a similar flap arose when the service killed a bulletin board in which gay topics were discussed. In 1991, the company tightened restrictions on the content of electronic postings after complaints over a series of allegedly anti-Semitic messages.

"This is absolutely not censorship," said Prodigy representative Steve Hein. "We consider the other subjects in the bulletin board very acceptable and very appropriate for discussion." But, he argued, the bulletin board had become "largely if not predominantly devoted to gratuitous sex."

"Prodigy wants the best of both worlds," said Gary Arlen, an analyst who specializes in computer-media issues. "You can't promise people the freedom of a telephone system and then tell them you're a publisher who is going to censor their material." Reported in: *White Plains Reporter Dispatch*, January 29; *San Jose Mercury-News*, January 29.

theater

Frederick, Maryland

A play about genocide and homosexual love in Nazi Germany has launched a heated battle in Frederick over whether actors should be allowed to walk nude on a public stage. The play, *Bent*, opened in a city-owned theater in January and includes a thirty second scene in which a man walks naked from a bed to a shower. When some town officials said the scene would violate an ordinance governing liquor and entertainment, the local arts community cried censorship.

"Our entire purpose is to get this issue into court," said Gary D. Hughes, president of the Frederick Arts Council, which operates the city-owned Weinberg Center for the Arts. A few elected officials, Hughes said, "don't believe there should be nudity in Frederick. They are using the liquor board to try to control the content of a play. That is by definition censorship. The clear intent of this thing was to prohibit girlie joints. No wet T-shirt contests, no strip joints. The law was never intended to apply to a theater." Reported in: *Washington Post*, January 24.

university

Dayton, Ohio

For the second straight year, the University of Dayton bookstore declined to sell the *Sports Illustrated* swimsuit edition. Despite the controversy generated by her 1992 refusal to sell the magazine, bookstore manager Mary Lynn Naughton said she still believed the issue denigrates women and is inappropriate at an institution that has a stated mission to promote human dignity. Reported in: *Dayton Daily News*, February 18.

broadcasting

Portland, Maine

A Maine radio station that features a weak-minded character named "Frenchie" with a strong French accent has angered northern New England's substantial Franco-American community, whose leaders want to see the comic routine banned. At a January 26 news conference, the Association Canado-Americaine threatened to go to the Federal Communications Commission if WBLM in Portland didn't take Frenchie off the air. "If they haven't crossed the line, they have come awfully close," said Maine state Rep. Patrick Paradis. Reported in: *Orlando Sentinel*, January 27.

Boston, Massachusetts

Chief Inspector Jane Tennison is a tough-talking London cop. That is, she was until public broadcasting censors got a hold of her. In the crime drama "Prime Suspect 2," sequel to a big hit on the Public Broadcasting Service "Mystery" series, all of Tennison's expressions were changed to things like "baloney."

Tennison got away with more earthy language on the series' first episode, which was purchased by Boston's WGBH, which packages "Mystery," after it was made. But the station coproduced the sequel, giving the station substantial control over content. The original producer, England's Granada Television, had to agree to let the actors return to a recording studio and dub in new dialogue.

"WGBH insisted upon changes," said Craig McNeil of Granada. Rebecca Eaton, the WGBH executive in charge of "Mystery," said, "We didn't tell them what to say, we just gave them a list of unacceptable words. It isn't WGBH choosing the standards. It's WGBH following PBS guidelines."

PBS executive vice president Jennifer Lawson denied the service has a list of forbidden words "as such." She said the substitute language which PBS "guidelines" mandated "makes the program acceptable and usable by all stations all over the country." Television critic Tom Shales said that translates as "managers at backwater PBS stations refuse to air programs they consider controversial or troublesome, so their very conservative standards are used to edit and censor PBS programming for the whole country." Reported in: *Boston Herald*, February 14.

Seattle, Washington

Seattle television station KIRO on January 28 became the second station in the country to drop the CBS series "Picket Fences" because of concern over its content. Glenn Wright, the station's executive vice president and general manager, pulled the drama after CBS backed the series during negotiation sessions.

(continued on page 88)

newsletter on intellectual freedom index to vol. 41, 1993

indexed by Eli and Gail Liss

*Intellectual Freedom Committee
American Library Association*

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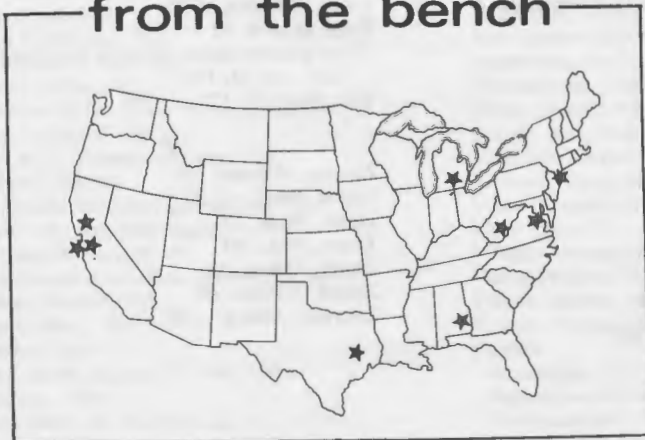
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from the bench



U.S. Supreme Court

Has the federal government's use of the Racketeer Influenced and Corrupt Organizations (RICO) Act in its battle against pornography encroached too far on material protected by the First Amendment? In a case argued before the Supreme Court on January 12, the owner of a chain of adult entertainment businesses argued that RICO and the First Amendment are incompatible in this context.

Minnesota adult bookstore magnate Ferris Alexander was indicted in 1989 on racketeering and obscenity charges, based on his sale of four magazines and three videotapes deemed obscene. Sent to prison for six years, Alexander also was forced to forfeit his chain of thirteen stores, ten parcels of real estate, three vehicles, and nearly \$9 million in receipts. In addition, federal marshals trucked three tons of his magazines and videotapes to a local incinerator.

The government claims the forfeiture was appropriate, making Alexander pay for an "enormous racketeering enterprise" transcending the sale of seven obscene products. But in *Alexander v. U.S.*, Alexander, supported by civil libertarians, says the government's conduct in the case amounts to a frightening form of censorship that could cast a chill over legitimate expression as well as obscenity.

"It puts all kinds of publishers and distributors at tremendous risk," argued David Ogden, who filed an *amicus* brief in support of Alexander on behalf of the Freedom to Read Foundation and others.

In argument before the Court, Alexander's counsel said that forfeiture of inventory not found to be obscene by a jury amounts to an unconstitutional prior restraint, imposes a chilling effect on constitutionally protected speech, and is overbroad. He also contended that it violated the Eighth Amendment's prohibitions against cruel and unusual punishment and excessive fines.

The government argued, however, that when expressive materials are the subject of a RICO forfeiture, it is because of their status as assets related to racketeering violations, not because of their content or expressive nature. Reported in: *U.S. Law Week*, January 26; *USA Today*, January 12.

