

newsletter
on
intellectual
freedom



IFC ALA

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The following article is one of several in this issue of the Newsletter focusing on censorship and other threats to free expression on the Internet and other online services in computer "cyberspace." These articles are published under the rubric "focus on the Internet."

The American Library Association is the lead plaintiff in a lawsuit filed February 26 in U.S. District Court for the Eastern District of Pennsylvania challenging the Communications Decency Act (CDA), a portion of the recently enacted Telecommunications Act (see *Newsletter*, March 1996, p. 35). The provision attempts to prohibit "indecent" communications to minors on the Internet. However, the suit contends, the CDA effectively bans a broad variety of communication that is constitutionally protected.

Along with the Freedom to Read Foundation, ALA's sister organization, the other named plaintiffs in the suit are America Online; American Booksellers Association; American Booksellers Foundation for Free Expression; American Society of Newspaper Editors; Apple Computer; Association of American Publishers; Association of Publishers, Editors and Writers; Citizens Internet Empowerment Coalition; Commercial Internet Exchange Association; CompuServe; Families Against Internet Censorship; Health Sciences Libraries Consortium; HotWired Ventures; Interactive Digital Software Association; Interactive Services Association; Magazine Publishers of America; Microsoft; The Microsoft Network; National Press Photographers Association; Netcom On-Line Communications; Newspaper Association of America; Opnet; Prodigy; Society of Professional Journalists, and Wired Ventures. All of the plaintiffs are members of the Citizens Internet Empowerment Coalition, which also includes such organizations as People for the American Way, the Center for Democracy and Technology, and Americans for Tax Reform.

"The Internet represents the most revolutionary invention in education and communication since Gutenberg invented the printing press," said Judith F. Krug, Director of the ALA Office for Intellectual Freedom. "This law threatens to rob children and adults alike of new and enriching opportunities to learn and communicate with people around the world. Our main argument is that you cannot limit ideas and information to the lowest common denominator, which is what this law does. It is unconstitutional to force adults to limit the information they can see to a level

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focus on the Internet excerpts from memorandum of law in Internet "indecent" suit

The following are edited excerpts from the plaintiffs' memorandum of law in the challenge by ALA and twenty-six other plaintiffs to the recently passed Communications Decency Act. All footnotes and legal citations have been removed.

Four points are critical in this case. First, the Internet, and "cyberspace" generally, is an entirely new communications medium that differs from other media in crucial respects: it is global, it is decentralized, it gives ordinary citizens unparalleled ability to communicate to and with others on a scale never before possible, and it is unobtrusive, because users access only the communications they affirmatively request. It therefore merits the highest level of First Amendment protection. Second, the provisions of the Act that are the subject of this challenge — Section 502(2), 47 U.S.C. § 223(d), and Section 502(1), 47 U.S.C. § 223(a) (1) (B) — criminalize an enormous quantity of speech, all of which is constitutionally protected for adults, and apply to a vast and diverse range of speakers and speech activities. Third, because of the way the Internet works, the Act effectively *bans* the vast majority of that speech, and severely burdens the rest. Thus, in nearly every application, the challenged provisions abridge the First Amendment rights of adults. Fourth, effective methods exist to protect minors from online speech that is inappropriate for them, methods that do *not* deny adult access to that speech. . . .

The Internet is not a physical or tangible entity. It is a giant network which interconnects innumerable smaller groups of linked computer networks: a network of networks. This amalgam of computers and computer networks is a decentralized, unrestricted global medium of communications — or "cyberspace" — linking individuals, institutions, corporations, and governments around the world. Anyone with access to the Internet can use it to exchange ideas, research, software, poetry, images, literature, sound, or electronic mail. Communication can occur virtually instantaneously, and can be directed to specific individuals, broader groups, or the world as a whole.

No entity — academic, corporate, governmental, or non-profit — controls the Internet. It exists and functions solely because hundreds of thousands of computer operators and computer networks independently decided to use a common data transfer protocol to exchange information with other computers (which in turn exchange information with still other computers). Although the nature of the Internet makes it impossible to determine its size, it is estimated that over 5,000,000 host computers

worldwide are linked to the Internet, and that over 50 million individuals around the world access this medium. Two hundred million users are expected by the year 1999. There is no centralized storage location, control point, or communications channel for the Internet. It would be impossible for any single entity to regulate the information conveyed on the Internet. . . .

Most transmissions of content from specific sites on the Internet are in response to recipients' requests that could not have been anticipated more than a few moments earlier. Because information is located on millions of computers around the world, with no central organization or control, a user cannot possibly know which computers might have useful information until starting a search, and while searching may have no knowledge of where the computers accessed are physically located. Thus, *there is no way for a user to pre-register with every computer that potentially might contain useful content on a particular topic* (and equally impossible for those content sites to maintain and continually update lists of registered users). Moreover, when exploring a topic, an individual might access dozens of newsgroups, telnet computers, and ftp, gopher, and Web sites around the world in a matter of minutes. If a user must request access from content providers (and prove he or she is not a minor) prior to actually viewing the information, as the Act requires, the Internet would lose much of its value as a dynamic and instantaneous research tool. . . .

Plaintiffs are *not* challenging the Act to the extent it prohibits speech that is *unprotected* by the First Amendment — including obscenity and child pornography. Nor do plaintiffs challenge the Act's prohibition of communications made with the intent to annoy, abuse, threaten, or harass the recipient, or provisions that prohibit communications designed to entice or lure minors into illegal activity. Those communications are not constitutionally protected even for adults. But subsections 223(a) and (d) enact sweeping restrictions on speech that is constitutionally protected for adults. Indeed, the Act directly affects an extraordinarily broad category of speech, a massive volume of speech, and an extremely diverse range of speakers and speech activities.

Subsection (a). The Act makes it a felony, punishable by two years in prison, for a person to knowingly transmit by "telecommunications device" "any comment, request, suggestion, proposal, image, or other communication which is . . . indecent" to a person whom the transmitter knows is under 18. This provision on its face prohibits any communications containing any indecent material whenever one participant knows another participant is under 18, and would make it illegal for a University library to transmit the text of *Lady Chatterly's Lover* or George Carlin's satirical "Seven Dirty Words" monologue to a portion of the University's freshman class, because those works have been judged "indecent."

Subsection (d). Subsection (d) is even more sweeping. The provision makes it a felony, punishable by two years in prison, for anyone to knowingly use an "interactive computer service" to "display in a manner available to" a person under 18:

any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs[.]

This "display" prohibition is truly breathtaking in scope. Unlike the standard for obscenity, the Act's prohibition of "indecent" or "patently offensive" material is not restricted to materials with "prurient appeal." To the contrary, while "[p]rurient appeal is an element of the obscene, . . . the normal definition of 'indecent' merely refers to nonconformance with accepted standards of morality." Nor are subsections (a) or (d) limited to material that lacks serious literary, artistic, political or scientific value. The Act plainly covers the so-called "seven dirty words," for those very words have been found "indecent" and "patently offensive" by the Supreme Court in *Pacifica*, and the Conference Report makes clear that Congress was adopting *Pacifica*. Similarly, Senator Exon, the Act's principal sponsor, confirmed that the prohibition would apply to *Playboy* magazine.

Not surprisingly given the enormous quantity and diversity of information it carries, cyberspace contains a substantial amount of expression that might be deemed "indecent" or "patently offensive" for younger children. This material includes serious works of fiction (containing descriptions of sexual conduct or vulgar language), use of profanity in casual conversations via e-mail, reproductions of artwork containing nudity or sexually explicit images, medical treatises (containing depictions or descriptions relating to sexually transmitted diseases and medical conditions), robust political or public policy debates containing vulgar language or expletives, and serious discussions of sexuality and relationships. This type of information is an important part of the Internet materials accessible by researchers, members of the academic community and the public. . . .

In addition to criminalizing a broad category of speech, the Act subjects an unusually broad category of speakers to the risk of imprisonment and substantial fines. Nearly every online user and service provider will of necessity employ either a "telecommunications device" or an "interactive computer service," or both. Almost all of the tens of millions of users of the Internet are "content providers." By the very nature of the Internet, *most* material that is stored in a database or made part of a bulletin board can be accessed by *everyone*, and is *ipso facto* "display[ed] in a manner available to" persons under 18. Thus, the Act regulates the activity of virtually everyone who uses the Internet or cyberspace. . . .

The online medium offers the recipients of information a degree of control unmatched in any other medium. Not only can users affirmatively select the content of materials they view based on the subject matter of the particular service or the information contained in the headline or subject line, but there are also numerous — and expanding — methods for users to screen and block incoming materials they choose not to receive.

Commercial online services such as America Online, CompuServe, the Microsoft Network, and Prodigy offer technologies that allow parents to block their children's access to inappropriate content. These online services, for example, include a feature that allows parents to prevent their children from accessing interactive discussion forums (chat rooms). They also offer parents the ability to block access to some or all of the Internet (including the World Wide Web and USENET newsgroups) based on keywords, subject matter, or specific newsgroups.

A variety of software providers have developed applications to use in conjunction with commercial online services, while others are designed for direct Internet access. SurfWatch, for example, allows parents to block access to USENET newsgroups, World Wide Web, gopher, and ftp sites with sexually explicit content. The service automatically updates the list of blocked sites, without any intervention required from the user. Similarly, Cyber Patrol blocks access to locations and content on the Internet based both on a list of identified sites and on a scan for certain key words suggesting sexual content. Certain of these screening programs can be set to keep a log of all activity that occurs on the computer, allowing parents to monitor a child's use. All of these programs contain safeguards to prevent children from circumventing the blocking software.

User-based content control programs provide parents and others flexibility to select the kinds of content to be screened. For example, Cyber Patrol allows parents to choose to screen out some or all of 12 separate categories of content. Moreover, these programs allow parents to modify the screening criteria as their young children mature into teenagers and young adults.

This screening technology is available at little or no cost to parents and other computer users. Online services make their internal parental control systems, as well as Cyber Patrol, SurfWatch, and similar software, available to parents at no additional charge. Microsystems Software, Inc. offers a version of Cyber Patrol that anyone can obtain for free over the Internet. Retail versions of this type of blocking software costs between \$20.00 and \$50.00.

Additionally, the World Wide Web Consortium has promulgated a communications standard to facilitate

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focus on the Internet state and local laws attack cyberspace freedoms

While attention has focused on the February passage of the federal Communications Decency Act (CDA), which, if upheld, would seriously restrict the availability of allegedly "indecent" material on the Internet, one fact has frequently been overlooked: In some areas of the country local actions have *already* shut down computer bulletin boards and have had a chilling effect on free speech in cyberspace.

Without realizing it, millions of Americans lost Internet freedoms over the past two years without congressional action but through state laws that were passed with little news coverage. In some states, these laws are more restrictive than anything proposed in Congress by Sen. James Exon (D-NE), author of the CDA, or even the Christian Coalition.

For example:

- In Kansas, a law specifically prohibits people from making "indecent comments" online.
- In Connecticut, Georgia, New Jersey, North Dakota, and South Dakota, state laws covering phone calls have been expanded to include computer communications, so it is now a criminal act to send e-mail that is obscene, vulgar, offensive, or causes annoyance.
- Even if a person does not live in one of the states listed above, she or he can still be prosecuted for sending such a message to someone who does.
- State decency laws have been used to harass owners of bulletin board systems (BBS) and at least two Internet sites.
- Many BBS owners, and some small Internet service providers, have started censoring their content in self-defense.

Looking beyond harassment at state obscenity laws, the situation is worse. Theoretically, one could be indicted merely for posting something to a Usenet group, if a prosecutor downloads the material and finds it in violation of state and local community statutes and standards. And media coverage of alleged "cyberporn" has attracted so much attention that any system operator can be victimized by a local prosecutor looking for support from conservative voters.

