newsletter on
intellectual freedom
IFC ALA

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storm center

Following is an edited transcript of a presentation by publisher Sasha Alyson, whose imprint, Alyson Wonderland, has produced such children's books as Daddy's Roommate, Heather Has Two Mommies, *and* The Duke Who Outlawed Jellybeans. *Mr. Alyson's address, entitled "Storm Center: Living in the Eye of the Censorship Hurricane," was presented at an ALA Annual Conference program co-sponsored by the ALA Intellectual Freedom Committee and the Freedom to Read Committee of the Association of American Publishers. Mr. Alyson spoke of his experience as the publisher of* Daddy's Roommate, *which has topped the ALA Office for Intellectual Freedom's Most Challenged Titles list for the past two years, the need for positive gay literature for children and young adults, and how challenges to this material can be addressed and overcome.*

I'm not really the one at the eye of the storm — people are the storm and a lot of you librarians are in the frontlines when someone chooses to challenge a book. So as I talk today, I want to have a chance to hear back from some of you.

Those of you who are close enough may have noticed my T-shirt. I don't want you to think that I am dressing down for the occasion by wearing a "Cat in the Hat" tee-shirt. Quite the contrary, I consider this to be dressing up in honor of one of my heroes. I don't mean the Cat in the Hat is one of my heroes, I mean Dr. Seuss. You know how some people say that they can remember just where they were when they heard that Pearl Harbor was bombed, or for some of us, just where we were when we heard that JFK had been shot? But what I can remember just as vividly, is exactly where I was sitting in first grade when I read *The Cat in the Hat*. Up until then, the children's books that I'd been reading had been the Alice and Jerry series. For those of you who don't know who Alice and Jerry are, I will just explain that Alice and Jerry were replaced by Dick, Jane, and Sally because educators felt that Dick, Jane, and Sally were more exciting! So, I was in the first grade. I was in the Cardinal reading group at school — I wasn't in the Robins. We weren't supposed to know what all that meant, but, in fact, we were fairly bright and could figure out that Robins were the good readers and Cardinals were the ones who weren't doing so well. I wanted to be a Robin, but not badly enough to sit down and read Alice and Jerry. But I remember exactly where I was when my parents brought home

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in this issue

targets of the censor

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library challenges rose in 1994

Challenges to library materials that discuss sexuality, the supernatural, or other controversial topics continued to increase last year in the United States, according to annual figures released by the American Library Association Office for Intellectual Freedom.

A total of 760 challenges to public library, school library, and school materials was reported to the office in 1994. The 760 challenges represented an 8 percent increase over the 697 challenges reported in 1993. There were 651 challenges reported in 1992 and 514 challenges in 1991.

The list of the year's "most challenged" books was topped by *Daddy's Roommate*, by Michael Willhoite. Tied for second place were *Heather Has Two Mommies*, by Leslea Newman, and *Scary Stories to Tell in the Dark*, by Alvin Schwartz. Other titles on the list were: *Forever*, by Judy Blume; *More Scary Stories to Tell in the Dark*, by Alvin Schwartz; *Bridge to Terabithia*, by Katherine Paterson; *The Chocolate War*, by Robert Cormier; *The New Joy of Gay Sex*, by Charles Silverstein; *The Adventures of Huckleberry Finn*, by Mark Twain; and *The Catcher in the Rye*, by J.D. Salinger. □

Gwinnett County "contract" defeated

Gwinnett-Forsyth Regional Library System board member Scott Scoggins's controversial plan to label "explicit" library materials and restrict them to readers over age 17, part of his "1995 Library Contract with Gwinnett" (see *Newsletter*, July 1995, p. 91), came before the library board June 12. As Scoggins himself predicted, it was defeated, failing even to garner a second, which meant that the plan was not even discussed.

Scoggins was not fazed, however. "It'll just enrage more people," he predicted. Scoggins said he would take the forty or fifty books that he found controversial to the grand jury to review and possibly rule as obscene.

Once Scoggins's motion was made, it died so quietly that it left the audience of up to 150 stunned and confused. One audience member yelled out, "What happened?" When the board chair explained that the motion failed for lack of a second, the room broke out into a whirlwind of applause and booing.

Although the board did not debate the proposal, several citizens spoke in favor of and in opposition to the plan. One woman read aloud allegedly "pornographic" sections from two young adult novels by Robert Cormier, *The Chocolate War* and *We All Fall Down*. Another speaker accused the American Library Association of being "an ultra-left wing organization" and a "militant-activist group" that supports legal child pornography.

In a related development, after initially stalling for weeks library funding because of problems with sexually explicit library materials directed at teenagers, county commissioners in Forsyth County finally decided June 26 to fully fund their portion of the two-county library system in 1996.

In addition, however, the commissioners voted to set aside $10,000 to study the feasibility of Forsyth County breaking away from the regional system.

Forsyth County Commission Chair Ron Seder had earlier expressed some sympathy for Scoggins and, after the defeat of his proposal, had suggested that the county might withdraw from the system. He was supported at the time by commissioner James Harrington. "Libraries have sunk to a new low," said Harrington after the Scoggins vote. "I didn't know how bad they were." Largely rural Forsyth County has one library and suburban Gwinnett county has nine branches in the system.

"I think that we can say there isn't hard-core pornography in the library now, so it's not a case of drawing the line, the line's already been drawn, but the question is where has the line been drawn," Seder said. "I think that we need to continue to fund the library, and we need to do the study, and we need to understand the materials selection process. While we have decided to go ahead and fund the library, I think that the material selection process is still on the table." Reported in: *Gwinnett Post-Tribune*, June 10, 14, 28; *Atlanta Constitution*, June 13, 14. □

'decency' and the internet

Republican House Speaker Newt Gingrich surprised many on June 21 when he bluntly attacked a proposed Communications Decency Act (CDA) intended to block obscenity on the Internet, which had been approved overwhelmingly by the Senate a week earlier. "It is clearly a violation of free speech, and it's a violation of the right of adults to communicate with each other," Gingrich said on his cable television show. "I don't agree with it and I don't think it is a serious way to discuss a serious issue."

But Gingrich may be a minority in the Republican Congress on this issue; with the prevailing pro-family and anti-pornography mood on Capitol Hill, most observers believed that the bill (or a form of it) will become law.

On June 14, the Senate, in an unusual display of bipartisanship, voted 84-16 to include the CDA as an amendment to a telecommunications bill overhauling the telephone and broadcasting industries. The measure, sponsored by Sens. Jim Exon (D-NE) and Dan Coats (R-IN), would ban "obscene, lewd, lascivious, filthy, or

indecent" material in cyberspace. It also aims to prohibit anyone from annoying or harassing another person online.

Many aspects of the proposed law worry civil libertarians and computer users. For one thing, it does not define terms such as "obscene," "lewd," "filthy," or "indecent." Online "cybernauts" also worry about government efforts to catch computer criminals. The proposed law is almost impossible to enforce, as there are ways hackers can bypass a network police force. Will Congress therefore also ban encryption software?

The Internet encompasses some thirty million or more computer users worldwide and has no single owner or regulator. Some of what the Senate deems "obscene" or "annoying" originates overseas. And because anyone on the Internet can easily connect to a foreign site and without extra charge, there is no practical difference between a site in, say, the Netherlands, or one next door.

In fact, Internet users often post messages and pictures to sex-related groups anonymously via a server in Finland. Law enforcement agencies would have no jurisdiction over such law breakers. If the U.S. government forbids Americans from connecting to foreign computers it will be the death of the Internet — and of much more.

Computer experts say the CDA is unnecessary because, among other things, software companies are creating browsers able to filter out "obscene" materials. The America Online internet browser censors most of the *Playboy* homepage, and Netscape, maker of a highly popular and sophisticated World Wide Web browser, has announced a software that will allow parents to block "objectionable" sites.

Indeed, on the very day that the Senate approved the CDA amendment, three major software companies — Microsoft, Netscape, and Progressive Networks — proposed a voluntary rating system and an electronic filter that would allow parents and other individuals to block access to sexually explicit content.

"The timing of this is undoubtedly influenced by what's going on in Washington," said Rob Glazer, president and chief executive of Progressive Networks. "We're saying, 'Let's break the logjam.'"

The three companies formed a body called the Information Highway Parental Empowerment group, which intends to create industry standards for rating content and for the software that would filter out offensive material. The group's plan essentially calls for a voluntary rating system most likely to be administered by an independent organization, and a software filter that would allow users to block material based on the content's rating. The group has not determined how its filter would deal with unrated material, which is a potential weakness since much of the pornographic material on the Internet originates in other countries.

The group has agreed to issue a report by December 31 that will analyze the issues associated with integrating lockout capabilities into Internet access software and provide recommendations.

Of course, one big question is who will determine how different Internet "sites" are rated. That problem has already become a thorny one for Surfwatch Software, which in May introduced a program marketed to parents who want to prevent their children from accessing online pornography. When installed on a personal computer connected to the Internet, the software blocks the computer from gaining access to any site on a list in the software's memory that has been deemed off-limits. Unfortunately, gay groups quickly complained that the software blocked access to at least a dozen gay and lesbian-oriented sites that were not sexually explicit.

The flap began when one user of Surfwatch became angry when he discovered that sites like the home page for the International Association of Gay Square Dance Clubs were blocked. "It turned out they had been blocking at one point on the word 'gay,'" said Christopher Kryzan, head of Outproud, a San Jose, California, organization that counsels gay and lesbian youth.

Surfwatch quickly corrected the problem. "Our basic policy has always been that we don't block on the basis of sexual orientation or preference," said Bill Duvall, the company's chief executive. "In doing this, you make some mistakes. At one time, we blocked IBM." But the experience highlighted the difficulty of designing software and/or ratings that will satisfy everyone.

Increasingly, Internet users suspect that the U.S. government will have to knock down doors or intercept private transmissions to catch cyber-criminals, including purveyors of cyber-porn. One tool that might be used to evade a snooping Big Brother is encryption, but FBI Director Louis Freeh has formally recommended to Congress that the government ban encoded messages over the Internet.

Most e-mail and other messages go through several computers before reaching their intended receiver and therefore can be intercepted and read by snoopers. However, Phil Zimmerman, a Colorado-based programmer, has created PGP (Pretty Good Privacy), a program that encodes digital messages and allows only recipients of a decoding "key" to unlock them.

Zimmerman is now working on a PGP version for voice communication. PGP is so effective that even the CIA and the NSA are reportedly unable to break it. The FBI recommends, instead, that encryption be allowed only if the government holds a universal key capable of unlocking all coded transmissions.

Because Zimmerman gave away his software by posting it on the Internet, he is the subject of a grand jury investigation into whether he broke a Cold War-era law prohibiting the export of encryption technology.

The concern about pornography on the Internet was fueled over the summer by two stories in which the mass media apparently distorted the truth. There were, first of all, two highly publicized cases involving children. One involved Daniel Montgomery, 16, who left his Seattle-area home for San Francisco to meet a person with whom he had exchanged messages in gay discussion forums online.

Early newspaper stories incorrectly reported that the boy had been lured from home by an older man seeking sex; later, the boy was found at San Francisco International Airport by police. His acquaintance was actually another young teenager, who had responded to the boy's question about his sexuality with sympathy and bus fare.

Daniel returned home and has said he had sex with nobody, male or female, during his trip, but the story and surrounding media frenzy led to increased calls for government intervention and censorship.

Then there was the Carnegie-Mellon University study, reported on the cover of *Time* magazine, which concluded that the exchange of sex-related images is "one of the largest (if not the largest) recreational applications of users of computer networks." The study received tremendous publicity but has since come under withering assault as unscientific and sensationalistic.

Concluded a year ago by an undergraduate at Carnegie-Mellon, the study found that computer networks represent an efficient global distribution mechanism for extreme pornographic images that are not commonly available in adult bookstores. Among its more intriguing conclusions was that most pornographic images found on public computer networks originate from adult bulletin boards.

The study claimed that "83.5 percent of all images posted on the Usenet are pornographic." Usenet, a global computer network composed of nearly 15,000 discussion groups, is commonly reached through the Internet and consumer online information services like CompuServe or America Online.

The study was embraced not only by *Time* but by antipornography activists and several members of Congress. Sen. Charles Grassley (R-IA) cited the study in support of his proposed legislation to make it a federal crime to knowingly make pornography available to children over computer networks. But several professors and lawyers fiercely attacked the study's methodology.

"It's a very bad piece of misleading research, and the way it was released shows a clear pattern of media manipulation," said Donna L. Hoffman, an associate professor of management at Vanderbilt University. Hoffman noted that the study was not submitted for normal peer review before publication, and said it would not have been taken seriously had it not been featured so prominently in *Time*.

"This would never make it through a traditional peer review in even a third-line social science review," said Jim Thomas, a professor of sociology and criminal justice who teaches research methodology at Northern Illinois University. "I've read it a couple of times now, and I see no way any useful extrapolations can be made, because of the ambiguity of the data, the often contradictory definitions and the failure to address fundamental methodological issues."

One of the chief criticisms is that the study, written by Martin Rimm when he was an undergraduate engineering student, generalizes about "the information superhighway" and computer users in general, although its data was gathered almost exclusively from a small subset of private bulletin board systems that specialize in selling pornography to adults. Such systems typically cannot be reached through the Internet but must be dialed up directly.

"It's as if one purported to have done a study of violence among American men when the sample of men studied were prisoners in the federal penitentiary at Marion, Illinois," said Michael Godwin, legal counsel for the Electronic Frontier Foundation.

Rimm's own faculty adviser gave the study a mixed review. Marvin A. Sirbu, professor of engineering and public policy at Carnegie-Mellon, said it was "a very clear analysis of what people are downloading from adult bulletin boards." But, Sirbu said, "the report needed a lot of editing from the versions I saw, and there was a tendency to want to make generalizations that couldn't be made. I advised him to remove things that were not clearly supported by the data."

If the study itself was flawed, *Time*'s coverage of it tended to exaggerate its weaknesses. For instance, *Time* reported that the study "surveyed 917,410 sexually explicit pictures, descriptions, short stories, and film clips" and found that "on those Usenet newsgroups where digitized images are stored, 83.5 percent of the pictures were pornographic."

What *Time* didn't make clear, critics point out, is that those 917,410 "pictures," etc. were not on Usenet at all but on adult dialup Bulletin Boards. Although *Time* did report that "pornographic image files . . . represent only about 3 percent of all messages on Usenet newsgroups" and "the Usenet itself represents only 11.5 percent of the traffic on the Internet" it didn't put the figures together to reach the not-so-alarming conclusion that pornographic images therefore represent *less than half of one percent* of Internet traffic.

Nor did *Time* report one of Rimm's other findings: that of 11,576 sites examined on the World Wide Web — the only segment of the Internet that works with point-and-click ease, and presumably therefore the main focus of

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intellectual freedom on the information highway

Following are edited texts of two speeches from a program held during the ALA's 1995 Annual Conference in Chicago, Illinois. The first was given by Marc Rotenberg and the second by Janet Murray as part of the Intellectual Freedom Round Table's program, "Intellectual Freedom: Will It Become Roadkill on the Information Superhighway? Issues for Libraries and Schools." Mr. Rotenberg is the Director of the Electronic Privacy Information Center, and was counsel to the Senate Judiciary Committee specializing in technology and the law. Mr. Rotenberg was asked to comment on the ways in which electronic network communications are being or may be affected by both privacy issues and the current legislative agenda of Congress. Ms. Murray is a school librarian at the Wilson High School in Portland, Oregon, and is a co-founder of K-12 Net, an electronic network designed to address the technological needs and education of school-aged children. Ms. Murray spoke about "acceptable use" policies of schools when access to electronic communications is provided to students.

remarks by Marc Rotenberg

As you know, we are today in a time of change in the development of our communications infrastructure. There is great talk in Washington about the reform of our telecommunications policies. The goals include to free industry, allow it to compete, to enter new markets and to develop new services, to free technology so that developers and designers can innovate and provide new products and services to consumers, to restrict the role of government and to reward private innovation. At the same time, there is a great opportunity to realize the liberating potential of information and communication technologies.

There also are, regrettably, some of the most pervasive and draconian proposals to restrict speech in our nation's history. Some of you may be aware of Senator Exon's Communications Decency Act. I will speak about Senator Exon's proposal in more detail, but let me just say for now that it is the first attempt to impose restrictions on publishers, libraries, content providers, and users of the information highway in a manner that is, on its face, unconstitutional, and an affront to the freedoms that we have always enjoyed with print publication. Senator Feinstein has put forward proposals to restrict so-called bombmaking material on the Internet. This is in light of the Oklahoma City tragedy, though there is no evidence at all that the Internet played any role in that very unfortunate incident. In fact, when a representative of our organization came before the Senate Judiciary Committee this past month, he held up before the committee the entry from the Encyclopedia Brittanica, eight pages on explosives, that could not be published on the Internet if this amendment were adopted. He held up a publication from the Department of Agriculture entitled "The Blaster's Manual," which is used in forestry to help engineers remove tree stumps in a safe manner. This publication also could not be distributed on the Internet if the bill were adopted.

A third threat to intellectual freedom and the surviving information infrastructure, and a very personal one, concerns a computer programmer named Phil Zimmerman. Phil is the author of a program called PGP, which stands for "Pretty Good Privacy." It has become, across the Internet, a wildly popular way to protect the privacy and confidentiality of personal communications. And yet Mr. Zimmerman may be looking at a federal indictment for violating laws regarding the international trafficking in munitions, because the U.S. government is concerned about the widespread availability of technology that could be used to protect privacy. There is some irony that a former peace activist whose software is now being used by human rights organizations around the globe faces an indictment for munitions trafficking.

Let me say a few words about the Exon bill. I will not pretend that the issues it raises are simple ones. I don't need to tell you that the concerns about the type of material made available to children through schools and libraries can raise some of the most difficult and problematic policy challenges that [those institutions] face. At the same time, I have to tell you that I think this issue also calls out for sensitivity, for careful deliberation, for thoughtful debate. A young person who is trying to come to terms with sexuality and sexual identity, a teenager who needs information about contraception and pregnancy, an adult who is trying to help a young person understand these issues, should not have to live in a country where there is a risk that if someone else decides that this information or this picture is indecent or filthy, that person could go to jail — could go to jail for two years. It is not a question of whether young people should be exposed to certain types of information. I think the question is who should properly make these decisions. And these are decisions that I would like to suggest to you require the care and sensitivity of parents, of teachers, of educators, of librarians, but not the draconian measures now under consideration in the U.S. Congress.

At some level, the politics surrounding this issue have become so perverse we begin to wonder, in fact, what the actual goal of the proponents may be. Let us take, for example, the concern for our children in education, which has been one of the driving arguments behind this proposal. I would like to see the same members of Congress who have expressed such concern about the education of our children and the danger that on the Internet

they might receive some bad material show similar support for the wealth of information that should be made accessible to children through our schools, through our libraries, through public broadcasting, and through public radio; similarly, with children and safety, which has been a second aspect of the arguments in support of the Exon proposal. I would like to see these legislators express similar concern about handguns in schools and handguns on city streets. And I think if we get to those problems first, then perhaps we will begin to understand where this issue may be placed.

Let me say a few words also about labeling. You are probably aware that in the last weeks, several proposals have been put forward. I think the right approach, in good faith, is to hold off the legislation in Washington to give hardware and software manufacturers time to build in technologies so that it would not be so easy on the computer networks to gain access to some of the Internet's sites, and some of the newsgroups, and some of the materials that have been cited as most offensive. Surfwatch is one computer program that is now receiving some attention. Microsoft, Netscape, and Progressive Network joined together to develop another technology and, I think, these are well-intentioned, and will give parents and educators and libraries new tools to protect ourselves from certain types of information. But at the same time, I have to warn you, I think we run some risk here of building a network of censorship; designing technologies that may make it more difficult to get access to information, both by law and by technique. By way of example, I learned recently that the Surfwatch program, which was intended to keep certain types of obscene and pornographic materials away from computing systems, also effectively places on its "blacklist" certain discussion groups relating to gay and lesbian materials. And I began to wonder what might be the application of this type of technology, being developed today in the United States, in other countries that have been traditionally less tolerant of free speech, that have been more concerned about political dissent, but do not have our First Amendment and our constitutional freedoms. The *Wall Street Journal* reported just yesterday morning that the government of China was beginning to crack down on Internet access, expressing concern about what they have termed "spiritual pollution"; the government of Singapore, in similar fashion, is also looking for new methods to restrict access to information. I have concerns that a few years out we may be prosecuting people for using noncomplying information systems — information systems that permit access to ideas, to images, and to activities that either by law or technique we are now trying to prohibit.

It's a little crazy, I guess, for me to be standing before the Intellectual Freedom Committee of the ALA, urging you to return to first principles in the defense of freedom. I can't think of any organization in the United States that has done more to protect intellectual freedom. It is sometimes said in the civil liberties world that our client is the Constitution, and if that's so, I think it can fairly be said about the ALA that you are the guardians of our intellectual freedom. But you know also that the battle for the free flow of information in this country has never won a popularity contest. War protestors, when a country is engaged in conflict, are not easy to defend, nor is political dissent, nor at times is even scientific innovation. But there is, of course, a larger principle at stake here which, I think is a bipartisan, broadly understood

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parental concerns — only nine contained R- or X-rated sexual images. When the study finally made it, via *Time*, into the Congressional Record as entered by Sen. Grassley we were informed absurdly that 83.5 percent of images on the Internet are pornographic!

Sen. Exon's CDA is not the only measure under consideration in Congress to control computer pornography. Sen. Patrick Leahy (D-VT) proposes simply that the Justice Department study ways to deal with sexually explicit materials. Under a plan being put together by two House members, parents, not the government, would have the power to block children's access to erotic pictures or explicit conversations.

The plan by Reps. Christopher Cox (R-CA) and Ron Wyden (D-OR) would rely on technology rather than federal regulation. Under the plan, the government would help people find available technologies to block objectionable materials.

Wyden said the government could establish an 800 number from which people could learn the latest in commercially available software and hardware. Or the government could refer callers to private services.

"We want to keep government from engaging in intrusive regulation" of the Internet and computer services. "Government's role should focus on making sure people know where to turn for information," Wyden said. "We can empower families to protect themselves."

Both Cox and Wyden oppose the Senate-passed measure. "It is hopeless for government to seek to censor or control such an enormous amount of information," Cox said. Wyden called the Senate plan a "constitutional glue factory." Reported in: *Christian Science Monitor*, July 3; *New York Times*, June 22, July 3; *Orange County Register*, June 15; *San Francisco Chronicle*, June 28; *San Francisco Examiner*, June 21, July 6; *San Jose Mercury-News*, June 20; *Arlington Heights Daily Herald*, June 22. □

IFC report to ALA Council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council, delivered on June 28 at the 1995 Annual Conference in Chicago, by Chair Candace D. Morgan.

As chair of the Intellectual Freedom Committee, I'm pleased to report on the committee's activities at this Annual Conference.

Access to Electronic Information, Services, and Networks: an Interpretation of the Library Bill of Rights

As you know, the Intellectual Freedom Committee has been working on an Interpretation of the *Library Bill of Rights* to address intellectual freedom in the arena of electronic information services and networks. We sponsored an open hearing to receive testimony on the subject at the Midwinter Meeting, and met as a committee in a special meeting over the weekend of March 3-5 to produce a draft for circulation and comment. The draft was widely distributed in both print and electronic format. We received comments from a wide variety of perspectives. We reviewed the draft in light of those comments. At this conference, we spent most of our meeting time on the Interpretation and distributed two successive versions for comment.

Although the discussion time on this Interpretation has been shorter than usual, the Committee is recommending adoption at this meeting for the following reasons: 1) many libraries have expressed the need for guidance now. In fact, we have had a number of reports of libraries using the draft Interpretation to develop policy; 2) the electronic environment is undergoing such significant and rapid changes that we expect updating of this Interpretation will be necessary much sooner than is usually the case. This will give us the opportunity to clarify any language that is causing difficulty; and 3) librarians have asked for guidelines and sample policies. This need cannot be responded to until ALA has adopted a policy. [Following lengthy discussion, Council defeated the motion to adopt *Access to Electronic Information, Services, and Networks: an Interpretation of the Library Bill of Rights* and referred the document back to the Intellectual Freedom Committee.]

Resolution Concerning the Exon Amendment to the Telecommunications Act of 1995

On June 14, 1995, the United States Senate approved an amendment to the Senate's telecommunications deregulation bill that raises grave Constitutional questions and poses great risks for libraries that provide Internet access to the people they serve. [Council adopted the Resolution Concerning the Exon Amendment to the Telecommunications Act of 1995.]

National Symposium on Intellectual Freedom

I am delighted to announce that, in celebration of the thirtieth anniversary of the Office for Intellectual Freedom, OIF and the IFC will sponsor the first national symposium on intellectual freedom in the spring of 1998. Dozens of organizations with First Amendment concerns, including arts, journalism, technological and civil rights groups, will be invited to present programs, and several general sessions will feature nationally known experts in the fields. The theme of the meeting will be the First Amendment in the 21st century. Watch for more details and registration information at the Midwinter Meeting.

First Freedom Op-ed Service

The Committee is pleased to announce the launch of the First Freedom Op-Ed Service. Coordinated by the Office for Intellectual Freedom, the Service is an independent project which was the brainchild of members of the Intellectual Freedom Committee and the Freedom to Read Foundation Board. It is edited by Freedom to Read Foundation Board member Charles Levendosky, award-winning editorial page editor for the *Casper (WY) Star-Tribune*. The first Op-ed piece, "We're all the press now," by Rodney Smolla, was distributed the week of June 5. Future pieces dealing with First Amendment issues will be distributed at the rate of approximately one per month to medium sized daily newspapers in every state. We ask that librarians watch their local newspaper to see whether these pieces are picked up and to avail themselves of the opportunity to write letters to the editor supporting the principles of intellectual freedom presented in the pieces.

Charles Levendosky has also established a First Amendment web site entitled FACT (First Amendment Cyber-Tribune). It can be accessed at http://www.trib.com/FACT/. If author permission is granted, the op-ed pieces will be available on the web site about one month after they are mailed to newspapers.

Leadership Development Institute

The extremely successful Leadership Development Institute held November 17-20, 1994, is bearing fruit nationwide — I am pleased to announce that the Office for Intellectual Freedom has received a grant of $52,000 from the Nathan Cummings Foundation in support of regional follow-up institutes. The first will take place next month in Iowa. Over the next several months, regional follow-ups will take place in ten regions covering every part of the nation and, simultaneously, statewide follow-up sessions will be planned and presented. The ultimate result will be a national network of librarians trained in intellectual freedom principles and public communication strategies to promote and defend intellectual freedom at the local level and nationwide.