The Supreme Court declined January 11 to review a decision by the U.S. Court of Appeals for the Eleventh Circuit, which ruled that *Soldier of Fortune* magazine could be held liable in a civil suit for publishing an advertisement that "makes it apparent that there is a substantial danger of harm to the public," even if it stops short of explicit solicitations. The man who placed the advertisement was hired by two men to kill a business partner. The victim's sons brought suit against the magazine.

The appeal, *Soldier of Fortune v. Braun*, had been supported by several media groups, which contended that the appellate court had upheld liability on the basis of a vague and subjective standard that would increase the cost of advertising by requiring publishers to examine all advertisements with extra care. Reported in: *New York Times*, January 12.

On January 18, the Supreme Court refused to let a state university in Texas restrict the on-campus distribution of most newspapers. The court, without comment, let stand a ruling that said such a regulation violated the First Amendment.

Southwest Texas State University in San Marcos expanded its anti-solicitation rule in 1989 to include all newspapers that contain advertising. Distribution was limited to vending machines at five locations, a single "free expression area," or by subscription.

The *Hays County Guardian*, a free newspaper then distributed in San Marcos, challenged the policy, but U.S. District Court Judge Walter Smith threw out the suit in 1990. The U.S. Court of Appeals for the Fifth Circuit, however, last August ruled that the policy could not be applied to newspapers. Reported in: *Daily Sparks Tribune*, January 19.

schools

Milpitas, California

A San Jose judge January 8 upheld a school district's decision to drop the spelling game "Wizards" after two parents claimed that it made the occult look like fun. The Milpitas Unified School District gave different reasons for its decision to shelve the game in 1990: that it might harm children's self-esteem, blur the line between good and evil, and demean women.

A teachers' union said those reasons were but pretexts for an improper religious motivation. But Santa Clara County Superior Court Judge Peter Stone "most reluctantly" dismissed the teachers' suit, saying they had failed to offer evidence of religious motivation.

School officials' actions were "reasonably related to legitimate educational concerns," he wrote. "This court can-

not interfere with the decisions of the school board even though it may substantially disagree intellectually with what has occurred." Priscilla Winslow, lawyer for the Association of Milpitas Educators, said she expected the union to appeal.

"Wizards," intended for grades five through seven, divides students into groups to solve spelling-related problems. By reaching various goals, a group can increase its "powers" to different levels, from ordinary human to wizard, while traveling through a fantasy world to reach a hidden treasure.

Although the game is not on a state-approved list of texts, it has been purchased by at least 200 California districts since its introduction in 1982. The game's distributor said the Milpitas protest was virtually identical to about a dozen others around the country against the game. Reported in: *Oakland Tribune*, January 9.

Grand Rapids, Michigan

A federal judge sided with a seventeen-year-old high school senior February 3 and ordered his public school to remove a portrait of Jesus Christ that had been displayed in a hall for three decades. The judge ruled that displaying the picture at Bloomingdale High School was an unconstitutional violation of the establishment clause of the First Amendment. He gave officials until March 1 to remove the print. Reported in: *Jackson Clarion-Ledger*, February 4.

university

Berkeley, California

In ruling that the university cannot make students pay fees supporting campus groups whose ideologies they oppose, the California Supreme Court struck a blow to the University of California at Berkeley's free speech tradition, student leaders claimed February 4. The decision could silence some of the campus' most outspoken organizations, said Margaret Fortune, president of the Associated Students of the University of California.

The court, in a 5-2 ruling on February 3, held that the campus violated some students' constitutional rights by using part of a mandatory \$21 annual student activity fee to fund groups whose views those students may oppose. To point out the conflict, the court noted that the mandatory fee supports both the Berkeley Students for Choice and the Berkeley Students for Life, pro-choice and anti-abortion groups. The justices said students must be able to apply for a refund of the portion of the fee that would support the offending group.

Mark Himmelstein, attorney for the student association, said the very example cited by the court showed that the system actually complied with the First Amendment. "All case law says that you can't pick and choose which ideas you will support, and that if you support one, you should support all," he said. "You can't support one group and not the other

because of the content of their speech." Himmelstein said he would appeal the ruling to the U.S. Supreme Court.

"I think it'll have a devastating effect on the students' ability to organize and have a voice," Fortune said. "In taking away resources by which the students get their message to the public, you in effect cripple them." But Richard M. Stephens, a Pacific Legal Foundation attorney on the winning side of the case, said students "finally have the right to choose what sort of political speech one is going to engage in and support."

Student government at Berkeley collects about \$600,000 a year in student fees and disburses it to about 150 organizations, ranging from the UC Flying Club to the Disabled Students Union to a Mexican-American cultural group.

The mandatory fees, which are common at public universities across the nation, have come under attack, mainly by conservatives. But this was the first time that a high court had ruled against the use of fees for political groups and mandated a refund. The ruling will affect all nine University of California campuses and the twenty California State University campuses, although CSU already prohibits the use of student fees for political or ideological groups. Reported in: *San Jose Mercury News*, February 5.

electronic privacy

Austin, Texas

A March ruling by a federal judge in Austin pushed privacy laws a bit further into the computer age. For the first time, attorneys said, a federal court explicitly ruled that the Privacy Protection Act, which mandates subpoenas in many cases, applies to electronically stored information, and that computer bulletin boards and electronic mail are safeguarded by federal wiretap laws.

The case stemmed from a U.S. Secret Service raid three years ago on Steve Jackson Games, an Austin publisher of role-playing games and books. The raid, one of many the service conducted in search of electronic documents believed stolen from Bell South, resulted in the seizure of some of the company's computers and masses of electronically stored information.

Although the ruling is not binding on other federal courts, and still faces a possible appeal, attorneys said Judge Sam Sparks' opinion had broad implications for privacy law. The decision could strengthen the legal protections available both to traditional news-gathering concerns and publishers, and to users of computer services.

"It's a highly visible case in the computer world," said Marc Rotenberg, of Computer Professionals for Social Responsibility. "The judge has recognized and uplifted values that are taken for granted in the nonelectronic world."

Federal law and court rulings have not kept pace with rapid changes in technology. The Privacy Protection Act of 1980, for instance, generally safeguards newspapers, broadcasters

and publishers from unreasonable government search or seizure, by forcing law enforcement officials to get a subpoena before they can demand "work product."

But "these days, even traditional publishers do all their work on computers," said Mike Godwin, counsel for the Electronic Frontier Foundation. Until now, no court had said that electronically stored files and information are also specifically protected under the act.

Also significant was Judge Sparks' rejection of the Justice Department's claim that the Privacy Protection Act didn't apply to records it seized "inadvertently," while carting off more than three hundred floppy disks, two computers and the computer on which a bulletin board was run.

"If they could seize all that from these guys legally, why not seize records at the *New York Times*?" asked Jane Kirtley, executive director of the Reporters Committee for Freedom of the Press.

Jim George, an Austin attorney who represented Steve Jackson Games, said the ruling made clear that, just as the government can't wiretap or rummage through the post office for an individual's mail without court permission, it can't monitor electronic mail. He said the ruling could prove an important first step toward treating electronic mail and computer bulletin boards like more traditional means of communication. "The concept of privacy in communications shouldn't depend on the medium of delivery," he said.