Lorne Shantz discovered this the hard way. For years he operated a BBS out of his home in Phoenix, Arizona. He was careful to stay within the law because he was the law: a highway patrol officer. In November, 1994, his computer was seized because it was suspected of containing child pornography. Shantz was immediately suspended from his job and, four months later, indicted by a grand jury.

According to prosecutor Rick Romley, three pictures

on Shantz's BBS were of girls under 18 years of age. They were judged to be minors by using the Tanner Scale, a technique devised by doctors to estimate age by measuring breast development and pubic hair. Shantz objected that the scale was inexact and hardly probative.

Shantz's BBS also contained some pictures of bestiality. He agreed that those should not have been there but said he had never seen them. They were included on a CD-ROM he'd bought by mail order that was marked "BBS Ready."

"Almost every BBS around used to have an adult section," commented networking engineer and former BBS owner Jonathan Gillies. "Lorne actually took more trouble than most of them, posting notices warning people not to upload certain types of pictures, and demanding proof of age."

Shantz eventually beat the charges, but endured six months of anxiety and unemployment, and ran up \$30,000 in legal fees. He had to fight for the return of his computer equipment and to get back his old job.

Even more important, perhaps, was that despite Shantz's "victory" about half a dozen local BBS operators shut down their systems and others closed their adult sections, which were often among the most popular parts of their services.

Last year, Cincinnati witnessed perhaps the most remarkable example of state law enforcement run amok. Hamilton County sheriff Simon Leis, Jr., who previously prosecuted the Robert Mapplethorpe exhibition at the Cincinnati Contemporary Arts Center, took on a BBS owner named Bob Emerson. Emerson began his BBS in 1984, eventually investing \$45,000 in equipment and ending up with a network of 27 computers serving about 6,000 subscribers over eighteen phone lines. He even added Internet access with e-mail service and Usenet feeds.

In 1995, he lost it all when a SWAT team descended on his home and seized all of his equipment, including his grandchild's multimedia machine which the family used for games.

But Emerson fought back. Within days, he'd purchased new equipment and got his BBS running again. More importantly, he hired Louis Sirkin, a prominent First Amendment attorney, and filed suit against Sheriff Leis and other city employees and departments. Soon the complaint grew to a class action suit on behalf of *all* of Emerson's BBS users who were deprived of access and had their e-mail illegally seized.

But Emerson wasn't the only one targeted by Leis. Four other BBS owners in the region were raided on the same day — and they did not have Emerson's ability to fight back. Steve Brown, who holds a full-time job as a salesperson, started his BBS as a hobby and served just 520 people with one computer and a phone line. Like

focus on the Internet

center pushes to keep racism offline

The Los Angeles-based Simon Wiesenthal Center raised the stakes in the ongoing debate over censorship on the Internet January 9 when it began mailing letters to hundreds of Internet access providers asking them to deny service to "individuals and groups who seek to use this technology to mainstream their agenda of hate." Major providers quickly rejected the appeal, saying they cannot be in the position of deciding what kind of material subscribers can create or receive.

Citing about seventy-five sites on the World Wide Web that are published by groups that denigrate Jews, blacks, and other minorities, the Wiesenthal Center urged providers to adopt a "code of ethics." "What we're asking for is some social responsibility," said the Center's Rabbi Abraham Cooper. "These are for-profit ventures, and we're saying set some standards, be responsive to the community."

Cooper said the Center was not asking access providers to remove newsgroups that hate groups might use to

express their ideas. Instead, the Center is focusing on Web sites, which allow users to publish text, pictures, sound and video that can be viewed by millions but typically offer no forum for discussion or response.

Cooper compared access providers to traditional media outlets, such as radio stations and newspapers. But the providers argue that they are more like a phone company than a publisher. "While we find hate messages personally offensive, we will not censor," said Curt Kundre of Netcom Communications in San Jose. "We're not going to decide for our subscribers what they should and shouldn't look at."

"The first step is protecting children, the next step is preventing people from hearing hate speech. What comes next?" asked Lori Fena, executive director of the Electronic Frontier Foundation, a cyberspace civil liberties group. "If everybody wanted to ban everything someone found objectionable on the Internet, this medium that used to be the most democratic representation of ideas would be severely limited." Reported in: *New York Times*, January 10; *Los Angeles Times*, January 11. □

Emerson, he allowed people to post files on his BBS and was unaware that a small number were pornographic. He lost his entire system along with his personal computer and all his personal financial, tax, and other files. He has been unable to restart his BBS and has feared that he will lose his job.

"I feel they have gone far beyond their duties, to the point of malicious persecution of me and my family," Brown said. "I just don't understand what's happening in this country. The fact is, Americans are not as free as we think we are."

Lojne Shantz, whose system was seized in Phoenix, shares Brown's anxiety. "The federal situation is bad enough," he said, "but what's going on at the state level is more frightening, because they're getting away with more than the Feds. Big Brother has got his nose where it does not belong." This from a man who spent fourteen years as a state law enforcement officer!

"A lot of state prosecutors are elected," said attorney Pete Kennedy, who is collaborating on the Emerson class action suit and was lead counsel in *Steve Jackson Games, Inc. v. U.S. Secret Service*, which ended with the Secret Service being ordered to pay damages for illegally seizing e-mail. "Federal prosecutors are not elected. That can make a big difference in how they behave over issues such

as cyberporn."

"Compare what happened in Cincinnati with the federal investigators who went looking for child pornography at America Online," he continued. "Investigators didn't seize computers at AOL, they didn't take e-mail, and the system stayed up. They used legal processes to order AOL to produce particular information about particular suspected users. This is what is required under the Electronic Communications Privacy Act: you have to state precisely what you're looking for.

"Federal law enforcement is now getting the message, slowly," he went on. "But there are fifty states with hundreds of county prosecutors apiece who are way behind on the learning curve."

That may be true, but a sinister pattern has emerged. In Cincinnati, Simon Leis has made his reputation as an "anti-pornography" crusader, yet he has failed to win a single obscenity case since coming to office in 1987. Arguably, he has no more chance of winning the case against Emerson than any of the others he has lost over the years. Yet, outside the courtroom, he has succeeded in drastically curtailing the BBS scene in Cincinnati. It's called "chilling effect." Reported in: *Wired*, April 1996. □

focus on the internet

CompuServe reinstates access to banned newsgroups

Citing a desire to leave Internet censorship to individual tastes rather than to government decree, the on-line company CompuServe, Inc., said February 13 that it would restore worldwide access to most of the two hundred sex-related computer Usenet newsgroups it had blocked in December, allegedly under pressure from German prosecutors.

Instead of barring all of its 4.3 million subscribers from access to the controversial newsgroups, CompuServe said it would provide subscribers with software that can selectively block any offensive material. While not foolproof, such filtering software can give people control over what material they or their children receive through the online service. CompuServe said, however, that it was maintaining a ban on five of the computer sites suspected by German, U.S. and other law enforcement officials of carrying child pornography.

CompuServe will adopt software similar to parental-control technology already offered by two other leading online companies, America Online and Prodigy. Cyber Patrol, the filtering system CompuServe has put in place, will allow users to restrict access to the Internet and other services that may contain adult-oriented content. Reported in: *Minneapolis Star-Tribune*, February 14; *Vancouver Sun*, February 14. □

focus on the Internet

White House web site blocked

The White House has moved into the Internet's redlight district. SurfWatch software, which prevents children from seeing "indecent" text and pictures on the Internet, recently blocked access to part of the White House's World Wide Web site. The reason? The site contained a "dirty" word — "couples."

SurfWatch searches for words commonly found in sexually explicit Web sites, and "couples" is one of them. But on the White House kids' page, "couples" refers to President Bill and Hillary Clinton and Vice-President Al and Tipper Gore. Reported in: *Edmonton Sun*, February 24. □

focus on the Internet

Asia leery of cyberspace

On the Internet, information crosses international boundaries at the speed of light, driving holes in the dikes of traditional authority, promoting political freedom and open markets, and rendering even the most tightly guarded borders increasingly porous.

That's the theory.

In reality, the worldwide computer network is exposing the ambivalent attitudes that many governments and societies hold toward the free flow of information. Nowhere is this more striking than in Asia. Lured by the potential economic benefits of Internet connections, the East is rapidly embracing the 'net's revolutionary technology while rejecting its underlying ideology of free information. To wit:

- In Singapore, political leaders worry that the Internet will undermine traditional morality. They have taken to reading private e-mail as part of an effort to beat back the perceived menace of online pornography.

- China is afraid the Internet will foment political rebellion. So officials are limiting access and making sure the Chinese portion can easily be severed from the world in the event of a political crisis.

- Hong Kong, a powerful outpost of the global electronics industry, is worried about gangsters and the threat that hackers pose to business. Law enforcement officials there have carried out raids on Internet service providers to root out suspected criminals.

- In Japan, traditional cultural insularity means that even as government agencies, academic institutions and corporations rush to the Internet and scour it for information, they are doing little to put on information of their own.

Across Asia there is a visible clash between the Internet's basic function as an information exchange medium and cultures where information is a closely guarded commodity, something parted with sparingly to friends over a drink. On the World Wide Web, for example, a number of American sites feature lengthy government reports and scientific studies, as well as lively debates about government policy. Comparable Asian sites typically offer little beyond public relations materials from government agencies and corporations. The critical discussions that do take place are hosted in the U.S. Internationally, the Internet — which originated as a project of the U.S. Department of Defense — looks like a hub based in America, and, to a lesser extent, Europe, with spokes stretching out across the world.

To be sure, in part this is simply a result of the fact that Asia is years behind the U.S. in building Internet connections. Last year, for instance, Japan had 150,000

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TV execs commit to ratings system

Representatives of every major television production studio, cable company, and broadcast television network met with President Clinton at the White House for more than two hours February 29 and committed themselves to warning labels on violent and sexually explicit television programs. The President hailed the agreement to create a new ratings regime for virtually all television programming, combined with new "V-chip" technology, as a "breakthrough" that will give parents more control over their children's viewing.

"We're handing the TV remote control back to America's parents so that they can pass on their values and protect their children," Clinton said after the first White House meeting of its kind. But the President made clear that he believes the ratings system, while necessary, is only a modest first step toward improving the content of programming beamed into American homes.

"It is not enough for parents to be able to tune out what they don't want their children to watch," Clinton said. "They want to be able to tune in good programs that their children will watch."

Jack Valenti, president of the Motion Picture Association of America (MPAA), outlined at the session how the industry intends to design and implement the ratings system. He said that individual distributors of programming would rate their products according to a system modeled on the 27-year-old MPAA movie ratings scale. The industry also will create a ratings review board that periodically will review the operation of the system to ensure that it is being applied consistently by production studios.

Participants described the session as "historic" and friendly, but industry officials showed the strains of being driven to a "voluntary" ratings system under political pressure and legal duress. They also complained about the size of the task that confronts them before next January, when they promised to have the new system in place.

The typical 27-channel cable television system broadcasts more than 600,000 hours of programming a year, most of which will have to be rated and encoded for use with the V-chip, which allows parents to screen out objectionable programs. Under the agreement, only news and sports programs will be exempt from the rating requirement.

Industry executives took pains to assert that they were acting voluntarily on the ratings system but would brook no further government intrusion into their artistic and First Amendment freedoms. They made clear to Clinton that they would fight any attempt to impose censorship on their products or government edicts on the operation of their self-regulating scheme.

"Within each of us, Mr. President," said Valenti, "is a real core belief that government censorship is fundamentally in conflict with two hundred years' heritage of free speech."

Although Vice President Gore said the ratings plan raised "no First Amendment questions whatsoever, no more than the movie picture rating system does," others were not so sanguine. Daniel E. Katz, legislative counsel for the ACLU, said that ratings in conjunction with the V-chip will have "a severe chilling effect on the creative community" because advertisers will be reluctant to support programs that millions of households will block because they are rated as containing violent or suggestive material.