Banned Books Week

Banned Books Week 1995 will take place September 23-30. The materials are particularly exciting this year with special appeal to children. We've had many wonderful comments on them.

Intellectual Freedom Manual

Finally, we're pleased to announce that the fifth edition of the *Intellectual Freedom Manual* will published in December 1995 or possibly January 1996. It will contain the newest updated Interpretations, updated articles on protecting intellectual freedom and pro-active public relations strategies for building community support.

Collaboration for Change

I'm delighted to remind you that the Office for Intellectual Freedom and the American Association of School Librarians will be co-sponsoring Collaboration for Change: A Team Approach to Intellectual Freedom, a conference which will be taking place concurrently with the 1996 Midwinter Meeting. Targeting teams of school library media specialists and school administrators, the symposium will train these professionals how to work together to protect intellectual freedom, prepare to respond to organized attacks, and preserve quality education and library services even when controversy erupts.

It has been my pleasure to serve as chair of the Committee during an exciting time. The Committee has accelerated its efforts to provide timely, meaningful and understandable guidance on intellectual freedom principles to the profession. I'm proud of the work the Committee has done and look forward to continuing our effort to be proactive and to anticipate the needs of our colleagues in the area of intellectual freedom. □

Resolution Concerning the Exon Amendment to the Telecommunications Act of 1995

WHEREAS, The Exon/Coats Amendment (#1362) to S. 652, the Telecommunications Act of 1995, imposes criminal penalty for the transmission of speech that is constitutionally protected; and

WHEREAS, The definitions of the prohibited speech are vague and overbroad; and

WHEREAS, The Amendment imposes the penalty for transmission of speech that is merely "indecent" when received by any person under 18 years of age; and

WHEREAS, The chilling effect of the Amendment would limit what is available to adults on the basis of what is appropriate for minors; and

WHEREAS, This Amendment applies to any telecommunications facility, system or network, including any library, that is used for the transmission of speech proscribed by the Amendment; and

WHEREAS, The international scope and technical complexity of these telecommunications would make implementation of the Amendment extraordinarily cumbersome, if not impossible; and

WHEREAS, Users have the power to chose what information they will and will not retrieve; and

WHEREAS, American Library Association Policy #53.1, *Library Bill of Rights*, states that "Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment," and "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." Now, therefore, be it

RESOLVED, That the American Library Association opposes the enactment of the Exon/Coats amendment (#1362) to S. 652, the Telecommunications Act of 1995; and, be it further

RESOLVED, That the American Library Association transmit this resolution as appropriate.

Adopted by the ALA Council, June 28, 1995

FTRF Report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered June 27, 1995, at the ALA Annual Conference in Chicago, by President Gordon M. Conable.

As president of the Freedom to Read Foundation, I am pleased to report on the Foundation's activities at this Annual Conference meeting.

Litigation

In an important case for the principles of library user confidentiality, the Brown & Williamson Tobacco Co. sued the Regents of the University of California, seeking to recover documents it contended were stolen from it. The University of California at San Francisco Library held the documents, which allegedly revealed that the tobacco industry knew of the link between smoking and health problems for many years and failed to reveal it. The documents had already been the subject of numerous press reports and were discussed in congressional hearings. In addition to requesting the return of the documents, Brown & Williamson *asked for the names of library users who had had access to them and a description of the substance of their research and publications.* The Foundation filed an *amicus* brief outlining the crucial importance of confidentiality to the exercise of the First Amendment right to receive information in libraries. On May 25, 1995, Judge Stuart Pollack, of the California Superior Court in San Francisco, refused to block the UCSF library from releasing the documents to the public. However, he issued a stay of his decision until June 23 to allow Brown & Williamson time to appeal. [The California Supreme Court denied the company's appeal on June 29. See p. 146] The Court did not reach the issue of confidentiality, but a transcript of the hearing at which Judge Pollack made his ruling reveals that the Foundation's arguments were worked into the defendant's arguments and figured in the Judge's ruling. Should the case be further appealed, the Foundation plans to file an *amicus* brief.

The Foundation scored a wonderful victory in *National Treasury Employees Union v. United States*, a case in which employees of the Treasury Department challenged an Executive Order banning honoraria for their speeches and articles, even if the speech or article was unrelated to their federal employment. The United States Supreme Court agreed with the points the Foundation made in its *amicus* brief, that the regulation infringed federal employees' First Amendment rights by imposing a financial disincentive on speech. The library community had a stake in this litigation because many of the employees affected, in addition to their responsibilities as government employees, are experts in fields unrelated to their government employment and have been relied upon as authors of articles for encyclopedias and sources of scholarship on a myriad of subjects. If they were unable to receive payment for their work in these areas, their contributions would most likely be lost and library users would be deprived of the expertise and information they would have provided.

In another new case which came to the Foundation since I last reported to you, twelve First Amendment-related organizations have joined *Playboy Magazine* in suing Joseph T. Deters, the prosecuting attorney for Hamilton County, Ohio. Deters had sent a letter to a Barnes & Noble bookstore in Cincinnati informing the management that, in his opinion, the display of the January, 1995, issue of *Playboy* and four other magazines were forbidden under Ohio's display statue and violated Ohio's harmful to minors statute. The suit alleges that Deters' action constituted a prior restraint, and that he used his official position to threaten the distribution of constitutionally-protected material.

The Foundation also discussed several pieces of legislation and litigation having to do with freedom of speech issues in cyberspace. Specifically, we discussed the Exon and Conrad amendments to the Telecommunications Act, each of which impose extraordinary restrictions and burdens on speech delivered via computer networks and television.

Recent litigation like the *Prodigy* decision raises important implications for libraries which provide network connectivity for their patrons. As many of you know, the recent decision in *Stratton Oakmont v. Prodigy* (see page 148) was the first in which a court decided that an online information provider, namely, Prodigy, Inc., could be held liable for allegedly defamatory statements posted on one of the bulletin boards it makes available. Key to the decision was the fact that Prodigy had long held itself out to be a family-oriented service, which monitors the content of the material it transmits and moderates, and edits the bulletin boards it makes available to subscribers. It thus established itself as a publisher with editorial control, rather than a common carrier or a mere conduit or distributor of information, which could not have had notice of defamatory statements. The decision has potentially far-reaching implications for libraries adding network connectivity to their services, particularly if they undertake to edit or screen content. The Foundation committed itself to a proactive agenda aggressively seeking opportunities to participate in litigation which will help clarify for libraries the issues raised by *Prodigy* and similar cases.

We also determined to devote a substantial portion of our agenda at the Midwinter Meeting in San Antonio to educating ourselves on these technical issues relating to free speech in cyberspace, including a briefing from a technical expert.

The ongoing litigation in *ALA v. Reno*, the case challenging the Child Protection Restoration and

Penalties Enhancement Act of 1990, has reached the Supreme Court level. The statute under challenge imposes burdensome record-keeping requirements and forfeiture penalties upon publishers and distributors of constitutionally-protected images of nude adults, under the guise of protecting children from exploitation. When last I reported to you, the Federal District Court for the District of Columbia agreed with the Foundation that the statute was unconstitutionally overbroad. The government then appealed, and the United States Court of Appeals for the District of Columbia Circuit reversed the lower court's decision. We then filed a petition for rehearing *en banc*, which was denied. The next step was filing a petition for *certiorari* before the United States Supreme Court. I regret to inform you that on Friday, June 23, the Court denied our petition. The implications for libraries and bookstores are potentially far-reaching. The Foundation will seek legal advice on how the requirements of the statute will affect libraries.

Finally, dispositive motions in *Case, et al. v. Unified School District No. 233* are pending. This case, filed last summer, involves the removal of *Annie on My Mind* from the Olathe, Kansas, High School. The motions ask the court to resolve the case by deciding, as a matter of law, whether or not the removal violated constitutional standards. The Foundation has provided the plaintiffs' attorneys with legal assistance, background information, and a list of potential expert witnesses in the case. A decision on the motions, which were filed April 30, is awaited.

Other Business

I'm pleased to announce the Foundation is participating in the 1995 Independent Charities of America campaign. Independent Charities of America was founded by employees of the Internal Revenue Service in order to offer federal employees alternative opportunities for charitable giving in the workplace. The Foundation also is pursuing related state fundraising campaigns.

Finally, the Foundation was pleased to present its Roll of Honor Awards to two very deserving persons — J. Dennis Day and Judith F. Krug — at the Opening General Session of this conference. Both have devoted literally decades to the cause, and particularly to the Freedom to Read Foundation, and have provided invaluable guidance which has assisted the Foundation in fulfilling its mission to protect the freedom to read in libraries.

We look forward to another very busy year! □

Dole raps Hollywood

In a May 31 speech to a Los Angeles fund-raiser, Republican presidential hopeful and Senate Majority Leader Bob Dole (R-KA) chastised Hollywood for promoting violence, rape and casual sex in music and movies and said that for the good of America's children, "the mainstreaming of deviancy must come to an end."

In particular, Dole criticized the R-rated action movies *Natural Born Killers* and *True Romance* as "films that revel in mindless violence and loveless sex." Dole also rebuked entertainment industry giant Time Warner and three recording groups, Cannibal Corpse, Geto Boys, and 2 Live Crew.

Dole's assault on Hollywood was, political observers noted, designed to blunt doubts about his presidential candidacy among religious and social conservatives — a powerful constituency within the Republican primary electorate. Some critics, noting that the Kansas senator rarely talked about the issue before launching his presidential drive, regarded the speech as cynical politics.

But Dole advisers said that attacks on Hollywood resonated across party, racial and religious lines. "It appeals directly to parents and working families," said Scott Reed, Dole's campaign manager. "I guarantee there will be a lot of dinner table discussions about what Bob Dole said about the entertainment industry."

Within hours, entertainment figures were lashing back at Dole's charge that Hollywood was producing "nightmares of depravity."

Steven Bochco, producer of television's "NYPD Blue," said, "It's always ironic to me that in the exercise of constitutional rights, you get people who are bellying up real close to censorship. I'm sure he'll say he's not advocating censorship, but it gets you into that murky territory."

Quentin Tarantino, who wrote both *Natural Born Killers* and *True Romance*, said that Dole's "saying this is a knee-jerk reaction. It's a cheap laugh. My biggest problem with his statement is that it is so disingenuous. How can you take seriously someone talking about art he admittedly hasn't seen?"

Steve Tisch, co-producer of *Forrest Gump*, found it ironic that Dole would decry make-believe violence in movies and television when, at the same time, the senator wants to overturn the ban on assault weapons. "I think maybe more people than Sen. Dole gives credit to *know* that violence in movies is fake and violence on the street is very real," said Tisch.

The attack by Dole was at least the third major assault on Hollywood product by government leaders in the last three years. In 1992, then-Vice President Dan Quayle attacked the television series "Murphy Brown" because

its lead character was having a baby out of wedlock. Sen. Paul Simon (D-IL) headed an anti-violence drive that caused a summit meeting to be held by top entertainment leaders in 1993 and caused wide discussion in television circles.

Reaction to Dole's comments in the recording industry was also predictably negative. Jay Berman, head of the Recording Industry Association of America (RIAA), said: "His complaints are nothing new. This is a free speech issue, and while it would be very easy to stop artists from creating and producing material, that raises issues about First Amendment protection."

Dole admitted frankly that he had never listened to the music he was criticizing. That, said *Billboard* editor Timothy White, is "disgraceful." As White noted, *Billboard*, the music industry's leading trade journal, is on record editorially "saying that certain of these records deserve and merit censure, not censorship. But for a politician to come along and start to criticize these things and admit he hasn't heard them is fundamentally dishonest. We welcome serious, informed debate and discussion, but until [Dole] sits down and listens hard to these records and watches the films, he should keep his manipulative mouth shut."

Though Dole's musical attack was clearly aimed at Time Warner, which has also been targeted by former education secretary William Bennett and C. DeLores Tucker, president of the National Political Congress of Black Women (see page 133), Hilary Rosen of RIAA pointed out that aside from Nine Inch Nails, "none of the groups Dole cited are currently affiliated with any Time Warner Music Group labels, and the examples given for offensive lyrics are three and four years old."

Dole's critics also noted the absence from his remarks of references to violent films made by stars Bruce Willis, Sylvester Stallone, and Arnold Schwarzenegger, all prominent Republicans.

Although conservatives overwhelmingly applauded Dole's remarks, a somewhat different note was sounded by David Boaz, executive vice president of the conservative libertarian Cato Institute. "I don't have a problem when individuals criticize excessive sex and violence in movies and TV," he said. "I'm a little uncomfortable when it's a political figure doing it. Anything a powerful politician does carries with it some threat of political action, control." Reported in: *Los Angeles Times*, June 1, 2, 8; *Washington Post*, June 7; *Washington Post National Weekly*, June 12.

Clinton backs v-chip

President Clinton warned in a speech July 10 that children are learning warped values from a heavy media diet of violence and sex, and endorsed legislation to require new television devices that would allow parents to block channels or programs that they find offensive. At the same time, Clinton came to the defense of public broadcasting as a wholesome alternative to the poor quality of many commercial programs.

By aligning himself with federal support for public broadcasting and the "v-chip" for all new televisions — so named because the device's advocates say it can be used to block shows with excessive violence — Clinton was trying to turn the tables in Washington's debate over who is responsible for what many see as the debasement of modern culture.

Clinton argued that activist government can be the ally of people who are discontented with "too much indiscriminate violence, too much indiscriminate sex, and too much callous degradation of women and sometimes of other people in various parts of our media today."

A proposal to require that the v-chip be installed in all new television sets manufactured or imported into this country easily passed the Senate when it was included in the pending telecommunications bill. But the measure was opposed by broadcasters, and Senate Majority Leader Bob Dole (R-KA) complained that it "takes us one step closer to government control of what we see on television."

"This is not censorship," Clinton countered, "this is parental responsibility."

While he criticized much that is on the airwaves and movie screens, Clinton also seemed determined to strike a tone that was not overly judgmental or censorious. He applauded rap music as a "great thing," and "a kind of folk music" that is "easily accessible." The problem, he said, is that the music has "been used by people in ways that are very bad" to extol violence.

But the First Amendment does not allow censorship, Clinton said, and the audience for rap music doesn't "give a rip" about statements of denunciation by politicians, whom they are inclined to dismiss as a "bunch of hypocrites." A better solution, he said, is for more compelling role models to stand up against the excesses of rap music.

Likewise, the president struck an ambivalent note about violent movies. The problem, he suggested, is the lack of intelligent context, as well as the sheer volume of dramatized bloodshed "in which millions of people are literally desensitized" by overexposure to violence. Reported in: *Washington Post*, July 11. □

Time Warner under attack

Attacks on rock and rap music are hardly new. Indeed, these have become the stock in trade of mainly conservative politicians, as most recently evidenced by Bob Dole's attack on Hollywood and the record industry (see page 131). In recent months, however, for the first time would-be music censors have focused on one company: Time Warner.

Dole focused much of his assault on the company, but equally prominent was the "odd couple" alliance of former education secretary William Bennett and C. DeLores Tucker, president of the National Political Congress of Black Women. In May, the two addressed a Time Warner stockholders meeting and held a much publicized confrontation with company executives. Bennett suggested that the conglomerate's critics try to embarrass it through media exposure if the company insists on denying "a connection between the kind of music they sell for profit and the kinds of problems we have in American society." Tucker asked, "How long will Time Warner continue to be silent conspirators in the social genocide of an entire generation?"

The two also produced a series of television ads sponsored by Bennett's and Jack Kemp's Empower America organization. In the ads, Bennett says: "We're not talking about censorship," with Tucker adding, "If Time Warner doesn't see the light, you ought to make them feel the heat." The attacks on the company led to some managerial reshuffling and a commitment to reexamine the standards used in the voluntary labeling of albums containing explicit lyrics.

Record industry representatives say the assault on the company is unfair. "We have made sure that companies are diligently stickering records that have explicit lyrics, and that's for one purpose — so people can take responsibility for what their kids listen to," said Recording Industry Association of America CEO Hilary Rosen. "It seems that the issue of whether or not companies should *want* to put out these records, or whether artists producing this music have a legitimate voice that deserves commercial distribution, really is an issue that has to be resolved on a record-by-record basis by each individual company."

"Dole, Bennett and Tucker are offended by these words and by these artists, and therefore no industry standard on a new sticker addressing that issue would satisfy them," Rosen said. "The only thing that would satisfy them would be for these artists to be silenced, and I think it is naive for any of us to believe that if Time Warner stopped distributing a popular rapper like 2Pac or Snoop Doggy Dogg that they would be silenced."

Ironically, it has been Time Warner that has been most active in ending relationships with controversial rappers. Warner Music Group USA's Doug Morris noted that "in our effort to be responsible, we've become a lightning rod for this kind of acrimony."

The list of acts separated from assorted labels owned or distributed by Time Warner includes:

- Almighty RSO, dropped by Tommy Boy over "One in the Chamba," which described the death of two young black men at the hands of Boston police officers.
- Kool G. Rap, bounced from Cold Chillin' over the violent contents and cover of their "Live and Let Die" album.
- The Geto Boys, dropped from Def America and Geffen distribution in 1990 over violent and sexist lyrics on the album "We Can't Be Stopped."
- Paris, dropped when Warner Bros. refused to release his 1992 "Sleeping With the Enemy," an album whose cover showed a sniper stalking George Bush near the Capitol (with a companion "fantasy" titled "Bush Killa"), and "Coffee, Donuts & Death," inspired, Paris said, by the lenient treatment of an Oakland cop accused of raping a black woman.
- Ice-T, whose song "Cop Killer" (actually by Ice-T's metal band, Body Count) inspired attacks on Time Warner by angry police associations in 1992. Ice-T eventually took "Cop Killer" off the Body Count album and left the label in 1993 after a dispute over the cover art and contents of his next album.

All of these performers subsequently released the disputed albums on independent labels that remain far less susceptible to the kind of moral and economic pressures being applied at Time Warner.

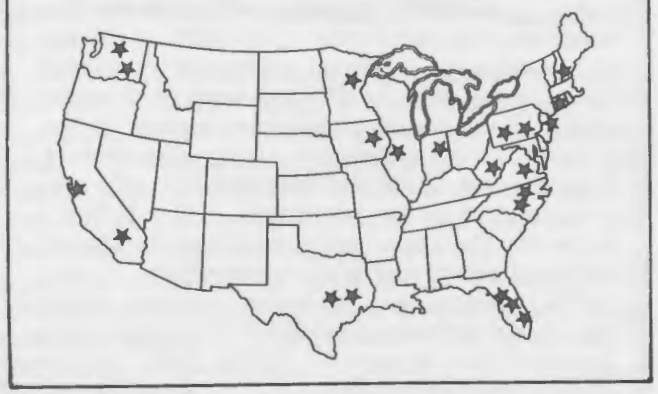
(continued on page 150)

Arthur Kropp

Arthur J. Kropp, president of People for the American Way, died June 12 of AIDS at the age of 37. Kropp was appointed president of People for the American Way in 1987 and oversaw dramatic growth in the organization's membership. As the group's national spokesman and director he was a frequent guest on national television and radio programs and wrote for newspapers. Under Kropp's leadership the organization produced its annual survey of school and library censorship.

"The country has lost one of the great young men," said television producer Norman Lear, who founded the group in 1980. "He ran a 300,000-member organization with direction and efficiency and inspiration. That is hard to match."
Reported in: *Philadelphia Inquirer*, June 14.

censorship dateline



libraries

Indianapolis, Indiana

Political pressure may be forcing the Indianapolis library system to consider making it more difficult for juveniles to check out videotapes. Local pressures brought on by politicians, including Mayor Stephen Goldsmith, forced the Indianapolis-Marion County Public Library director to recommend a new policy to the library's seven-member board.

A motion to pull all R-rated videos from Indianapolis-Marion County Public Library shelves quickly failed for lack of a second at a library board meeting June 12. But a motion to limit the borrowing of R-rated videos to adults drew two hours of discussion before it failed. Board member James Logsdon offered both measures to trigger discussion of the library's policy that allows children to borrow adult videos.

The board tackled the issue because Eric Miller, executive director of Citizens Concerned for the Constitution, had proposed reversing the board policy of allowing any patron to borrow any material unless the patron is a child whose parent has voluntarily restricted his or her library card. Only 369 parents out of 150,000 children's cardholders have imposed such a restriction.

Miller proposed restricting all children's library cards but allowing parents to give permission if they want their children to have access to R and NC-17 rated videos.

Miller did not give up, however. He won the support of Mayor Goldsmith, who wrote in a letter to Miller, "Public libraries should not use tax dollars to provide these movies free to children without the prior written consent of their parents." The mayor added that the provision of entertainment videos at public libraries was, in his opinion, a waste of taxpayer money in the first place. "Government wastes far too many tax dollars by providing services it shouldn't," he wrote. He said the library's collection should contain only historic and classic videos not available in commercial video stores.

Goldsmith was soon joined by Marion County Prosecutor Scott Newman, Sheriff Jack Cottey, and Juvenile Court Judge James W. Payne, all of whom wrote letters to Miller. Bowing to political pressure, Library Director Ed Szynaka told a City-Council committee July 6 that he would ask the board to change the policy at its July 20 meeting.

The new policy proposed by Szynaka would prevent all those under 18 from borrowing any videocassette unless their parents have a library card and have agreed in writing to allow their children to borrow videos.

Miller said he was "shocked" by the proposal, which he called vague. He was, however, "cautiously optimistic that we are moving in the right direction to protect the children of Marion County." Reported in: *Indianapolis News*, June 13, 15.

Tysons Corner, Virginia

Every June since the Tysons Corner branch library opened in 1985, reference librarian Charles Keener has organized a display commemorating Gay Pride Day and the Stonewall riots in New York. Keener, who is gay, planned a similar display this year at the Tysons-Pimmit Regional Library. But Fairfax County Library Director Edwin S. Clay, III, forbade it.

"It seems to me that it is time at that branch that we focus on a different topic," Clay said. "We have done that. It is time to move on."

Clay acknowledged that complaints about the displays from conservative activists influenced his decision, but denied that he had knuckled under to censorship. "We still have a collection with a wide array of materials on this subject," he said. "We will continue to provide access to all subjects, no matter how popular or unpopular they are."

In subsequent elaboration, Clay said that he felt the 1994 exhibit gave the appearance of an "issue display" — one which takes a position on a political issue. That was one of the reasons he decided not to allow the display this year. In a May 24 memo to staff, Clay said staff-produced displays must not support a "particular view or a political position."

"The library has an ethical obligation to remain neutral on issues, especially those which are or have become politically controversial," he wrote.

But Keener and gay rights activists said Clay had insulted the gay community. They called it the first major setback in their two-year battle with conservatives over library access to materials such as the *Washington Blade* newspaper, which is aimed at a gay readership.

"It is sending a message to the gay community that it is not a valued part of mainstream Fairfax," said Stephanie Burns, president of the Fairfax Lesbian and Gay Citizens Association. "Mr. Clay has basically kowtowed to a very small minority of people who are anti-gay."

Keener said that many exhibits at the library are annual events, such as those for Black History Month. "It strikes at the heart of what we are supposed to be about, which is to provide equal and fair access to everybody," he said. "They are saying that the books can be on the shelf, but just don't bring any attention to them."

Valerie Eastwood, founder of Northern Virginia Citizens Against Censorship, which has been active in defending the library against efforts to remove the *Blade* and otherwise censor gay-oriented materials, said Clay's memo struck her as "odd."

"It seems odd and out of character for the library administration — which has been basically supportive in anti-censorship efforts — to single gay and lesbian issues as something needing to be screened out," said Eastwood. "As far as I know, this is the only group the library director is doing this for. It shows censorship efforts by the religious right have been successful in intimidating library administrators. I think that's unfortunate."

Conservatives in Fairfax praised Clay's decision. "I just felt it was not appropriate for a family-oriented library to romanticize homosexuality," said Dawn T. Jones.

Library board members were generally supportive of Clay's action. "He possesses excellent judgment and makes good decisions," said board member Phylis A. Salak, who has voted against efforts to limit access to library materials such as the *Blade*. Reported in: *Washington Post*, May 18; *Washington Blade*, June 2.

schools

Hemet, California

A proposed HIV-AIDS curriculum was sent back to district staff June 20 by the Hemet Unified School District Board of Trustees. The district staff had recommended that the board approve a curriculum that did not include teaching the use of condoms. The course would also include lessons on abstinence, marriage and morality.

Critics from the audience complained that the proposed curriculum was the proposal supported by the lone dissenting member of the teachers' committee on the curriculum, former board member Bonnie Park. "It would appear that even though she no longer sits on the board, her voice is the only one that counts," said Diane Mitchell.

The curriculum council had approved the teachers' committee recommendation, because the majority of the members felt it wasn't their place to make changes that could be viewed as censorship. Park had told the council that she knows how the board majority would vote and recommended the elimination of the condom instruction and information from SIECUS, which was critical of some abstinence-only sex education courses.

Several people criticized the board for its unwillingness to teach about condoms. "I'm not advocating teaching sexual techniques," said John Haggart. "But young people need to know all the facts."

Maureen Bryan said she was concerned with the approval of a curriculum that wasn't complete. "Is this going to be a mini-Sex Respect course?" she asked. Bryan is one of several parents suing the district over the teaching of the controversial "abstinence-based" Sex Respect curriculum. The suit and associated controversy over sex education resulted in the elimination of all sex education courses in the district. The district is required by state law, however, to have a course that teaches about HIV/AIDS.

The board voted 4-1 to send the proposed curriculum back to district staff. Reported in: *Hemet News*, June 21.

Southbury, Connecticut

Passages in certain novels — including the rape of a 14-year-old girl in Alice Walker's *The Color Purple* — have had one family demanding that the books be removed from the curricular reading list at Pomperaug High School. Robert Barnes, who graduated in June, and his mother, Michele, said sexually explicit passages aren't appropriate high school reading. Barnes said he was concerned about passages in several books, including *The Color Purple* and Jerzy Kosinski's *Being There*. The Barneses called for a review and revision of the school's reading list.

School Superintendent Louis Esparo said, "No student is forced to read anything to which he or she takes exception." He said the reading list is reviewed regularly by teachers and that teachers make selections from a list they make up for a particular course according to "the maturity level and ability level" of the students. Reported in: *Danbury News-Times*, June 21.

Carol City, Florida

Carol City High School valedictorian Shani Gray didn't get to read six lines in her graduation speech in June. They were crossed out minutes before the ceremony by a counselor who considered the words "too negative." The furious pencil scribbles on the speech surprised Gray when it was handed back to her before the commencement march. But the Dade County School Board should find the markings even more surprising. The board banned censorship of student graduation speeches last year.