In his opinion, Judge Sparks noted that the Secret Service had legitimate concerns about intrusions into computer systems, including those of telephone systems and the Defense Department. But in its rush to raid, the Secret Service didn't care what other information it seized "incidentally," or what impact its actions had on the company.

The search and seizure at Steve Jackson Games in March, 1990, was part of a wider crackdown on computer hacking. Agents said they believed an employee of the firm might have stored a copy of telephone documents on a company-run bulletin board. They used a search warrant to seize several computers and large amounts of data, including more than 160 electronic messages, and an electronically stored book and game the company was about to publish.

As it turned out, the allegedly sensitive data in the telephone document was publicly available for about \$13 from another Bell company. No charges of any kind were ever filed against the employee or the Jackson company. Further, there was "no valid reason" not to copy and return all the seized material within hours or days, Judge Sparks said. Jackson said the four months delay caused by the raid forced him to lay off eight employees.

By keeping its search warrant and seizure order secret, the Secret Service disregarded the safeguards in federal laws that should have given the company a chance to contest or modify the seizure order, the judge said. Despite government denials, evidence showed that the agency read and destroyed messages in violation of federal wiretap laws. Reported in: *Wall Street Journal*, March 18.

broadcasting

Washington, D.C.

A federal appeals court in Washington, D.C., in late February, postponed implementation of new Federal Communications Commission rules that would have required broadcasters to channel "indecent" programming to the hours of midnight to 6 a.m. The U.S. Court of Appeals for the District of Columbia Circuit placed a stay on the effective date of the FCC rules, which were supposed to become effective the week of the ruling. Instead, the court ordered a speedy review of the new rules, and said oral arguments in the case would be heard in the Fall.

The action meant that broadcasters will continue to operate under rules that allow the airing of allegedly indecent programming between 8 p.m. and 6 a.m. The midnight-to-6 a.m. rule was adopted by the FCC on January 22, under orders from Congress. The FCC defines indecent programming as material that "describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

Broadcasters, Hollywood and First Amendment activists immediately filed suit to protest the new rules, which they claimed were overly restrictive. They asked the court to continue the more lenient policy, arguing the new rule "reduces adults to seeing and hearing material fit only for children." Reported in: *Variety*, March 1.

advertising

San Francisco, California

A California statute that regulates environmental claims in advertising is, for the most part, constitutional, the U.S. District Court for the Northern District of California held December 23. The statute does not curtail speech in violation of the First Amendment, nor is it unconstitutionally vague, except for its definition of "recyclable."

The statute prohibits manufacturers or distributors of consumer goods from representing their products as "ozone friendly," "biodegradable," "photodegradable," "recyclable," or "recycled" unless the products satisfy definitions in the statute.

The court found the legislation "clearly reasonable" in believing that uniform definitions would promote the state's consumer protection goals. The court also found that the advertising restrictions are no more extensive than necessary to further the state's interests. Reported in: *U.S. Law Week*, January 26.

New York, New York

A federal judge ruled February 5 that Amtrak must allow an artist to display a photo montage criticizing Coors brewery on a billboard that the railroad owns at Pennsylvania Station in New York. The artist, Michael Lebron, had rented

the space from Amtrak's leasing agent for two months, but the railroad declined to let him install his work, which it labeled "political." The work criticized the Coors family for its support of right-wing causes.

U.S. District Court Judge Pierre Leval ruled that Amtrak's action constituted censorship and violated Lebron's First Amendment rights. Amtrak had argued that it is a private entity and thus immune from First Amendment restrictions. Judge Leval disagreed because of the government's involvement in Amtrak's structure and operation. Reported in: *Miami Herald*, February 6.

prior restraint

Montgomery, Alabama

An Alabama state court judge temporarily blocked publication of a book about the murder of a woman who was dismembered by her husband. Morgan County Circuit Court Judge Richard Hundley issued the temporary restraining order in January blocking the book at the request of the man who adopted the victim's three children. He claimed that without changes the book will cause the children mental and emotional harm and invade their privacy. Judge Hundley said he would decide later whether to issue a permanent injunction against publication of the book. Reported in: *Montgomery Advertiser*, January 13.

U.S. government

Washington, D.C.

A Department of Defense questionnaire that asks holders of "secret" security clearances to divulge their life histories concerning criminal arrests, credit, mental health, and drug and alcohol use does not likely violate, on its face, the Fifth Amendment privilege against self-incrimination or the constitutional right to privacy, the U.S. Court of Appeals for the District of Columbia Circuit ruled for January 29. It reversed a preliminary injunction against use of the questionnaire.

Employees contended that requested disclosure of illegal drug use violated their privilege against self-incrimination. The court said the threat of firing may constitute compulsion in that context, but only if the information sought may be used in a criminal prosecution. Because none of the employees had actually declined to provide the requested information, the issue of compulsion turned on what the government might do in such a case.

The challenge based on the right of privacy also fell short, the court found, because there are possible valid applications of the questions at issue. Reported in: *U.S. Law Week*, February 16.

Washington, D.C.

An Environmental Protection Agency ethics regulation that permits employees giving "official" speeches to accept travel expense reimbursement from private sources, but forbids the same to employees giving "unofficial" speeches, does not on its face violate the First Amendment, the U.S. Court of Appeals for the District of Columbia Circuit held on January 29.

Two EPA employees who have criticized agency policies for years challenged the disallowance of travel reimbursement for "unofficial" speech as an "economic bar to speech." But the court said the employees remain free to speak on any topic. A facial challenge must show that the rule could never be validly applied, the court stressed. It deemed the rule content-neutral because it regulates the "secondary effects" of speech in attempting to avoid the appearance of impropriety that could result if EPA employees, in accepting money from private sources outside EPA's scrutiny, appear to be "serving two masters." That compelling government interest outweighs the "incidental" burden on employee speech, the court ruled. Reported in: *U.S. Law Week*, February 16.

Washington, D.C.

The Executive Office of the President and the National Security Council were not free to purge electronic data on computer systems prior to the change in administrations, the U.S. District Court for the District of Columbia ruled January 6. At least some such data is subject to preservation under the Federal Records Act (FRA).