The meeting followed a series of developments in February that increased the pressure on the television industry to adopt the ratings system. On February 8, President Clinton signed into law the massive Telecommunications Act, which contained a provision compelling television manufacturers to begin producing sets with the so-called "V-chip."

The law also instructed the Federal Communications Commission, based on recommendations of a committee it appoints, to devise a system for rating all TV programs for violent and sexual content and profanity if the industry did not come up with its own "voluntary" ratings system within a year. The law specifically excludes only political and religious program content, not news or sports programs. Such a rating system, designed to activate the V-chip technology, could have penalized coverage of the Oklahoma City bombing, the Vietnam War, or the beating of Rodney King.

Also in early February, a cable television-financed study conducted by four universities was released. It found television violence to be widespread and growing. The study concluded that 73 percent of all violent acts on television take place without repercussions, and humor occurs in 39 percent of all violent scenes.

"Premium cable channels present the highest proportion of violent programs, and programs with numerous violent interactions," the report said.

The study also bent some myths. Few reality-based programs (like "Hard Copy") show violence, but those that do show it in high concentrations. Slightly less than one-third of music videos contain violence, substantially below the average for all programs. Music videos also tend not to depict attractive perpetrators and targets of violence, or humor-based violence.

But the turning point in the television industry's attitude toward ratings came when, on February 15, the Fox network announced that it would begin on its own to rate programs it airs for sexual and violent content.

"We have decided to implement an MPAA-like ratings system for the television programs on Fox," chairman

Rupert Murdoch said in a news release. "We are prepared to act unilaterally if necessary." The announcement dramatically increased the pressure on the other networks, which were already at work on the plan that would eventually be announced at the White House.

Fox executives said Murdoch had decided to break with the other networks in response to public outcry. But executives at the other networks charged that Fox was taking action "to make points in Washington. It's highly ironic that the king of trash TV is the one saying he's making the first move," said one executive. Fox is known for such racy shows as "Beverly Hills 90210" and "Married . . . with Children."

The decision of the broadcast and cable industries to cooperate with the President and design their own ratings system could set the stage for a virtually unprecedented national discussion of values.

"What is violence?" asked L. Brent Bozell, chair of the Media Research Center, which publishes the *Family Guide to Prime Time Television*. "Is sexual content an

issue? And if the V-chip is meant to program out violence, are we going to decide that John Wayne movies should not be viewed by children?" What about *Schindler's List*?"

Indeed, many observers noted, in a society that is radically divided on other so-called value issues, it is difficult to imagine just how a ratings system will work and whether anyone will be able to agree on it. Will shows that gracefully explore delicate topics receive the same ratings as programs that feature explicit sex? What about Saturday morning cartoons, whose exaggerated and unreal violence is offensive to some, hysterically funny to others, adults and children? What about the Miss America pageant?

"All of this is opening up a can of worms," said Martha Dewing, who edits a newsletter that evaluates children's videos. "Any image that you look at reflects values." Reported in: *Los Angeles Times*, February 16, 29, March 1; *Phoenix Gazette*, February 14; *Catholic Standard*, February 15. □

in review

Preserving Intellectual Freedom: Fighting Censorship in Our Schools. Ed. Jean E. Brown. National Council of Teachers of English, 1994. 252 pp. no price on jacket.

The National Council of Teachers of English has long been a valued advocate with the American Library Association in promoting intellectual freedom in our schools. This intelligent collection of essays reflects the broad philosophical underpinnings of intellectual freedom and, at the same time, presents specific issues and situations an educator is likely to face on the job. These essays also reach far beyond English education.

The collection is divided neatly into five sections. *Intellectual Freedom and English Education* includes Philip Anderson's provocative "In Defense of the Aesthetic: Technical Rationality and Cultural Censorship," which warns teachers how conceptual frameworks like E.D. Hirsch's "cultural literacy" model promote memorization of specific facts and ideas rather than appreciation and critical analysis of this material. Kathie Cerra's statistical survey in "Self-Censorship and the Elementary School Teacher" raises awareness of the dynamics of self-censorship as practiced by librarians and teachers, as well.

Intellectual Freedom and the Curriculum includes a moving essay by Hugh Agee, "Literature, Intellectual Freedom, and the Ecology of the Imagination." Agee documents psychiatric patients whose lives are transformed when one book stimulates the imagination. The often controversial topic, "Censorship and African

American Literature," is ably surveyed by Jim Knippling. His fascinating but tragic account of novelist Chester Himes' conflicts with his publishers are a sobering reminder of the importance of including publishers in the intellectual freedom coalition. New American Library attempted drastic editorial revisions of his 1955 novel, *The Primitive*. Himes had violated what has been called the "scarlet equation" — interracial sexual relations. Included are specific examples of editorial changes, compared to the author's original text.

In this reviewer's opinion, Mary Ellen Van Camp's "Intellectual Freedom and the Student: Using Literature to Teach Differentiation of Propaganda and Persuasion" is "must" reading for any teaching using a textbook. Van Camp demonstrates how educators can use supplemental materials to promote discourse on the controversial topics removed by textbook publishers. For example, she lists six books on nuclear war, each of which has a different point of view.

The third section, *Providing Support for Teachers*, mirrors for teachers the kind of valuable preparatory strategies librarians use "before the censor arrives." Specific, approved curricular goal statements are the parallel to the written collection development policy librarians are used to have on hand.

My only complaint about *Taking Action for Intellectual Freedom* is that this fourth section should have been longer! The contributors present real-life scenarios of teachers — often young and idealistic — who get caught in knotty censorship battles. C. Jane Hydrick's "Slugging It Out: Censorship Issues in the Third Grade," was

the reviewer's favorite. Hydrick's local library was hearing a citizen complaint that David Greenberg's *Slugs* (Trumpet Club, 1983) was disgusting. The newspaper article made Hydrick's fellow team teachers shy away from teaching the book. She decided to present it nevertheless, and provides hundreds of direct quotations from her third graders' reactions. The vast range of responses is instructive, as is the student review written for the school paper: "Some of us liked it, some of us didn't. *Slugs* is on any library shelf. If you want to read it you can and then you can decide if you like it or not."

The final section, *Legal Implications of Limiting Intellectual Freedom*, gives a thorough, much-needed analysis of the *Hazelwood School District v. Kuhlmeier* decision, and its application to teacher-advisors of student publications.

This collection of essays was consistently strong and readable for an educator, parent — or student. However, the next edition *must* include a sixth section on censorship of electronic resources and services in the schools.—*Reviewed by Barbara M. Jones, Director, Schaffer Library, Union College.*

Forbidden Passages: Writings Banned in Canada. Edited by Pat Califia. Cleis Press, Inc., 1995. 176 p. \$14.95.

This anthology of excerpted contributions by gay and lesbian writers brings together examples of books, cartoons and short stories banned and stopped at the border by the Canadian Customs agents. After reading this collection gathered by Pat Califia, it is rather difficult to discern just on what the agents based their decisions to confiscate this literature.

Webster's Encyclopedic Unabridged Dictionary defines 'pornography' as "obscene literature, art, or photography, esp. that having little or no artistic merit," while 'obscene' as "offensive to modesty or decency; indecent; lewd, causing or intended to cause, sexual excitement or lust." Who is to decide what has or does not have artistic merit? Obscenity was at issue in the 1992 *Regina v. Butler* court case, when the Canadian court found Donald Butler, a Manitoba "adult video store owner, guilty of peddling obscenity." This decision altered the country's censorship policies from community standards toward issues which may promote "harm," particularly to women. This new emphasis targeted the terms "degrading" and "dehumanizing" to describe those writings which were suspect.

Forbidden Passages: Writing Banned in Canada is a book of "excerpts from some of the most significant publications seized at the Canadian border, as sexually 'degrading,' 'obscene' or politically suspect." This particular publication was published as a fundraiser to help Little Sister's Book and Art Emporium, a gay bookstore

in Vancouver, Canada, to pay for legal fees incurred in its recent litigation against the Canadian Customs.

In her introduction, "Dangerous Tongues," Califia proposes that the seizures of gay and lesbian literature not only involved the writer, but also the bookseller. "These seizures have threatened the survival of Canada's four gay bookstores." She goes on to say that people don't like to talk about censorship, because it makes them uncomfortable "to be reminded that governments have this power and frequently exercise it." Califia presents a capsulized history of the ongoing battle of sexual censorship. In her concluding remarks, she warns that society in the United States is moving toward procensorship, and it should not be assumed that the First Amendment would prevent laws such as *Regina v. Butler* from being enacted within our borders. The second introduction, "The Case Against Canada Customs" by Janine Fuller, is a discussion of the lawsuits that have been filed against the Canadian Customs since 1986. Califia and Fuller set the background of events leading up to the publishing of *Forbidden Passages*.

What, if anything, is "degrading" or "dehumanizing" about the excerpts included in this collection? One might select several of the illustrations in "Spiral" from *Memories That Smell Like Gasoline*, by David Wojnarowicz, as well as the captions accompanying the drawings, as being suspect. Jack Morin's "Anal Pleasure and Anal Taboo" from *Anal Pleasure and Health: A Guide for Men and Women*, discusses an area of sexual exploration that has been viewed as a taboo in our society. Morin presents a short explanation of the anal taboo and the negative attitudes that surround it.

Joseph Beam's "Brother to Brother: Words from the Heart" from *In the Life: A Black Gay Anthology*, is a social and political monologue about Black men loving Black men. Beam feels this is a "call to action, an acknowledgement of responsibility." This writer brings the reader's attention to the twofold problem of minority gay lifestyle. "Otherness" is explored by bell hooks (writer uses lower case letters in name) in "Eating the Other: Desire and Resistance" from *Black Looks: Race and Representation*. This writer looks at Otherness as a commodity within our culture, with the idea that "there is pleasure to be found in the acknowledgment and enjoyment of racial differences," which could be interpreted as a radical hypothesis.

The feminist revenge comic strip from *Hothead Paisan: Homocidal Lesbian Terrorist #7*, by Diane Dimassa, was banned for being degrading to men. This reviewer could not see the reason for the banning except for a few references to men and parts of their anatomy in sexually explicit terms. Three contributions to the anthology could be identified as material that might qualify for the scrutiny of Canadian Customs agents. Pat Califia's essay "The Surprise Party," from *Macho Sluts*, received special

treatment by the customs agents. It contains scenes of rough sex and bondage, including anal penetration. Although the reader might believe this is a description of three cops sexually assaulting a lesbian, it is in fact complicated staged S/M scenes produced in honor of the heroine's birthday. "The Surprise Party" was under suspicion for "potentially instigating antigay violence." The descriptions are very graphic, yet because of the tight suspenseful storyline, the focus of sexual perversion becomes secondary.

The second candidate for the customs' gavel is from *Tom of Finland: Retrospective*. This entry is a series of sexually explicit drawings depicting men engaging in single and multiple sex acts. There is no need for commentary—the illustrations are clearly expressed. A third excerpt, "Numb," from *Fisk*, by Dennis Cooper could also fall within the guidelines of the *Regina v. Butler* ruling. In a letter to Julian, Dennis talks about his sexual exploits with male strangers. This letter describes how he and two other men use assault, degradation and murder to feel strong and powerful. While the descriptions are extremely graphic and caused this reviewer some discomfort, one cannot surmise if this is the general tone of the book *Fisk*.

John Preston posits an explanation of gay and lesbian writers in the final essay, "Epilogue: On Writing Pornography" from *I Once Had a Master*. He states that "gay writers do spend more time dealing with sexual issues than do others. There are reasons for it. Gay life treats sex differently. It can be a symbol for self-affirmation—and self-abuse—in a way that often just doesn't translate for other people." This reviewer feels that *Forbidden Passages* has done a superior job of translating to the reader the thoughts and dreams of gay and lesbian writers. It is a book that urges the reader to seek out the unabridged versions of these collected excerpts.—Reviewed by Joyce G. Taylor, Ph.D., Lecturer, School of Library and Information Science, Indiana University, Bloomington.