The deleted lines referred to Gray's disappointment over the lack of help she received from Carol City High in obtaining scholarships for college. She also was bitter over not being picked to represent the school on a television promotion that featured two students as Best of the Class.

"How did we do it," she wrote, referring to her class's successful four years, "when we missed out on scholarships, awards and other special events? How did we make it this far when it seemed it was who you know and not what you achieved that seemed to dictate what you received?"

Before the Class of '95 prepared to march Gray was told to leave the speech on the stage. Helene Giles, activities director at the school, said she told senior class counselor Faye Brown to mark out the lines. "I looked at it and said, 'Definitely, I agree, let's just take this out'," Giles said. Reported in: *Miami Herald*, June 16.

Mount Dora, Florida

An exhibit commemorating the 50th anniversary of the end of World War II was removed from an elementary school in early May after a parent and staff member apparently voiced concerns that some of the scenes were too graphic for young children. "We felt that maybe they were inappropriate for elementary children," said Stanley 'Bud' Brookes, principal of Roseborough Elementary School. "I did what was in the best interest of my students."

More that 75 posters depicting various scenes and famous battles from World War II are included in the traveling exhibit that was being shown at schools throughout the county on a voluntary basis.

"We've had a lot of good compliments from the teachers," said WWII veteran John Northcott who volunteered to transport the exhibit to schools and libraries. "The kids were interested in everything. It was only this one school that decided they didn't want it." Reported in: *Orlando Sentinel*, May 6.

Aledo, Illinois

Using sexually graphic poems in a role-playing exercise on censorship backfired on high school teacher Mark Artcher. Sexy sonnets he passed out to students created a genuine censorship controversy that left the veteran teacher and coach with a written warning in his record.

"The materials were chosen as part of a role-playing unit on the censorship of controversial materials in a public school setting," Artcher said in a statement released May 22. "The Board of Education concluded that the materials were not appropriate. Their directive ordered that materials of this nature not be used, and I plan to make every effort to follow that directive."

In the exercise, students chose sides in favor of or against censoring the poems. At least one student complained to Principal Bruce Hall that the poems were too sexually explicit. Hall then referred the matter to the school board. During a closed session, board members passed a resolution issuing a "notice of remedial warning" to Artcher. Reported in: *Quad City Times*, May 23.

Anoka, Minnesota

Sex is again on the minds of the Anoka-Hennepin school board. Earlier this year, a segment of the board and the community tried unsuccessfully to ban R-rated movies from the classroom. This summer, some of the same players became involved in a controversy over whether to ban something else from the classroom: specifically, the idea that homosexuality is a "normal, valid lifestyle."

By a vote of 4-2, the school board accepted a recommendation from a handful of community members and parents that "while respect be maintained toward all people, homosexuality not be taught/addressed as a normal, valid lifestyle and that the district staff and their resources not advocate the homosexual lifestyle."

"I believe we have to set a standard and it has to be the right standard," said board member Mark Temke, one of the four board members who supported the recommendation. "We are not interested in putting anybody down. But we want to recommend marriage and a healthy lifestyle."

Gwen Moore, a parent who was among the five people who made the recommendation, said, "It is difficult to teach without values. I'd like my values taught instead of someone else's."

Opposition to the move came immediately from the Minnesota Civil Liberties Union, the Anoka-Hennepin Education Association, and PTA activist Wendy Graves. Graves and the teachers' union began circulating a petition asking the board to reconsider its decision.

The recommendation on homosexuality came from a minority report signed by five people who were part of a 25-member committee of parents, educators and community members set up by the school district. The committee was asked to study the health curriculum used by the district and come up with recommendations that will guide the district in selecting new materials.

The larger committee gave the board a majority report, which was accepted June 26. But a group of five turned in their own recommendations and parts of that were adopted by the board as well. These included:

- That sodomy and masturbation not be discussed in any elementary classroom. Elementary students raising questions on these issues will be referred to their parents.
- That all sex education curricula will emphasize the positive advantages of saving sex for monogamous heterosexual marriage.

• That while respect will be maintained toward all people, homosexuality will not be taught or addressed as a normal, valid lifestyle and that district staff and their resources will not advocate the homosexual lifestyle.

Walt Munsterman, president of the teachers union, and Graves, who was on the curriculum committee and backed the majority report, were disturbed that the board accepted parts of the minority report when the full committee had spent months working on a majority report. "People won't volunteer anymore if they realize their work is for naught," Munsterman said.

Board chair Michael Sullivan was one of two board members to vote against the minority recommendations. He questioned using the words "normal" or "not normal" to describe a lifestyle. "That is judgmental," he said. "I don't count myself wise enough to indulge in that." Reported in: *Saint Paul Pioneer Press*, July 17.

New Ipswich, New Hampshire

Penny Culliton's desire to teach her students tolerance for gays and lesbians may have jeopardized her job. The Mascenic Regional High School teacher, who distributed three respected literary works with homosexual characters, said Superintendent Francine Fullam sent her a letter saying she intended to recommend the School Board dismiss her.

Culliton distributed *Maurice*, by E.M. Forster; *The Drowning of Stephen Jones*, by Bette Green; and *The Education of Harriet Hatfield*, by May Sarton, in May. The books were not required reading. Principal Dana McKenney ordered the books removed from Culliton's classes, saying they had not been approved.

About fifteen students and ten adults attended a subsequent school board meeting where they presented the board with a petition containing about a hundred signatures of students who decried the action as censorship.

"They were not part of the approved curriculum," said board Chair Steve Lizotte. "We have no policy on censorship. We try to be as fair as possible. Censorship is what we have to do. *Playboy* isn't allowed in the library and we are dealing with underaged children. They can read what they want to at home."

Culliton said *Maurice* was to be used in her senior British literature and critical writing class. *Harriet Hatfield* was to be used in her eleventh-grade American literature and interpretive writing class. *Stephen Jones* was to be used in her tenth grade modern world literature course.

Culliton cannot be dismissed without a School Board hearing because she has been at Mascenic for five years. Reported in: *Bay Windows*, May 18, 25.

Boyertown, Pennsylvania

The Boyertown School Board voted 5-3 at its May 23 meeting to approve a revised elementary textbook list that did not include a controversial third grade social studies book. The book, *This is My House*, by Arthur Dorros, was requested by a teacher and recommended to the board for approval by the administration. The book depicts families in various countries displaying their homes. One American family is shown living in a car, with the passage, "This is my house. This is where I live right now. My family is staying in our car. We will move into a house when we can."

Board member Sherwood E. Conrad, Jr., said that he was concerned that the book's depiction of an American family as homeless might misrepresent the problem of homelessness to children.

Rev. Roger Buchanan, a co-founder of Boyertown Clergy Opposed to Censorship, made a donation of five copies of the book to the board on May 23. He said the board could use the books however it wished. He characterized the removal of the book from the textbook list as censorship and said board objections to the book demoralize the professional staff that recommended it for use in the classroom.

"It is inappropriate and counter-productive for the board to set itself up as a powerful adversary of its own professional employees," said Buchanan. Reported in: *Boyertown Area Times*, June 1.

Grove City, Pennsylvania

Three parents voiced concern May 8 at a school board meeting about the use of *On My Honor*, by Marion Dane Bauer, in fourth-sixth grade reading classes. Gail Chutz said the book, a Newberry Award winner which she read twice, was depressing enough to "pull a child down for days."

"This can be very confusing as well as disturbing," she said. "I don't know about you, but there's enough out there." She said the book should be dropped from the reading list. Chutz said she also questioned elementary students learning about the Revolutionary War through a fictionalized account. "I think they should learn the facts first," she said.

Jeff and Leigh Peterson also made a case against some of the reading material at the school, and joined Chutz in questioning what criteria were used in selecting books which focus on divorce, death, suicide and defeat.

The parents gave a list of the books they oppose to Hillview Principal Rich Bonnar. Reported in: *Sharon Herald*, May 9.

Austin, Texas

The Texas State Board of Education on June 9 rejected a request that board members be banned from trying to influence which textbooks local school districts buy. The

board unanimously and with virtually no comment denied the petition by People for the American Way.

The anti-censorship group wanted to stop board member Donna Ballard from suggesting which health textbooks she thinks high schools in her district ought to buy. Earlier this year, Ballard wrote high school principals in the Houston area and elsewhere, suggesting ways to get around buying board-approved textbooks and selecting those she recommended.

Harriet Peppel, Texas coordinator for the group, said not only was it inappropriate for a board member to recommend a textbook, such comments might also be construed as endorsement of a particular publisher. But board member Will Davis of Austin, who co-chaired a committee that earlier recommended the board deny Peppel's request, said not only was her proposal unconstitutional, the new education code did not give the board authority to adopt such a rule.

"I'm not going to gag anyone and I don't want them gagging me," Davis said. Reported in: *Houston Chronicle*, June 10.

Houston, Texas

A recent school board decision about textbooks left some Clear Creek Independent School District teachers seeing red. As the school board moved to implement an abstinence policy in the teaching of its health and psychology curriculum, it rejected two health textbooks recommended by a teacher selection committee.

According to Pam Moak, president of the Clear Creek Educators' Association, the teachers on the selection committee, anxious for new texts to replace the fifteen-year-old books they've been using, spent considerable time and energy reviewing the proposed texts and brought forth what they thought were the best options.

"We studied through and rated each book — it was a very involved process," Moak said. "We felt our expertise was completely disregarded and the process wasn't respected."

Board member Cheryl Johnson said that the heart of the issue was a general consensus that the books didn't reflect an overall message that abstinence is the best policy. "This policy doesn't mean that there won't be any sex education," Johnson said. "But we want the kids to learn that the only 100 percent way of not getting pregnant is abstinence. We're talking about abstinence from all bad things — drugs, tobacco, alcohol. When you get into the health textbooks, it should say, 'Don't smoke cigarettes' not 'smoke low-tar cigarettes.'"

"This is not an attack on the teachers," Johnson added. "We're slapping the state Board of Education for giving us these lousy choices. They did what they were told, but they didn't have the best choices."

Moak said that the new abstinence policy will just formalize what has already been taking place in the classroom. But she disputed Johnson's statement that the books didn't reflect a philosophy of abstinence. "One of the books has bold-faced statements in two different places that say abstinence is the only 100 percent way to prevent pregnancy and sexually transmitted diseases," she said. "And there are several more references to abstinence throughout the text."

"We have professional health educators making these decisions and a lay person telling us what's wrong," Moak continued. "We're certainly open to listening to any concerns parents might have, but they have to know what's appropriate in that area."

Said Johnson, "I may be just a parent, but I do have a degree of intelligence. I did read the textbooks. I'm not a real ultra-conservative person, but I know [a problem] when I see it." Reported in: *Houston Citizen*, June 7.

Mossyrock, Washington

The father of an eighth-grade girl urged the Mossyrock School Board May 15 to review and exclude some parts of the AIDS curriculum planned for students at Mossyrock High School next year. "After partially reviewing the presentation scheduled to be presented by the Lewis County Health Department to our students, I feel that the material is unsuitable and unnecessarily graphic for the purpose intended," said Wallace Boyles.

Boyles said he objected to a sensitive subject matter being presented in a coeducational environment, specifically to slides showing male genitalia. "I know we have a problem," he said, "but why do we need to be so graphic?"

Board chair Mark Bolender sympathized with Boyles' concerns, but noted that school administrators across the country are under pressure to address the issue of AIDS.

Superintendent John Stencil told Boyles that details of the program were not final. "You can be assured that we will be reviewing this as well," he said. "I'm not sure what we're going to do." Reported in: *Centralia Chronicle*, May 17.

Kingwood, West Virginia

Saying it smacked of censorship, fourteen people told the Preston County School Board in late May not to adopt a proposed policy to preview the content of student public performances. The policy, which would revise the existing policy on "complaints regarding educational materials," was suggested by School Superintendent Ted Mattern in the aftermath of parental complaints about a Preston High School play. The student production of "Visions 2000" contained obscenities and references to homosexuality to which some parents objected.

No advocates of the proposed revision attended the board meeting. Instead, parents and teachers explained why they opposed any attempt to monitor student per-

formances. "While every parent wants to protect his child from ideas that may threaten the values that we want our children to possess, protection which fosters ignorance creates vulnerability," said teacher and mother Susan Hardesty.

Tammy Bolyard, a Preston High parent and speech and drama volunteer, also opposed the changed policy. She told the board "to support allowing teachers to do the job that you have employed them to do." The board took no action on the issue. Reported in: *Cumberland Times-News*, June 2.

student press

Campbell, California

The ACLU labeled the decision of administrators in the Campbell Union High School District barring an ad for a gay and lesbian community center from appearing in school newspapers as censorship. The ad, from the Billy DeFrank Lesbian and Gay Community Center, focused on the center's activities for young people. It ran in high school newspapers throughout Santa Clara County. The center is a United Way agency offering activities, counseling, support and referrals for the lesbian, gay and bisexual community.

School district officials defended their decision, saying they needed more information about the center. District Superintendent Bruce Hauger said the decision was unrelated to the center's gay orientation. He said district officials were concerned because the organization was slow to provide information about its goals and objectives. Reported in: *Gay and Lesbian Times*, May 11.

Orlando, Florida

A Lake Howell High School yearbook feature on body piercing and the school newspaper's attempt to attend a sensitive faculty meeting have cost a teacher her job as faculty adviser. Principal Don Smith said teacher Jane Speidel won't return next year as adviser to either the *Wings* yearbook or *in flight* newspaper because of what he called poor judgment. She will continue to teach English, but not journalism.

The yearbook carried a photo layout on body piercing that describes how a student "got his penis pierced at Leather Tiger, a body piercing shop." Smith called the passage inappropriate and said he received about fifteen complaints from parents. "I don't think there was good taste shown there. I don't think that's what a yearbook should be," he said.

The principal was also upset that an *in flight* reporter showed up at a faculty meeting he arranged earlier this spring to discuss a teacher accused of having an affair with a student. "I asked the student to leave. I didn't think it was an appropriate meeting for a student," Smith said. He criticized Speidel's decision to tell the student about the meeting.

Speidel said she was doing her job at both publications by allowing students to exercise judgment about what stories to write and pursue. "They run things by me. I look for mistakes. I give advice on form and content. But I cannot censor," she said. "There's a lot of things my students cover I don't like."

Speidel worked for nine years with the yearbook and ten with the newspaper. Both publications earned a top student journalism award from the Southern Interscholastic Press Association. Speidel is district director for the Florida Scholastic Press Association and serves on the press association advisory board. Reported in: *Orlando Sentinel*, June 7.

Kernersville, North Carolina

Glenn High School's literary magazine, *Underworld*, may be renamed *Underground* after the principal banned it this spring. Principal Adolphus Coplin said the two-year-old magazine couldn't be distributed on campus after he found some of its content objectionable, according to the attorney for the Winston-Salem/Forsyth County Board of Education.

"I talked with the principal, and there were parts of it he considered to be lewd, vulgar or indecent, which meets one of the criteria in the board's policy for prohibiting the distribution of a nonschool-sponsored publication," school board attorney Douglas Punger said.

Coplin found several poems in *Underworld*, including one that referred to looking up cheerleader's skirts, to be offensive and lewd. Punger said some parents of students had brought the poems to Coplin's attention, and the principal made the decision to ban distribution of the magazine on campus.

"The decision can be appealed to the superintendent and then the board, but as of now, no appeal has been made or taken," Punger said. But some Glenn students called local radio and television stations to protest the decision. Reported in: *High Point Enterprise*, June 9.

Rocky Mount, North Carolina

A Nash County court magistrate on June 1 upheld a principal's decision to censor parts of Northern Nash Senior High School's published yearbook, saying he had an obligation to maintain the school system's moral underpinnings.

Nancy Balkcum brought a small claims suit on behalf of her son, junior Tab Balkcum, against Principal Robert Hurley. The Balkcums said Hurley should have edited the *Roundtable* long before it had been published and partially distributed. Mrs. Balkcum requested that Hurley pay her son $300 in damages and return his book unedited.

"I feel Principal Robert Hurley was hired as the educational leader of Northern Nash High School and part of his job is to ensure that certain principles of the school are upheld," said magistrate L.R. Bass, Jr. "I will dismiss this case on its principles."

Hurley ordered the mark up of all of the yearbooks after they had been published and delivered to the school. He and school officials said some "offensive" content in the books made sexual innuendos and referred to underage drinking. Reported in: *Rocky Mountain Telegram*, June 3.

Kitsap, Washington

Yearbooks at Central Kitsap Junior High School were confiscated in June when administrators found the words "flip power" at the end of a football photo caption. A parent found the slogan and called the school the day after some 850 copies of the yearbook were distributed. Assistant Principal Barbara Gilchrist said she asked teachers to collect any annual students brought to their sixth period class and black out the words.

The motto stands for "Filipino power." An unknown student or students in the yearbook class changed the caption in a special sports section after a teacher had proofed it and before it was mailed to a printing company. The yearbook is doublechecked for problems by Gilchrist before distribution. She said she didn't have time to proof the special sports section because it was a supplemental package that the school received from the printers the day before distribution. Reported in: *Bremerton Sun*, June 24.

university

Iowa City, Iowa

University of Iowa art students cried censorship over the campus police's removal of an outdoor exhibition of murals in early May and said they would seek compensation of $750 for each painted bedsheet damaged in the incident. They said that depiction of a penis in the artwork led to the removal, but a university representative denied that.

The murals, which were painted on nine bedsheets and taped to the north wall of the Communication Studies Building, were torn down by campus police May 6 because of a university ban on attaching anything to the outside of buildings, said Joanne Fritz, director of university relations.

"Any time someone's artwork is taken down against their will, it's a case of censorship," countered Cedar Nordbye, a graduate student in printmaking. Another graduate art student said that some of the sheets were torn by campus police and the students would seek compensation for the damage.

Four student artists painted the sheets for a celebration called " Exquisite Community" that also included music, dance and poetry. The result was three surreal figures, each composed of three sheets arranged vertically. A penis "coming down out of the clouds" could be seen on one of the nine sheets. The art students said that one of the officers who removed the sheets said he was doing it because of the penis. University officials said that was not the case. "We do not pass judgment on content," one administrator emphasized. Reported in: *Des Moines Register*, May 9.

United Nations

New York, New York

A book commissioned by the United Nations to mark its 50th anniversary created a commotion even before publication — not because of what it contains, but because of what it omits.

Jonathan Power, editor of the commemorative book, *A Vision of Hope*, said at least seventy cuts were made in the manuscript submitted to Gillian Martin Sorenson, the official in charge of coordinating the celebration of the UN's anniversary. All fifteen writers who contributed to the book asked that their names be removed from the chapters they wrote.

Deletions included the names of countries that abstained from voting for the Universal Declaration of Human Rights in 1948 and of others whom the UN has since monitored for human rights violations. UN officials acknowledged that some deletions were made to avoid offending countries named.

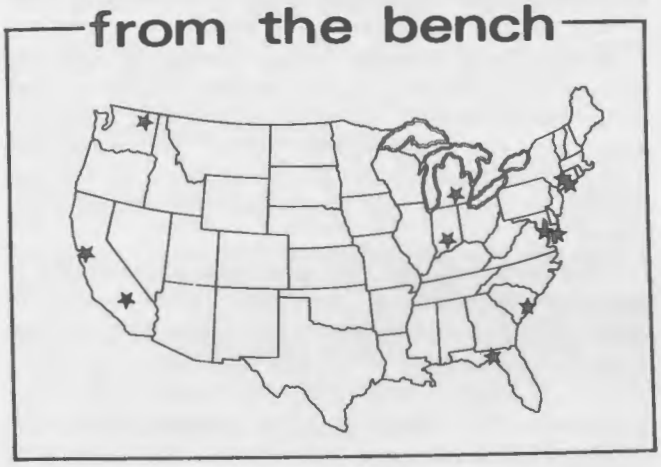
Also dropped were references to the Dalai Lama, the Tibetan spiritual leader, including two sentences of a speech that he delivered outside a human rights conference backed by the UN in 1993.

"It was not deemed appropriate to have the book contain criticism of member states in it,' said Ahmad Fawzi, deputy spokesman for UN Secretary-General Boutros Boutros-Ghali.

"We know what editing is and we know what censorship is," replied Richard Reoch, who wrote the book's chapter on human rights. Reoch, a former director of information for Amnesty International, said from London that the deletions amounted to "airbrushing history."

The World in Our Hands, a book written and designed by children from all over the world, also had controversial sections excised by UN officials. Reported in: *Chicago Tribune*, June 29; *St. Petersburg Times*, June 27; *Los Angeles Times*, June 30. □

from the bench



U.S. Supreme Court

In a decision extolling the expressive nature of a parade, the Supreme Court ruled unanimously June 19 that, under the First Amendment, the organizers of Boston's St. Patrick's Day parade should have been allowed to exclude gay marchers. The court said a parade, a "public drama" of costumes, flags and banners emblazoned with messages, is a form of expression protected by the constitutional guarantee of free speech. The justices said lower courts were wrong to rule that, under a state public accommodations law, the South Boston war veterans had to permit the Irish-American Gay, Lesbian and Bisexual Group of Boston to participate in their annual March parade.

"The issue in this case is whether Massachusetts may require private citizens who organize a parade to include among the marchers a group imparting a message the organizers do not wish to convey," Justice David H. Souter wrote for the court. "We hold that such a mandate violates the First Amendment."

People who organize or join a parade are there to make some sort of collective point, Souter wrote, "not just to each other but to bystanders along the way." Reiterating past court rulings, he said that government impermissibly denies parade organizers the ability to choose their message when it regulates who can march.

Burt Neuborne, a lawyer for the American Civil Liberties Union, which filed a "friend of the court" brief in the case, said the decision means that "nobody can rain on anybody else's parade."

"It is very helpful for people who want to use 'street rhetoric' . . . the lifeblood of the civil rights movement," he said. "The importance of parades and street demonstrations is that it is the only form of speech available to poor people."

Souter went out of his way to note that the gay marchers had defended their case on narrow grounds. They did not, for example, claim that the parade, long endorsed and previously financed by the city, was an official action that would require tougher judicial scrutiny. Souter specifically noted that the gay marchers had argued their case only under a Massachusetts public accommodations law, and he left open the possibility that gay marchers and other excluded groups could in the future assert their own First Amendment rights.

The fact that the ruling was unanimous and that no justices wrote concurring statements revealed how much the decision flowed from past court rulings and how easy it was for the justices to reach it.

The issue in the Boston parade case — and a similar recent dispute in New York between gay groups and sponsors of that city's St. Patrick's Day parade — recalls controversies since the 1960s over Vietnam War protests and civil rights demonstrations. Confronted by war supporters who wanted to march in anti-war demonstrations or civil rights activists who wanted to parade with the Ku Klux Klan, judges generally have said groups are entitled to their own parades. (In the New York conflict, which was not before the high court, a federal judge had said the parade sponsor, the Ancient Order of Hibernians, could exclude a gay group.) St. Patrick's Day conflicts add a twist because they involve a single day on which many groups seek to express their heritage, and the parades often have some official endorsement.

Souter noted that until 1992, Boston had allowed the veterans to use the city's seal and gave them money for parade activities. Boston's big Irish-American parade, which has included up to 20,000 marchers and a million spectators, also celebrates Evacuation Day, George Washington's victory over the British in 1776 that forced British troops out of South Boston.

The dispute began three years ago when the veterans, who have sponsored the parade since 1947, denied a place to the Irish-American Gay, Lesbian and Bisexual Group of Boston. That group, known as GLIB, was formed specifically to march in the parade. Although the veterans denied the request, a state court ordered that the contingent could march.

In 1993, the veterans again turned down the group and GLIB sued the veterans council and its president, John J. "Wacko" Hurley. A trial court ruled that the parade was an open recreational event. Relying on a state law banning discrimination based on sexual orientation in public accommodations, it ordered the veterans to allow the gay marchers in.

The Supreme Judicial Court of Massachusetts last year upheld the findings, saying it did not have to decide whether the free speech or expressive association rights of the veterans were at risk because the trial court found that the veterans had no discernible expressive message entitling them to free speech protection. The veterans canceled the parade in 1994 rather than again allow the gay marchers' participation. In their appeal to the high court, they said "every parade is designed to convey a message" and that their message celebrates religious and social values.

The Supreme Court agreed in *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston* that it violated the First Amendment to require the private organizers to admit a contingent that expresses a conflicting message. A parade's message consists of individual presentations along the way, the court concluded, and each display becomes part of the whole. "Parades are . . . a form of expression, not just motion," Souter said, referring to past court cases. Reported in: *Washington Post*, June 20.

In two rulings further refining the delicate relationship between church and state, the Supreme Court on June 29 enhanced the ability of religious groups to promote their messages in the public arena. In a 5-4 vote, the court said that the University of Virginia violated the free speech rights of a student group by refusing to provide funds for its Christian magazine while subsidizing other student publications. The decision marked the first time that the court approved government funding for a religious activity.

In another case, which was closely watched by the many communities that have wrangled over creches and other religious displays, the justices by a 7-2 vote said the state of Ohio was wrong to bar the Ku Klux Klan from putting up a large wooden cross in front of the state capitol. Conservative Christians hailed both rulings as major victories for religious freedom in an era they say is one of unprecedented government hostility to religion.

"We have crossed a critical threshold in the fight for religious liberty," said Jay Sekulow, chief litigator for the American Center for Law and Justice, founded by religious broadcaster Pat Robertson. "The message is clear: Religious speech or speakers must be treated exactly the same way as any other group. The content of that speech does not disqualify them from funding."

But the Virginia ruling in particular dismayed backers of strong separation between church and state. They said that the court had betrayed core democratic principles that have helped this nation transcend religious divisions. "This is a sad day for religious liberty. For the first time in our nation's history, the Supreme Court has sanctioned funding of religion with public funds," said J. Brent Walker, general counsel for the Baptist Joint Committee on Public Affairs. "Our founders understood that, for religion to be meaningful it must be voluntary, freed from government assistance and control."

Writing for the majority, Justice Anthony M. Kennedy cautioned that the court was not opening the door to more direct public funding of religious activities, and said courts must guard against such "abuse." He stressed that states should treat student groups neutrally by offering support to religious and nonreligious groups on equal terms.

"We have held that the guarantee of neutrality is respected, not offended," he wrote, "when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse."

Kennedy was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Antonin Scalia and Clarence Thomas.

Dissenting, Justice David H. Souter said the court was turning away from fundamental guarantees of the separation of church and state. "The court today, for the first time, approves direct funding of core religious activities by an arm of the state." He was joined by Justices John Paul Stevens, Ruth Bader Ginsburg, and Steven G. Breyer.