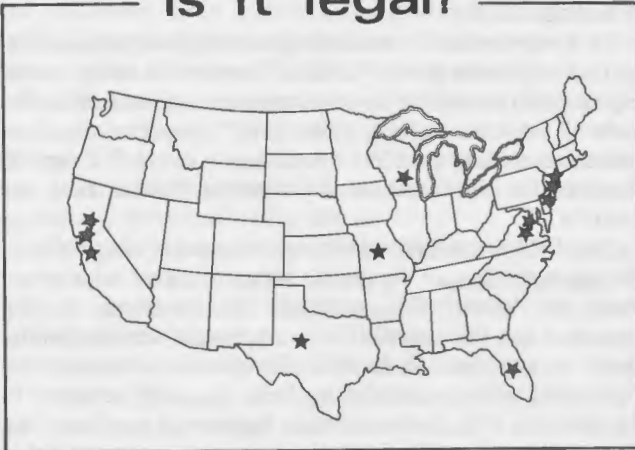
The court concluded that the FRA applied to electronic communications systems, because the statute defines federal records to include materials made or received in the transaction of public business "regardless of physical form or characteristics." Although agency staff allegedly were directed to preserve materials that are federal records by printing paper copies, the court said this procedure was insufficient. Reported in: *U.S. Law Week*, January 26.

obscenity

Charleston, West Virginia

A West Virginia law authorizing counties to adopt anti-obscenity laws has been ruled unconstitutional. The state law provided counties with a model text they could adopt, and Wood County passed an ordinance last year. In August, U.S. District Court Judge Charles Haden blocked the ordinance from taking effect after the owners of four video and bookstores sued. On January 14, he struck down both the county and state laws because they describe obscenity as defined by "individuals regardless of age." He said children cannot be considered a part of the group that decides what is obscene. Reported in: *Orlando Sentinel*, January 16. □

is it legal?



libraries

Fairfax, Virginia

Fairfax County library officials, responding to an outcry over the availability of a gay weekly newspaper in library lobbies, on February 17 modified their policy of allowing groups to distribute publications at branch libraries. The library board voted unanimously to allow local branch managers who get complaints about free publications to decide whether to remove them from displays near front desks. The branch librarians will be required to base their decisions on space and on demand for a publication. They will not be allowed to censor material, according to board chair Phylis Salak.

The action came in response to dozens of complaints from residents who have demanded that the library system remove the *Washington Blade* newspaper from lobbies, where stacks of the papers have been available for the taking since late last year. Residents have said they are concerned about children reading the gay newspaper.

In a separate issue, a library committee was considering a request to remove the *Blade* from the library's own periodical collection. Reported in: *Washington Post*, February 18.

schools

Sacramento, California

Plans to paint a burning American flag on a wall of Elk Grove High School were reduced to ashes February 16. District trustees ruled that students' free speech rights don't extend to controversial murals on walls of a public campus.

"We're all part of a community and we need to look carefully at how we project our schools and our image," said board chair Kay Albani.

The Model United Nations/Junior Statesmen Club had proposed painting a burning Stars and Stripes on an interior wall at the school as a symbol of civil liberties. The proposed mural would have depicted the flag in flames, with a scorched hole in the center, a list of civil liberties, and a notation about the landmark Supreme Court decision protecting the right to burn the flag.

The mural was designed to stimulate thought about controversial issues. "The mural is not in favor of or in opposition to flag burning, but rather it's in favor of the First Amendment," explained Heather Markgraf, president of the club. But Principal Paula Duncan disagreed, and she refused to permit the mural. The governing board's 6-0 vote upheld that decision.

Duncan said the mural could be misinterpreted as an endorsement of flag burning and a poor example of citizenship. "I believe that many people in our community — and students as well — will find a mural depicting our flag in flames to be offensive," she said.

Club member Steve Sabicer said the school was censoring students. "If decisions were made solely on these grounds, the school couldn't teach evolution or sex education or works of literature such as *Huckleberry Finn*," he said.

Trustee Brian Myers said 90 percent of those who contacted him about the mural were against it. But Emily Smith, vice president of the club, said the First Amendment is designed precisely to protect expression that is not popular. "To be honest, I don't think the public opinion at our school is really relevant in this matter," she said. Reported in: *Sacramento Bee*, February 12, 17.

Columbia, Missouri

On January 11, the Columbia Board of Education passed a policy governing school-sponsored activities that will give district officials formal control over students' freedom of expression. A new school-sponsored activities policy declares that because the board is responsible for school-related activities, it "retains the authority to control the style and content of school-sponsored expressive activities." The policy also states that students have the right to freedom of expression "subject to reasonable regulation related to educational concerns."

Mark Sableman, president of the ACLU's East Missouri affiliate, called the policy "open-ended and broad," and said it would be difficult to administer. "It looks to me like they are probably trying to assert the maximum control over student expression that the Supreme Court has allowed. They're basically saying, 'We can do whatever we want to do,'" he said. "People should know what's required of them to act lawfully. These policies fail this test." Reported in: *Columbia Missourian*, January 12.

Trenton, New Jersey

New Jersey's largest teachers union appealed to the Appellate Division of the state's Superior Court January 7 to prevent the controversial classroom news program Channel One from being aired in schools in the state. "Students are being exploited by Channel One for private economic gain," said Arnold Mellk, an attorney representing the New Jersey Education Association (NJEA).

The union was appealing the state Board of Education's December 2 decision to allow the 12-minute program — which includes two minutes of commercials — in classrooms. The board's decision affirmed an August 6 ruling by then-Education Commissioner John Ellis, who overturned an administrative law judge's ruling that the commercials infringed upon school time.

The NJEA originally brought the case on behalf of a family seeking to block the Trenton Board of Education from signing a contract with Whittle Communications, the Tennessee firm that markets Channel One. Statewide, 307 schools have signed contracts to carry Channel One. Reported in: *Hackensack Record*, January 8.

New York New York

New York state's top education official has ruled that the New York City Board of Education overstepped its authority and infringed on teachers' rights by requiring that all AIDS education stress abstinence as the most effective means of avoiding the disease. State Commissioner of Education Thomas Sobol said February 8 that he had overturned a board resolution that he contended established a "stopwatch approach to education" by dictating how and when teachers should teach about AIDS.

The resolution, Sobol wrote, "reaches beyond the city board's legitimate interest in setting policy and approving curriculum and intrudes impermissibly upon the teacher's latitude to teach the curriculum in the most effective manner."

The resolution, passed by a 4-3 vote last May, was adamantly opposed by then-Schools Chancellor Joseph A. Fernandez as "micro-management." That vote marked the first time the board publicly rebuffed Fernandez and accelerated a feud between the Chancellor and the board majority that led to his dismissal.

The practical impact of Sobol's ruling was unclear because the policy was not applied uniformly. For instance, the policy required outside organizations to sign a waiver saying that members would stress abstinence when teaching about AIDS in public schools. Some groups that refused to sign were allowed to teach in schools, but others were barred. And in other cases, groups refused to enter the schools in protest of the policy.

The group of civil libertarians, teachers, elected officials, and AIDS educators who had asked Sobol to overturn the resolution applauded his decision as a victory for free speech. "Dr. Sobol's overturning the resolution really recognizes

that there is a range of behaviors young people have to know about to prevent the spread of AIDS," said Frances Kunreuther, executive director of the Hetrick-Martin Institute, which had stopped teaching in the schools as a protest.

Sobol's ruling struck down the board's resolution on two grounds. First, he found that the board had failed to consult with its AIDS Advisory Council, as required under state regulations, before approving the resolution. Second, he determined that the resolution overextended the Board's legal power to establish educational policy.

"It's a constant balancing act between setting policy and carrying it out," Sobol said. "This decision says the board ventured beyond the realm of policy making into the realm of deciding how instruction should be carried out." Reported in: *New York Times*, February 9.