The Myth of Political Correctness. By John K. Wilson. Duke University Press, 1995. 205 p.

The term "politically correct" is not new. According to this author, it was first used in a Supreme Court decision in 1793 (*Chisholm vs. Georgia*) and quickly faded from view. In 1991, it burst on the scene again as the rallying cry of the conservative critics of academia. Since that time, thousands of articles and hundreds of books have been written decrying the alleged intimidation of conservative scholars and students in higher education by the forces of political correctness. This reviewer has often wondered, in recent years, when someone would take the time to develop a thoughtful and documented response to these diatribes.

John K. Wilson has done precisely that. This is a well-written, solidly researched book. Mr. Wilson does not make grand statements based on hearsay or impression. He goes to the sources and does the background checking necessary to support his statements. References and "footnotes" for each of the chapters are included in a separate section at the end of the volume. There is also a thorough index which enables one to look up issues related to specific individuals and institutions with considerable ease.

Mr. Wilson points out that "political correctness" has permeated our culture in a mindless way. It has become so meaningless, that individuals as diverse as Rush Limbaugh, President Clinton, and John Cardinal O'Connor have decried the evils of "political correctness". Politicians, writers, journalists and others have learned that they can, in the words of Wilson, "escape responsibility by yelling 'PC' as loud as possible."

The book includes hundreds of examples which show how incidents on college campuses around the country have been blown out of proportion, manufactured, exaggerated, and then cited by others as fact. As an example, he cites a 1991 editorial in *The Wall Street Journal*. Under the title "The Return of the Storm Troopers", the article describes how a "mob" intimidated a speaker at the SUNY Binghamton campus. Closer investigation showed that a single individual had caused the disruption. One of the speakers who, according to the *Journal*, had been intimidated and prevented from speaking, told a student reporter that "other than the one person who misbehaved, the meeting had gone well." Later, when the story of this incident was retold in the *St. Petersburg Times* by John Leo, "a mob of 200 students. . .invaded the lecture hall, brandishing sticks and canes". The same story was repeated in the pages of *Heterodoxy*.

Wilson devotes chapters to exploring what he terms "Conservative Correctness", "The Cult of Western Culture", "The Myth of Speech Codes", "The Myth of Sexual Correctness", and "The Myth of Reverse Discrimination".

His analysis of the reverse discrimination cry that is constantly heard is insightful and points out some disturbingly dishonest behavior by some of those who attack affirmative action. For instance, a group of conservative Dartmouth alumni argue that "there must be no goals or quotas for any special group or category of applicants", and then add that "alumni sons and daughters should receive some special consideration". In the opinion of Wilson, this favored treatment of alumni sons and daughters is probably the oldest example of affirmative action in American higher education. It also was used broadly beginning in the 1920s by a number of

(continued on page 106)

— censorship dateline



libraries

Rancho Cucamonga, California

Public library patrons in Rancho Cucamonga won't ever find *Playboy* on the shelves. That promise, made at a meeting of the library's board February 1, pleased parents who, two months earlier, were upset to find a few *Playboy* issues on display in a locked glass case in the Friends of the Library bookstore.

Although the parents had hoped the board would adopt a written policy, the trustees voted unanimously not to set a formal policy barring the sale or display of the magazine. Instead, the trustees said the Friends group's commitment to the board that the store would not carry *Playboy*, *Penthouse* or similar magazines was all they required.

Library officials were hopeful the vote and decision to accept a \$235 donation raised by the Friends when they auctioned a collection of 238 *Playboy* issues in December would close the book on the controversy that followed.

After parents Jacqueline Bolda and Tony Villegas discovered the magazines in the library bookstore, they began circulating a petition to protest the auction. Reported in: *Inland Valley Daily Bulletin*, February 3.

Riverside, California

An award-winning popular book depicting mature themes, sexual situations, and smoking was pulled from middle school libraries in the Riverside Unified School District in March. *The Chocolate War*, by Robert Cormier, was removed after a district committee decided the novel was inappropriate for seventh- and eighth-graders to read without class discussion. The decision, announced March 4, delighted the two Gage Middle School parents who challenged the book last October.

The decision was not easy for the seven-member Reconsideration Committee, which voted 4-3 to remove the novel from the district's six middle school libraries. A majority of the committee concluded that "it's the kind of book that kind of begs for discussion," said District Librarian Christine Allen, a committee member who voted to keep the book because she thought it was good literature.

Marcia Weaver, a teacher, and parent Sue Neal argued that Gage students who could use the book for reports would not necessarily have the opportunity to discuss the serious issues raised by the novel. The book includes scenes of masturbation in a boys' restroom, sexual comments, profanity, and violence by members of a secret school society. The committee rejected Weaver's argument that the book violated the state Education Code by promoting smoking and depicting derogatory comments against Jesus Christ.

School officials were instructed to delete the book from an electronic list of books suggested for middle school projects and reports. Copies of the book will be transferred to the district's high school libraries.

Although the decision was officially a recommendation, Superintendent Anthony Lardieri said it would be final. Reported in: *Riverside Press-Enterprise*, March 5.

Ames, Iowa

Librarians at Iowa State University have been debating whether it was right to remove an anti-abortion newsletter from their collections last summer. Bob Sickles, a librarian, has been donating the *Right to Life News* to the university for four years. But in August he was told by another librarian, Cynthia Dobson, that the newsletter was being removed because the library did not offer a publication with an opposing viewpoint. Sickles complained that the library was censoring materials.

"It is not for us to choose what people can read," he said. "If they want to have Planned Parenthood's newsletter in this library, I will be the first to make sure it is in the collection."

Librarian Nancy Easton said, however, that Sickles was "confusing his personal interest with his responsibilities to the library." She said the library had pulled the newsletter because it wasn't scholarly enough. Reported in: *Chronicle of Higher Education*, February 16.

Mehlville, Missouri

A lesbian and gay history book, intended for high school students, was banned from the shelves of at least two high school libraries in Mehlville, by order of Superintendent Bob Rogers. Copies of *Becoming Visible: A Reader in Gay and Lesbian History for High School and College Students* had been donated to the school district by the Gay, Lesbian & Straight Teachers Network.

The district librarian placed *Becoming Visible* in Mehlville's professional library, rather than in the school libraries for which it was intended. Superintendent Rogers claimed the book "does not meet the needs of the curriculum" for high school students. "I'm not aware of any school that has put that book in their library," he added. "We just don't put a book in the library because some group sends it to us." Reported in: *Oakville Call*, December 21; *Bay Area Reporter*, January 18.

Merrimack, New Hampshire

A parent, upset that her seventh-grade son was able to check out a Stephen King novel from Mastricola Middle School library, asked the district to set up a parental consent system. Failing that, April Sarasin said she wanted the district to pull inappropriate and profane books from the shelf. Reported in: *Boston Globe*, February 8.

Clifton, New Jersey

Minors will no longer have easy access to sexually explicit material at Clifton libraries. By a 4-2 vote February 15, the city's Board of Library Trustees approved a new policy limiting such material to patrons over 18 years of age, ending a three-month battle over three books that some residents described as "filth" and "pornography."

Adults will be allowed to check out the three books — *The Magic of Sex*, *More Joy of Sex*, and *The New Joy of Gay Sex* — but will have to ask for them, because they will be hidden behind the checkout counter. On the shelves will be dummy book jackets.

Mayor James Anzaldi called the new policy a compromise between two warring factions: those who wanted the books out of the library and those who wanted them to remain. Al DuBois, the city's recycling director, called the new policy a triumph for community standards. He spearheaded the fight to have the books removed.

"This is our city," said DuBois. "I do not think these three obscene, pornographic books should be made available to minors." DuBois began his campaign last October when, visiting the library with his daughter, he spotted the books. Reported in: *The Record*, February 16.

Charlotte, North Carolina

Reading the ending of Judy Blume's *Deenie* with her daughter, Lynn Oke began to feel very uncomfortable as she skipped ahead and saw what was to come. Foreplay, intercourse, and masturbation were not what she wanted her third-grade daughter to read about.

"I was sick about it," she told parents, teachers, and Cornelius Elementary School administrators February 6 at the monthly PTA meeting. The book, she concluded, does not belong in an elementary school library. "I am not a troublemaker," she told the PTA. "The bottom line is it's our right as parents to decide when, how and

why our children are going to learn about sex."

Principal Mary Clark said she understood Oke's concerns, but noted that the book was geared toward fifth- and sixth-grade pupils in the school. Clark added that she was concerned because Oke had not read the entire book. "The book is about a child with scoliosis. It needs to be read in context," she said.

Oke said she would pursue her complaint until the book is removed from the school system. Reported in: *Mecklenburg Gazette*, February 14.

Lake Oswego, Oregon

To the dismay of some parents, the Lake Oswego Public Library added *Playboy* to its collection of 490 magazines in January. Anyone, regardless of age, may ask to see the magazine. Clay Werts, a mother of five children, was one of dozens who signed petitions demanding that the library reverse its decision and remove *Playboy*. They planned to take the petitions to the library board and demand action.

Library Director Carole Dickerson said the library "tries to be inclusive rather than exclusive. All libraries have controversial information. It's in the eye of the beholder." She said the library had begun to carry *Playboy* because a number of people had asked for it, including one woman in a book club who sought a profile of author Kurt Vonnegut that appeared in the magazine.

"There are two kinds of libraries," Dickerson added. "Those that have had experience with challenges and those that are going to. I do recognize that it was a controversial selection, and I urge people who are concerned about it to contact me." Reported in: *Portland Oregonian*, February 23.

Aston, Pennsylvania

John Updike's *Rabbit Is Rich* won the Pulitzer Prize for fiction in 1982, but on January 24 it became *Rabbit Removed* when it was pulled from the library at Sun Valley High School.

Acting on the recommendation of a district committee, the Penn-Delco school board ordered the book removed after a complaint from the parent of a tenth grade student. According to board members, the book contains offensive language and explicit sexual scenes.

"My objection to this book is strictly the language," said board member Dave Bush. "The language is inappropriate. I take a dim view of censorship, but we have an obligation to the community. You'd have to read this to believe it."

Sun Valley Principal Bruce Williams said the book had been in the library since at least 1987 and had never been checked out until a student in an American literature class checked it out recently for a report. After coming across

certain passages, the student showed a parent. Reported in: *Philadelphia Inquirer*, January 26.

schools

Caddo, Alabama

One woman quoted Bible verses and told a school media committee they would "have to answer to God" if they didn't ban Maya Angelou's autobiography, *I Know Why the Caged Bird Sings*. Another woman said sexual deviants are bred from reading passages like those contained in the book. Many of the forty people who filled an East Lawrence High School classroom March 12 said they didn't want their high school students reading the critically acclaimed poet's book.

The twelve-member committee was reviewing a complaint filed by parent George F. Thomas in December. The book is used as an optional reading assignment for students who can choose other books. English teachers have been using it at the school for two decades.

Thomas filed the complaint after Superintendent Patrick Graham, acting in violation of board policy, attempted to ban it himself. Thomas said certain passages are sexually explicit. At the hearing, he detailed sexual scenes in the book and muttered "this is ridiculous" after the committee held him to a five-minute time limit for speakers.

"If these scenes were in a movie they would be rated X or at least NC-17," he told the committee. "These are things that the adolescent mind does not need to be subjected to." Nine of the thirteen people who spoke at the hearing agreed with Thomas. Most said that Angelou's account of being raped as a child by her mother's boyfriend were too descriptive. Defending the book were a teacher and three advanced English students. All four said they were Christians, but the book shouldn't be removed.