The church-state cases involved two aspects of the First Amendment that the court has tried to balance for decades: one guaranteeing free speech and the other ensuring that government "shall make no law respecting an establishment of religion." But the decisions were closely tied to the peculiar facts of each case and did not attempt to set broader standards for how governments should treat religious activities.

In the University of Virginia case, former student Ronald W. Rosenberger had sought $5,800 from a student activities fund to publish *Wide Awake: A Christian Perspective at the University of Virginia*. He argued that among the 118 student organizations receiving funds were Jewish, Muslim and other Christian groups, some that also published magazines. The university argued that those groups could be funded because their activities and magazines were primarily cultural and not religious. But because many of the articles in *Wide Awake* were explicitly religious, the university could not allow student activity funds to subsidize publication. He sued, but lower federal courts upheld the university policy, as did the U.S. Court of Appeals for the Fourth Circuit, which said providing the subsidy would have breached the First Amendment mandate against government establishment of religion.

Reversing that opinion in the *Rosenberger* v. *Rector and Visitors of University of Virginia* decision, the Supreme Court said, "Vital First Amendment speech principles are at stake here. The first danger to liberty lies in granting the state the power to examine publica-

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St. Patrick's day parade decision

The following are excerpts from the U.S. Supreme Court's decision in Hurley *v.* Irish-American Gay, Lesbian and Bisexual Group of Boston. *The opinion was written by Justice David Souter.*

The issue in this case is whether Massachusetts may require private citizens who organize a parade to include among the marchers a group imparting a message the organizers do not wish to convey. We hold that such a mandate violates the First Amendment. . . .

If there were no reason for a group of people to march from here to there except to reach a destination, they could make the trip without expressing any message beyond the fact of the march itself. Some people might call such a procession a parade, but it would not be much of one. Real parades are public dramas of social relations, and in them performers define who can be a social actor and what subjects and ideas are available for communication and consideration. Hence, we use the word —parade— to indicate marchers who are making some sort of collective point, not just to each other but to bystanders along the way. Indeed a parade's dependence on watchers is so extreme that nowadays, as with Bishop Berkeley's celebrated tree, if a parade or demonstration receives no media coverage, it may as well not have happened. Parades are thus a form of expression, not just motion, and the inherent expressiveness of marching to make a point explains our cases involving protest marchers. . . .

The protected expression that inheres in a parade is not limited to its banners and songs, however, for the Constitution looks beyond written or spoken words as mediums of expression. Noting that "[s]ymbolism is a primitive but effective way of communicating ideas," [*West Virginia Bd. of Ed.* v. *Barnette*, (1943)], our cases have recognized that the First Amendment shields such acts as saluting a flag (and refusing to do so), wearing an arm band to protest a war [*Tinker* v. *Des Moines Independent Community School Dist.*, (1969)], displaying a red flag, and even "[m]arching, walking or parading" in uniforms displaying the swastika.

As some of these examples show, a narrow, succinctly articulable message is not a condition of constitutional protection, which if confined to expressions conveying

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Rosenberger v. University of Virginia

The following are excerpts from the majority opinion in Rosenberger *v.* University of Virginia. *Justice Kennedy delivered the opinion of the Court.*

The University of Virginia, an instrumentality of the Commonwealth for which it is named and thus bound by the First and Fourteenth Amendments, authorizes the payment of outside contractors for the printing costs of a variety of student publications. It withheld any authorization for payments on behalf of petitioners for the sole reason that their student paper "primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality." That the paper did promote or manifest views within the defined exclusion seems plain enough. The challenge is to the University's regulation and its denial of authorization, the case raising issues under the Speech and Establishment Clauses of the First Amendment. . . .

It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. Other principles follow from this precept. In the realm of private speech or expression, government regulation may not favor one speaker over another. Discrimination against speech because of its message is presumed to be unconstitutional. These rules informed our determination that the government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression. When the government targets not subject matter but particular views taken by speakers on a subject,the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.

These principles provide the framework forbidding the State from exercising viewpoint discrimination, even when the limited public forum is one of its own creation. In a case involving a school district's provision of school facilities for private uses, we declared that "[t]here is no question that the District, like the private owner of property, may legally preserve the property under its control for the use to which it is dedicated." The necessities of confining a forum to the limited and legitimate purposes for which it was created may justify the State in reserving it for certain groups or for the discussion of certain topics. Once it has opened a limited forum, however, the State must respect the lawful boundaries it has itself set. The State may not exclude speech where its distinction is not "reasonable in light of the purpose

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(bench . . . from page 142)
tions to determine whether or not they are based on some ultimate idea and if so for the state to classify them."

Justice Kennedy said the court recognizes "dangers where the government makes direct money payments" to religious institutions. But in the University of Virginia case, he said, the university could have paid the funds to a magazine printer, in effect a neutral, secular third party. The majority also emphasized that *Wide Awake* was asking for funding from student fees, not taxpayer dollars.

In dissent, Justice Souter noted that *Wide Awake* refers extensively to Jesus Christ or God, and he said the court's ruling could open the door to greater state entanglement with religion.

At the University of Virginia, Hovey Dabney, rector of the Board of Visitors, said the decision could be "far-reaching . . . because so many other colleges and universities fund (groups) exactly the way we do."

The Ohio case, *Capitol Square Review* v. *Pinette*, began when Klansmen tried to erect a ten-foot cross on a public square adjoining the state Capitol in December, 1993. State officials objected, although they permitted a Christmas tree and menorah to be displayed there. The state had said the Christmas tree and menorah were allowed because they had a cultural significance beyond religion, while the cross conveyed a purely sectarian message advancing Christianity.

The Klan sued, alleging that its rights of free speech and free exercise of religion were denied, and lower courts agreed. The U.S. Court of Appeals for the Sixth Circuit said a private group's unattended display of a religious symbol in a public forum does not violate the Establishment Clause. The court said, "The freedoms guaranteed by the Constitution cannot depend upon the fanciful perceptions of some hypothetical dolt," who may not realize the cross was a message from private citizens, not the government.

The court's ruling may make it easier for private groups to sponsor religious displays on public property, lessening some of the conflicts that have divided many communities over whether to exhibit creches and menorahs in public parks or town halls.

Seven justices affirmed the appeals ruling, but they differed in their reasoning. Justice Scalia, joined by Justices Rehnquist, Kennedy and Thomas, said that the state cannot ban all private religious speech from an area used as a public forum. Justices Souter, O'Connor and Breyer said the state need only make clear that it is not endorsing religion.

Writing separately, Justice Thomas agreed that the cross should be allowed but he asserted that the Klan may have been engaging in "a political act, not a Christian one." Dissenting, Justice Ginsburg said, "If the aim of the Establishment Clause is genuinely to uncouple government from church, a state may not permit, and a court may not order, a display of this character." Justice Stevens also dissented. Reported in: *Washington Post*, June 30.

On June 26, the Supreme Court threw out a federal appeals court ruling that said student-led prayer at a public school graduation is unconstitutional. But the justices themselves refused to resolve the fractious dilemma of whether students should be allowed to pray at school ceremonies. The National School Boards Association had urged the court to address the question, saying in a "friend of the court" brief that conflicting lower court opinions had made public schools "the site of religious warfare."

Whether prayer should be allowed in schools also has become a hot political issue, with conservative Christian groups proposing a "Religious Equality Amendment" to the Constitution that they say would ease barriers to free religious expression in public places.

The ruling at issue from the U.S. Court of Appeals for the Ninth Circuit, based in San Francisco and covering nine western states, conflicted with a decision by the Fifth Circuit, based in New Orleans and covering Louisiana, Mississippi and Texas.

The Supreme Court action did not set any precedent and offered no national standard for whether students may organize and lead school prayers. A graduation prayer initiated by school administrators and delivered by a member of the clergy was ruled unconstitutional by the high court in 1992 in a Providence, R.I., case.

The Fifth Circuit in 1992 permitted student-initiated prayer at a public school graduation. That decision, which the Supreme Court in 1993 refused to review, has been seized upon by conservative groups who have urged school administrators to allow prayer at graduation. But the ruling from Clear Creek, Tex., is binding only on the three states in the Fifth Circuit.

The high court's one-sentence order compounded the confusion. The justices dismissed the Ninth Circuit's ban on student-initiated graduation prayer as moot. Although the justices did not explain, they likely were noting that the student who challenged the prayer policy in Grangeville, Idaho, graduated from high school earlier in June.

"The Supreme Court went around to the back door in this case . . . (and) failed to make a strong statement about prayer in schools," said Elliot Mincberg, legal director at People for the American Way.

The Ninth Circuit ruled last November that the prayers allowed at the Grangeville school "are indistinguishable from those that might be said in a church service. If said there, no one would dispute that their intent and primary effect was to advance religion. We do not think the character of the prayers changes when said at graduation."

The appeals court said that although the students were

the ones deciding whether prayers were included, school officials ultimately were in control and effectively endorsing religion. The court said the Idaho school district violated the Constitution's guarantee that government "shall make no law respecting an establishment of religion."

The action in *Joint District No. 241* v. *Harris* effectively ended that opinion's binding force in Idaho and the other states in the Ninth Circuit. Reported in: *Washington Post*, June 27.

In a final religious freedom case, the Supreme Court declined June 19 to overturn a judgment against an Arkansas couple whose neighbors sued over a massive Christmas lights display. The justices left standing an Arkansas Supreme Court decision last year that the display at the suburban Little Rock estate of Mitzi and William Jennings Bryan Osborne must be reduced. The display included more than three million lights and huge figurines such as an eighteen-foot-high Santa Claus.

Without comment, the justices turned aside arguments by the Osbornes that the display is a "symbolic manifestation" of their "sincere religious beliefs." Reported in: *St. Petersburg Times*, June 20.

The Supreme Court on May 30 let stand a state court injunction barring anti-abortion demonstrators from picketing within a hundred feet of the Westfield, New Jersey, home of a doctor who performs abortions. The court turned away a free speech challenge to the injunction.

In a seven-page opinion concurring with the court's action, however, Justice Antonin Scalia voiced concern over the effects of a 1994 Supreme Court ruling on the rights of abortion protesters. Scalia said the ruling "has damaged the First Amendment more quickly and more severely than I feared."

The 1994 decision in a Florida case stemmed from protests by Operation Rescue National outside the Aware Woman Center for Choice in Melbourne, Florida. The ruling said judges can bar even peaceful demonstrators from getting too close to abortion clinics when the level of protest is endangering the health of the women and preventing their entry into the clinic.

Less than a week later, however, the court took action that yielded an apparently opposite result. The justices rejected an Ohio community's attempt to prohibit pickets from marching in front of an abortion doctor's home. The decision left intact a ruling that struck down an Upper Arlington, Ohio, ordinance that outlawed picketing of homes. The U.S. Court of Appeals for the Sixth Circuit had ruled the law violated the protesters' rights to free speech. Reported in: *Orlando Sentinel*, May 31; *Tampa Tribune*, June 6.

The Supreme Court changed direction on the issue of advertising by lawyers June 21, ruling that states can restrain aggressive attorneys from sending solicitation letters to families of accident victims for at least thirty days. The court ruled 5-4 that Florida officials are empowered to protect grieving persons from "conduct that is universally regarded as deplorable and beneath common decency."

The decision marked an abrupt shift from the court's position in recent years. In 1977, the justices cleared the way for lawyers to appear in television ads and on billboards when they ruled for the first time that advertising by lawyers is free speech protected by the First Amendment. The Supreme Court has made clear that states can forbid false or deceptive ads by lawyers. It also has prevented person-to-person solicitations. But as recently as 1990, the court said that the First Amendment protects a lawyer's right to use targeted direct-mail advertising.

The Florida regulation, the first of its kind in the nation, grew out of a state study of advertising and solicitation by lawyers. The study included angry complaints from citizens.

"First Amendment protection, of course, is not absolute," Justice Sandra Day O'Connor wrote for the majority. Solicitation letters are "pure commercial advertising [which deserves] a lesser degree of protection under the First Amendment."

But critics, including the four dissenters, complained that the rule sets a double standard that is unfair. The regulation applies to lawyers who contact a client by mail "for the purpose of obtaining professional employment." It does not, however, restrict defense lawyers and insurance adjusters, who are free to contact accident victims to try to persuade them to accept a settlement.

The owner of a Florida lawyer referral service called Went for It, Inc., challenged the restriction as unconstitutional and it was struck down last year by the U.S. Court of Appeals in Atlanta. Reversing that decision, O'Connor said in *Florida Bar* v. *Went For It* that the state "has a substantial interest both in protecting injured Floridians from invasive conduct by lawyers and in preventing the erosion of confidence in the profession." She was joined by Chief Justice Rehnquist and Justices Scalia, Thomas, and Breyer.

In dissent, Justice Anthony Kennedy called the rule "censorship pure and simple." He said, "Under the First Amendment the public, not the state, has the right and the power to decide what ideas and information are deserving of their adherence." He was joined by Justices Stevens, Souter and Ginsburg. Reported in: *Los Angeles Times*, June 22.

The Supreme Court on June 19 rejected the paint industry's attempt to overturn a Chicago anti-graffiti ordinance banning spray paint sales in the city. The justices refused the National Paint & Coatings Association's request for a hearing on its claim that the citywide ban violates constitutional protections for interstate

commerce.

A U.S. District Court Judge ruled in 1993 that the ban was unconstitutional because the city could not impede interstate commerce without proving that the ban would serve an effective purpose. The judge found little evidence that the prohibition would stem graffiti. A federal appeals court overturned the decision in January, however. Reported in: *Valley Daily News*, June 20.

On June 26, the Supreme Court announced it would decide whether local telephone companies may enter the cable television business and sell video programs to customers in their service areas. A federal appeals court based in Richmond ruled last year that the federal government's ban on such sales violated the telephone companies' right to free speech.

Congress may trump the court on the question, however. Earlier in June, the Senate passed major telecommunications legislation that would lift a 1984 ban that kept phone companies out of the cable TV business. The House was expected to act on companion legislation and prospects for final passage were believed to be good.

The federal government and the National Cable Television Association argued that the ban should remain, because local phone companies can use revenue from telephone monopolies to finance cable franchises and, thereby, undercut competition by local cable operators. Bell Atlantic Corp. sued in federal court in Alexandria, Virginia, to have the ban declared a violation of the First Amendment. That court, and then the U.S. Court of Appeals for the Fourth Circuit and several other courts, agreed. The cases are *U.S.* v. *Chesapeake and Potomac Telephone Co. of Virginia* and *National Cable Television Association* v. *Bell Atlantic Corp.* Reported in: *Washington Post*, June 27.

library

San Francisco, California

The University of California at San Francisco said it would make available hundreds of documents showing that the tobacco industry concealed its knowledge of the addictive nature of nicotine and other harmful effects of smoking. The university said June 30 that it would display the documents in its library and publish them over the Internet. The announcement followed a ruling the previous day by the California Supreme Court rejecting a request by the Brown & Williamson Tobacco Company to block publication of the documents.

The documents were mailed anonymously in May, 1994, to Stanton Glantz, a professor of medicine at the university and to several news organizations. The documents, based on tobacco industry research conducted as long as thirty years ago, demonstrate that cigarette manufacturers recognized the addictive nature of nicotine well before the general scientific community understood it (see *Newsletter*, May 1995, p. 79).

Brown & Williamson said the court's decision did not alter the company's position that the papers cannot be used as evidence in litigation. The company has stated the papers were stolen in 1989 by someone who once worked for the company's law firm.

"Whether they are suing a business or a private citizen, the decision appears to invite plaintiffs' lawyers to avoid the proper process for discovery of documents in litigation," the company said. "This decision invites any person to steal documents and launder them" through a library so that "plaintiffs' lawyers can then argue that the documents are public."

Although the case involved the display of documents in a public library rather than publication in the news media, legal experts said Brown & Williamson's request faced the same heavy burden imposed on all suits involving prior restraint.

Although academic institutions have rarely gone to court over the right to publish sensitive materials, Christopher M. Patti, the university's lawyer, said the university was on firm ground. "You had information there that was important to the public and the academic community, and a powerful entity arguing against its distribution," Patti said. "The university felt it shouldn't bend to that kind of pressure. The feeling was that this is an issue that was central to the university's purpose and charter." Reported in: *New York Times*, July 4.

broadcasting

Washington, D.C.

Rebuffing broadcasters and civil liberties groups, a sharply divided federal appeals court on June 30 upheld regulations that prohibit radio and television stations from carrying sexually oriented "indecent" programs between 6 a.m. and 10 p.m. The 7-4 decision by the U.S. Court of Appeals for the District of Columbia Circuit essentially preserves restrictions that Congress imposed in 1993.

The court emphatically rejected arguments by broadcasters that the restrictions were too broad and said the government had a "compelling interest" in shielding children from steamy programs beamed over the airwaves. "It is fanciful to believe that the vast majority of parents who wish to shield their children from indecent material can effectively do so without meaningful restrictions on the airwaves," said the opinion written by Judge James L. Buckley.

The decision marked a turning point in a tortuous eight-year legal battle over steps by Congress and the Federal Communications Commission to clamp down on steamy programming. Twice, the same appellate court had rejected efforts to expand earlier restrictions, saying the proposed expansions were too broad to be constitutional.

The court split along political lines. All seven Republican appointees supported the rules; all four Democratic appointees issued lengthy dissents. The plaintiffs are virtually certain to appeal to the Supreme Court. The suit was brought by broadcasters and an alliance of civil liberties groups, led by Action for Children's Television.

The ruling will bring little immediate change to what people see or hear over the airwaves and it does not apply at all to cable television. But it is likely to lead to tighter restrictions, because the court left the government ample room to expand the prohibition to midnight from ten p.m. As a result, the decision could affect shows like ABC's hit series "NYPD Blue."

"Parents and the public are the winners," said Federal Communications Commission (FCC) chair Reed E. Hundt. "The court's action serves the goal of confining this material to the hours when minors are less likely to be exposed."

"It's very disappointing," countered Timothy Dyk, a Washington lawyer who represented the major television networks and argued the case, "and it is a sharp departure from the approach reflected in earlier court decisions."

It is "the most outrageous censorship decision of the decade," added Peggy Charren of Action for Children's Television.

Federal restrictions on "indecency" over television and radio have been problematic since the Supreme Court ruled in 1973 that the government had a right to restrict indecent but not obscene broadcasting. "Indecent" programming has been broadly defined by the courts as "patently offensive" language or material that depicts "sexual or excretory activities or organs." The courts have said that indecency is milder than obscenity.

In 1987, the FCC moved to expand enforcement against indecency to cover material that might not contain the "seven dirty words." Two years later, the appeals court rejected that approach, ordering the commission to provide a "safe harbor" for adults that would preserve their right to watch or listen to indecent programs. In effect, that meant allowing such programming between 8 p.m. and 6 a.m.

Congress quickly responded that year by passing legislation that imposed a round-the-clock ban on indecent programming. The commission came up with new regulations, this time bolstered by surveys about the viewing habits of children, but the appeals court rejected them in 1991.

Congress then passed a second law in 1992, this time allowing broadcasters to carry indecent programming between midnight and 6 a.m. and allowing some public television stations that went off the air at midnight to begin such broadcasts at 10 p.m. The commission adopted a new set of regulations the next year.

The court said these latest restrictions were narrowly tailored to the public need and "would not unduly burden the First Amendment." It rejected pleas by opponents of the rules to permit indecent programming as early as 8 p.m. and also rejected arguments that the rules should be tailored to children younger than 12, upholding rules intended for anyone younger than 18.

Chief Judge Harry T. Edwards, one of the four dissenters, lambasted the majority. In his strongly worded dissent, Judge Edwards said the court had embraced an "utterly irrational distinction" by agreeing with Congress not to apply the indecency rule to cable television. More broadly, he said, the government had simply gone too far in restricting speech.

"The commission has failed to show that its secondary interest, protecting children from exposure to indecent broadcast, is compelling when it conflicts with the rights of parents to rear their children in the way they see fit," he wrote. Reported in: *New York Times*, July 1; *Chicago Sun-Times*, July 2.

schools

Visalia, California

A state appellate court May 9 rejected a student group's free speech argument and sided with the Tulare Joint Union High School District, which said a student-produced video that contained offensive language must be censored. The Fifth District Court of Appeal in Fresno said school officials can "restrain such expression because it violates professional standards of English and journalism."

The case pitted the school board against a group of students from Valley High School in Visalia who said their video, "Melancholianne," which discouraged teen pregnancy, was protected free speech. The video, produced by the students under a teacher's guidance, contained words that the school board ruled to be obscene. The board ordered the students to censor their work. But the students decided that "in order to be convincing, the teenage characters should act and speak as teenagers might be expected to do" and refused to alter their work.

Presiding Justice James A. Ardaiz said that although high school students are guaranteed freedom of expression through the First Amendment, "this right is not absolute." He said school officials "have a more exten-

sive right to control expression in the school setting given the students' age and level of maturity." Reported in: *Fresno Bee*, May 10.

cyberspace

Ann Arbor, Michigan

A judge threw out charges July 21 against a University of Michigan student who wrote fantasies on the Internet about raping and killing a classmate. U.S. District Court Judge Avern Cohn said Jake Baker expressed no intent of actually carrying out such acts. He said the tale was "only a rather savage and tasteless piece of fiction."

Baker faced five counts of transmitting a threat to kidnap or injure by electronic mail. He was arrested in February after a university alumnus read his story on the computer network and notified school officials. In addition to posting the fantasy to a sexually oriented "Usenet" group, Baker exchanged e-mail with another man about the tale, which used the classmate's proper name.

Prosecutors argued that Baker's e-mail evolved from "shared fantasies to a firm plan of action." But defense lawyers argued that Baker's writings were protected free speech, and Cohn agreed.

The judge said "musings, considerations of what it would be like to kidnap or injure someone, or desires to kidnap or injure someone" do not violate the Constitution unless some intent to commit the acts is expressed. Cohn said the story would have been better handled as a disciplinary matter by the university. Reported in: *Tampa Tribune*, June 22.

Nassau County, New York

On May 30, a trial court in Nassau County held that the Prodigy Services Company was a publisher of statements made by one of its users. Stratton Oakmont, Inc., a securities investment banking firm, alleged these statements were libelous and sued. The court held that Prodigy, as a publisher, could be held responsible for those statements.

Prodigy's statements about itself and its operation were key to the decision. Since its inception in 1990, Prodigy had promoted itself as a family-oriented computer network which exercised editorial control over the content of messages posted on the computer bulletin boards it makes available. Also significant was that Prodigy promulgates content guidelines for users and advised them that it will remove postings it deems in bad taste, repugnant to community standards, harmful to the harmonious online community, or which constitute harassment.

The court specifically distinguished a publisher like Prodigy from bookstores and libraries: "Distributors such as bookstores and libraries may be liable for defamatory statements of others only if they knew or had reason to know of the defamatory statement at issue. A distributor or deliverer of defamatory material is considered a passive conduit and will not be found liable in the absence of fault. . . . However, a newspaper, for example, is more than a passive receptacle or conduit for news, comment, and advertising."

The decision in *Prodigy* contrasted with the federal court decision in *Cubby* v. *CompuServe*, where the court found that CompuServe had no opportunity to review the contents of the allegedly libelous statement for which it was being sued prior to its being uploaded to the network. In that case, the court found that CompuServe was "in essence, an electronic for-profit library" with little or no editorial control over the contents of the publications it distributed.

The key distinctions between CompuServe and Prodigy noted by the court in *Stratton Oakmont* included: first, that Prodigy had held itself out to the public and its members as controlling the content of its bulletin boards; and, second, Prodigy implemented that control through an automatic software screening program and guidelines which Board Leaders were required to enforce.

The court agreed with the decision in *Cubby*, that computer bulletin boards should generally be regarded in the same context as bookstores and libraries. It was Prodigy's own policies, technology, and staffing decisions which altered the landscape and mandated the finding that the service was itself a publisher. Reported in: *Intellectual Freedom Action News*, June 1995.

church and state

Bloomington, Indiana

Indiana University students were invited to pray at graduation ceremonies May 6 as a result of a federal court decision. U.S. District Court Judge Sarah Evans Barker ruled May 4 that the university may continue to invite clergy to give an innovation and benediction during graduation ceremonies.

A law professor and two law students had challenged the practice, arguing that it violated the First Amendment's separation of church and state. The Indiana Civil Liberties Union, on behalf of the plaintiffs, had sought a preliminary injunction. Barker said the ICLU argument for an injunction lacked merit, but said her decision would affect only this year's graduation and the lawsuit remains open.

Barker, however, noted in her opinion that she had doubts whether the lawsuit was anything more than a "clinical classroom exercise" contrived by a professor and his students. The judge also questioned whether the issue was best resolved in the courts. Reported in: *Indianapolis Star*, May 5.

government employees

Washington, D.C.

Government rules that forbid federal employees from accepting travel expenses for non-official speeches about agency business are unconstitutional, according to a divided federal court. "The government may not regulate speech on the ground that it expresses a dissenting viewpoint," the U.S. Court of Appeals for the District of Columbia Circuit ruled in a 5-4 decision. The May 30 ruling reversed a 1993 decision by a three-judge appellate panel that upheld the regulations. The now-invalidated 1991 regulations allowed federal employees to accept free trips to give speeches "only by toeing the agency line," Judge Patricia Ward wrote for the majority. Reported in: *Bremerton Sun, June 1.*

cross burning

Tallahassee, Florida

The burning of a cross will remain illegal in Florida, the state Supreme Court ruled June 15 in a 6-1 decision. "Although the First Amendment confers on each citizen a powerful right to self-expression, it gives no citizen a boon to launch terrorist raids against his or her neighbor," Justice Leander Shaw, the court's only black member, wrote for the majority.

"Few things can chill free speech and association to the bone like night riders outside the door and a fiery cross in the yard," he said.

Florida's anti-cross burning law dates from the 1950s. It includes just one exception. It is permissible to burn a cross on property with the owner's permission. The law's constitutionality had been questioned, however, by some state courts.

The case at issue involved a juvenile who burned a cross in 1993 on a vacant lot in Jacksonville. The incident occurred in a neighborhood where there were tensions between blacks and whites. The charges against the youth were thrown out.

The Supreme Court's impassioned defense of the law was thus sweet justice to some. "In effect, the court is saying where free speech activity ends and criminal behavior begins, the public policy of the state of Florida shall be to give the bigots no quarter," said Art Teitelbaum, southern director of the Anti-Defamation League and chair of the state's hate crimes task force.

Justice Ben Overton wrote in his dissent that the state should redo the cross-burning law to include language mentioning accompanying threats or intimidation, as suggested in a 1992 U.S. Supreme Court decision that overturned a St. Paul, Minnesota, ordinance.