Greenfield, Wisconsin

The January suspension of a Greenfield High School special education student for hurling racial slurs at a black teacher aide prompted the school board to pass a district-wide policy banning hate speech by employees and students. Superintendent Ronald Wojack said that the same aide three years ago was racially insulted by another student. High School Principal Robert Laabs requested the policy, although he called the incident "an isolated one."

"The relationships we have here are very good. We have our share of kids arguing, but it's usually not racial," Laabs said.

The policy, approved February 8, does not recommend specific disciplinary action for students or employees who violate the rule. Wojack said students who use discriminatory slurs usually were suspended under the previous rules, and that policy would continue. He said he did not know what would happen to an employee who violated the new rule.

The policy states that "the school district will not tolerate comments or other expression by students or employees which insult, degrade, or stereotype any person or group because of sex, race, religion, national origin, or physical, mental, emotional or learning disability." Laabs said the policy would cover such items as "T-shirts demeaning to gender issues."

Board President Robert Heule said he was not concerned about the questions of constitutionality that have clouded hate speech rules at universities, including a controversial rule declared unconstitutional at the University of Wisconsin.

"I think we can restrict racial slurs in a high school setting," Heule said. "I think academic freedom as it applies to a college campus is much less restricted than it is at a high school, middle school or elementary school. Kids need to learn respect early in life." Reported in: *Milwaukee Journal*, February 9.

university

Berkeley, California

After repeated warnings from University of California, Berkeley, officials to just get dressed, Andrew Martinez, better known as "the naked guy," was expelled from the university for his repeated appearances on campus without clothing. University officials said they attempted to craft a compromise with Martinez, advising him that proper attire would halt all disciplinary action.

Martinez, whose exposures gained national attention, likened the expulsion to "a cop enforcing an unjust law." The 19-year-old junior contended that nudity is a form of speech. University officials sent Martinez a certified letter on January 21 notifying him of the decision following an "exhaustive" process. The final decision was made by Dean of Student Life Francisco Hernandez.

Martinez was suspended for two weeks in late November for violating the campus nudity policy imposed after he began showing up naked on campus. His exploits spawned a rash of public nude-ins. "What I am getting out here is there's a lot of social control going on here," Martinez told one such rally. "A really unjust system has been perpetuated."

Most people on the campus responded to Martinez with chuckles or mild chiding, but some students and community members complained that they found the presence of a naked stranger threatening, especially some women who encountered Martinez on campus after dark.

Student body President Margaret Fortune expressed sympathy with Martinez's parents, but said the expulsion took a back seat to more immediate concerns with student fees and a strike by graduate teaching assistants. "We've got more pressing details to deal with than 'the naked guy' coming to class without his shorts," she said. Reported in: *Oakland Tribune*, January 27; *San Jose Mercury-News*, January 27.

broadcasting

Washington, D.C.

Federal Communications Commission procedures for penalizing broadcasters accused of airing indecent programming violate the First Amendment, a coalition of broadcasters, film studios and journalist groups charged in a suite filed in federal court in Washington in late February. The suit, filed just one day after the U.S. Court of Appeals in Washington stayed the effective date of new FCC broadcast indecency rules (see page 79), claims broadcasters are unfairly placed at the commission's mercy once they have been fined for indecency.

"These procedures fail to afford broadcasters any assurance of prompt FCC action or, even more important, any means of obtaining prompt judicial review," the suit stated.

Timothy Dyk, lawyer for the plaintiffs, said there are no

"constitutional defenses" for broadcasters accused of indecency. For that reason, the majority of broadcasters cited for alleged violations by the FCC pay the fine rather than face the "enormous time and expense" fighting the case. The plaintiffs asked the court to issue a preliminary injunction preventing the FCC from continuing its indecency fine practices. Reported in: *Variety*, March 1.

picketing and privacy

San Jose, California

After an impassioned debate over where freedom of speech and the right to privacy intersect, the San Jose City Council voted 8-3 February 9 to prohibit picketing directed at specific homes. The council adopted the policy as an emergency ordinance taking effect immediately, to thwart abortion protesters' plans to picket doctors' homes.

"I cannot allow residents in this city to be subject to that type of harassment and intimidation," Mayor Susan Hammer said in urging that the ordinance be passed. For at least ninety days, until the council acts on a non-emergency measure, it will be a misdemeanor to picket within 300 feet of a targeted home. Leafletting and marches in neighborhoods were still allowed. Picketing aimed at individuals remained permissible, too, as long as the pickets stay far enough from the target's property line.

Most of the council's debate centered on the right to privacy, the tactics of abortion protesters, and the freedom of dissidents to get their views across. Sally Behel of Planned Parenthood said protests at doctors' homes "strike below the belt." On the other side, Art Bickford said, "It's necessary when picketing to connect the object with the protest, and with 300 feet, who's going to be able to?"

San Jose officials said the new ordinance was less restrictive than a similar law upheld by the U.S. Supreme Court in the 1988 case of *Frisby v. Schultz*. In that case, the town of Brookfield, Wisconsin, banned picketing "before or about the residence" of the person being targeted.

The precise meaning of "before or about" was the crucial issue that divided the court, however. The majority upheld the ordinance because justices found it to prohibit "only focused picketing taking place solely in front of a particular residence." Whether a more precise 300 foot perimeter would also pass constitutional muster remains unclear. Reported in: *San Jose Mercury-News*, February 10.

prisoner's rights

New Brunswick, New Jersey

Five state inmates and three politically oriented periodicals brought a class action lawsuit February 10 against the state

Department of Corrections, complaining that the department is unfairly censoring inmates' mail. The suit, filed in state court, alleges that besides violating the publications' and the inmates' First Amendment rights, the department is breaking its own rules limiting mail censorship to items that might endanger prison security.

"We fully understand the Department of Corrections' need to exclude publications or articles that might address things like how to build a bomb or how to fashion a knife out of prison implements," said Elizabeth B. Cooper, the plaintiffs' lawyer. "But that is not what these publications are about."

Cooper described the periodicals as "newsletters of political and community-based organizations." One of the publications, *Love and Rage*, was described as "a revolutionary, anarchist bimonthly." Its delivery to inmate Ojore N. Lutalo, a plaintiff in the case who had written an article, was denied.

The other censored publications include the *Black Community News Service*, a quarterly mailed to inmates by the Black Panther Community Newspaper Committee of New Jersey, and *Prison News Service*, a Canadian bimonthly. Reported in: *Hackensack Record*, February 11.

etc.

Stuart, Florida

When Patricia Begley wore a T-shirt emblazoned with the slogan "Fuck Censorship" that she had borrowed hastily from her daughter for a quick trip to a convenience store February 16, Martin County Sheriff's Deputy Bill Ward decided it was time to act. Noting the presence of women and children at the store, he charged Begley with disorderly conduct arising from the "patently offensive" nature of her shirt. Prosecutors, however, decided that they could not pursue the case.