Clad in a baseball uniform, East Lawrence senior Clint Jones said he is the son of a preacher and the book was one of the best he'd read. He urged parents not to shelter their children from "real-world" truths no matter how ugly.

"Don't try to build this wall around your children," said Jones, who recently received a college football scholarship. "My parents tried to protect me from things and when I got out in the real world, it was a shock and I took some wrong turns because of that. I've heard profanity in elementary school and that's not the book's fault. If your children are raised right, this book is not going to affect your children. But this is the real world. This is the 1990s. We read books to gain knowledge and I commend students and teachers for doing that. Just keep it going."

If Thomas is not satisfied with the committee's decision, he can appeal to the county media committee, then

the school board. The committee is composed of parents, teachers, a librarian, the principal, and a student. Reported in: *Decatur Daily*, March 13.

San Leandro, California

The show went on March 7 at San Leandro High School after drama students and administrators reached a compromise over potentially offensive language in the play "The Breakfast Club." District Superintendent Tom Himmelberg said a few deletions would be made in the script allowing the student production to open.

Administrators had prevented the play from opening the previous week because they were troubled by the use of profanities in the production, which was adopted from the popular movie with the same title. They offered to allow the show to open if the students cut some of the potentially offensive language. But students protested the decision and vowed not to make significant changes, saying the message would be lost if the play were overly sanitized.

"The main issue is one of obscenity within the context of a school play," said Himmelberg. "The responsibility of a public school is setting guidelines for the use of obscenities. The use of this language is not commonplace in high school drama productions." Himmelberg was referring to the use of common "four-letter" words in the script.

The compromise came after Himmelberg — who had not seen the play before — and a group of administrators, faculty, and parents saw the students perform. The students agreed not to use God's name in vain and to delete some sexual innuendo, said Scott DeMerritt, who directed the production. "I'd rather have had no changes, but there had to be some compromise," DeMerritt said. Reported in: *Oakland Tribune*, March 1, 7.

Frisco, Colorado

A group of parents told school board members January 23 that it is inappropriate for R-rated films to be used in educating 14-year-old students. "We are concerned with the curriculum at the high school, specifically the use of R-rated films in Transitions class for freshmen," said Kathleen Serra, who spoke on behalf of the group. "This is not appropriate and certainly no educational value can be found."

Serra said the two films viewed were *Stand By Me* and *Emerald Forest*. She described *Stand By Me* as "what not to do as a teenager" and said *Emerald Forest* contains nudity and is violent. "Actors and actresses are walking around only in loincloths for the entire movie."

"I don't see how these contribute to the education of our students," she said. "In both of these movies, the women are depicted as nothing but victims." Reported in: *Summit Daily News*, January 25.

Golden, Colorado

A school board dismissed a high school teacher April 1 for showing the R-rated film *1900*, an historical drama about the roots of Italian fascism directed by Bernardo Bertolucci, to his 17- and 18-year-old students, rejecting his appeal of an initial dismissal last year. The Jefferson County school board also rejected an arbitrator's recommendation following a two-week hearing that the teacher, Alfred Wilder, be retained because board policy on showing R-rated movies in class was vague.

The board found that Wilder did not apply "good professional judgment" in showing *1900*. The film has nudity, drug use, and violence. As the decision was announced, Wilder and his attorneys stormed out. "We'll see you in court," one lawyer said.

Wilder had received support from Bertolucci himself and the prominent American director Martin Scorsese, along with other writers and filmmakers. They signed a petition asking Colorado Governor Roy Romer to intercede on the teacher's behalf. "It is outrageous that Colorado school officials would attempt to fire a teacher for choosing to use a classic film" as an instructional tool, the petitioners wrote. The document was signed by the directors Milos Forman, James Ivory, and Scorsese, Pulitzer Prize winning playwright Tony Kushner, author Judy Blume and other prominent writers and artists.

Wilder was suspended in March, 1995, after he showed the film to a class of seniors. The board voted to fire him, but he appealed. School administrators told the arbitrator that he was fired not only for the film showing but also for a host of problems during his fifteen years at the school, including insubordination, tardiness, leaving classes unattended, and missing parent conferences. Using the "controversial learning resource" without prior approval was simply the last straw, they said.

Wilder's lawyer, Greg Lawler of the Colorado Education Association, said Wilder didn't consider the film controversial and, moreover, the school had no history of enforcing a prior-approval policy. Lawler also stressed that Wilder was removed because of the film and that other charges were just window dressing. "The crime Al Wilder is guilty of is trying to present art," he said.

The teacher showed the film in a logic and debate class to discuss how political ideologies evolved during the modern communications boom. Students were offered a library assignment if they felt uncomfortable watching the movie. Parents of two students complained, but other students defended Wilder. Twenty students testified on his behalf at the appeal hearing. But some of his colleagues testified that their jobs were made more difficult because Wilder did not teach basic skills.

"He's not nearly as popular as some of the press has implied," said principal Ron Mitchell of Wilder's teaching. "But there are students who will say he is the best teacher they ever had. Some students say he really

makes them think. But does a teacher have to break the rules in order to help students to think? Is there some kind of one-to-one correlation here? I don't understand that."

Wilder said he passed out parental permission slips at the beginning of the semester and noted that he might show R-rated films. When he told students he would show the film, and offered them the chance to leave, there were no complaints and no student appeared uncomfortable, he said. Wilder added that Mitchell prevented him from meeting with the one parent who complained as is required under the teachers' contract. Reported in: *Rocky Mountain News*, January 26, February 7, 17; *Denver Post*, February 17; *USA Today*, February 20; *New York Times*, April 3.

Casselberry, Florida

Lake Howell High School officials upset several drama students February 1 by telling them to change some language in monologues that will be delivered at a regional competition. The International Thespian Society had practiced the monologues since November.

One parent decried the school directive as censorship. Principal Don Smith said it was a matter of forbidding inappropriate language in a school-sponsored activity.

Smith said he had received several complaints from parents and faculty after the students performed at the school as a rehearsal. Sophomore Julia Boguslawski said school officials told her and other students to remove the offending language or risk disciplinary action. One of Julia's two monologues featured a 14-year-old girl describing sexual relations with a garbage collector. One line featured a slang term for sex, but, she said, the original was even stronger. Other monologues included references to breasts and penises and one contained a vulgar term for excrement.

Boguslawski said it would disrupt her performance and dilute its effect to alter the language at the last minute. "It wouldn't be so bad if they had told us two months ago," she said. "I feel in my heart we don't get respect, and it's suppressing our talent." Reported in: *Orlando Sentinel*, February 2.

Fort Lauderdale, Florida

A Dillard High School student's nude sculpture was ordered removed from sight January 16. Principal John Kelly banished Rebecca Antolak's plaster and chicken-wire sculpture to a storage room. The teenager started the sculpture — a ten-foot tall crouching man with larger-than-life genitalia — three weeks before for a class project. Several teachers complained about it, and Kelly asked her to cover the offending parts or remove the work. He said she could finish the project but that it would not be displayed in the school's art wing with other students' work.

"Now I have to finish it in seclusion," Antolak complained. She noted that another student's nude female torso had been on display for three months without problems. After Antolak and her mother complained of a double standard, Kelly removed some nude paintings from the hallway of the school but said he would leave the nude torso. "It's a copy of a very classic piece of artwork," he said. "The other is not."

In a show of solidarity with their censored classmate, the school's art students removed all their work from display shelves to the storage room just hours before a parents' open house the day after Kelly ordered the removal of Antolak's work. They then waived signs reading "Honk Against Censors" at the school's entrance as the parents arrived. The students said the signs were hastily put together after security guards snatched others they spent all day designing.

"We're her friends and we did this silent protest to support her," said student Jamie Johnson. "We didn't think it was fair for Rebecca's sculpture to be taken down. Now none of the artwork is going to be seen."

The next day students wore handwritten stickers saying "Stop Censorship Now" and displayed signs in the school cafeteria at lunch. The protesters were quickly escorted to Kelly's office where the signs were confiscated, several students said.

"Principal Kelly said [the school] wanted to stop things before they got started," said Candace-Marie Moreland. She said that she and her friends asked Kelly why pictures of nude women were allowed to be displayed in the school but not a statue of a nude man. She said Kelly told the students that the artwork depicting nude women had not been removed because no one had complained about it.

The ACLU also became involved in the incident. "We want the sculpture back where it was and allow Rebecca to continue to work on it," said Robyn Blunner, Executive Director of the ACLU of Florida. "If the school decides against that, we will go to court. There is obviously some discriminatory components to this. Especially when the principal allows a nude female torso to grace the school." Reported in: *Fort Lauderdale Sun-Sentinel*, January 3, 17, 19; *Miami Herald*, January 18, 19; *St. Petersburg Times*, January 13.

Sarasota, Florida

The choice was theirs: remove the "pro-choice" bumper stickers from their cars or face suspension from their Catholic high school. Two Cardinal Mooney High School students were suspended March 6 after refusing to remove the stickers. "They had to make the choice if they wanted to remain in a Catholic school. [The stickers] were offensive to our faith community," Principal Robert Siccone said.

The suspensions lasted less than a day. Both students were back in class the next morning. The bumper stickers were gone.

Earlier in the week, the principal spotted pro-choice stickers on two other student cars. The students removed them when asked to do so. A group of students heard about it and got about forty stickers from the local Planned Parenthood office, then distributed them throughout the campus. About six students followed through on the plan to post the stickers en masse, including senior Sam Miles and junior Bri Saba. Only Saba and Miles refused Siccone's request to remove them.

"I just think it's really stupid that he thinks he can tell us what to put on our cars," Miles said. Neither Miles nor Saba is Catholic.

"It's not an issue of what they believe," Siccone said. "We're not trying to control their beliefs. We're simply asking them to be sensitive to the beliefs of the Catholic community." Reported in: *St. Petersburg Times*, March 8.

Richmond Hill, Georgia

Two critical and creative thinking classes were dropped after they were criticized by three school board members and a Christian group. The seventh-grade, state-approved classes, "Critical and Creative Thinking: Content Application" and "Self-Discovery," were removed from the curriculum in January after the members met privately with Curriculum Director John Oliver. The matter was never brought before the full board nor was it given any public hearing, leading some parents and administrators to cry foul.

"The only thing I was asked to do was change the curriculum. I am appalled that these courses were taken out and I wasn't consulted about it," said James Bing, principal of Richmond Hill Middle School.

At a board meeting, Superintendent Perry Bacon read a document circulating in the community that declared one of the actions of the newly formed Christian Coalition chapter in Richmond Hill had been to win elimination of "two anti-Christian classes from our middle school."

Board members Charles McCoy, Tim Beasley, and William Mock requested the meeting with Oliver. Beasley and McCoy said the classes were not teaching students what they need to learn in school. "I don't feel we have the time, manpower, resources or square footage to donate to nonacademic classes," McCoy said. "Standing in front of a mirror and saying how great you are is not going to get you a paycheck." But the board members said talk of a conspiracy with the Christian Coalition was untrue. "The two did not have anything in common," McCoy declared.

But parents angry about the change said the board members had acted improperly whether the Christian

Coalition was involved or not. "It's not so much the classes but the way they were pulled," said Parent Teacher Organization President Suzanne Wolf. "It's OK to change the curriculum, but you need to get the input of the people."

"They didn't follow the rules," echoed parent Mary Pearl. "[They] went straight to the curriculum director to implement changes that have an impact on a lot of people."

Beasley said that since the board didn't approve the classes, it shouldn't be required to vote them out. But Superintendent Bacon said that when the board approved the middle school concept, it also accepted the state-approved curriculum. Nevertheless, he directed Bing to remove the classes because he thought the board would have voted them down. "In retrospect, I probably shouldn't have done that," he said.

Board chair Carrol Ann Coleman said a workshop would be held to discuss the issue. "I do not believe they [the courses] are permanently taken from the curriculum unless our full board approves or disapproves them," she added. Reported in: *Savannah News Press*, February 18.