Yet Shaw used strong language to defend the value of making cross-burning more than an act of trespass. "An unauthorized cross-burning by intruders in one's own yard constitutes a direct affront to one's privacy and security and has been inextricably linked in this state's history to sudden and precipitous violence — lynchings, shootings, whippings, mutilations and home-burnings. The connection between a flaming cross in the yard and forthcoming violence is clear and direct. A more terrifying symbolic threat for many Floridians would be difficult to imagine." Reported in: *Orlando Sentinel*, June 16.

adult bookstores

Prince George's and Harford Counties, Maryland

The U.S. Court of Appeals for the Fourth Circuit in Richmond, Virginia, struck down ordinances governing adult bookstores in two Maryland counties, ruling July 5 that they imposed an unconstitutional prior restraint on free speech. The court threw out the Prince George's County law in an 11-3 decision and the Harford County law in a 10-4 ruling.

In both cases, the court said local governments imposed bureaucratic hurdles that could lead to impermissible delays when adult bookstores seek permission to operate. The court said the Prince George's ordinance gave government as many as 150 days to consider an adult bookstore's zoning application. The dissenters said that the only constitutional requirement was for prompt access to judicial review of administrative decisions, not a prompt decision. Reported in: *Washington Post*, July 6.

etc.

New York, New York

The city of New York did not violate a homosexual organization's First Amendment rights when it denied the organization a parade permit that would have allowed it to march at the same time and on the same street as the annual St. Patrick's Day parade, U.S. District Court Judge John F. Keenan ruled March 15. The denial of the permit was content neutral and furthered legitimate public safety concerns, including traffic congestion and increased burden on emergency services created by such parades. The organization had no First Amendment right to carry its message to the same audience that would gather to march in and watch the St. Patrick's Day parade. Reported in: *West's Federal Case News*, May 5.

Charleston, South Carolina

A federal judge has ruled that the city of Charleston did not censor artist Robert Burke when it made him cover his cartoon mural outside a bar. Rather, the city was working within its rights to protect centuries-old buildings in the Old and Historic District, U.S. District Court Judge Cameron Currie said.

Currie said that allowing nontraditional images to flourish unregulated would adversely affect history, economy and property. It also would chase away tourists. The decision upheld the powers of the city's Board of Architectural Review, the panel established in 1931 to protect the city's architectural integrity and heritage.

In 1993, Burke was hired to paint a mural outside a now-defunct bar. The painting depicted frolicking impish creatures in wild colors. But the city said the images didn't conform to existing regulations. Burke covered his work with plywood and filed suit in federal court, claiming the city was infringing his right to free expression. Reported in: *Charleston Post and Courier*, July 1.

Spokane, Washington

Restaurants can refuse service to Hell's Angels wearing their club insignia, a Spokane County judge ruled in June. District Court Judge Mike Padden said members of the biker club are not a "protected class" under anti-discrimination provisions of state or federal law.

The Spokane Angels chapter filed a discrimination suit against two restaurants. They argued that the restaurants' refusal to admit them while they wore club insignia violated their constitutional rights of free speech and assembly. Reported in: *Spokane Spokesman-Review*, June 20. □

(Time Warner . . . from page 133)

Dole, Bennett and Tucker have all focused on rap music, unfairly say many critics. *Billboard* magazine's Timothy White notes that the white heavy metal band Guns 'n' Roses' "Appetite for Destruction" is "as stupid, worthless and racist as anything released in the last decade, and I've never heard Bob Dole say a word about it."

Some African-American leaders have also come to the defense of the record companies, including Time Warner. The Rev. Al Sharpton met with Time Warner executives to urge them not to give in to censorship. "Yes, I have a problem as a parent with some of these lyrics," he said afterward, "but I have even more of a problem with the right wing using this concern as an excuse to usher in censorship. That is not right and it will infringe on our First Amendment rights. I told the Time Warner people that they should not in any way cave in to the pressure and protest. If they do, they will see protest from people like me, and we will have a lot of support from the black constituency." Reported in: *Washington Post*, June 7, 14; *Los Angeles Times*, June 14. □

(Rosenberger . . . from page 143)

served by the forum," nor may it discriminate against speech on the basis of its viewpoint. Thus, in determining whether the State is acting to preserve the limits of the forum it has created so that the exclusion of a class of speech is legitimate, we have observed a distinction between, on the one hand, content discrimination, which may be permissible if it preserves the purposes of that limited forum, and, on the other hand, viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations. . . .

It is, in a sense, something of an understatement to speak of religious thought and discussion as just a viewpoint, as distinct from a comprehensive body of thought. The nature of our origins and destiny and their dependence upon the existence of a divine being have been subjects of philosophic inquiry throughout human history. We conclude, nonetheless, that here, as in *Lamb's Chapel*, viewpoint discrimination is the proper way to interpret the University's objections to *Wide Awake*. By the very terms of the prohibition, the University does not exclude religion as a subject matter but selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints. Religion may be a vast area of inquiry, but it also provides, as it did here, a specific premise, a perspective, a standpoint from which a variety of subjects may be discussed and considered. The prohibited perspective, not the general subject matter, resulted in the refusal to make third-party payments, for the subjects discussed were otherwise within the approved category of publications.

The dissent's assertion that no viewpoint discrimination occurs because the Guidelines discriminate against an entire class of viewpoints reflects on insupportable assumption that all debate is bipolar and that anti-religious speech is the only response to religious speech.

Our understanding of the complex and multifaceted nature of public discourse has not embraced such a contrived description of the marketplace of ideas. If the topic of debate is, for example, racism, then exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one. It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint. The dissent's declaration that debate is not skewed so long as multiple voices are silenced is simply wrong; the debate is skewed in multiple ways. . . .

Vital First Amendment speech principles are at stake here. The first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and if so for

the State to classify them. The second, and corollary, danger is to speech from the chilling of individual thought and expression. That danger is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition. In ancient Athens, and, as Europe entered into a new period of intellectual awakening, in places like Bologna, Oxford, and Paris, universities began as voluntary and spontaneous assemblages or concourses for students to speak and to write and to learn. The quality and creative power of student intellectual life to this day remains a vital measure of a school's influence and attainment. For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the nation's intellectual life, its college and university campuses. . . .

. . . If any manifestation of beliefs in first principles disqualifies the writing, as seems to be the case, it is indeed difficult to name renowned thinkers whose writings would be acceptable, save perhaps for articles disclaiming all connection to their ultimate philosophy. Plato could contrive perhaps to submit an acceptable essay on making pasta or peanut butter cookies, provided he did not point out their (necessary) imperfections.

Based on the principles we have discussed, we hold that the regulation invoked to deny SAF support, both in its terms and in its application to these petitioners, is a denial of their right of free speech guaranteed by the First Amendment. It remains to be considered whether the violation following from the University's action is excused by the necessity of complying with the Constitution's prohibition against state establishment of religion. We turn to that question.

. . . . That the University itself no longer presses the Establishment Clause claim is some indication that it lacks force; but as the Court of Appeals rested its judgment on the point and our dissenting colleagues would find it determinative, it must be addressed. . . .

If there is to be assurance that the Establishment Clause retains its force in guarding against those governmental actions it was intended to prohibit, we must in each case inquire first into the purpose and object of the governmental action in question and then into the practical details of the program's operation. Before turning to these matters, however, we can set forth certain general principles that must bear upon our determination.

A central lesson of our decisions is that a significant factor in upholding governmental programs in the fact of Establishment Clause attack is their neutrality towards religion. . . . More than once have we rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to religious speakers who participate in broad-reaching government programs neutral in design. The governmental program here is neutral toward religion. There is no suggestion that the University created it to advance religion or adopted some ingenious device with the purpose of aiding a religious cause. The object of the SAF is to open a forum for speech and to support various student enterprises, including the publication of newspapers, in recognition of the diversity and creativity of student life. The University's SAF Guidelines have a separate classification for, and do not make third-party payments on behalf of, "religious organizations," which are those "whose purpose is to practice a devotion to an acknowledged ultimate reality or deity." The category of support here is for "student news, information, opinion, entertainment, or academic communications media groups," of which *Wide Awake* was one of fifteen in the 1990 school year. WAP did not seek a subsidy because of its Christian editorial viewpoint; it sought funding as a student journal, which it was.

The neutrality of the program distinguishes the student fees from a tax levied for the direct support of a church or group of churches. A tax of that sort, of course, would run contrary to Establishment Clause concerns dating from the earliest days of the Republic. The apprehensions of our predecessors involved the levying of taxes upon the public for the sole and exclusive purpose of establishing and supporting specific sects. The exaction here, by contrast, is a student activity fee designed to reflect the reality that student life in its many dimensions includes the necessity of wide-ranging speech and inquiry and that student expression is an integral part of the University's educational mission. The fee is mandatory, and we do not have before us the question whether an objecting student has the First Amendment right to demand a pro rata return to the extent the fee is expended for speech to which he or she does not subscribe. We must treat it, then, as an exaction upon the students. But the $14 paid each semester by the students is not a general tax designed to raise revenue for the University. The SAF cannot be used for unlimited purposes, much less the illegitimate purpose of supporting one religion. Much like the arrangement in *Widmar*, the money goes to a special fund from which any group of students with CIO status can draw for purposes consistent with the University's educational mission; and to the extent the student is interested in speech, withdrawal is permitted to cover the whole spectrum of speech, whether it manifests a religious view, an antireligious view, or neither. . . .

Government neutrality is apparent in the State's overall scheme in a further meaningful respect. The program respects the critical difference "between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses pro-

tect." In this case, "the government has not willfully fostered or encouraged" any mistaken impression that the student newspapers speak for the University. The University has taken pains to disassociate itself from the private speech involved in this case. The Court of Appeals' apparent concern that *Wide Awake*'s religious orientation would be attributed to the University is not a plausible fear, and there is no real likelihood that the speech in question is being either endorsed or coerced by the State.

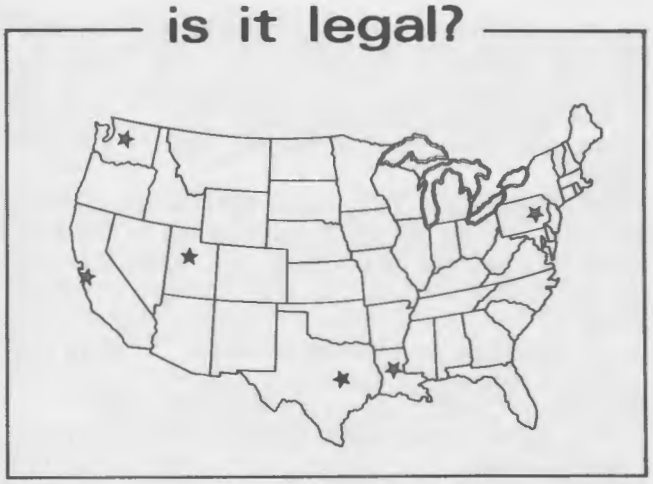
The Court of Appeals (and the dissent) are correct to extract from our decisions the principle that we have recognized special Establishment Clause dangers where the government makes direct money payments to sectarian institutions. The error is not in identifying the principle but in believing that it controls this case. Even assuming that WAP is no different from a church and that its speech is the same as the religious exercises conducted in *Widmar* (two points much in doubt), the Court of Appeals decided a case that was, in essence, not before it, and the dissent would have us do the same. We do not confront a case where, even under a neutral program that includes nonsectarian recipients, the government is making direct money payments to an institution or group that is engaged in religious activity. Neither the Court of Appeals nor the dissent, we believe, takes sufficient cognizance of the undisputed fact that no public funds flow directly to WAP's coffers.

. . . The error made by the Court of Appeals, as well as by the dissent, lies in focusing on the money that is undoubtedly expended by the government, rather than on the nature of the benefit received by the recipient. If the expenditure of governmental funds is prohibited whenever those funds pay for a service that is, pursuant to a religion-neutral program, used by a group for sectarian purposes, then *Widmar*, *Mergens*, and *Lamb's Chapel* would have to be overruled. Given our holdings in these cases, it follows that a public university may maintain its own computer facility and give student groups access to that facility, including the use of the printers, on a religion neutral, say first-come-first-served, basis. If a religious student organization obtained access on that religion-neutral basis and used a computer to compose or a printer or copy machine to print speech with a religious content or viewpoint, the State's action in providing the group with access would no more violate the Establishment Clause than would giving those groups access to an assembly hall. There is no difference in logic or principle, and no difference of constitutional significance, between a school using its funds to operate a facility to which students have access, and a school paying a third-party contractor to operate the facility on its behalf. The latter occurs here. The University provides printing services to a broad spectrum of student newspapers qualified as CIOs by reason of their officers and membership. Any benefit to religion is incidental to the government's provision of secular services for secular purposes on a religion-neutral basis. Printing is a routine, secular, and recurring attribute of student life.

By paying outside printers, the University in fact attains a further degree of separation from the student publication, for it avoids the duties of supervision, escapes the costs of upkeep, repair, and replacement attributable to student use, and has a clear record of costs. As a result, and as in *Widmar*, the University can charge the SAF, and not the taxpayers as a whole, for the discrete activity in question. It would be formalistic for us to say that the University must forfeit these advantages and provide the services itself in order to comply with the Establishment Clause. It is, of course, true that if the State pays a church's bills it is subsidizing it, and we must guard against this abuse. That is not a danger here, based on the considerations we have advanced and for the additional reason that the student publication is not a religious institution, at least in the usual sense of that term as used in our case law, and it is not a religious organization as used in the University's own regulations. It is instead a publication involved in a pure forum for the expression of ideas, ideas that would be both incomplete and chilled were the Constitution to be interpreted to require that state officials and courts scan the publication to ferret out views that principally manifest a belief in a divine being.

Were the dissent's view to become law, it would require the University, in order to avoid a constitutional violation, to scrutinize the content of student speech, lest the expression in question — speech otherwise protected by the Constitution — contain too great a religious content. The dissent, in fact, anticipates such censorship as crucial in distinguishing between works characterized by the evangelism of *Wide Awake* and writing that merely happens to express views that a given religion might approve. That eventuality raises the specter of governmental censorship, to ensure that all student writings and publications meet some baseline standard of secular orthodoxy. To impose that standard on student speech at a university is to imperil the very sources of free speech and expression. □

is it legal?



libraries

Slidell, Louisiana

The St. Tammany Parish School Board's protracted legal battle to keep a history of voodoo out of its library raged again June 5 in federal appeals court. The attorney for the board told a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit that a lower federal court had erred when it ordered *Voodoo and Hoodoo* back on library shelves.

Parent Kathy Bonds objected to the book in 1992 and after other parents protested as well the board ordered it removed from the library of Clearwood Junior High School near Slidell. Some other parents, represented by the ACLU, protested that vote and last year U.S. District Court Judge Patrick Carr ordered the book returned to the library.

But board attorney Kenneth Sills argued that Carr erred on procedural grounds and had not fully considered all the evidence. Sills said that Carr's summary judgment was invalid because there were disputed facts. The ACLU contended that the board removed the book to suppress ideas about voodooism, but Sills said the board's motivation was to avoid vulgarity.

If the board prevails in the hearing, the case will return to the lower court for a full trial. Reported in: *New Orleans Times-Picayune*, June 6.

Weslaco, Texas

Former Weslaco librarian Pam Antonelli filed a federal lawsuit June 21 charging that she was fired for publicly discussing that city's efforts to ban Howard Stern's *Private Parts* from its library. Now working for the Houston Public Library system, Antonelli said complaints about the adult nature of books she ordered for the Weslaco library led to the city demanding that Stern's and other books be removed beginning in 1993.

As publicity grew over Weslaco's city commissioners' insistence on removing books, Antonelli found herself quoted often in local news reports. An interview she gave last August led to her being told to quit or be fired.

Antonelli's suit claims the city did not fire her according to its procedures and punished her for pursuing her right to free speech. She said she was told in July, 1994, to remove three books from the shelves — *Private Parts, Warrior Marks*, and *How to Make Love to a Man Safely*. Her failure to do so would mean replacement of the Library Board, she was told. When a local newspaper approached her shortly thereafter, Antonelli said city officials had ordered the books removed. After the story ran, she said, city officials told her she could quit or be fired the next day. The ACLU's Houston chapter is representing her.

A Weslaco librarian said June 21 that *Private Parts* is once again on the shelves and that the book is checked out as quickly as it is returned, with a waiting list of "one or two people." Reported in: *Houston Chronicle*, June 22.

schools

McMurray, Pennsylvania

The 222 seniors of Peters Township High School learned a lesson in constitutional law — and how to defy the law — when a suit was filed less than a day before the school's June 10 commencement to prohibit prayer during graduation. Attorneys for the Pittsburgh chapter of the ACLU filed suit to forbid any religious observances during the ceremony. The district then signed an agreement to eliminate religious portions of the program and inform those attending that no religious prayers could be said.

Also stipulated, however, was that nothing in the agreement would be violated if a participant in the program decided to exercise his right to free speech. Valedictorian Kerry Ann George did just that. In a clear voice, she said, "I ask you to bow your heads. Dear Lord. . ." The words of her prayer were lost in the sound of thunderous applause and cheers from a majority of those in the bleachers. At the conclusion of the prayer, most of the crowd gave George and her twin sister, class salutatorian Kelly Ann George, a standing ovation.

Dennis Hutchison, school board president, said the district signed the agreement with the ACLU in lieu of going to court because of the late filing. "I did everything I could to oppose this deal," he said, "but it was the timing."

Seventy-eight percent of the seniors voted to include prayer in the graduation. "Dissenting voices are good, but I always found in this country that if 51 percent siad they wanted it one way, you lived with it," Hutchison said. Reported in: *Washington (PA) Observer-Reporter*, June 11.

Salt Lake City, Utah

A Jewish student in Utah thought she had won her battle to keep religious music out of her high school's graduation ceremony. In the end, however, many parents and students defied a court order and sang anyway.

The choir, including sophomore Rachel Bauchman, had finished singing the two secular songs that replaced the religious ones the court had barred from the June 7 ceremony. Then graduating senior Will Badger approached the microphone to plead for the song. He said "Friends," one of the banned songs, had been a tradition at West High School in Salt Lake City for more than five years. Badger proceeded to lead the audience and students in song. Police led him from the stage after the song's finish.

The 16-year-old Bauchman, who had been called "Jew bitch" and "dirty Jew" by fellow students for taking legal action to bar the songs, said it was "a shame." She said she felt "very uncomfortable" while the song was sung. "I had 4,000 pairs of eyes staring at me," she said. "I felt like a second-class citizen. Like I wasn't welcome in my own school choir."

The incident culminated a battle over religious lyrics in the choir class that Bauchman had been waging since October. When the school did not respond to her concerns, she decided to go to court. In June, she filed suit in U.S. District Court alleging that the school's choir class violated her constitutional rights by continuously performing religious songs. The suit asked for a temporary restraining order, requesting that two songs, "Friends" and "May the Lord Bless You and Keep You," not be sung at graduation.

A U.S. District Court Judge denied the order, but his decision was overturned by the U.S. Court of Appeals for the Tenth Circuit in Denver just one day before the ceremony.. Arguing that the songs were aesthetic not religious, West High School officials had said Bauchman could be excused from the performance. Her lawyers dismissed that option, saying it cheated her out of a school event and could affect her standing in the choir class, for which she receives credit and a letter grade.

The singing of the songs by the students did not violate the court order, which had named only the school board and the choir director, who did not participate in the singing. The seniors in the choir who sang cannot be disciplined because they have already graduated, but the choir's underclass members could face disciplinary action, said Sherri Clark of the Salt Lake City School District.

The District Court, meanwhile, will schedule a trial to determine whether the choir can continue to sing such songs. As a member of the choir class, Bauchman said she had continually been put in the position of having to sing predominantly religious songs at numerous programs, including a Christmas program. "If there was more of a balance" in the choir's choice of songs, said her mother Cheryl, "she would have been OK."

There are two other Jewish students in the choir class, Cheryl Bauchman said, adding that they did not want to get involved in the fight because they feared reprisals. One of those students, the class salutatorian, walked out of the graduation with the Bauchmans after the song was finished. Reported in: *Intermountain Jewish News*, June 16.

Bellevue, Washington

Paul Kim thought of his Internet creation as a harmless joke. But the creation, which pointed readers in the direction of sexually explicit text and pictures, prompted his high school principal to yank the school's endorsement of him for a prestigious national scholarship and college admissions. "It caused immediate repercussions and other effects I may not even know about," said Kim.

The ACLU took up Kim's case, contending the school overstepped its bound by trying to censor his off-campus conduct and constitutionally protected speech. "Schools have no business playing moral policeman," said ACLU representative Doug Honig.

Kim, an ambitious student with a long list of academic achievements, including near-perfect scores on the SAT, learned to navigate the World Wide Web last year under a teacher's guidance. The same teacher got Kim involved in a project at the University of Washington, where Kim used the Internet to do astronomy research.

While roaming the "Web," he saw that some high schools had created so-called "home pages," where computer users get information about the organizations or individuals who post them. Kim thought it would be amusing to create such a page about his own high school. In February, he spent about an hour creating the page he called the unofficial Newport High School home page.

In addition to a satirical description of the school, the page listed as a subject of student interest the category "sex." When a computer user selected that category he or she would be connected to three items Kim had found elsewhere on the Internet: a nude photograph from *Playboy* magazine, an article about masturbation,

and an article about oral sex.

When teachers learned of the "page," Kim was summoned by school administrators, who took issue first with the use of the school's name on the document and, later, told him that what he had done was immoral.

According to the ACLU, Principal Karin Cathey then contacted the National Merit Scholarship program, which had selected Kim as a finalist, saying that she was withdrawing the school's endorsement of Kim for the honor. She sent a similar letter to each of the seven colleges the young man applied to, stating no reason for the action, and indicating that Kim had received a copy of the letters. Kim said he never received those letters.

Kim learned of the letters to the colleges only when he was contacted by a representative of Columbia University, who wanted to know more. He was offered and accepted admission to Columbia, which had been his second choice. His first choice, Harvard, rejected him shortly after receiving the principal's letter.

Kim said he takes seriously the rights of free speech and due process. "From an immigrant's point of view, the U.S. Constitution is something phenomenal," said Kim, whose family came to the U.S. from Korea when he was six. "The value of the Internet is based on freedom of speech. That's what makes it so precious," he said. Reported in: *Bellevue Journal-American*, May 23.

university

Stanford, California

The *Stanford Daily* has filed suit against Stanford University for restricting the newspaper's ability to distribute a special issue during last summer's World Cup soccer game at Stanford Stadium. Editor Andy Dworkin charged that the university violated the newspaper's First Amendment rights.

Stanford President Gerhard Casper, on the other hand, said the dispute was really about the *Daily*'s lease of office space from the university, which has a provision on how the newspaper can be distributed on campus.

Stanford restricted distribution of the special issue of the *Daily* last summer to the parking lots outside the stadium because of licensing agreements it had made with advertisers during the World Cup. The *Daily* charges that Stanford violated its lease by doing that.

"Ever since 1973, we've had a contract with Stanford saying we can distribute the *Daily* anywhere on campus, as long as we don't block the movement of people or property," Dworkin said. "Then the World Cup came along and Stanford saw a chance to make a quick buck. Reported in: *Palo Alto Weekly*, June 2. □

(St. Patrick's . . . from page 143)

a "particularized message," would never reach the unquestionably shielded painting of Jackson Pollock, music of Arnold Schonberg, or Jabberwocky verse of Lewis Carroll.

Not many marchers, then, are beyond the realm of expressive parades, and the South Boston celebration is not one of them. Spectators line the streets; people march in costumes and uniforms, carrying flags and banners with all sorts of messages; marching bands and pipers play, floats are pulled along, and the whole show is broadcast over Boston television. To be sure, we agree with the state courts that in spite of excluding some applicants, the Council is rather lenient in admitting participants. But a private speaker does not forfeit constitutional protection simply by combining multifarious voices, or by failing to edit their themes to isolate an exact message as the exclusive subject matter of the speech. Nor, under our precedent, does First Amendment protection require a speaker to generate, as an original matter, each item featured in the communication. Cable operators, for example, are engaged in protected speech activities even when they only select programming originally produced by others. For that matter, the presentation of an edited compilation of speech generated by other persons is a staple of most newspapers' opinion pages, which, of course, fall squarely within the core of First Amendment security, as does even the simple selection of a paid noncommercial advertisement for inclusion in a daily paper. The selection of contingents to make a parade is entitled to similar protection.

Respondents' participation as a unit in the parade was equally expressive. GLIB was formed for the very purpose of marching in it, as the trial court found, in order to celebrate its members' identity as openly gay, lesbian, and bisexual descendants of the Irish immigrants, to show that there are such individuals in the community, and to support the like men and women who sought to march in the New York parade. The organization distributed a fact sheet describing the members' intentions and the record otherwise corroborates the expressive nature of GLIB's participation. . . . GLIB understandably seeks to communicate its ideas as part of the existing parade, rather than staging one of its own. . . .

In the case before us, the Massachusetts [public accommodations] law has been applied in a peculiar way. Its enforcement does not address any dispute about the participation of openly gay, lesbian, or bisexual individuals in various units admitted to the parade. The petitioners disclaim any intent to exclude homosexuals as such, and no individual member of GLIB claims to have been excluded from parading as a member of any group that the Council has approved to march. Instead, the disagree-

ment goes to the admission of GLIB as its own parade unit carrying its own banner. Since every participating unit affects the message conveyed by the private organizers, the state courts' application of the statute produced an order essentially requiring petitioners to alter the expressive content of their parade. Although the state courts spoke of the parade as a place of public accommodation, once the expressive character of both the parade and the marching GLIB contingent is understood, it becomes apparent that the state courts' application of the statute had the effect of declaring the sponsors' speech itself to be the public accommodation. Under this approach any contingent of protected individuals with a message would have the right to participate in petitioners' speech, so that the communication produced by the private organizers would be shaped by all those protected by the law who wished to join in with some expressive demonstration of their own. But this use of the State's power violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message. . . .

. . .[O]ne important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say. Although the State may at times "prescribe what shall be orthodox in commercial advertising" by requiring the dissemination of "purely factual and uncontroversial information," outside that context it may not compel affirmance of a belief with which the speaker disagrees. Indeed this general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid. Nor is the rule's benefit restricted to the press, being enjoyed by business corporations generally and by ordinary people engaged in unsophisticated expression as well as by professional publishers. Its point is simply the point of all speech protection, which is to shield just those choices of content that in someone's eyes are misguided, or even hurtful.