"The Supreme Court has ruled that people can walk around with language such as that on their T-shirt," said assistant state attorney Steve Levin. "The Supreme Court has labeled that free speech, therefore we obviously cannot prosecute regardless of individual beliefs."

ACLU attorney James Green said that's not enough. He and Begley said they would file a federal lawsuit against Ward and the sheriff's department. "I've never seen anything quite this egregious," Green said. "This deputy should be sent back to the police academy." Reported in: *Stuart News*, February 20.

Waco, Texas

A federal agent injured in the February 28 shootout with the Branch Davidian religious cult filed a civil lawsuit against a local newspaper March 17 claiming that it had alerted members of the group about the impending raid. The suit says the newspaper should pay the agent from the Bureau of Alcohol, Tobacco and Firearms, John T. Risenhoover,

for his injuries. The agent offered no proof for his assertions against the newspaper, the *Waco Tribune-Herald*. Bob Lott, the paper's editor, denied the accusation.

On the day before the raid, the *Tribune-Herald* began publication of "The Sinful Messiah," a series about the cult's leader, David Koresh, that detailed his hold over cult members, his weapons cache, and accusations by former cult members that he was a child abuser.

Bureau officials have said that they thought someone informed the group about the raid, which breached the operation's secrecy, and probably contributed to the deaths of four agents and injuries to fifteen others. But officials have insisted that they do not know who placed the phone call. By blaming the newspaper, Risenhoover went well beyond any declarations by his agency. Reported in: *New York Times*, March 18. □

(on line . . . from page 68)

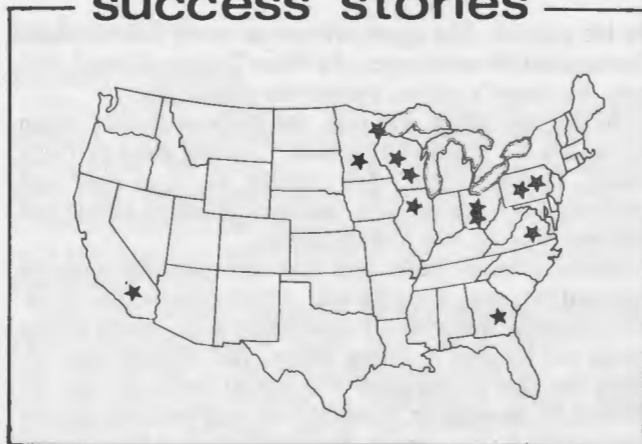
Internet and will play a key role in building the National Research and Education Network (NREN), could find itself in a situation similar to that of the National Endowment for the Arts.

"I think the NREN could run the same kind of risk," said Wolfe. Such battles as those fought by the arts endowment over its support of controversial artists could be costly to efforts to develop a national system of computer networks.

National Science Foundation officials insist, however, that the federally financed NSFNET "backbone" that ties together the Internet in the United States is used for education and research, not for pornography. Stephen W. Wolff, director of the foundation's networking division, said the agency responds to reports of inappropriate network traffic by re-routing it to networks that are not publicly supported.

But Cornell's Lynn still expressed fear that "people can always take things the wrong way and make larger issues of them." He suggested that the best way to win the battle was to stress the comparison between the computer networks and the interstate highways. "It doesn't seem to stop the federal government from investing in the highway system because trucks on the highways deliver *Penthouse* magazine," he said. Reported in: *Chronicle of Higher Education*, January 27. □

— success stories —



libraries

Naperville, Illinois

The Board of Trustees of the Naperville Public Library voted unanimously February 3 to retain *Playboy* magazine and to stand behind its library card system, which does not prohibit children from checking out adult materials. "We will not censor," board President Jack McCambridge declared.

The board cast its votes at a spirited meeting that followed a petition drive that garnered the signatures of eight hundred residents seeking to have the library drop its subscription to the magazine and another six hundred who wanted a new juvenile library card application that would require parental approval for borrowing "explicitly adult and R-rated materials." The petitioners called *Playboy* pornographic and "inappropriate for the community."

But most of the three hundred people gathered at the board meeting favored the policy of keeping the magazine behind the librarian's desk, where it is available to anyone with a valid library card. "*Playboy* has been part of the American scene for over forty years. It has over 3.5 million subscribers, which includes a definite following of Naperville patrons," said board member George Pilkenton.

Julie Byrd, who led the petition drive, told the board the magazine was inappropriate for a public library because as pornography it is linked to crime, violence, and child abuse. She said taxpayers should not have to pay for pornography. "These policies are in disregard to the Judeo-Christian ethics which are the basis for values in Naperville," Byrd said.

But others told the board that censorship was not the library's responsibility. "I can't see this being anything but an issue of censorship," said resident Jim Hemphill. "If we

pull this magazine from the shelves, what I want to know is where will censorship end." Reported in: *Aurora Beacon-News*, February 4; *Chicago Sun-Times*, February 3; *Chicago Tribune*, January 31, February 5.

New Prague, Minnesota

The Scott County Library Board turned down a request in January from a group of petitioners who called for the removal or restriction of *People* magazine at the New Prague Memorial Library. Scott County Library Director Jan Williams said the petition was received last October following an issue which included a photograph of the singer Madonna with bare breasts.

"The October 12 issue of *People* magazine has several prurient photos, headlines and captions which our children are exposed to since the magazine is kept on an accessible shelf next to the children's books," the thirty-two petitioners noted. "This magazine regularly deals with sleazy topics and offers titillating photos and so, we think it would be an acceptable compromise to put the magazine into a restricted to adults setting or to let adults request it from another library."

"We discussed the matter with the staff in New Prague," Williams said. "I spoke personally with the patrons who initiated the request several times before it went to the board. The library board has gone on record in support of the *Library Bill of Rights* in that we provide materials on all subjects and all issues and all points of view." Reported in: *New Prague Times*, January 14.

Columbus, Ohio

Members of South-Western City Schools Board of Education on February 8 refused to ban a series of books featuring horror stories from the district's elementary school libraries. The board voted 4-1 to reject an appeal by area parents to have the *Scary Stories* series of books by Alvin Schwartz removed from library shelves. The board also defeated, by a 3-2 vote, an effort to have access to the series restricted.

The vote came on an appeal by a local parent, Kendra Hall, who connected *Scary Stories 3* with nightmares that her second grade daughter was having in December. "I don't want my children being scared by materials they read in school," Hall said, adding that many children do not understand that the book is fiction. "What this book really teaches to children is that it is OK to hurt other people and maybe then to teach them to become hard hearted," she said. "With books like this we can't build a secure environment for our children. Books shouldn't be a source of fears. Something like this has no place in the schools."

School Board President Mark Hutchison said he did not see a problem with the book being in the school libraries. He said that children should be given the choice of what books they want or do not want to read. Hutchison added that parents should pay closer attention to what their children

bring home. "I always look at what my kids bring home," he said.

Hutchison said he refused to ban a book from the school libraries because it would be censorship and violate the First Amendment. "I have a problem with banning books," he said. Reported in: *Westside Messenger*, February 15.