Chicago, Illinois

Coffee Will Make You Black, by April Sinclair, a novel about a young black girl growing up on Chicago's south side was removed from the curriculum at the south side's Julian High School in February after a substitute teacher began a campaign against it. Paul Vallas, chief executive officer for the school system, said he ordered Julian Principal Willie Crittendon to remove the book from a required reading list for freshmen.

"The book has very sexually explicit language in it, and what I told the principal is that the book should not be on the mandatory reading list," Vallas said. "I'm not saying it's a bad book. I just didn't feel the book was appropriate for children at that age, and I didn't feel it was appropriate for required reading. Vallas denied requests, however, to take disciplinary action against the principal and teachers at the school as demanded by substitute teacher Gwen Meeks and a coalition of ministers. Meeks had called the book "garbage" and said it was inappropriate for school use.

Coffee was named a Best Book for Young Adults in 1995 by ALA, although its author said it was written with an adult audience in mind. Reported in: *Chicago Tribune*, February 22.

Libertyville, Illinois

To some students at Libertyville High School, the proposed spring play *Dark of the Moon*, by Howard Richardson and William Berney, represented a Romeo and Juliet story of love and romance. It was written in the 1940s and three years ago was the Illinois High School Theater Association's all-state play.

To others, however, in particular a group of parents and community members, the play is sacrilegious. It's a tale of a woman and "John the Witch Boy" who marry and give birth to a witch child with claws for hands. The play includes a scene in which the woman is allegedly raped during a church revival — and for critics, that's the crux of the problem.

A group of angry parents, led by Wayne Grudem, a professor of Bible and theology at Trinity International University in Deerfield, began writing letters and phoning school administrators to express outrage that such a scene would be in a high school play. The campaign was effective. Students returning from winter break learned the play had been canceled and another production scheduled in its place.

"Every parent that I talked to, from whatever religious background, was deeply upset with the subject matter of the play," said Grudem. "This play was a mockery of the Christian Gospel. I'm pleased with how the situation was handled."

Some students, however, said canceling the play was unfair and a form of censorship. "It's a good play, and it really bothers me that it would be pulled in this way, without consulting the students themselves," said John Eastburg. "I think it sets a dangerous precedent for the future. We are reacting to a small group of people and haven't had time for the rest of the community to react or give any input."

Student Darren Nandagiri agreed. "The theater department is for the students. So the students should be the ones who decide if we keep a play or not. If they would have gotten our opinion first, and students said pull it, and they pulled it, then that would be one thing. But to do it without even consulting us first is wrong." Some 180 students, parents and community members signed a petition protesting the cancellation.

"The decision not to perform *Dark of the Moon* is not a censorship issue nor is it a violation of students' freedom of expression, because there will be a spring play and the students will be allowed to express themselves. There will just be a different play," said Libertyville High School Superintendent Donald Gossett. Reported in: *Chicago Tribune*, January 11.

Lawrence, Kansas

The sight of his fifth-grade daughter absorbed in a book at the dinner table would normally have elicited pleasure from James Juola. Instead, he sent her to her room — without the book. Ashleigh had been reading *Wait Till Helen Comes*, a spooky novel by Mary Downing Hahn, that her teacher had assigned. But Juola, a psychology professor at the University of Kansas, thought the book was too frightening for an eleven-year-old. The next day he lodged a formal complaint with the Lawrence

School District, asking officials to remove the book from the curriculum.

The novel, which received good reviews when it was published in 1986, is about a family living near a cemetery. The story revolves around a seven-year-old whose only friend is a ghost. The ghost tries to lure her into a pond to join her in death, but the girl is saved by a stepsister. "The book is just not healthy," Juola said. "The book terrified me."

Assistant Superintendent Randy Weseman said the book was being studied by a review committee. He acknowledged, however, that it was popular among teachers. "I'm under the impression many teachers have used it or are using it," he said.

"I certainly don't mean to advocate censorship," Juola said. "But I'm not sure if young kids these days should be reading stuff like this." The book presents suicide as a viable, "even attractive way of dealing with family problems. Ghosts, poltergeists and other supernatural phenomena are presented as documented reality and these are capable of deadly harm to children." Reported in: *Kansas City Star*, February 8.

Chappaqua, New York

Basketball star Magic Johnson's book on AIDS was banned from a high school classroom after parents decided it was too graphic. The 1992 book, *What You Can Do to Avoid AIDS*, had been used in health classes at Horace Greeley High School in Chappaqua for four years. But the school district stopped using it in February after parents said the basketball star's written depictions of oral and anal sex were inappropriate for students. Reported in: *Franklin (IN) Daily Journal*, March 14.

Dublin, Ohio

A parent protested the screening of the film *Romeo and Juliet*, which her daughter viewed in class at Dublin Scioto High School. Marsha Lloyd told the Dublin City Schools Board of Education February 26 that her daughter saw actors partially nude in a movie shown in class.

"My daughter felt very uncomfortable and very embarrassed," she said. "My daughter said she felt dirty and bad because she saw something that goes against her moral beliefs." Lloyd said the school should show only "wholesome, uplifting" films. Reported in: *Dublin News*, February 28.

Pulaski Township, Pennsylvania

The New Brighton Area School Board removed two highly acclaimed but controversial books from the curriculum March 18. By a 5-4 vote, the school board took *Bridge to Terabithia*, by Katherine Paterson, out of fifth-grade classrooms, and *Julie of the Wolves*, by Jean Craighead George, out of sixth-grade classes. The books

will remain in district libraries.

Parents Nellie and Bernie Vorderbrueggen, Jr., asked the school district to remove the books. In *Bridge to Terabithia* they objected to profanity, disrespect of adults, and an elaborate fantasy world they felt might lead to confusion about reality. In *Julie of the Wolves* the family said there was a graphic marital rape scene.

School Superintendent John Ross set up a committee of parents, teachers, librarians, and administrators to review the books, which were found suitable for the curriculum. The Vorderbrueggens were not allowed to address the committee directly, however, and they appealed to the school board. "We are happy that the board agrees with us," they said afterward. Reported in: *Beaver County Times*, March 12, 17, 19.

Dallas, Texas

The Dallas School Board decided February 12 that the play *Brighton Beach Memoirs*, by Neil Simon, will no longer be used in Dallas High School's Introduction to Theater class. It will be available as an option, however, in the Advanced Theater class. The book will not be required reading, nor will it be on a list of optional books. In the advanced class, students choose three plays to go to or to read on their own. *Brighton Beach Memoirs* could be chosen for this assignment.

The school board followed a recommendation by Superintendent Dave Voves. The play had been in the spotlight for months owing to passages containing profanity and sexually explicit language that were read aloud in the Intro to Theater class. It was the focus of two review committee meetings and three school board meetings. Reported in: *Dallas Itemizer-Observer*, February 14.

Plainview, Texas

After receiving complaints in January about the appropriateness of language in a novel required in a Plainview High School freshman Honors English class, Superintendent Dennis Townsend said the school had chosen to require an alternate book in its place. *The Color Purple*, by Alice Walker, was never formally challenged, however. Instead, the teacher chose to offer another novel after informal complaints were made. This was the first year the Walker book had been required in the class. Reported in: *Plainview Daily Herald*, January 21.

student press

Reno, Nevada

McQueen High School sophomore Pat Lee said he will appeal his transfer to another school for publishing three issues of an underground newspaper that voiced anti-

school spirit and was laced with expletives.

"The punishment is just too harsh," said Jerry Byers, Lee's stepfather. "Basically, he's been going to the school with a lot of these kids since the fifth grade. He is familiar with the school, and he doesn't want to leave his friends and start over."

Lee, who had never been in trouble before, published three issues of *Kuhnspeeruhsee* in November and December. It featured photos, anti-school-police stories, anti-school-spirit stories, and many obscene and profane words. Lee was accused of libel, using profanity and spreading false or unsubstantiated information about a person and harming his reputation.

The ACLU and the Student Press Law Center, however, said the First Amendment protects Lee's opinions. They noted that the Supreme Court's decision in the *Hazelwood* case permitting school authorities to censor publications specifically exempted so-called "underground" publications that are published privately by students and are unconnected to formal school activities. The ACLU said it was "seriously considering litigation." Reported in: *Reno Gazette-Journal*, January 18.

Merrimack, New Hampshire

Merrimack High School's principal pulled two letters to the editor from the school's student newspaper in January because of the "potential" they would violate the district's policy restricting discussion of homosexuality. Principal Timothy Mayes said he decided to censor the letters, written by two alumni, after the paper's adviser brought them to his attention.

The letters both supported a group of high school students who are protesting the homosexuality policy approved last August that bans from the schools anything seen as having "either the purpose or effect of encouraging or supporting homosexuality as a positive lifestyle alternative." Since early December, some students have been wearing pink buttons and black armbands to protest the policy.

The newspaper, *Currents*, reported on the approval of the policy in its first issue last fall. Mayes said that article was acceptable, but that the letters had the "potential" to violate the policy. "We've taken a very conservative approach this year, and I think that was the intent of the policy," he said.

Although the policy was approved last summer, Superintendent Jim O'Neill had yet to offer guidelines for its implementation and enforcement. "We certainly don't want to do anything that would put the newspaper or the adviser or the kids in a bad spot, so I made the decision I did," Mayes said.

Editor-in-chief Trisch Monro, a sophomore, said she and many other students were upset by the decision. Reported in: *Nashua Telegraph*, January 23.

Glendale, Wisconsin

Six Nicolet High School students were suspended for distributing an underground newspaper they had published, school officials confirmed February 26. Margaret Watt, a lawyer with the ACLU, said she would represent the students and take the matter to court. Elliott Moeser, the school's top administrator, said the content of the publication was not the issue. "It's not censorship," he said. "It's a matter of following the rules."

School guidelines say students can distribute only non-school materials after school ends and then only at two of the several exits to the building. The students followed those rules last November when an earlier issue was published but violated them in February when they chose to distribute the papers before the start of school.

Kevin Clancy, one of the suspended students, said the administration's rules seriously hindered distribution of *Ricochet*. The publication includes commentary and satire. The lead article called school spending wasteful; another story is a commentary about homophobia. There were profanities in some of the articles, including one about alternatives to having sex. Reported in: *Milwaukee Journal Sentinel*, February 27.

university

Harrisonburg, Virginia

A new member of the James Madison University board of visitors says an on-campus homosexual art exhibit and courses on the writings of homosexual authors are "totally inappropriate" and don't belong at the school. "In fact, I think, in the case of gay and lesbian behavior, that's offensive activity that shouldn't be imposed on others. Nor should [students] have to pay for it," Charles Cunningham said of the October art exhibit.

"And gay and lesbian literature — that doesn't sound like a course that should be on a college campus. [But] there it was at JMU — as amazing as it is in the Shenandoah Valley."

Cunningham's views were challenged by David K. Jeffrey, associate provost of the College of Arts and Letters. According to Jeffrey, if the writings of homosexuals were stricken from the curriculum, students might no longer read Walt Whitman, Thomas Gray, Horace Walpole, W.H. Auden, or Oscar Wilde. Jeffrey added that fears that such courses promote homosexuality are groundless.

"We study Holocaust literature, too. It hasn't encouraged anyone to go out and start a concentration camp as far as I know," he said. "I always thought it was the job of a professor to present material in a way that challenged the thinking of a student."

Cunningham, a 1981 graduate of the school and former Student Government Association president, is director of voter education for the Christian Coalition. Reported in: *Washington Times*, February 15.

Internet

Santa Cruz, California

Germany's biggest Internet provider has blocked access to a Santa Cruz computer service that makes available neo-Nazi propaganda. Deutsche Telekom, Germany's national phone company, blocked its million customers January 25 from gaining access to Internet Web sites maintained by customers of Web Communications of Santa Cruz.