Petitioners' claim to the benefit of this principle of autonomy to control one's own speech is as sound as the South Boston parade is expressive. Rather like a composer, the Council selects the expressive units of the parade from potential participants, and though the score may not produce a particularized message, each contingent's expression in the Council's eyes comports with what merits celebration on that day. Even if this view gives the Council credit for a more considered judgment than it actively made, the Council clearly decided to exclude a message it did not like from the communication it chose to make, and that is enough to invoke its right as a private speaker to shape its expression by speaking on one subject while remaining silent on another. The message it disfavored is not difficult to identify. Although GLIB's point (like the Council's) is not wholly articulate, a contingent marching behind the organization's banner would at least bear witness to the fact that some Irish are gay, lesbian, or bisexual, and the presence of the organized marchers would suggest their view that people of their sexual orientations have as much claim to unqualified social acceptance as heterosexuals and indeed as members of parade units organized around other identifying characteristics. The parade's organizers may not believe these facts about Irish sexuality to be so, or they may object to unqualified social acceptance of gays and lesbians or have some other reason for wishing to keep GLIB's message out of the parade. But whatever the reason, it boils down to the choice of a speaker not to propound a particular point of view, and that choice is presumed to lie beyond the government's power to control.

The statute, Mass. Gen. Laws 272:98, is a piece of protective legislation that announces no purpose beyond the object both expressed and apparent in its provisions, which is to prevent any denial of access to (or discriminatory treatment in) public accommodations on proscribed grounds, including sexual orientation. On its face, the object of the law is to ensure by statute for gays and lesbians desiring to make use of public accommodations what the old common law promised to any member of the public wanting a meal at the inn, that accepting the usual terms of service, they will not be turned away merely on the proprietor's exercise of personal preference. When the law is applied to expressive activity in the way it was done here, its apparent object is simply to require speakers to modify the content of their expression to whatever extent beneficiaries of the law choose to alter it with messages of their own. But in the absence of some further, legitimate end, this object is merely to allow exactly what the general rule of speaker's autonomy forbids. . .

Our holding today rests not on any particular view about the Council's message but on the Nation's commitment to protect freedom of speech. Disapproval of a private speaker's statement does not legitimize use of the Commonwealth's power to compel the speaker to alter the message by including one more acceptable to others. Accordingly, the judgment of the Supreme Judicial Court is reversed and the case remanded for proceedings not inconsistent with this opinion. □

success stories

libraries

Springdale, Arkansas

The Springdale Public Library's board of directors declined June 14 to remove a book from the young adult shelves after a request to do so by a library patron. *Fair Game*, by Erika Tamar, is about a group of high school athletes accused of sexually assaulting a mildly retarded teenage girl. Wendy Sisson asked that the book be removed from the juvenile shelves or withdrawn altogether.

According to Sisson, although the book addresses issues of rape and child abuse, "ethics take a back seat to graphic sexual material. Perhaps there is a less prurient work that explores the issue of rape vs. consensual sex or date rape."

The board, however, voted 4-2 to follow a staff recommendation and keep the book on the young adult shelves. "The theme of the book addresses shocking situations and presents an opportunity for readers to rethink their own values," Library Director Judy Kuykendall told the board. "As this deals with teen characters and adolescent life, it is appropriate to include this book in the young adult section." Reported in: *Northwest Arkansas News*, June 15; *Northwest Arkansas Times*, June 15.

Gwinnett County, Georgia

Despite several expressed reservations, the Gwinnett County Board of Education on June 15 voted unanimously to keep the book *Dinosaurs Divorce*, by Laurene Krasny Brown and Marc Brown, available to children of all ages at Rebecca Minor Elementary School. Stanley Brown, the parent who had challenged the book, asking that it be used only under adult supervision for kindergarten through second grade students, said he was disappointed.

"I was pursuing putting a book on the restricted access list, and there is not one," Brown said. "I hope you will see my involvement as one of the ways you have asked for more parental involvement. If just one of our children is affected, that is one too many. I wouldn't want one child to get hurt." Brown contended the book could offend children whose parents are going through a divorce and create fears and anxiety in children from stable families.

"We felt it was very age-appropriate and very factual," said Minor Elementary media specialist Mary Masterson. "It presented a subject that is very threatening in a non-threatening way. We placed it so children could have access when they needed it." Reported in: *Gwinnett Post-Tribune*, June 16; *Atlanta Constitution*, June 12, 16.

Chesterton, Indiana

After hearing impassioned pleas from parents against book banning, a Duneland Schools committee voted 6-3 July 6 to keep an elementary school library book on the shelves. *The Wizard in the Tree*, by Lloyd Alexander, came under fire from a parent because a man character in the story uses the words "slut" and "damn."

The complainant, parent Kelly Cavanaugh, did not attend the meeting but nine people who did urged the committee not to set a precedent by banning a book because two words in it are objectionable to someone.

"Whenever you start banning then you are closing your children off to a variety of things," said parent Debbie Hurley. Among the three members of the committee who voted to remove the book were two high school students. Student Vera Nackovic said the schools have a responsibility not to offer books that contain questionable language. She said the high school did not order a particular textbook, although it was recommended by educators, because it stated that homosexuality is an alternative lifestyle. Reported in: *Chesterton Tribune*, July 6.

Galena, Kansas

The Galena Board of Education voted unanimously June 12 to keep the John Steinbeck novel *Of Mice and Men* in the school library. Vicky Wells, a mother of three teenage boys, said she was disappointed. She originally complained about the book's language and social implications in March. Wells had filed an appeal with the board May 8 after the instructional materials review committee decided to keep the book.

"I didn't know it for a fact, but I had hints from dif-

ferent people that's what would happen," Wells said. "I'm also disappointed that people who could do something about it didn't do anything about it." Reported in: *Joplin Globe*, June 14.

Sandwich, Massachusetts

Janice Schomburg and Jeanne Prendergast do not like being labeled censors. But the two Sandwich mothers were willing to risk the label because they believed strongly that *Halloween ABC*, a children's book by Eve Merriam, is too violent for young children. They asked the Sandwich Public Library board of trustees to remove the book from the library or at least restrict access to it. But the trustees voted twice to keep the book in the library's juvenile section.

"If this book should be removed from the library, so should *Snow White*," said board chair Joseph Maruca. "Both books deal with a poison apple." Maruca acknowledged that *Halloween ABC* is "a dark little book" that might not be appropriate for some children, particularly younger ones. But he argued it is up to individual parents, not the library, to decide whether their children should read the book.

"If everybody in the town had to agree on the items we could keep in the library or agree we could tolerate them, we'd have about ten items," Maruca said. "There's bound to be something to offend everybody. I guess our job is to offend everybody equally and serve everybody equally."

The controversy began after Schomburg's 7-year-old son grabbed the book from a holiday display. The trustees took up the issue in January, discussed it again in February, and then voted unanimously to keep the book in the juvenile section. Reported in: *Cape Cod Times*, May 11.

Derry Township, Pennsylvania

At its May 15 meeting, the Derry Township Library Board voted unanimously to accept library director Cathi Alloway's recommendation to keep copies of cartoonist Matt Groening's *The Big Book of Hell* on the Hershey Public Library shelves. Groening's book had been the subject of a challenge by Earl E. and Christina Geesaman, who charged that "the entire book teaches conduct contrary to wishes of parents" and is "trash" with "no morals." The Geesamans called on the library to "destroy all books of a similar nature." The couple lodged the complaint after their twelve-year-old daughter brought the book home from the library.

In a written response, Alloway said: "The book does deal with controversial subjects. The library cannot avoid controversial material. The library takes the position that all users are entitled to use all library materials." Reported in: *Hummelstown Sun*, May 17.

Southlake, Texas

A book deemed "pornographic" and full of "gross evils" by the parent requesting its removal from the Carroll school district will remain on school library shelves. In a unanimous vote June 22, the Carroll School Board denied the appeal of Mildred Beene to ban *I Know Why the Caged Bird Sings*, by Maya Angelou, finding the book to be a work of "exceptional value" to education.

The vote came at a jam-packed public hearing filled with testimonials, passionate pleas, and strong opinions. Most of those in attendance wore small green ribbons to show their support of "the librarians" and the reconsideration committee's decision to keep the book on the shelves.

Parent Margaret Hill said she attended the meeting to express the right of parents to choose their own children's reading materials. "Reading about child molestation will not turn our children into pedophiles," she said. "Books that tell stories of bad things in life do not undermine family values. They just might reinforce those values by illustrating the destructive power of evil and keep our children on the right track."

But Gerald Beene, whose wife filed the complaint against the book, told trustees it should be pulled because children should not be subjected to the "filth" it contains.

"The book portrays pornography," he said. "There's an example on page 71. It gives the description of a man masturbating while molesting an eight-year-old girl. That, to me, is inappropriate for an eleven-year-old child to read. And it gives a detailed account of a rape of a child. The idea of recommending this book to our children because of its potential merit is equivalent to giving a nutritious plate lunch to a child, and then sprinkling it with dung — it just ain't worth it. If some parents want their children to read pornography, let them buy it with their own money and not with my tax dollars."

"I just want to say that I read this book, and I am not a lesbian and I am not sexually active," retorted eighth-grade student Taylor Cook. "This book has brought to my mind things about different people and how things happen and about how people can overcome those difficulties in life. It hasn't made me perverted, and I don't have a subscription to *Penthouse*."

Assistant Superintendent of Instruction Mike Murphy said that removal of the book would "constitute an insult to the talented and sophisticated Carroll Intermediate School District students who wish to learn from adversity and appreciate the struggle of others who have succeeded in giving something valuable back to our society."

Trustee Howard Addison, who said he was raised in the rural South by a dad "who burned crosses in people's yards," said the book provided compelling insight of how it was for a young black girl growing up in a town filled with racial prejudice.

At the same meeting, the board decided by a 6-1 vote to reinstate the banned book *The Last Mission*, by Harry Mazer. In the original complaint against *The Last Mission*, a parent requested its removal because of excessive profanity. The Reconsideration Committee voted to keep the book in the library, but the committee's decision was appealed to the school board and the trustees, in a 4-3 vote in February, decided to ban the book from the middle and elementary school libraries. The book will now return to those libraries.

"I regret the division this caused in the community," Addison said. "I can tell you I don't want to listen to another book complaint." Reported in: *Grapevine Sun*, June 25; *Fort Worth Star-Telegram*, June 18, 23.

Rutland, Vermont

After more than a month of controversy and debate, trustees of the Rutland Free Library decided June 22 not to create a special section for or restrict access to the children's book *Daddy's Roommate*, by Michael Willhoite, which is about homosexual parenting.

The trustees also voted, however, to form two committees to review library policies. One committee will study the current categorization of books and other material in the children's section. Another committee will review the library's policies and look at procedures that permit R-rated videos to be checked out, regardless of the cardholder's age.

The policy review was prompted by a complaint by Karol Raiche, who became upset when her six-year-old son brought *Daddy's Roommate* home from the library in late April. The often-challenged book tells the story of a boy whose gay father is living with a male partner. Raiche thought the book was inappropriate for young children and asked the library to place it in an area where it would be inaccessible without parental supervision.

After her initial objection, Raiche expanded her complaint to a broader collection of library material, including two gay publications, *Out in the Mountains* and *Out*, and *Art Forum* magazine. She said those materials should not be in the main section of the library because they contain sexually explicit text and photographs. Raiche also asked the trustees to consider a system whereby parents could have control over what materials their children were checking out. All three requests were denied.

Raiche's complaint prompted widespread media and public attention, which reached a peak at a public hearing on June 6, attended by about 180 people with an additional 150 outside, unable to fit inside the library's meeting room. Passions ran high, with the crowd about evenly divided between those who favored and those who opposed Raiche's request. Reported in: *Bay Windows*, June 22; *IN Newsweekly*, June 25; *Rutland Herald*, June 4, 7.

Fairfax, Virginia

MTV and other cable channels won't be banned from Fairfax County's public libraries, but the future of cable television in the libraries is limited because of budget constraints. The Library Board voted unanimously May 15 to continue offering the channels at 27 media stations at five branch libraries while funding is available. Several Fairfax County conservative activists wanted MTV removed out of concern that children were watching programming they weren't allowed to watch at home.

But the nine board members expressed strong concern about the "slippery slope of censorship" that could be encountered if one or more channels were singled out. "It's the feeling of the board across the ideological spectrum that this board was not going to get into the business of picking and choosing the channels to block out," said board member Mark D. Sickles.

But Karen Jo Gounaud, an activist and founder of Family Friendly Libraries, who has over the past two years campaigned for the removal of gay-oriented materials from Fairfax libraries, said the board had dodged the real issue to avoid controversy.

"We're talking about young minds that have a proven reaction to shows on these channels," she said. "When are we going to recognize that the government has a responsibility to protect its youngest citizens?"

Valerie Eastwood of Northern Virginia Citizens Against Censorship was pleased with another "sensible" decision by a library board that is constantly assaulted by county conservatives. "If people are worried, they need to accompany their kids and advise them what to watch," she said. "It's just fortunate that we won't tolerate censorship in Fairfax County." Reported in: *Fairfax Journal*, May 17.

Stafford County, Virginia

The Stafford County School Board refused July 25 to ban the books of the late children's author Roald Dahl from the elementary school curriculum. Their action came in response to the second attempt this year by a parent to restrict reading material in the county's schools.

The board had agreed in May to review a parent's request to restrict student access to six books by Dahl. Phyllis Filoso, whose fourth-grade daughter attends Anne E. Moncure Elementary School, appealed a district committee decision to leave all but one of the books in classrooms and on library shelves. The Dahl books were removed from Moncure's classrooms and library in March, when Filoso complained that the tales contain crude language and encourage children to disobey their parents and other adults. They were reshelved in April.

Filoso asked that two books, *George's Marvelous Medicine* and *Revolting Rhymes*, be removed from the school altogether. She said the first book posed a safety

threat because the boy in the story warms household items, such as paint thinner and soap, to make a potion. The second book spoofs nursery rhymes. In one, Cinderella's prince tells her he'd better shop around before marrying her. "It makes her look like a slut," Filoso said.

Filoso asked that four books be removed from classrooms and put in the library, where access could be restricted. Those books are *Matilda*, *The Witches*, *The Minpins*, and *James and the Giant Peach*. In Dahl's books, said Filoso, "the children misbehave and take retribution on the adults and there's never, ever a consequence for their actions." Filoso, who teaches earth science at a high school in Fredericksburg, Virginia, is a candidate for the school board election in the fall.

The Stafford board voted unanimously to keep Dahl's books on library shelves and in the elementary curriculum. Their ruling reversed a decision by officials at Widewater Elementary School that removed *George's Marvelous Medicine* from the library.

"To ban those books from the library is a drastic measure,' said Stafford County School Board Chair Doris Torrice. "Children know these books are fantasy. And just like people don't tell their doctor what to prescribe for them, I hope they realize that teachers are professionals. Parents can't second-guess them every day the child goes to school. Reported in: *Fredericksburg Free Lance-Star*, May 24; *Washington Post*, July 27.

schools

Elk Grove, California

Wiping away tears, Natalie Flint, a Joseph Kerr Middle School eighth-grader, said she was disappointed at the outcome of the hearing during which the Elk Grove Unified School District denied her family's request. Natalie and her mother, Karen Flint, had filed a complaint against reading *The Giver*, by Lois Lowry, and other literature in middle school classes.

In her first complaint, filed last November, Flint asked that the book be taken from the school curriculum. Her request was then modified to ask that a written synopsis of any reading material be given in advance for parents to consider.

At its May meeting, the board denied both requests by unanimous vote. Besides *The Giver*, other materials questioned were short stories by James Baldwin, Sam Keith, Kurt Vonnegut, Jr., and Don Wulfson. Reported in: *Elk Grove Citizen*, May 12.

Elko, Nevada

The View From the Cherry Tree, by Willo Davis Roberts, a sixth-grade supplemental reading text, will remain in Elko County classrooms despite the complaints of one Sage Elementary School pupil's parents. The decision was made by the Elko County School Board June 25 with only trustee Wilde Brough dissenting.

The book is a mystery about a child who witnesses a murder but is not believed. School officials said the parents complained that the book contains language inappropriate for sixth-graders, including a cat named S.O.B.

"I have a problem with books that contain vulgar words in the elementary library, and with the way this book would teach 12-year-olds that it's OK to treat elderly people like the lady in the book was treated," Brough said. "The review committee said the book depicted real life. I have a problem with thinking that book depicts real life." Child characters in the novel made fun of "old lady Calloway."

The anonymous parents first complained to Sage principal Mike Clemans, who forwarded the matter to the district office. The book was then reviewed by a special committee that included a teacher, site administrator, librarian, student, and a parent. The committee, chaired by the district's director of instruction, recommended that the book remain in use. The parents then appealed to the school board.

"This is one book out of many," said board president Don Hewitt. "These days, kids can go home and read Stephen King or watch it on TV. If we were to allow this book to be taken out for the term S.O.B., next time we might have to take out ten books. That's not the American way." Reported in: *Elko Free Press*, June 28.

Junction City, Oregon

Alice Walker's Pulitzer Prize-winning novel *The Color Purple* easily tops the chart as the year's best-read literary work in Junction City, thanks to a group of parents who tried to have the book removed from the reading list of a high school English course. Although the parents won support, eventually the effort failed.

At the height of the controversy, the Junction City chapter of Parents for Academic Excellence (PAE) sent district families a greatly condensed version of the book. The abridgement contained every instance of the word "fuck" and each description of sex that occurs in the book; it distilled Walker's 295-page novel to a page-and-a-quarter of "filth." Accompanying the excerpts was a letter that asked: "Do you think this material lives up to Junction City's standards for academic excellence and moral decency?"

The mailing was just one salvo in a months-long controversy that began when 14-year-old Aaron North started to read the book, which had been assigned to his brother, Ryan, in a senior English class taught by Patty Turley. Aaron showed the book to his parents, Chuck and Karen North, who questioned Ryan. "He told us it

was an assignment, that the teacher had told the class she thought they were old enough to handle this material," North said. "Ryan also said that she offered the class an alternative assignment."

After a talk with Junction City High School Principal Keith Gillis, in which Karen North said her concerns were ignored, her husband, a minister in the Church of the Nazarene, made an appointment with Turley. "I asked her whether she would read the first page aloud," he said. "She refused." North said his concern began to shift from his own sons to the town's few black students, who might easily be offended by the book's negative image of black men.

North then turned to Henry Luvert, president of the Eugene chapter of the NAACP, who seconded his concerns. "I had to agree with him," Luvert said. "I felt like there was another agenda — a more feminist agenda at the expense of black men." Finally, North filed a formal complaint.

The formal complaint became public when Barry Williams, a Republican Party precinct committee member, joined the fray and began writing letters to area publications. In one letter, Williams wrote that Turley was "notorious among Christian parents for her offensive classroom material," claiming that any teenager offended by the book was "left appearing as an immature Christian nerd, not yet ready for Turley's version of adult maturity."

Despite the efforts of Williams and others, however, school administrators and the majority of the community, including religious leaders, rose to Turley's defense.

"The only way to deal with ignorance is truth," said Gerald Jensen, minister of Faith Lutheran Church in Junction City at a school board hearing. "When I was a teacher, I was appalled at the prejudice I saw, even though no black families lived within miles. This book is an important tool to help students see the impact of prejudice."

Jensen also said that youth could benefit from exposure to sexually frank writing. "I grew up afraid of physical contact," he said. "I didn't talk about sex. I felt my body was dirty. I can see in myself that I still suffer from that ignorance. We need to be free and open about expressions of affection."

After considering a recommendation by a book review committee, Junction City School Superintendent Don Anderson eventually decided that *The Color Purple* could be used in the course's curriculum without restriction, provided that an alternate selection is made available.

Turley, admittedly shaken by the attacks against her, said she felt buoyed nonetheless by the confidence expressed by the school board, the administration, and the community. "I'm really grateful for their support in presenting this controversial material," she said. "I think we do a good job in preparing our children to get along in the world." Reported in: *Eugene Weekly*, June 22.

Mount Vernon, Washington

Timothy Scriven thinks the textbook being used in a Skagit Valley College Human Sexuality class is inappropriately graphic, and even downright indecent. Class instructor Lynne Fouquette and SVC's trustees disagree. They said the book is no more or less explicit than those traditionally used in such classes across the country.

Scriven said he learned of the textbook, *Exploring Human Sexuality*, through friends whose son attended the elective class. The student and his parents, Scriven said, were offended by the explicit acts depicted in the textbook. Scriven took his request that the book be discontinued to the SVC trustees' May 22 meeting. He also expressed his objections to SVC President James Ford and Brinton Sprague, vice president for educational services. He even took the matter to County Commissioner Ted Anderson, who said he agreed with Scriven.

Scriven's objections centered on the book's depiction of sexual acts and on what he deemed its implied acceptance of homosexuality, which he believes is contrary to God's will.

In a May 25 letter to Scriven, the trustees declined to limit the content of the class. "A college is an institution which values and encourages open and honest inquiry," wrote board chair Mary Ann Funk. "It's purpose is to discover what is true. This can only be done if faculty and students are able to examine the natural and human worlds in a setting free of censorship or prior restraint."

Funk wrote that to accede to Scriven's request would amount to censorship and limiting academic freedom, and "would inevitably lead to the same pressures in other fields, such as history, biology, and philosophy, where controversial subjects are regularly studied." Reported in: *Skagit Valley Herald*, June 7. □

(storm center . . . from page 121)

a copy of *The Cat in the Hat*. I sat down and in one sitting read it cover to cover — and I discovered the power of a book to really open up a whole new world.

A little later I realized there was another lesson to be learned from *The Cat in the Hat*, or from Dr. Seuss, I should say. That was: just because things have always been done one way doesn't mean that's the best way, or the way we have to keep on doing them. Children's books have been boring for a long time, and somehow, although it seems obvious now, it took a very creative person, Dr. Seuss, to decide that there was a much, much better and different way to do them.

Equally vividly, I remember about fifteen years after that when I read the very first book with a gay character in it. I was nineteen years old then. I had figured out that I was gay. I was comfortable that my friends knew I was gay, but I had never actually seen a gay character in a

movie, in a book, on television, anywhere. I had no role models, if you want to use that term. And suddenly I realized what all this talk about role models was, and that it wasn't some abstract thing, that it really does make a difference when you see someone in a book or in a movie that you identify with, who has faced some of the same issues that you have, and has gone on to do things. In short, there was this gap that I had not known existed until it was filled, in this case, by a book by Mary Renault.

I remember a few years later *The Frontrunner*, a book which perhaps does not qualify as great literature, but was a real exciting book that, once more, gave me some positive gay characters to look up to. So, when I decided to enter publishing a few years after that, I think I understood on a real gut level that books, yes, they can entertain, but they can also do more than that. They can really have the power to change people's lives, to affect people in a very real, important way. The first books I did were on a subject that was important to me — they were by and about gay teenagers. I tried to capture the stories of some young people who had "come out" in high school. One took a gay date to his high school prom in Rhode Island, and wrote a book telling about his progression from being very closeted and self-hating and a loner, to where he could actually stand up and make a statement like that. In *One Teenager in Ten*, we had some twenty-six kids each tell their very different stories about coming to terms with their identity. And in the years that followed, I tried to look for other groups whose needs and whose issues have never been addressed and to do books for them.

I find that often the best ideas for books come from talking to booksellers, librarians, and people who were there, who get requests that sometimes they can't fill. So, I took a couple of booksellers to lunch during a booksellers' convention and said, "What would you like to see us publishing? What should we be doing? What are you getting requests for that you're unable to fill?" And they had a ready answer for me. They said, "Well, we are getting more and more gay and lesbian parents coming in who can't find any books for their kids that reflect the kind of family they live in." Well, without having any idea of what I was getting into, I decided to do a few children's books. I was really lucky in that the first person I talked to to do this was Michael Willhoite, who had done a couple of books for us, who I knew had great art skills and was also a good writer, who wasn't a father and had no children's book experience, but I thought, well, let's give it to him and see what he can do. He was really excited but wasn't quite sure, given this very broad, vague assignment to do a book for kids with gay parents. He says he had to kick it around for a few weeks, but, finally, it just came to him, the storyline for *Daddy's Roommate*. He came in and very excitedly showed me the layouts and the sketches and text, and so on. Not having had much experience myself, my first thought was, well there just is not very much plot to this book, is there? But as I looked around, I saw that, in fact, this book was right for the age group it is targeted at.

That became my first book, and in the couple of years that followed, we very consciously decided to explore several different approaches and see what worked. Because this was very new territory, we also were doing much more limited budget than most children's books are published on. We tried some books like *Heather Has Two Mommies*, where the gay or lesbian theme was very much the focus of the book. We did other books like *Daddy's Roommate*, where it was sort of semi the focus, but most of the book was about other things. And then we did some books where it was very peripheral, where, in fact, we could have taken the story with heterosexual parents, just changed their sexes and put them in this background. Trying to see which of those approaches worked best, we tried some books in color, which is more expensive. We tried some in black and white, hoping that by keeping the price down we would make them accessible to more parents. We tried paperback originals and hardback originals, and so on, just trying to see what met the need that had been expressed to us.

As I started publishing these books, there was one obvious market — the market this bookseller had told me about at lunch: kids with gay parents. One of the first letters I got after we published *Daddy's Roommate* came from a man who had advised me a bit along the way, a father out in Santa Cruz with a five year old son named Nicholas. He wrote that Nicholas loved the book, *Daddy's Roommate*, that it had replaced his teddy bear and he carried *Daddy's Roommate* around with him instead of his teddy bear and even took it to bed with him at night sometimes. So, even at the age of five, like myself at age nineteen, never seeing a gay role model in a book, Nicholas too, at the age of five, had felt something missing from all the materials he was seeing. And that's why this book could be so important to him.

But there's more reasons, more audiences for these books than I realized at first. A couple of years after I started doing the Alyson Wonderland line, I heard from a mother in New York City, who had a six year old daughter, and one day the daughter came home from school and said she had been told by one of her classmates, "I'm not allowed to play with you anymore, because you have a dirty family". Now, obviously, that's a real painful thing for the girl. It's going to be equally problematic for the boy who made that comment to grow up thinking that kids with gay parents were dirty people or constituted a dirty family. There was a time, a generation or two ago, when you could grow up hating gay people and still be quite successful in life. But you can't anymore. That boy in fifteen years may have a lesbian

supervisor at work. If he grows up hating lesbians, thinking they are somehow less than him, he's going to have a lot of trouble in life. It's going to be an obstacle for him. So, that boy, too, needs to see some books in which there are gay parents.