Medina, Ohio

A novel banned from a high school library's shelves after parents complained is again available to students. After hearing complaints from parents, the school board decided February 22 that *Night Over Water*, by Ken Follett, should be returned to open shelves despite some sexually explicit passages.

"The point is different people find different things objectionable — it's very difficult to define a community standard and draw the line there," Superintendent Charles Irish explained. "Basically, I don't think it's the school's role to censor books." Parent Shirley Ann Walker, who asked school officials to remove the book, said she was disappointed by the decision.

After Walker and others brought their complaints to the board's January meeting, the student council at Medina High School designed and distributed a T-shirt to protest the book banning effort. The front of the shirt read, "Germany, 1943 -- Medina, 1993 . . . Celebrating 50 Years of Censorship," with a drawing of a kneeling student gagged and bound. The back of the shirt listed 33 frequently challenged books — plus the World War II novel by Follett.

"Even though we know this isn't as severe as the book burning that went on in Nazi Germany, we wanted to draw a correlation," said Melissa Thompson. "No one has the right to ban books." Reported in: *Akron Beacon Journal*, February 13, 24; *Columbus Dispatch*, February 21; *Ravenna Record-Courier*, February 24.

Bloomsburg, Pennsylvania

Shel Silverstein's controversial book of children's poetry, *Where the Sidewalk Ends*, passed a Central Columbia School District review and will remain in the district's elementary library. The school board voted February 22 to follow a review committee's recommendation to refuse a parental request to remove the book. In January, Deidra Unger objected to the book, which was brought home by her eight-year-old son. Unger said a poem titled "Dreadful" talks about how "someone ate the baby." Elementary librarian Becky Frost said the book is immensely popular with children and is rated highly by reviewers.

"I'm not trying to ban the book itself," Unger said. "I just don't think books like this should be in the elementary school. The baby one sounds like Jeffrey Dahmer wrote it. Who knows? Maybe he read this when he was a kid."

"Do parents know what their kids are reading in the library?" Unger asked. "I feel guilty myself. I never picked

my kids' books up and read them. Maybe we're just as guilty."

School board vice president Ray Hock said the committee supported inclusion of the book unanimously. "I think part of the problem is the book does contain some violent language, but so does 'Little Red Riding Hood' and other tales," he said. Reported in: *Bloomsburg Press-Enterprise*, January 16, 19, February 23.

Boyertown, Pennsylvania

On January 12, the Boyertown School Board accepted the unanimous decision of a seven-member evaluation committee to allow all four district copies of the primary children's reader *Caleb and Kate*, by William Steig, to remain in circulation in elementary schools. In December, an unidentified parent charged that the book depicts a "dismal outlook on marriage and life." The parent claimed that the book's illustrations were too violent.

According to committee chair and elementary school principal Michael Hipple, the parent had the opportunity to appeal the decision to the school board, but chose not to do so. Reported in: *Times of Boyertown Area*, January 14.

Nashotah, Wisconsin

A book addressing different elements of the occult is not a danger to students and should remain on Nashotah school library shelves, a school committee voted unanimously January 7. *Stars, Spells, Secrets and Sorcery*, by Barbara Haislip, is mostly a lighthearted book that does not promote Satanism, the Library Media Selection Committee concluded.

District resident Sue Brandt filed a written concern about the book in December, which prompted the first meeting of the new citizens committee. Brandt said she was "still not crazy" about the book, but accepted the decision because the library had ordered other books to show the other side of the issue. "Whatever decision you make is fine with me," she told the committee. Reported in: *Lake Country Reporter*, January 12.

schools

Anaheim, California

In what one Anaheim Union High School District official said was the first challenge of its kind in fifteen years, an advisory committee told the Board of Trustees in February that *Ordinary People*, by Judith Guest, should remain on the sophomore core reading list despite a parent's protests.

Treva Brown said she was appalled when she discovered her son was reading the book. "I asked him what he was reading and doing in school, and he said he was reading *Ordinary People*," I said, "*Ordinary People*? Doesn't that have bad words in it?" She said the book's treatment of teenage sex, suicide and a dysfunctional family were depress-

ing and "degrading to Christians."

But members of a review committee of teachers and parents said the novel was not offensive. "The entire committee thoroughly evaluated the book, taking into account its relevance to the curriculum, age level appropriateness, literary merit, theme, plot, character development and the author's treatment of teen suicide and profanity," the committee said in its written report. Reported in: *Anaheim Bulletin*, February 18.

Jonesboro, Georgia

The Clayton County school board never got a chance to rule on a Jonesboro mother's request to have John Gardner's novel *Grendel* removed from the school district's supplemental reading list for advanced English students. Teresa Buckalew acknowledged February 10 that she had submitted a letter to school officials dropping her appeal.

A week earlier, Buckalew, whose daughter attends Lovejoy High School, denounced the book at the board's monthly work session, charging that certain scenes and language in the book were too violent and graphic. "This book doesn't have any educational value in it. It is demeaning and gross," she said. "The whole book is about how to kill people." The 1971 novel is a retelling of the medieval epic of *Beowulf*, from the point of view of the monster slain by the knight-hero.

The book had been deemed appropriate for supplemental reading in advanced English classes by committees at both the school and system level and by Superintendent Bob Livingston, but Buckalew appealed to the board. School officials had promised, however, to strengthen guidelines to better inform parents about such material and to assure that students and parents know that substitutes are available and permitted.

Board chair Linda Barrett said she was not surprised by the last-minute withdrawal of the appeal. "I think she understood the changes the educators offered to make and she accepted those changes," Barrett said. Reported in: *Atlanta Constitution*, February 11; *Marietta Daily Journal*, January 23.

Duluth, Minnesota

Students were allowed to attend a dance company's performance February 8 despite the complaints of some parents that it might be sexually provocative. The Duluth School District had canceled plans for students to attend a matinee performance by Men Dancers, a nine-man troupe from Jacob's Pillow Dance Festival in Becket, Massachusetts, after six parents complained. The parents objected to ads that depicted dancers holding others aloft. All were bare-chested with scanty clothing. The district reversed itself, however, after scores of protesters said students should be allowed to attend. Reported in: *Orlando Sentinel*, February 8.

Fauquier, Virginia

A committee appointed by assistant superintendent for instruction Dr. Lowell Lemons, which consisted of three representatives from Fauquier's public schools and two representatives from the community, unanimously voted against a resident's challenge of the use of a film series in Fauquier High School. The challenged series, entitled *Stress: The Time Bomb Within*, deals with different aspects of stress management.

The fourth film in the series, *Counter Attack*, describes some of the different techniques that individuals use in relieving stress. One of the methods discussed is transcendental meditation. According to Gene Aubry, who challenged the use of the film, "The material is not presented as anything other than a remedy," although its origins are in the Hindu religion. "It can be presented as a religious practice, but it is disguised as a secular practice when indeed it is not," Aubry said.