The company offers customers the ability to self-publish material on the World Wide Web. Among its 1,500 customers is a Canadian man who has posted material that questions the existence of the Holocaust. "We want to make it very clear we condemn anti-Semitism, racism and hatred in any form," said company president Chris Scheffler. But "we do not monitor, police or control the content of any of our customer sites."

In Germany, computer users accused Deutsche Telekom of overreacting and said such action could stifle the free flow of information on the Internet. The block, they charged, is like barring entry to a bookstore because one title was objectionable. In cutting access to Web Communications, Telekom also cut access to other resources on the Santa Cruz service, including, for instance, the Web site of the San Jose Symphony Orchestra.

Neo-Nazi material is illegal to print or distribute in Germany, but it remains unclear how the laws governing such material will or can be applied to cyberspace.

Telekom blocked access to Web Communications as a preventative measure while government prosecutors investigated online neo-Nazi materials. The investigation was focused on Ernst Zundel, a German neo-Nazi living in Toronto, who created the Web site. Reported in: *San Jose Mercury News*, January 27.

periodical

Waseca, Minnesota

On the eve of its second anniversary, the San Francisco-based *Might* magazine learned a powerful lesson in censorship, thanks to the production crew at Brown Printing Company in Waseca. In early November, the magazine's five-member volunteer staff was relieved when Brown agreed to become the bimonthly's regular printer, and the next issue was reviewed and accepted by the company's San Francisco representative. They were equally stunned a few weeks later when the first Brown-printed issue, which featured first-person accounts of gay and straight people talking frankly about condom use, didn't arrive.

Some production staff in Waseca objected to the story, which did not contain photos, and pulled the magazine off the presses. Brown tried to farm out the job to other Minnesota printers without success. Finally, on December

4, Brown reluctantly completed the job but immediately voided its contract with *Might*.

"It's like the phone company [having] one of the operators intervening in a conversation and saying we're not going to carry your conversation any more because we don't like what you're saying," said *Might* editor David Eggers. "It constitutes de facto censorship because while printers can't tell us what to write, they can tell us what they won't print." Reported in: *Twin Cities Reader*, February 7.

broadcasting

Port Arthur, Texas

Two NBC affiliates, KJAC in Port Arthur and WLIO in Lima, Ohio, refused to air a controversial episode of the sitcom "Friends" in January. The show centered on the lesbian wedding of two characters and featured Candace Gingrich, lesbian sister of House Speaker Newt Gingrich, portraying the minister who performs the service.

"We do not believe the episode of 'Friends' meets prevailing standards of good taste in our community," Ron Kelly, KJAC general manager said. An NBC representative said the episode met "acceptable guidelines for broadcasts and stays within viewer expectations for this program." He added that many affiliates previewed the episode and agreed with NBC.

KJAC substituted a locally produced Super Bowl preview. "I'll stack the Cowboys up against anybody in this market — 'Friends,' 'ER,' or anybody," said Kelly. But angry viewers flooded KJAC with calls of protest and a crowd gathered at Port Arthur's Handlebar & Grill to watch the show via satellite from a station in Newfoundland. Reported in: *Los Angeles Daily News*, January 20.

art

Mesa, Arizona

A mobile museum was moved to an out-of-the-way site outside the Mesa school district administrative offices because of an official's objection to a painting showing a nude pregnant woman. The painting is part of the Tactile Museum for the Blind and Visually Impacted. It is on the outside of the mobile unit and is part of a mural in which a hand reaches toward the sculpture, showing what's available inside.

The mobile unit was set up March 1 at the front of the district office's parking lot. Some callers objected to the painting, and Ray Rafford, an assistant district superintendent, taped blue paper over it. The next day

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newsletter on intellectual freedom
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indexed by Eli and Gail Liss

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American Library Association

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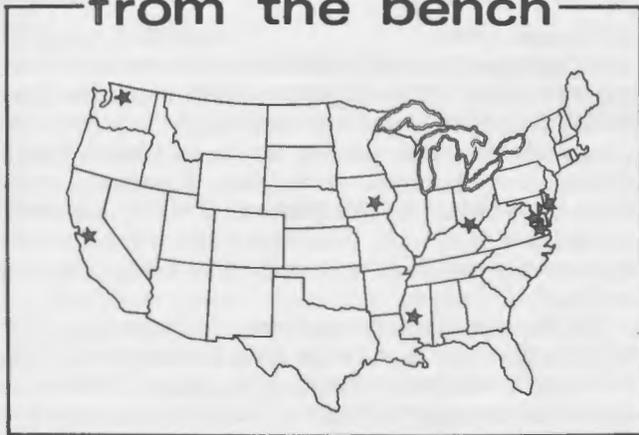
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from the bench



U.S. Supreme Court

The Clinton administration's defense of a federal law intended to curb children's access to sexually explicit programming on cable television got a skeptical hearing from the Supreme Court February 21 in a case that could help shape the legal framework for regulation of indecency on the Internet, as well as on television. The Justices wrestled with the intricate provisions of a law that Congress adopted, with little debate or explanation, as a last-minute floor amendment to a cable television bill in 1992.

Known as the Helms Amendment, for its sponsor, Sen. Jesse Helms (R-NC), the law delegates to cable system operators the authority to ban indecent programming from the channels they make available to community groups without charge and to commercial programmers who lease them for a fee. If the operators choose to permit indecent programming on a leased channel, they must scramble the signal for all subscribers who do not request access in writing.

There seemed to be little support on the court for the administration's argument that because the choice was left to cable operators whether to carry the programming, the Helms Amendment should be viewed not as a government restriction on speech but simply as a "redistribution of editorial discretion between the operators and the programmers." With the government involved remotely, if at all, in the private parties' choice, the law posed no First Amendment problem, argued Deputy Solicitor General Lawrence G. Wallace.

Several justices objected that this description did not take account of the law's intended effect. "Wasn't it Congress's purpose to restrict and regulate indecent programming?" Justice Anthony M. Kennedy asked. "Under your characterization, Congress acted for no purpose whatsoever."

The case came before the Court at a time of growing debate over sexually explicit material on television, in the movies, and over online computer services. The U.S. Court of Appeals for the District of Columbia upheld the Helms Amendment last year on the ground that the lack of government involvement in the operators' choice meant that the law should not be subjected to constitutional analysis. The Constitution restricts only government action, not private behavior.

While it appeared likely that the Justices would reject the appeals court's analysis and subject the law to some level of First Amendment scrutiny, it was not clear from the argument how the constitutional analysis would proceed. The case, *Denver Area Consortium v. Federal Communications Commission*, is likely to be only the first of several Supreme Court cases created by the current interest in Congress in curbing indecency. Reported in: *New York Times*, February 22.

On February 20, the Supreme Court let Colorado keep a monument engraved with the Ten Commandments. Without comment, the court turned away arguments by the Freedom From Religion Foundation that the Colorado display, located in a public park near the state Capitol in Denver, violates the separation of government and religion.

A state judge ruled against the Foundation but an appellate court reversed, saying the monument "conveys an essential religious message that would appear to be endorsed and approved by the state." The Colorado Supreme Court disagreed, ruling the monument could remain in the park because it "does not have the purpose or effect of endorsing religion." The Supreme Court allowed that decision to stand.

"If the Ten Commandments doesn't send a religious message, what does?" asked Barry Lynn, executive director of Americans United for Separation of Church and State. "Such religious pronouncements belong at houses of worship, not the seat of government." Reported in: *Torrance Daily Breeze*, February 21.

A Florida law making it a crime to burn a cross on someone else's property will stand, the U.S. Supreme Court ruled February 26. Without comment, the court turned away an underage boy's arguments that the law violates free speech rights. The law at issue makes it a first-degree misdemeanor to place a burning cross on someone's property without written permission.

"The Court in effect has said freedom of speech does not include the right to harass or terrorize others because of their religion, race, or ethnic beliefs," said Arthur

Teitelbaum, director of the Anti-Defamation League's southern region. Reported in: *St. Petersburg Times*, February 27.

church and state

Jackson, Mississippi

A Mississippi law that allowed student-led prayer in public schools was struck down January 10 by a federal appeals court. The panel said the law "tells students that the state wants them to pray," thereby violating the constitutional ban on state-established religion. The ruling was a blow to efforts by the religious right to reintroduce prayer in public schools by arguing that students have a free speech right to initiate prayer.

"This ruling reaffirms that student-led prayer can be just as coercive and involuntary as teacher-led prayer," said Barry Lynn of Americans United for Separation of Church and State.

The law, viewed by many as the nation's most sweeping effort to put prayer back in schools, let students lead prayer in school settings from classrooms to football games. It was passed in 1993 after a Jackson high school principal, Bishop Knox, was fired for allowing students to pray over the intercom. His firing was later reduced to a suspension. A federal judge halted enforcement of the law from the beginning, but many schools in the state proceeded or continued allowing student prayer.

The court said the statute violated all five extant U.S. Supreme Court Establishment Clause tests. "Returning prayer to public schools is not a secular purpose," the court declared, citing the statute's statement of purpose and the legislature's commendation of the suspended principal. The statute has the effect of advancing religion in giving it "a preferential, exceptional benefit . . . that it does not extend to anything else." A state policy of prayer at school "tells students that the state wants them to pray." And when school employees participate in the prayers or decide whether they are voluntary, non-sectarian, and non-proselytizing, the state becomes excessively entangled in religion.

The statute also impermissibly coerces religious belief and participation, the court said, because by authorizing prayer at compulsory events it makes pupils "a captive audience." Finally, it improperly endorses religion by allowing state officials to lead students in prayer and setting aside "special time for prayer."

The ruling left in place an earlier decision by the same appeals court that allowed student prayer at graduations in the judicial district that includes Louisiana, Mississippi, and Texas. Reported in: *USA Today*, January 12; *U.S. Law Week*, January 23.

prior restraint

Cincinnati, Ohio

A federal appeals court decision that reversed a controversial order barring *Business Week* magazine from publishing sealed court documents vigorously reasserted constitutional protection for the press against "gag" orders. The ruling by the U.S. Court of Appeals for the Sixth Circuit noted that the Supreme Court has long considered any bar on the publication of a news story the essence of censorship, never upholding a prior restraint order.

The three-judge panel on March 5 reversed an order by U.S. District Court Judge John Feikens prohibiting *Business Week* from printing information obtained on the lawsuit brought by Procter & Gamble against Bankers Trust. Writing for the 2-1 majority, Judge Gilbert S. Merritt said the lower court failed "to realize that it was engaging in a practice that, under all but the most exceptional circumstances, violates the Constitution: preventing a news organization from publishing information in its possession on a matter of public concern."

Merritt also criticized the original protective order to keep the documents out of public view — a practice that is common in civil litigation. "The protective order in this case allows the parties to control public access to court papers," Merritt said, also observing that "the private litigants' interest in protecting their vanity or their commercial self-interest simply does not qualify as grounds for imposing a prior restraint."

The dispute began when a *Business Week* reporter was leaked documents in the case in which Procter & Gamble alleged fraud by Bankers Trust in a securities deal by a partner at a Bankers Trust law firm. Bankers Trust asked Judge Feikens to stop *Business Week* from publishing the documents. Feikens then, on September 13, ordered *Business Week* not to publish the documents. The magazine, which was hours from its press deadline, complied, but appealed the next day. The Sixth Circuit and the Supreme Court refused to intervene, and Feikens eventually ruled that *Business Week* "knowingly violated the protective order" by obtaining the documents and issued a permanent injunction against publication. In October, Feikens unsealed the documents and the magazine published its story, but the appeal continued.