And, finally, there's a group that, I think, is perhaps most important of all, but most invisible, too. A friend of mine in Boston, Kevin Jennings, who has since done a couple of books for us about gay teachers, has been very open in his high school for a number of years. Each year, there have been a few students who he thought were gay or lesbian or were, at least, working on those issues. And he has made it a point to make sure that they know he is gay, that they have his home phone number, in case they ever feel a need to talk or anything like that. There was one girl a few years ago, named Laura, who had that number. He tells me he was cooking dinner one evening and the phone rang; his lover, Bob, answered it, and it was Laura. She wanted to speak to Mr. Jennings. Bob said, "Well, he's really kind of busy right now. Is this important?" And Laura said, "Yes, it's very important." So Mr. Jennings took the phone and said, "Yes, Laura, what is it? I'm kind of busy and I was . . . is it something that can wait?" And she said, "Mr. Jennings, I just swallowed a bottle of Tylenol and slit my wrists." That's the third audience these books are for. It's kids who are six now, but in ten years, in eight years, they're going to be wondering: "Am I gay?" — worrying about it, feeling very isolated, feeling very alone.

Even though, to me, to most of you, it seems like we have a lot less stereotyping and more positive gay images in the media these days, the fact is, when you're fourteen it still feels very, very alone. If you're thinking about coming out, if you're thinking you might be gay, it's very scary because you're pretty much stuck where you are for four years. If I come out at work and I get so much hostility I just can't deal with it, I can move to a new city. If you're fourteen or fifteen, you're caught for three years in whatever situation you're in. In fact, there was a federal study done a few years ago of teenage suicide, which found that teenagers dealing with issues of sexual orientation were three times as likely to commit suicide as their peers. When you imagine the isolation those kids are in, the absolute lack of anybody to talk to, of any images of kids like themselves, it's really easy to understand why.

As librarians, you're in a very unique position to help that last group. There's lots of groups out there of other minorities who need to see themselves in books, but gay teenagers are the only group I can think of where they have to go to the library first, where they get, in most cases, no support from their family; where they feel that they have to go outside of their family in order to get any kind of support to figure out who they are. It is one experience that every gay person I know has in common, and that is that we remember looking through the card catalog sometime in junior high or high school trying desperately to find books, to find information about this subject that we, on some level, knew was important to us but didn't really know anything about yet. Books can provide a way to get that information in a real, nonthreatening manner. I would bet that any of you who have high school libraries or young adult sections in your public library, if you carry books like *Reflections of a Rock Lobster* or *One Teenager in Ten*, you've often found it in the farthest corner of the library where somebody was reading it, hoping not to be disturbed. It may not get checked out a lot, but those books are making a real difference. I think I know a lot of you already carry books like our children's books or some of the young adult books. I hope for some of you who don't, that I've been able to persuade you that maybe it's something to look at. The bad news is that what I am urging you to do may well get you in some trouble. How many of you here have had challenges to books because they were on gay issues? More than I expected, really. . . .

As of a year ago, we had counted about fifty challenges to *Daddy's Roommate* in libraries around the country, and those are just the ones that came to our attention. I made an effort to call a lot of librarians involved, because I wanted to understand what was going on, to understand how they were responding, and what was working, and to see if there was any way we could provide any support. So, as a means of preparation, I would like to talk about a few of the things I discovered were happening.

In Lafayetteville, North Carolina, there was an existing fundamentalist organization that took out full-page newspaper ads around a library referendum, urging voters to defeat the referendum, because the "Library Takes the Lead in Pursuit of Legitimizing Homosexuality: Can Prostitution, Bestiality, or Incest be Far Behind?" The referendum passed by about three hundred votes.

In Fort Meyers, Florida, a library director, Dorothy Schirtzinger, said that in her twelve years they had never had so much protest against a book. There was a one hundred signature petition demanding that the commissioners all lose their jobs. As far as I know, that was resolved satisfactorily, and the book stayed on the shelves.

In Lawrenceville, Georgia, they got a one hundred signature petition and fifteen formal written complaints about *Daddy's Roommate*, but the review committee voted unanimously to keep it on the shelf.

One of my favorites was in Eastline, Connecticut. There were two complaints about *Daddy's Roommate*. One person wrote that "a child below the age of reason having read this book may come to believe that the homosexual lifestyle is common. It probably is." That was their reason for taking it off the shelves.

In Mosspoint, Mississippi, they moved the book to the adult section. In Gwinett County, Georgia, they made it available only by special request. Two other libraries that I know of put it in some special kind of shelving — top shelf, adult fiction, something like that. In the other case I know of, the library followed its review procedure, decided that the book, whether it was *Daddy's Roommate* or one of the others, was, in fact, an appropriate selection, and they kept it right where it was.

Unfortunately, that wasn't always the end of the battle. Having discovered that they couldn't get the library to take the book off the shelf, a lot of people took it into their hands and things happened, such as books being checked out and never returned, books just disappearing off the shelf. In Harrisburg, Pennsylvania, a number of adults started putting in their requests for *Daddy's Roommate*, not because they wanted to read it but just because they wanted to make sure that nobody else would get to read it, make sure that it was never available on the shelf. We responded to that by offering free copies to the first five hundred libraries that wrote, whether it was replacement copies or extra copies because there was so much demand, or simply a library that didn't have the budget to buy the book in the first place but wanted to have it.

I was also real pleased that we did not get requests from New York, Chicago, Boston. In most cities, the libraries at least have enough in the budget that if they want a book, it's easier to fill out the standard requisition than to go to the trouble of writing a letter asking for it. We got letters from very small towns, a lot of times in the south, towns out in the Rockies and Montana, often saying "Our budget for new books is $3,000 a year. We really appreciate the chance to have this book. And, by the way, I know there are families in this town for whom this is appropriate or who want this book". Everyone of these librarians knew that they might be asking for trouble, especially in some of these smaller towns, but they also knew that there were families that were being served by these books, and they were willing to chance trouble in order to do their job. So, finally, I am happy to say that we haven't heard of too many protests at those libraries.

As long as we are on the subject of these protests, let me say that I did learn a few things from talking to librarians, and though I may be preaching to the converted here, I think it's still worth mentioning that what seems most effective is to make sure that you have a review procedure in place before there are any challenges. The libraries that had that generally had a much easier time of it. That means they had a complaint form. If somebody came in and said, "You should take this book off the shelf," they said, "We're willing to listen to what you have to say — here's a form.". . . Some of the more clever forms took the complainant through a sort of Socratic dialogue. The first question is often, "Have you read the book?", and right there, I'm afraid, you can lose half the people that come in. Then the form asks them to explain why it should be taken off the shelf. What are the criteria by which a book should be removed? Should any book be removed if it offends people? If it says something that does not reflect the majority opinions of the community, and so on. And some of these questionnaires and complaint forms that I have seen actually take the person through a process, where it would be very hard to get to the end and still say that this book should be removed without contradicting yourself or talking yourself in a circle where you would be arguing that anything controversial should be removed — that the Bible should be removed because it offends some people, and so on.

The other thing I have learned is that talking with your board ahead of time can make a big difference. I know some of you have very supportive boards, but some of you have very politicized boards that are real sensitive to public opinion and to protests, and are elected or appointed by elected commissioners, and are really afraid of controversy. If you can get these boards to look at issues of intellectual freedom, to adopt the *Library Bill of Rights* and so on before there is a controversy, it can be a lot easier than after they feel a lot of heat.

The kind of censorship I've been talking about is very easy to be against. I imagine most of us in the room here have no problem supporting *Daddy's Roommate*'s right to be in the library. Is there another kind of process going on, you can call it censorship, you can call it selection, which has the same effect of keeping some books out of the library but which, I think, may be a little more controversial even within the script here? I've got some comments I want to make. I'm going to be real curious then about whether you agree with me and what you think.

Just to back up a bit, I discovered when I started doing children's books that it really is a very different world than doing books for adults. With *Daddy's Roommate*, we were kind of lucky. Without really knowing what we were doing, I found a good author/illustrator, and he did a very good job of producing a book that was nicely illustrated. It was a good story that was right for that group. We got good reviews in a lot of the library journals, and it pretty quickly was picked up by far more libraries than I ever would have expected.

Then we started doing other books. We did black and white, color, paperback, hardback, and so on. I started finding that we were not getting much publicity for most of our children's books, and I tried to figure out why. Some of it was just the resistance to controversy. They had already reviewed one gay kids' book, they didn't feel like they had to go out and do another one. Some of it, I'm sure, was homophobia, but most of the resistance didn't seem to be either of those two concerns. Soon I

got to realize that what was going on was that children's book publishing has a much greater emphasis in art than does adult books, which don't have art at all. That may seem perfectly logical. Art is a big part of a picture book, and we want our kids to be exposed to some good art and to learn to appreciate it and so on. But as I've looked at what's happening, what I see is that art has become such a leading criteria for choosing children's books that a lot of times books get ruled out that might have a small audience but be very, very important to their audience.

Now, let me give you my perspective on what's involved in doing a children's book. When we publish a book for adults, a typical trade paperback novel, hardcover even, we can get first run at five thousand copies, and with a little bit of care and effort, but without spending much money, we can do a book that looks just as nice, that reads just as well as a book that Random House is doing with half million first printing. That's impossible with children's books. Artwork, good artwork, really high quality artwork, is very expensive. First, you have to commission the artist; then, you have to pay a printer to do separations; you have to pay for the four-color printing. It's impossible to do a book in three thousand copies or five thousand copies, and have something that's going to look as good as a book done with a first run ten times that. So the dynamic that comes up is that there is a pressure on any publisher, large or small, to only do books, children's books, on which they expect to sell fifty or a hundred thousand copies. Nobody expects to sell that many copies of a book like *Daddy's Roommate*, and therefore they don't happen. We do these books with typical first runs of three to five thousand, but I am the first to admit the artwork is not going to, in most cases, be of the same quality as that of the newest book from Harper Collins. And when the artwork becomes the main criterion or at least the first criterion that reviewers look at, what happens is that books that some kids desperately need just aren't available to them — either don't get published at all or get published but don't get reviewed, don't get into bookstores, don't get into libraries. That six year old girl who was told that she has a dirty family, if she has to wait for the Berenstein Bears to have a gay family, she's going to wait a long time. It's much more important that she see some book right now with a family like hers, a family that she can like and identify with. And whatever format that book comes in right now, we need to make it available now, and, hopefully, in two years or three years, there will be fancier books and more deluxe books with those same pictures. But I think it's critical that we make available now what we've got.

I'm also less and less optimistic that the mentioned publishers are going to be doing gay children's books in a few years. I remember in 1991, I predicted that it would be five years before any one of the six major houses did books like ours that showed gay families. We are four years towards that now, and that was before all the controversy hit. I think with this controversy, it's going to be even longer. Economics are still a big factor in mainstream publishing. If Random House or Harper Collins had done *Daddy's Roommate*, you can bet there would be some pickets and boycotts going on against their entire children's line, and they know that. I'm not sure at what point they are going to feel like they can take that on, but I think it's likely to be a few years yet; and I know we've got at least one person from one of those houses here, and if anyone has comments on that I'd be very interested to hear it.

In that sense, I think children's publishing has taken a wrong turn, that quality has come to mean art first, that publishers tend to compete in the children's sphere, not by seeing who could introduce some interesting stories but by seeing who can pay the most for their art and printing. And just to bring it home, let me put it to you this way: suppose you had a choice between two books and you could only have one of them on your shelf. You could either have a very simply illustrated black and white book that would really make a difference to that six year old girl, or you could have a new edition of *Cinderella* with some beautiful gold-foiled stamped illustrations. Which would be most likely to find a spot in your library? There are some people here for whom I know the answer would be the first book, the one that would make a real difference. But I'm afraid there's a lot of libraries and bookstores and reviewers for whom that second book still gets the most attention.

We went through the same thing with our young adult books. We've had reviewers say, of some of the books written by gay teenagers, that the writing isn't that polished, it's just not that smooth. Well, it's not meant to be. It's meant to be very real stories, and kids reading those should also be reading some books that are beautifully written, but they need both. These books provide something for kids who are coming to terms with their sexual orientation that no other book has for them. I hope as we look at books, we can use a number of criteria and not just polish, but also say, is this book going to help this child, this teenager, enjoy reading more? Is it going to encourage them to then go on and read other books? Is it going to make them feel more secure about their own lives? Is it going to help them address some of the issues that they are facing? And if it does, then it may not be the most polished or the most beautiful picture book, but I think it deserves a spot in libraries.

I came here with three things I wanted to talk about. I wanted to explain why I think it's so critical that libraries carry books, both children's books and young adult books, that discuss gay themes and, like I said, I think many of you already carry those. I hope some of the rest of you will look at them. I also wanted to bring up this issue about selection criteria. How we decide which books

are appropriate and important to have.

There's one other thing I want to do, and that is really just to thank you as librarians and, especially, a lot of you in this room right now for the support you've given me, the courage that you've shown in some of the controversy that's come up over the past years. One thing that's happened to me since I started publishing children's books is that I've had much more contact with librarians. Even after five or ten years in publishing, when I was doing just adult titles, I think I still had a little bit of a stereotyped image of librarians. I was a library assistant in sixth grade and my job was to keep the books in alphabetical order. I guess on some level, I still thought that's what librarians do. If I'd thought about it a bit more, I would have figured out how much more librarians do. Like many things in life, I took a lot of you for granted. Then the controversy really started to heat up about *Daddy's Roommate* and *Heather Has Two Mommies*, and I saw the whole New York City school system capitulate to a few very local people. Librarians in North Carolina, Georgia, Texas, Montana, Washington all stood up, all withstood a great deal of abuse, in some cases also withstood threats to their jobs, and made sure they continued to provide the books they knew kids and teenagers in their towns needed.

So, I really think you're an exceptional group. I've come to have a great deal of respect and admiration for librarians. What you're doing really does make a difference, and I occasionally get letters from people telling me what a huge difference a certain book made in their life. I sort of assume that for each one I hear from, there must be many others that I don't hear from, but for whom our books are also important. And the same is going to be true with you. You may not hear from all the people whose lives you influence, but I can assure you that there are a lot of kids, a lot of teenagers, a lot of adults who are much better off because they could walk into your library and find some books that really addressed their needs. Thank you.

QUESTION: I'm the bibliographer for children's literature at the University of Colorado-Boulder, and for the last year, I've been working on a research project to find out what resources there are for both librarians and parents to find gay/lesbian children's books. There aren't many — just two small bibliographies. So we've created one that's much larger and we're now looking at the trends we're seeing. My research assistant and I have a question for you. What do you know about the international scene in this field? Is America behind or are we ahead? Do you have any idea?

SASHA ALYSON: In terms of children's books specifically, you mean?

AUDIENCE: Yes.

SASHA ALYSON: Well, the very first children's book I know of that dealt with a gay theme was a book called *Jenny Lives With Eric and Martin*. That was originally published either in Germany or one of the Scandinavian countries, and was translated and reissued in England by Gaymen's Press. It went into some of the same kinds of battles in the U.K. that *Daddy's Roommate* has over here. We imported that for a number of years until it went out of print. It was a pamphlet format, and because it was a pamphlet, it was never really widely bought by libraries in the U.S. We only distributed it here, but it wasn't published here so it didn't get review attention. There's a very nice Canadian book called *Ashley's Moms*. As far as I know, it's still in print. I'm pretty sure it was a hardcover. The Women's Press also did a book called *Come Sit by Me*, which dealt with AIDS. Then there is Leslea Newman, who wrote *Heather Has Two Mommies*, who also did other children's books like *Saturday is Pattyday*. Apart from those, the only other children's books I know of that directly addressed gay issues are the ones that we publish.

Speaking of bibliographies, I put together a listing about a year ago, two years ago, just because I'm often asked for listings. This was more young adult than children's titles, but just a listing of young adult titles and my guess is it's stuff you have. It's more for people who really have no idea where to even start, but if you'd like a copy of that, I'll be happy to get it to you.

AUDIENCE: I just want to bring to people's attention a wonderful publication that's called, *Out of the Closet and into the Classroom*. It's published by Alia Publishers from Australia. It's a book of annotations of homosexuality in mostly young adult literature for young adults and does include some picture books that you have published. It's done very beautifully and has an incredible sort of indices where the books are listed by whether the main character is gay or lesbian, whether or not it is peripherally mentioned that there is homosexuality in it, and there's a whole listing of indices to help you with your collection development. I also want to confirm and concur with what you had said about finding material on homosexuality out on tables in libraries. I work in a high school library media center, and I have been fortunate in not having anything challenged. I purchase everything I can possibly get my hands on in any area of sexuality. I find that those are the materials that are left on tables, hidden in study carrels, often corners, at the end of the day, but at least I'm pleased that they are being read.

AUDIENCE: Has *The Advocate* made the same commitment to publishing children's books that Alyson Press had before it was bought by *The Advocate*?

SASHA ALYSON: Yes, they want to continue doing them, and we've got a couple of new projects in the works already, including, I think this is the first time it's been said even semi-publicly, Michael Willhoite has just

finished writing a book called *Daddy's Wedding*. Daddy and his roommate decided to make it official. So, that will give you all another chance to get in trouble if you missed it the first time. It's going to come out in wedding month, next June.

AUDIENCE: Situations like we are talking about today and what you've experienced show that libraries need to support the smaller presses as much as possible. One reason is that it provides a diversity, a contrast to the mainstream that is very much needed. . . . The small presses may be able to say to people what perhaps is usually kept out of the mainstream, mainly for economic reasons. Library collections at their best are against alienation. Somewhere along the line somebody, perhaps more often than not a smaller press, is going to say something that is going to remind somebody that he or she is not alone in the world.

SASHA ALYSON: One of my goals from the first books that we did was to do some of the titles that mainstream presses, for whatever reason, weren't going to do. In the 1980s, that meant any gay title because mainstream publishers were doing a few gay books but very few, and just about every book that we did during our first few years was a first of its kind in some way or another. More recently, we have done some books that could very easily have been done by St. Martins or NAL or another publisher. We've still continued to do some books that I know no one would have done at this point. Sometimes I would publish a three thousand or four thousand printing and that takes care of the market; you can see why the big companies didn't want to do it, because they wouldn't have sold the numbers that they need. We also get surprised sometimes. Our bestselling book right now by far is a book called, *B Boy Blues*, which is told in the voice of a young black streetwise gay man, sort of a hip-hop culture book. I actually signed him up to do it before it was written. He was recommended by a mutual friend. But I can assure that if you went to one of the major houses, they might not have said it, but they would have thought, well, black books don't sell that well and, certainly, not one for gay black young streetwise men — there's just no market for it; we can't do it. It's taken off. We've printed for the fourth time in ten months. Partly, because that is a bigger group than people think, and, some of them, yes, do read. Plus, word got around that for the first time they could see themselves in a book. Some of those who didn't read it have now picked it up and enjoyed it, as well as some people who aren't a member of that culture but who want to know about it and want to see it. That's something that I think is vital for small presses, and I'm often asked, "How do you feel when you see the mainstream houses moving and doing what you were doing five years ago, when they start to take over your successes"? I imagine it's fine. I didn't get into this because I wanted to have the only gay publishing company. I got into it because I thought there needed to be more books out there with this perspective. It's touching, yet will be exciting to explore in the years ahead.

AUDIENCE: I have a concern. I feel very confident that we, as members of the library community, can defend against individual challenges. We've done so and I think this group demonstrates that. My concern is how do we defend against a legislator or a legislature which would make it a crime for librarians to give "harmful to minors" literature to children. It is very difficult to have a rational discussion with legislators on that subject.

SASHA ALYSON: Well, there's a whole workshop for you. I'll bet Dick here has something to say on that.

RICHARD KLEEMAN, AAP: There's at least one answer to that question and probably several others. There is an outfit in New York called the Media Coalition and the Association of American Publishers is a member of it. The American Library Association is a member of it and, in fact, Judith Krug is its current chair. Communication with the Media Coalition in a case such as you have cited produces a lot of helpful material. It's obviously hard to turn a legislator around, but that's what they specialize in, and you should know about it and communicate with the Coalition if you're in that kind of situation.

SASHA ALYSON: The whole legislative arena gets real tough. Every time one of our books is challenged in a context like the New York City schools, where it's elected officials, very tied to political appointments, who have to make the decision, they usually back down. When it's librarians, people who understand library issues and intellectual freedom issues, they consistently stand up for the rights of people to see a range of books and for the First Amendment. It's very frightening to see how many, not just on First Amendment issues, but on all kinds of issues, are getting demagogued where legislators simply don't have the spine to do what they perfectly well know is right. I was a little bit heartened to see that Newt Gingrich is coming out against some of this Internet censorship stuff, because I could just see that whole issue going the same way as some of the others have, but apparently even Newt saw that this was going a little too far. I think one critical thing is we all need to look for ways to get that same show of grassroot support that the new right is so effective in mobilizing, to make sure that you communicate to people that they have to write and telephone their legislators, and that their voices be heard. It doesn't take too many of those communications to give an elected official some basis for standing up to these kinds of proposals.

AUDIENCE: Do you perceive an increase in challenges or an intensification of those challenges because of the

current political climate?

SASHA ALYSON: One problem I haven't answered yet is that what I see and hear about isn't necessarily representative of what's happening, it might just depend on how closely I'm tapped into the various networks.

LISA DREW, AAP: As chair of the Freedom To Read Committee of the AAP, we deal in nothing but First Amendment issues. I think I can say, with some confidence, that we seem to be having more on our plate rather than less, and that the Internet has opened up a whole new situation that's really quite alarming. We recently had a seminar in New York that was a joint ALA/AAP program called "Can You Say That In Cyberspace?," and one of the things the audience was struck with when they came in was a bulletin board full of newsclippings that had been gathered just over the last month about terrible problems coming up for people on the Internet. One case I'm sure you've all read about wherever you are, because it got huge national play, concerns a student named Jake Baker (see page 148). He was a student at Michigan who wrote a sexual fantasy that contained violence, put it out on the Internet, and it was picked up, of all things, by a University of Michigan alum in Moscow, on the Internet. He complained violently about this to the University. It happened, although there was no apparent real connection, that the name of a real fellow student was the object of Baker's sexual fantasy, although he didn't seem to be directly threatening. This college student was arrested and put in jail for twenty-nine days with no bail. They just threw away the key. Finally, they did set bail. He got out, and the whole case was thrown out of court about a week ago. But this kid was in terrible, terrible trouble, and this is just one example. It's happening all over, and the Exon bill was a knee-jerk reaction to it. As Sasha pointed out, to most of our amazement, Newt Gingrich stepped up the plate on this; although somebody pointed out to me at lunch not to read too much into it, he's already beginning to carve out the adult appropriateness of what's on the Internet and watch out for the kiddies. So, there you go again.

AUDIENCE: When I was going to grad school, I did a paper on positive literature for gay and lesbian children, and I remember the first reaction my teacher heard was like, "You're what?" I used all your books as examples. I wanted to address a couple of questions to you regarding *Heather Has Two Mommies* and *Daddy's Roommate*. For the appropriateness for the young child when I was taking this class, I was wondering why *Heather Has Two Mommies* had such long paragraphs and information utilizing huge words that children in that age range would not have understood. That's the first question that I had. The second one is that I noticed, after someone else had brought it to my attention, that there are some illustrations in *Daddy's Roommate* which reinforced stereotypes, with the lover having a theater tee-shirt. I know this is nitpicking, but I just wanted to ask you. I loved the books, every single one of those children's books I bought for myself, and then gave to a local gay/lesbian library, so they would have them. But I just wanted to know if you would address the stereotypes.

SASHA ALYSON: Sure, well, let me start with *Heather*. I'm actually glad to have an opportunity to explain what happened with that. Leslea Newman wrote *Heather Has Two Mommies* because a friend of hers had asked for such a book. She took it to a number of publishers, all of whom turned it down. She didn't know that I would be interested in it, so she published it herself. Back when she was submitting it to various publishing houses, one editor wrote back, "I think you need to explain artificial insemination". So she said, "Well, this editor knows more than I do," so she added that. Well, the editor still refused the book, but this part about artificial insemination had been added and Leslea had figured that since an editor suggested it, it must be appropriate to have it in there. So, she published it herself and very soon after that, I had decided I would start my own line of children's books. Meanwhile, Leslea had discovered that being your own self-publisher involves a lot of sticking books into Jiffy bags, things that she didn't want to do as a writer, so she very happily sold me the rights to the book to add to my line. What I got was a finished book that was already printed at that point, and we toyed with making some changes when it came time to reprint, but by then there had been so much controversy that it felt very odd to be making editorial changes, partly as if people would take credit for having forced us to change the book, or people would misinterpret it that we had backed down in the face of pressure, and so on. I'm still not entirely certain this was the right decision, but we decided that the book was out, that it was too late to make substantial changes to it. I would be curious to know if people think we should do a new edition of that? Maybe put in color illustrations, change some of the text that we think wasn't really age appropriate, or is it now just an established book and we ought to leave it and go on to new things, which is what we have been inclined to do so far?

As for *Daddy's Roommate*, since I wasn't the author or illustrator, I can't comment directly on his thoughts on putting on that T-shirt. I might mention that the other comment we've gotten about it was actually from fundamentalists, that the T-shirt, at least one of the T-shirts, says "Janus" on it, and somebody was attacking the book on the grounds that the word "anus" was embedded in that. You can't do anything right, can you?

I can add that as I talk to librarians who have run into challenges, a real consistent theme has been how helpful ALA was when they called. You know, even if you think

that you know what to do, that you've got everything under control, getting another perspective from somebody who has dealt with a lot of challenges before might make a big difference; they might have some ideas, have some suggestions that can help. So, apart from just keeping a complete record, it really is worth a phone call to see what other advice you might be able to get.

I didn't ever actually finish responding to the question about stereotypes and the drama tee-shirt. That's something where I would disagree with you actually. And that's fine. But sometimes it's a fine line in a book between a stereotype and a realistic depiction of what somebody really would do. The fact is a lot of gay men are in the theater, so I think it's realistic to have somebody wearing that T-shirt. If another artist did a book in which he was quite vehement that he was not going to have any theater stuff in that book, I might say, fine, because there are lots of gay men, including myself, that perhaps don't appreciate theater as much as others do. I just saw a report. The 1990 census for the first time asked a question that somewhat helped identify gay couples, at least to the vast number of people who are living in same sex relationships. It turned out that three times as many of them were involved in the entertainment industry as in the rest of the population. So, yes, it's a stereotype. Yes, it also reflects something of reality. □

(info highway . . . from page 127)

principle, and that is the belief that if a free society is to survive it must be because it respects dissent, unpopular views, and the diversity of opinion.

Justice Thurgood Marshall, writing in an earlier case about the constitutional state of access to these types of materials said, "If the First Amendment means anything, it certainly must mean that a person has the right to decide what to read and what to watch in one's home free of government interference." Justice Brandeis, however, has warned, in an opinion going back to the 1920s, that government may someday discover a method to read the contents of information contained in one's desk drawer. There is work to be done, great work to be done. We know how technology helps control and operate.