According to teacher Lesley Benedusi, the teachers who use the film were surprised at the objection to it, because meditation was presented merely as one option among many for relieving stress, in addition to proper diet, physical exercise, self-analysis and bio-feedback. She agreed with the general opinion at the hearing that the film is not especially well done and is outdated, but added, "With exams, some students are looking for ways to relieve stress." She said the film was the only one available to teachers that deals with the issue. Reported in: *Fauquier Times-Democrat*, February 10.

Stevens Point, Wisconsin

Anastasia Krupnik, by Lois Lowry, will return to Stevens Point Area School District classrooms and the elementary school recommended reading list, the school board decided unanimously February 15. The decision reversed a December committee recommendation to remove the book (see *Newsletter*, March 1993, p. 45). Board members approved the book, however, under the condition that parents be given recommended reading lists containing descriptive paragraphs on the books' contents.

"I'm pleased if they truly inform us ahead of time," parent Gail Smiley said. Smiley was one of the initiators of the request to remove the book. Smiley and other parents objected to the use of profanity and references to underage drinking in the book. "If I would have known ahead of time what she was reading, this could have been avoided," Smiley said. "I may have even let my daughter read it."

The board's action came in response to an appeal by reading and language arts coordinator Rose Ylimaki and about eighty teachers, administrators and community members. "I'm very pleased that *Anastasia Krupnik* has been restored for classroom use," Ylimaki said. "I'm pleased with the board's policy and they have tried to accommodate parents' rights." Reported in: *Stevens Point Journal*, February 16. □

(censorship dateline . . . from page 76)

"They stand behind the show," Wright said. "They say it is controversial and issues are discussed, but they are going to continue with it as in the past." But Wright called the show "offensive, in bad taste" and "sometimes you could even say gross." He added: "Some things you just don't feel belong on your air."

"It was difficult, but it's the decision we feel is right for our specific marketplace," Wright said. "At some point you have to take a stand. Not everybody is going to agree, but you hope the majority do."

A week before, CBS affiliate KSL in Salt Lake City announced it was dropping "Picket Fences" because of its "bizarre and aberrant" content. "Picket Fences" focuses on the people and events in the small, fictional town of Rome, Wisconsin. Reported in: *Seattle Post-Intelligencer*, January 29.

art

Harrisburg, Pennsylvania

Although partially nude female sculptures grace the Capitol stairs, Philadelphia artist James A. Dupree was banned from exhibiting two nude paintings as part of his exhibit saluting African-American art on display at the Pennsylvania State Capitol. The two paintings were supposed to be the final works in a three-part series. Dupree described them as "non-sensual nudes" that depict in an abstract manner his wife giving birth to his three daughters.

Dupree, who was invited by the Department of State to exhibit his work, said he was told he wouldn't be censored when he accepted. But on February 24, he received a call from a department officer who told him the two paintings were being removed.

"I was shocked. I couldn't believe it. I thought it was a joke," said Dupree. "They were not painted from a sexist point of view, nor had anything to do with sex or pornography." Dupree said he was not surprised that his work created controversy, but he had been prepared for criticism of such works as "Pro-Life Pro-Choice Crack Baby," not the nudes.

Rosemary J. Wuenschel, press secretary for the Department of General Services, said the paintings were removed because they conflicted with an "informal policy" that artworks be "appropriate for the visitors of the Capitol, which include a large number of schoolchildren." She said the decision to remove the works was made by Fuller Runyan, DGS director of special events. Reported in: *Harrisburg Patriot*, February 25, 26; *Philadelphia Inquirer*, February 26.

Provo, Utah

A Brigham Young University art exhibit of paintings by four graduate students completing their master's degrees drew criticism March 2 after an artist's work was censored by faculty members. Jean Lambert, one of the participating artists, said six of her twelve paintings of nude men and women were removed from the exhibit without prior notification. Lambert said she had been attending the university for many years and her interest in painting the human body was well known to the art faculty.

BYU representative Brent Harker said the faculty committee chose not to display Lambert's paintings because they expressed much anger and pain. "The university has a right to choose what it will display on its walls," he said. "That's a university's decision, not a student's decision. Explicit genitalia expressed in an angry, violent way crosses the line for us."

Harker said the university does not prohibit expression of the nude art form, but must display art that is acceptable to a community with high moral standards. "Clearly any work that might be offensive to those community standards could not be displayed at BYU," he explained.

"One person finds it offensive, the other person finds it enriching," Lambert said. "Anywhere else this would not be a problem. The paintings would be looked at whether they were well executed and whether they were art, not whether they were female and male nudes. That would not be the issue."

"A comment was made that it was exaggerated nudity, but most of the exaggerated nudity are just self-portraits and they are not exaggerated," she added. "I was devastated. This is the culmination of six years of working on my master's. This is supposed to be an important night. The show

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/s/ Judith F. Krug.

has been castrated."

A statement prepared by Lambert's supporters on the campus said: "Jean should not have been led to pursue her degree and brought to the point of her final showing, only to be denied the right to show her work at the last minute. It is the university's right to legislate what will or will not be shown on campus. But it should also be the university's responsibility to conduct itself with honesty and morality toward its students and the public." Reported in: *Provo Herald*, March 4.

foreign

London, England

Britain's press could face new curbs, according to recommendations by an inquiry set up to look into media coverage of the royal family. The government-ordered report, delivered to the government January 8, urged the establishment of a Press Complaints Tribunal with power to impose fines on newspapers that breach a new code of conduct.

The Association of British Editors and the Guild of British Newspaper Editors condemned the proposals. "Britain is already over-laden with laws that impinge on freedom of expression," the *Sunday Times* said in an editorial.

There is no state control or major censorship of Britain's newspaper industry, only a Press Complaints Commission set up by the industry last year as an attempt at self-regulation. Lurid press coverage of the royal family has led, however, to widespread calls for a crackdown. Prime Minister John Major is believed to be moving in favor of press regulation. Reported in: *St. Petersburg Times*, January 11.

New Delhi, India

A government agency censured a leading news magazine for printing pictures of a priest kissing a nun and of a white child embracing a black one. The pictures — old advertisements by the Italian clothier United Colors of Benetton that accompanied a story about Benetton's plan to produce multicolored condoms in India — appeared in 1991 in *Illustrated Weekly of India*. G.L. Ahuja, secretary of the Press Council of India, said the pictures were "against the ethics of journalism in the context of the multiracial and multireligious composition of the Indian nation." Reported in: *Washington Post*, January 30.

Dublin, Ireland

Director Abel Ferrara's film *Bad Lieutenant*, starring Harvey Keitel as a crooked cop, was banned in Ireland. The movie charts the moral collapse of a New York detective who abuses his position to feed his addictions to sex, drugs and gambling. The movie received an 'R' rating in the United States. The Irish Department of Justice, which oversees the censorship board, refused comment on the ban. Reported in: *Los Angeles Daily News*, February 7.

Johannesburg, South Africa

Government censors January 22 banned an album by the rap group 2 Live Crew, which successfully battled obscenity charges in the United States. No reason was given for banning the album *The 2 Live Crew*, but South Africa often prohibits sexually explicit material or religious references in books, films and music. Reported in: *Owensboro Messenger-Inquirer*, January 23. □

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