You may be aware that over the last couple of years there has been quite a debate in Washington about a claim made by the FBI — that new technologies were making it difficult to conduct wiretaps. For this reason, it was necessary, they said, to rewire the nation's telephone system to ensure that every type of communication, whether by fax, by e-mail, by cellular phone, or by the plain old telephone system, could be readily wiretapped. We thought it was necessary for the FBI to put forward the justification for that proposal. It litigated a case in district court that went before Judge Sporkin which said that the FBI had an obligation under the Freedom of Information Act to make clear what the basis for the need was. Unfortunately, in the end, all that we received and all the public has seen in support of the proposal is twenty pages with more black magic marking on it than, I think, my own two year old son could muster. That is the government's justification for a plan that would cost U.S. taxpayers over 500 million dollars over the next four years to wiretap the information highway. This is a technology of surveillance, and if I suggest anything to you today, it is that in the design of our technologies, in the support and the development of our technologies, we are building in political values with a computer program that made it easy for people to encrypt with PGP. Phil Zimmerman gave us the technology of privacy and so, not surprisingly, the government was not very pleased by this development.

Let me say a few words about what I think our strategy should be. I think the American Library Association, on these issues in particular, must be on the front lines. It is not enough, I'm afraid, to join coalitions with other organizations that are also doing fine work. I encourage you to do that and also to work with a broad political base across party lines, across regions of the country, across political associations, but I urge you also to get out in front. As I said before, the people in the civil liberties community can speak for the Constitution, but the people in the library community speak for the future users of the information highway, and your ability to press forward intellectual freedom will largely determine the choices and options that are available to the people who make use of our country's communications infrastructure. I urge you also to be technologically savvy. I am very pleased to learn, for example, that the ALA in Washington is developing an office on information technology. You have to get out in front of these issues, not only for promoting access and good user interface, but also trying to understand the implications of the collection of data, its impact on personal privacy, and its possible impact on free speech and association.

One issue, in particular, is the question of anonymity. This is the next frontier of the privacy battle in the United States. Many of you, I am sure, have heard a lot about the battle of encryption, not only with Phil Zimmerman but also about the Clipper Chip proposal and some of the NSA's efforts in the area of export control and licensing to restrict encryption. And I guess we know a quite a bit about that issue now. But anonymity, which is the right to control the disclosure of your identity, to decide when it is necessary and when it is not necessary for your name and your personal information to be known to others, could well be the key to privacy, and

could say, by extension, to intellectual freedom in our information future. In fact, the public library provides the ideal model of anonymous access to information. The person who can freely roam a rich information resource, to explore both the popular and the unpopular, to look at particular personal interests or general social interests without having to account to anyone or to leave a record, I think, is the very best of intellectual freedom. You have, of course, some practical restraints. You need to know when materials have been taken out; you need to get those materials back. But to the extent you can, to limit the collection of personal data is a wonderful safeguard for personal privacy. Those of you who remember the FBI Library Awareness Program from the 1980s know what the consequences are on the other side, which is having the ability to pull up information on library users and borrowers. You also create a risk that that information will be disclosed to others and used for improper purposes.

As the Internet first grew up, it was also a system of anonymous information retrieval. The FTP sites that were built around the country, rich storehouses of information, of software, of resources, of tools, required no identification from the users, and to the extent that a person offered identity, it was often for the sake of saying, "I would like some help. Could someone please send me some information? This is how to find me." Not surprisingly, this information environment flourished — open, accessible, without restriction. It may well change, for software has changed, commercial forces have come into play, and our ability to remain anonymous across the Internet is by no means guaranteed. But speaking on behalf of the privacy community, I would like to reach out to you and ask you in the library community to please place anonymity, which is the right to obtain information without saying who you are, high up on your list as an important goal to protect and to preserve intellectual freedom in the years ahead.

I should say also a few words about where we are with the legislation today in Washington. As you know, Senator Exon's proposal was adopted by the Senate 84 to 16. As currently crafted, it will leave publishers and users and content providers liable for "obscene, lewd, lascivious, filthy and indecent" speech. Those terms have been used in the past in the broadcast context, when the government was regulating networks, radios, and television stations. It is not a standard that is used in the First Amendment world where speech that might be considered indecent or filthy is clearly protected. So the Senate has placed the U.S. Congress on track, as I said earlier, to pass legislation that, if applied to the print world, would clearly violate the First Amendment. On the House side, it is not clear yet what is going to happen. Speaker Gingrich this past week expressed opposition to the Exon proposal and if he is prepared to carry forward, it may well be the case that the Exon measure will not pass. Nonetheless, there have been similar bills adopted in more than a dozen states, and I suspect that we will see more. Many of these bills would punish not only the content providers but also the communication carriers and anyone who in any way facilitates access to this information.

I think, therefore, we are going to have to make some choices, and we must be cautious about adopting two positions that seem to be popular in Washington when talking about technology. There is in one corner the view that technology is inherently liberating. That is to say that, by its nature, it will promote more freedom, more openness and more accessibility. And there is in another corner a view that technology is inherently a form of social control, that it leads to surveillance, to dehumanization, and to loss of employment. I'm somewhere in between; I do not believe that technology determines our future. I think what will determine our future will be the strength of our public institutions, the openness of our society, and the commitment to freedom of belief. But if we are not prepared to carry those social goals into the design of our new technologies, then I am afraid that the future holds some prospects that are less than bright.

And so, once again, we look forward to working with the ALA, the Intellectual Freedom Committee, Judy Krug, and Paul Vermouth, and the people who have been honored today. You are the champions of our right to free speech in this country, but you have your work cut out for you. There are a lot of decisions being made today about the development of the Internet, and how those decisions turn out will largely affect our freedoms in the years to come. Thank you.

remarks by Janet Murray

The headline, "Sex and the Infohighway," from a weekly newsmagazine, is typical of articles we have all seen in the popular media. Articles which focus on the sensational sell magazines, but they also promote misconceptions about the Internet in the minds of parents and the public. Censors call this "protection of vulnerable young minds." In fact, it reminds me of another movement, reflected by a cartoon which shows a teacher and student, and the teacher is castigating a textbook because it is soft on communism. The student, who is, of course, an eager learner asks, "What is communism"? She describes it as a totalitarian form of government that controls what people can read and won't let them think for themselves. "What are you going to do about the book?" he asks. "Ban it," she says.

My goal today is not to debate the philosophical implications of such cartoons, but rather to outline in practical terms how we can deal with these issues in schools and libraries. A number of metaphors have been used to describe the Internet in an attempt to make it accessible and comprehensible to people who have no personal experience of it. And, indeed, I think this is one of our biggest problems — that many of the people who are making decisions are making them based on or outside the realm of personal experience. It may be that with pure metaphor coupled with historical precedent we can find some answers to our dilemmas. I heard a librarian describe our role this way: "If the Internet is a highway, then we want to be the driving instructors and the filling station attendants, but we emphatically do not want to be the highway patrol, snowplow operators, or litter collectors."

Historically, schools have developed policies and procedures based on the doctrine of *in loco parentis* — while children are in their care they act for the parents to ensure their children's safety, and, as Marc [Rotenberg] mentioned, safety is a buzzword among the people who want to protect kids from these horrible threats that they view as being carried on the Internet. Marc also talked about constitutional law. School law differs from constitutional law in its broad application. Constitutional freedoms may be justifiably abridged in their application in schools. For example, lockers may be searched if there is the threat that they contain weapons or other illegal substances. We consult with parents before we take their children off schoolgrounds. We ask them to sign a field trip permission form. So when approached to use Internet in schools, it is treated as a virtual field trip to cyberspace. We inform the parents of the potential dangers and indemnify ourselves by asking them to sign the permission form.

Although school boards and network service providers are reasonably concerned about liability issues in the current atmosphere of litigiousness, most educators are more interested in the teaching opportunity afforded by the introduction of Internet into the schools—an opportunity which transcends content specific resources and effective search strategies. Most schools treat Internet access as a revocable privilege, and have developed acceptable use policies with which students must agree to comply. Discussing the terms of the acceptable use policies with students allows us to introduce positive concepts like ethics, responsibility, and copyright.

Acceptable use policies commonly include the following elements, and I should say I made a concerted attempt to state these in positive ways; in schools we like to think about positive reinforcement, not a bunch of rules that start out with "do not." It is an opportunity to teach users to be *responsible*. Students, for example, are expected to protect their individual accounts by declining to share their passwords. Of course, we also encourage them not to share their lockers. Students will accept responsibility for the content of the messages they post in their real names. In terms of anonymity, schools generally expect students to use their accounts and their real names, and to take responsibility for the content of the messages they post. There is a need to recognize that access is a revocable privilege. In other words, if they don't live up to our expectations for their responsible behavior, it's possible that their access will be removed.

Users, in signing acceptable use policies, agree to be *ethical*. They will not interfere with others' work or with the performance of the network by attempting to hack passwords, gain entry to closed areas of the network, or by knowingly or unwittingly introducing computer viruses.

Users agree to be *efficient*. They are expected to recognize that the network is a shared resource, respect time limits, and learn to use tools which allow them to work off-line.

Users agree to be *polite*. They learn that the network is a social community with accepted standards of behavior, also known as "netiquette." They are expected to use appropriate language and to avoid launching personal attacks on people whose appearance differ from theirs, also known as "flaming."

Users agree to use the network *legally*. They are supposed to protect copyright and avoid using network resources to promote illegal activities.

Schools also typically have codes of conduct which govern student behavior at school and on field trips. In my school district, these are referred to as student rights and responsibilities. Our K-12 Network recognizes users' right to *privacy* in their electronic communications. Philosophically, we tend to disagree with Prodigy's policy of screening all messages. Most of us prefer to stress the student's opportunity to develop maturity by taking responsibility for the content of their postings. I believe that students live up to our expectations of them, and that's the way I treat students at my school. I don't like the magnetic security device at the door. All it is to them is a challenge to outwit, to get around. I think it sends a negative message.

Users have the right to *equal access* to as many network services as the user's technology allows.

Users have the right to *safety* from unwanted solicitations or communications. We strongly discourage students from posting their home addresses or phone numbers. There was a fair amount of media hysteria about the young man lured from his home in Washington to San Francisco by some, presumably older, pervert. It turned out that, in fact, the guy who sent the messages was another 16-year old. I like that a lot!

Users have the right to *intellectual freedom* of personal expression.

These are the five rights that are spelled out in the K-12 Network use policy.

Another valuable teaching tool, published by the Computer Ethics Institute, is entitled "Ten Commandments For Computer Ethics": thou shalt not use a computer to harm other people; thou shalt not interfere with other people's work; thou shalt not snoop around in other people's files or desk drawers, as the case may be; thou shalt not use a computer to steal; thou shalt not use a computer to bear false witness; thou shalt not use or copy software for which you have not paid; thou shalt not use other people's computer resources without authorization; thou shalt not appropriate other people's intellectual output; thou shalt think about the social consequences of the program you write; and, thou shalt use a computer in ways that show consideration and respect.

When confronting issues pertaining to using the Internet in school, we can use the metaphor of a virtual field trip to guide our thinking about student safety and parental permission. We devise acceptable use policies which explicitly detail students' rights and responsibilities, and use them as a teaching tool to guide discussions of personal ethics in an electronic environment.

Now, to don my other hat, I am proud to note that librarians have been especially proactive in exploring intellectual freedom issues raised by the rapidly expanding global electronic village. The draft interpretation of the *Library Bill of Rights*, "Access to Electronic Information, Services and Networks," is solidly grounded on its predecessors. I am not a member of the Intellectual Freedom Committee, I was not involved in writing this interpretation. This is something that arrived in my e-mailbox, and I know that even this morning, they [the IFC] were still working on revising it. So I don't speak for the Committee or the people who drafted the document. I am simply sharing it with you from my perspective as someone who read it on the 'net.

The *Library Bill of Rights* was first adopted by ALA in 1940. That's more than 50 years ago. Now imagine the political climate at the beginning of the cold war and remember the cartoon I described earlier which, ironically, proposed to ban books which were soft on communism. Our professional organization asserts that libraries should provide materials and information presenting all points of view on current and historical issues. It's in the *Library Bill of Rights* — just in case you haven't read it! "Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment, and libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas."

The draft interpretation, "Access to Electronic Information," which was released in March of this year, also addresses issues of user rights and library responsibilities. It affirms that librarians address intellectual freedom from a strong ethical base and an abiding commitment to the preservation of the individual's rights, as expressed in the *Library Bill of Rights*. So what I want to share is how this is derived, not only from the *Library Bill of Rights*, but also from previous interpretations. It asserts that the constant emergence and change of issues arising from the still developing technology of computer mediated information, generation, distribution, and retrieval needs to be approached by librarians from the context of established policy.

Now, as Marc said, I am speaking to the converted. I mean, it's not difficult for us to conclude that electronic information is simply information in another format, but we may need to help our patrons, our school boards, and our communities to see it in that context. Remember what they have been reading about the Internet in the popular press! The Intellectual Freedom Committee's draft policy explicitly makes the connections and can help guide our own exploration of the issues.

The "rights of users" are clearly related to previous interpretations pertaining to freedom of access, privacy and confidentiality, and the rights of minors in the documents. Libraries are widely regarded as the public repository of information, and as such, can confidently assert that electronic information, services, or networks provided directly or indirectly by the library should be readily, equally, and equitably accessible to all library users. ALA's interpretation regarding equitable access was first adopted in 1973. We have an implicit obligation to avoid widening the gap between information haves and have nots, which results from disparities of economic opportunity and infrastructure. (Let me tell you about the infrastructure in Oregon — it's real different from that in the Beltway, let me put it that way!)

"Questionable" content is addressed directly. Providing access to electronic information cannot be equated with collection development and selection policies. "It is, therefore, left to each user to determine what is appropriate. *Parents* who are concerned about their children's use of electronic resources should provide guidance to their children"—a principle which has been previously articulated in Interpretations pertaining to nonprint materials, particularly videotapes, and the school library media program.

In the course of my career, I have only had two challenges. One was in my first year of teaching when I passed out a list of books for possible book reports to an American Lit class, and someone's daughter read Faulkner and found it objectionable. The administration backed me, saying that the book she chose was an option from a list of options and she didn't have to choose that book. The second one came just last year, and it clearly came from the same community that we are hearing so much about in connection with the legisla-

tion that Marc spoke about. But, again, my school district has well-established policies of selection and rose to accept the challenge. I was proud that it didn't give in to the pressure.

The draft of "Access to Electronic Information, Services and Networks, an Interpretation of the *Library Bill of Rights*," concludes by saying that "by applying traditional tenets of intellectual freedom to new media, librarians provide vision and leadership in an arena where it is clearly needed."

We have the opportunity to redefine our role as educators and information specialists, to provide our students and patrons with bold new ways to acquire knowledge, and in that spirit, and because I always do, I offer you what may be the bibliography of the future: you can get the *Library Bill of Rights* and its Interpretations on-line through the gopher at the Electronic Frontier Foundation. As for acceptable use policies, there is a really good collection at RICE. Also, ERIC has a good collection of sample agreements, which are what I used to come up with this sort of outline of what policies typically contain. I also want to mention the Internet Engineering Taskforce. This is an international group of people who had to do originally with engineering standards by which this network operates. But there is a school networking group and they produce what are called RFCs, requests for comment, and FAQs, frequently asked questions. There is one of these that specifically deals with acceptable use policies, although it is called "user expectations." There is also one called: "Frequently Asked Questions about School, Secondary School and Elementary School Use of the Internet," which has some excellent material in it regarding the questions that we've been talking about today. In addition, I cited Barry Fishman and Roy Pees' article, "The Internetwork School Policy for the Future" from *Technos*, in case any of you really only do print anymore. And "Outreach School Networking Group Internet RFC1746" by Bill Manning and Don Perkins leans heavily on the Coverse Pop Policy, which is articulated in Fishman and Pees' article.

QUESTION: The last speaker said she felt that Internet access was a privilege and not a right. Do you feel that way for your students?

JANET: I didn't say that I feel that way. That has been the typical policy adopted by school boards in their acceptable use policies. It's kind of a club that you hang over the kids; that if they screw up, they won't be able to use the network anymore.

QUESTION: I was wondering if you would comment on that attitude you feel is prevailing.

JANET: Well, I like to think about metaphors. What I tried to do was set all of this conversation in the context of previous things, to show that the Internet isn't something entirely new and different from everything I have ever done before. Say, for example, we loan textbooks to students. They have a right to have a textbook to use for their class. If they lose one or damage it beyond repair, then, generally, they are subject to a charge in order to replace that textbook. Same thing with the I.D. card. They get one for free. If they lose it, they have to pay for the replacement. So all I'm saying is that it has been a way to exercise control in schools — that if a student's behavior is outrageous, his account would be limited for some period of time. But not as a punishment so much as an opportunity to educate him about what is appropriate.

AUDIENCE: My comment is addressed to both of our speakers. At one point, Mr. Rotenberg, you said that librarians are the best safeguarders as far as the freedom of use for the public. But then later on, Ms. Murray, you said that you do try to discourage young people from putting their names and addresses on Internet and other data bases that are available. It seems to me that the librarian is not only in a position of guaranteeing freedom of use but also in determining how best to use what's available out there. A library can determine what reference book to buy and what not to buy. A library can determine what form of the Internet to make available to the public and what not, and whether to use World Wide Web or whether to use Mr. Zimmerman's technology. It seems that a library has become sort of an arbiter as far as what's best to use of the information that is out there, Internet and other means, and what is not. I was wondering if you could comment on that.

MARC ROTENBERG: I think the short answer is that the two views are compatible. I don't see a conflict here. The point I was making was that I felt it was critical for the library community to continue to push forward on openness and to oppose restrictions on speech and on content. I think the point Janet was making, which is very sensible, is that one of the ways young people sometimes make themselves at risk on the Internet is by disclosing personal information. I do think the concern may be somewhat overstated, particularly in the press. I don't know if you have noticed the past few weeks the number of articles and photographs that have appeared — *USA Today* ran a photograph on Monday that I don't think they would have ever run in the past. A woman in a bikini and a guy baretop, and the whole business to try to demonstrate the evils of obscene imagery.

I will tell you another story along this line. Senator Exon was down on the senate floor with a blue binder with red marking on the side that said "Caution." He was showing all of his colleagues the terrible stuff that they could find on the Internet if they only looked hard enough. You have to imagine what it must have been for two U.S. senators to be peering through this blue binder saying, "I never even saw that before!" I was thinking about what some of the staffing must have been like just

before the vote on this issue. Because the truth, of course, is that few members of the congress are really that comfortable with this technology.

I'll mention on the other side of the ledger that my former boss, Senator Patrick Leahy, was very good with the use of the Internet and, not surprisingly, was one of the critical opponents of the [Exon] proposal. But for the people who didn't understand the technology, didn't know what the Web was, what a page was or what any of this stuff was, you have to imagine that there was probably some young staff person who sat down with the senator in front of a computer said, "Senator, this is a computer, right? This is Mosaic software, and here's the Playboy home page." So, in about five minutes, you go from the keyboard to Miss June, 1995, or something. It's a terrible way to make policy on these types of issues. The point that you raised originally is a fair one. But there is nothing incompatible between our positions. It is about openness and about accessibility, and at the same time, just like when people are in a library and you say, "Don't leave personal belongings on a table unattended." That's just common sense and public safety.

QUESTION: My school right now is facing a dilemma. I am in a community college. We have some staff members and some students who feel that when other students are viewing pornographic images on the 'net in the lab that it creates an environment of sexual harassment. I think both sides have merit there, and I would ask you to give some words of wisdom on that. How can we resolve this dilemma without rampant censorship?

MARC ROTENBERG: That's a difficult issue. In fact, the Supreme Court has recognized that by the content and images that are displayed in the work environment you can, in fact, have the basis for some sort of workplace discrimination suit. But then, I think, this helps illustrate my point, which is that those types of problems need to be resolved locally with a particular sensitivity to the age of the people, the type of organization it is, what the expectations are. What is appropriate to do, for example, with a bunch of eighth-graders is not the same that you would do with a college freshman class. What's needed here is some good judgment. It is probably not appropriate in the community college, depending a little bit on the circumstances. I have to say something else about this issue: there is so much here, and unfortunately, we really didn't quite cover some ground that maybe should be covered. But a very important question which is going to concern the library community is the liability for the information that is made available on-line. Now, someone earlier raised this question in the context of the letters to the editor and whether or not they have claim to be published. And, of course, the answer is no. We have had a couple of cases on the specific application of some First Amendment claims to the Internet environment. Most people here are familiar with *Cubby v. Compuserve*? Well, in my opinion, it was an excellent opinion. The question there was whether the information service, Compuserve, should be held liable for material that they had made available to their customers that the parties agreed was slanderous. Now the question is, should Compuserve, which manages this huge information resource, with the new services and the on-line services and so forth, be held responsible for what appears in this one particular publication, frankly, pretty far down the chain, in terms of the central organization of the information service? The answer in that case from Judge Peter Lee was, well, you look at this and it looks very much like a bookstand or a newsstand or a library, and we are simply not going to hold these types of information service providers liable for every page in every book or every byte and every file that would otherwise be made available. I think it was a very strong, ringing affirmation of First Amendment freedoms in cyberspace.

Now, as wonderful as that opinion is, it doesn't answer all the questions. The most obvious one being, what if someone had brought to the attention of Compuserve the fact that this information that they were making available was, indeed, slanderous? And then at that point there would be this question: well, don't they now really have a responsibility to do something? But you see, you are very much in a similar position, and the goal will be to try to urge the courts and to urge the Congress to try to adopt the most expansive, most robust application of the First Amendment in these new information environments and not to impose the type of liability that will lead to censorship and to self-censorship, which in some ways is even more pernicious. Because when self-censorship occurs, there is not even a debate. You decide or someone else decides. I can't even risk raising this issue. And the information doesn't even get out there. That type of silencing, I think, would be very unfortunate.

QUESTION: There has been discussion of libraries using a software package like Surfwatch to do some filtering of what comes into the library. It seems to me like this brings up a lot of interesting issues. I wonder if you had any comment on that. And then I was also going to ask about the liability.

JANET MURRAY: In the "Electronic Access" Interpretation of the *Library Bill of Rights*, it says explicitly that it is not the same as your collection development policy, providing access to electronic information is not the same thing as selecting and purchasing material for a library collection. Libraries may discover that some material accessed electronically may not meet a library selection or collection development policy. Then it goes on to what I quoted, that it is then left up to the individual user to determine what's appropriate. In my school district, they blocked the "alt." groups from Usenet.

What I say to parents and to other school librarians and teachers who are worried about this is that you need

to realize we provide an environment and access to information. Children will not inadvertently stumble upon something objectionable, but by the same token, we know that the kids know how to navigate this network a whole lot more creatively than we do ourselves and we cannot and will not prevent them from accessing something they know how to get. Somebody once sent me e-mail and said that on their service, they couldn't subscribe to a newsgroup unless they already knew the name of it. She wanted a list of the K-12 newsgroups. It's a difficult issue. Another conference that deals specifically with this is Computers, Freedom and Privacy. It's an annual conference. It's an emerging area of law and interpretation. So, as I said, I always try to go back and think about what I would do if it were a book.

QUESTION: Marc, my question is about the Exon amendment. I realize that Newt Gingrich is opposed to it, but if it passed pretty much as it's written now, what sort of liability would there be for, say a public library, if the law were enacted with the rather stringent punishments? What sort of things would you envision if we had to abide by that law?

MARC ROTENBERG: Let me throw up first of all some disclaimers. I have looked at the revised bill as adopted, which was actually the version introduced by Senator Coates, and that modified somewhat the defenses that were made available to carriers and also changed the scope of information that would be covered. But the basic intent and structure of the Coates revision is still as the original Exon amendment was put out by the Senate Commerce Committee; it makes people in the business of providing information essentially liable that others may gain access to this material that is "indecent" or "filthy." Now, having said that you are liable, you may have some ways to get off. You may put notices up, you may decide not to exercise any editorial discretion — that's a possible defense. There's some discussion of technical features as defenses. On the other side of the equation, I am quite certain there are going to be some constitutional challenges, particularly from people in the publishing industry; I don't think the publishing industry is going to have much of a future if this survives. So the short answer is that real risk is hard to define right now.

QUESTION: Do you draw a distinction between freedom of speech, and stalking and harassment? And what about that issue on the network, which is very real for women users?

MARC ROTENBERG: Well, we've talked about two related sets of issues. In the speech realm, I really do think we need to err on the side of openness, but on the "criminal harms" side, I don't think we should be reluctant to prosecute people who threaten others. Now, there is going to be some overlap in the middle, and that's what creates the hard problem. There is a case, with which some of you may be familiar, where this Michigan student, Jake Baker, put out on the Internet some very offensive stuff, sort of a personal fantasy involving the maiming of another student, sexually harming another student at school. I think anyone who had seen this would also have been offended and concerned about the stability of this person. He was charged with violating federal law, and this past week, the judge threw out the indictment and basically said that this speech was protected by the First Amendment. But the judge said something else, which I thought was helpful for us here. He also said that he thought this was the type of activity which school adminstrators could properly deal with and possibly impose some type of sanction — whether it is appropriate to have a suspension or to be expelled. I think that is the right approach, this middle ground where institutions and individuals exercise their good judgement about how to respond to concerns within their community. This is going to lead to much saner, more workable policies than the federal government out here saying: "We have a one size fits all, touch this trip wire and you're looking at two years in jail". That's what concerns me.

QUESTION: I'm a little concerned with some of this discussion, as a public librarian who offers access to the Internet and also individual e-mail accounts. I would like to understand how you see a public library responding in the way you say is administration. Also, I was interested earlier in Janet Murray's comment that what you do is warn the parents of the dangers of this particular field trip; I would be interested to know what are the dangers of the Internet that she warned about? And how does that translate again into public libraries, or how would you do that?

JANET MURRAY: In terms of the dangers and the warning statement that goes on the thing that gets sent home to the parents — it typically says it is highly unlikely that your student will be inadvertently exposed to objectionable material, but you should know that objectionable material exists and if he is determined to find it, he can. Then don't post your home address and phone number. We have signs on the photocopier that say the person who uses the photocopier is responsible for obeying the copyright law, and if students come into my library and ask me to help them use the photocopier to copy sheet music I say, "No, I will not help you. That is a violation of copyright. I can't stop you from putting your money in the machine, but I will not facilitate your abuse of copyright". So that's where I get my guidance. I think what Marc said was, in a public library, you post a notice that says, we have not selected the content of these electronic resources. They do not reflect this library's policies regarding information, in terms of things we would purchase for the collection. □

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Compiled by Anne Penway, Assistant Director, Office for Intellectual Freedom.

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