"A number of us have seen a growing resistance in federal courts to traditional prior restraint doctrine," said lawyer Bruce W. Sanford, who represented a group of newspapers that sided with *Business Week*. "What was so wonderful about Judge Merritt's decision was its clarity, its emphatic denunciation of prior restraints by trial judges." Reported in: *Washington Post*, March 7.

cyberspace

Milpitas, California

Operating an electronic bulletin board from their home computer in Milpitas, Robert and Carleen Thomas reached out and offended someone. After viewing a few exhibits from the couple's online collection of sexually oriented materials, a Memphis, Tennessee, jury found the Thomases guilty of eleven obscenity counts — seven for transmitting "cyberporn" over state lines with a computer, modem, and telephone. Although the material could probably never be declared obscene in Northern California and the Thomases had never even set foot in Memphis, it was in Memphis that an undercover postal inspector downloaded material from their BBS.

On January 29, the U.S. Court of Appeals for the Sixth Circuit affirmed those convictions, declaring that each individual community can judge for itself the obscenity of material downloaded from computer bulletin boards, regardless of where the material originated. The case was the first in which the notion of "community standards," first defined in the Supreme Court's landmark 1973 obscenity ruling in *Miller v. California*, was applied specifically to material on a computer bulletin board in the city where it was downloaded or received rather than where it originated.

The issue raised by the case is: what is a community? In a neighborhood, the community is made up of the people who live there. But an online community is different in at least one way that the law does not recognize: it is made up of the people who go there.

The Thomases, in fact, were careful to let all who signed on to their bulletin board know what kind of community it was. They were required to provide name, age, address and signature before they could download any images. While the Thomases believed that this would limit their "community" only to those who would not be offended by the admittedly rather hard core materials they offered, the Sixth Circuit saw it otherwise.

The court ruled that because of their own cautious protocols, the Thomases must have known that the man posing as a pornography fan from Memphis was from Tennessee. Since the Thomases knew where their customer was from, the court held, they opened themselves to Tennessee community obscenity standards. Reported in: *Washington Times*, February 16; *San Francisco Recorder*, February 2; *U.S. Law Week*, February 13.

Arlington, Virginia

In a case with important implications for the application of copyright and First Amendment law to the Internet, a federal judge ruled January 19 that an Arlington man violated copyright laws when he dumped sacred texts of the Church of Scientology onto the

Internet, saying words enjoy legal protection even in cyberspace.

"This is a very important victory," said Helena K. Kobrin, a Scientology attorney from Los Angeles. "The Internet is part of this universe and country, and you can't just take copyright laws and say they don't apply."

Arnaldo Lerma expressed dismay at the ruling, in which U.S. District Court Judge Leone M. Brinkema said there was such compelling evidence of copyright violation that she found no need to send the case to a jury. "I was absolutely speechless," said Lerma, a former church member. "At the worst case, I thought I'd have a chance to send my case to a jury of my peers."

For years, Scientology officials have aggressively sued critics and publications that attacked the church. But last August, the church and several dissidents, including Lerma, put themselves on a collision course that raised fundamental questions about how copyright laws apply to free-flowing dialogue on computer bulletin board services.

Using an electronic scanner, Lerma posted training materials from the Religious Technology Center, an arm of Scientology. The materials were written by L. Ron Hubbard, a science fiction writer who founded the religion. The texts described Hubbard's theories and procedures for cleansing humans of spiritual traumas, including some that remain from a prehistoric galactic disaster described by Hubbard.

Brinkema noted in her ruling that a "fair use" exception allows publications to disseminate copyrighted material. But she said permissible excerpts generally must be brief and used to illustrate a larger story that discusses issues of public interest.

In September, Brinkema ruled that the *Washington Post*, which was sued for copyright violations for an article on Lerma, met that standard. But she said in January that Lerma, who put sixty-four pages of copied text on the Internet, had violated the law through wholesale copying, virtually without editorial comment.

Internet and copyright specialists differed on the impact of the ruling. David G. Post, co-director of the Cyberspace Law Institute at Georgetown University, said Brinkema's ruling was almost inevitable. "Unless you decide that copyright law means something very different in cyberspace, there's almost no choice," he said.

Post said a second Scientology case, in which an Internet access provider in San Jose, California, is being sued for not blocking transmission of the texts, could have greater impact on the Internet's future.

But Lerma and other advocates of free expression on the Internet see the issue in different terms, comparing the Internet to an expanded electronic version of village debate. Lerma's attorney said the documents were part of a running dialogue involving Lerma and others on a news group about Scientology "and were necessary, he

believed, to illustrate the foibles of the Church of Scientology." Reported in: *Washington Post*, January 20.

cable TV

Wilmington, Delaware

On March 7, a federal judge blocked part of the new telecommunications law which requires cable companies to block audio and video of sexually explicit programs. The temporary restraining order issued by U.S. District Court Judge Joseph Farnan had been sought by Playboy Enterprises, which is seeking to overturn the measure.

The provision requires a cable television system to fully block channels devoted primarily to sexually explicit programming, like the Playboy Channel, from customers who have not subscribed to them. Most cable systems already scramble these channels, but it is possible for viewers to hear the audio portion or sometimes see fragments of the video. The new law ordered cable systems to block the signal entirely, which would require systems to install new technology, and it would have prohibited cable systems from carrying services like the Playboy Channel until the new technology was installed.

Playboy argued that the law is unconstitutional and discriminatory because it allowed other cable premium channels to carry programming that can be found on the Playboy Channel without having to fully block them.

"This is a victory for sanity in government," said Christie Hefner, the Playboy chairwoman and chief executive. "Playboy has always supported the right of individuals to control what comes into their homes." The blocking provisions will cost cable companies \$300 million to \$1 billion to implement and those charges ultimately will be passed on to customers, Playboy contends.

In his ruling, the judge said Playboy had demonstrated that the provision would cause irreparable harm to the company and other cable businesses, and that it was necessary to halt enforcement until there was a final decision.

Beyond the blocking issue, Playboy also objected to a provision that would have required a customer to submit a written request for the service — a measure the company said would discourage many customers and amounted to an infringement of their privacy. Reported in: *New York Times*, March 8.

Fairfield, Iowa

A federal court magistrate ruled against a man whose public access television show was pulled for broadcasting sexually explicit programming. Jay Randolph Coplin was the host of "Fairfield Speaks," a talk show with live input from telephone calls beginning in May, 1993. Station officials banned Coplin after a program that featured several callers describing their sexual habits and those of

their neighbors.

Coplin sued the Fairfield Public Access Television Committee, the Fairfield City Council and several individuals connected with the station. In the complaint filed March 29, 1995, he alleged violations of his right to free speech and the Cable Act. However, U.S. Magistrate Celeste F. Bremer ruled that the content of the program was possibly an invasion of privacy, if true, and defamatory, if false.

Coplin "did not lose his broadcasting privileges as a consequence of exercising any categories of free speech protected by the First Amendment," Bremer wrote in a decision released March 14. Furthermore, officials "were reasonable in their determination that the information broadcasted exposed the city to civil liability." Reported: *Mason City Globe-Gazette*, March 16.

etc.

Bellingham, Washington

It was supposed to be a lesson in free speech and the judicial system. Instead, it was quite the opposite for nine private high school students who tried to attend the *Answer Me!* obscenity trial (see page 100) January 26. "It's ironic," said Exploration High School student Colin McElroy. "This trial is about freedom of speech, but we don't have the freedom to be there."

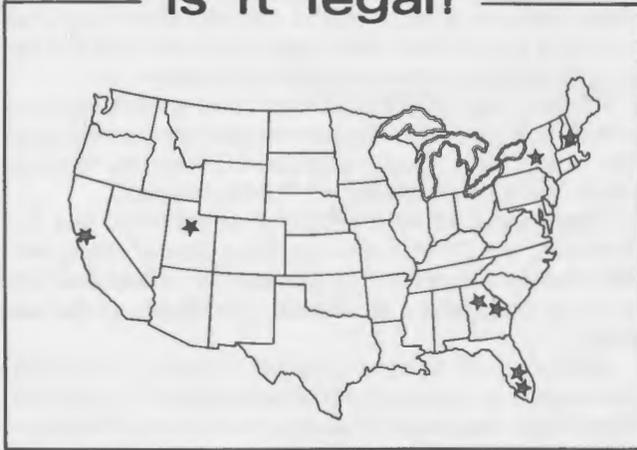
Skagit County Superior Court Judge Michael Rickert, who presided over the trial, said he asked the students to leave the classroom because of the graphic nature of the testimony and evidence. The owner and manager of The Newsstand International were being tried for distributing obscene materials because their store sold the 1994 issue of *Answer Me!*, an adult magazine devoted to rape.

Rickert said he didn't want anyone under eighteen in the courtroom and that he had ordered a ten-year-old from the court earlier in the week. "I didn't want the jury to feel uneasy," he explained.

"It has huge implications in that this is a public trial about free speech and they're limiting who can attend," said teacher Susan Edwards. Reported in: *Bellingham Herald*, January 27. □

**SUPPORT
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TO
READ**

is it legal?



libraries

Atlanta, Georgia

Despite complaints from library officials and civil libertarians, the Georgia Senate approved a bill February 19 to force the state's public libraries to restrict access to books deemed "harmful" to children under 18. The bill originally would have imposed criminal penalties, including possible jail time, for librarians who didn't comply with the restrictions. As adopted by the Senate in a 44-8 vote, however, the bill does not carry criminal penalties.

"This is an attempt by a vocal, narrow-minded group that wants to dictate what the entire state reads," said Teresa Nelson, executive director of the Georgia ACLU. But supporters said it was needed to protect children from sexually explicit material.

"We don't allow children to smoke until a certain age, to drive until a certain age, to buy alcohol," said Sen. Clint Day (R-Cummings), the chief sponsor. "To us, this is a very reasonable bill."

Under the proposed legislation, if a lawsuit were filed against a library, the courts would have to determine what books were harmful to minors and whether the library had adequate policies to "reasonably restrict" objectionable materials from minors. Reported in: *Atlanta Constitution*, February 20.

Oconee County, Georgia

The Oconee County Regional Library Board will not reconsider its decision to reject a donated subscription to *Creation Ex Nihilo* magazine despite threats of a lawsuit, board chair Ellen Purvis said. "The Oconee board has already made its decision. It would not be appropriate for us to reconsider. It will be appealed to the next higher level," Purvis said.

The board unanimously rejected the magazine, which was donated by Watkinsville resident Ronald Houser. A Florida law firm representing Houser and the magazine distributor, Answers in Genesis, has threatened to sue the board and each member individually unless the board accepts Houser's gift.

"I think it's a sad day in America when citizens who are volunteering their time to the library receive these kinds of letters and heavy-handed threats in the mail," board member Peter Wyllie said.

The board rejected the donation because the regional library system has a policy against accepting materials of a proselytizing nature. Houser's attorney called the policy unconstitutional. Reported in: *Athens Daily News*, February 24, 27.

schools

Daytona Beach, Florida

The Volusia County branch of the NAACP has voted to ask school district officials to ban the Confederate flag from public schools. The Daytona Beach-based chapter voted unanimously January 11 for a resolution to remove the symbol from campuses.

Volusia Superintendent Joan Kowal said she wasn't aware of the NAACP action but said it would be unwise to start banning specific items. "You can't just isolate one symbol," she said. "If we look at isolating that symbol, then we need to look across the board."

The NAACP vote came in the wake of a recent controversy involving the flag at Pine Ridge High School in Deltona, which sparked a protest by the Ku Klux Klan across the street from the school. Administrators said suspensions of several flag-bearing students last December resulted from behavior and not the flag. Students involved said their interest in the symbol was historical, not racial (see *Newsletter*, March 1996, p. 48). Reported in: *Orlando Sentinel*, January 13.

Orange County, Florida

Orange County schools will adopt presidential guidelines on religion in schools and pay legal fees to settle a lawsuit with a fifth-grader who was ordered not to bring his Bible to school. All of the county's principals will receive copies of President Clinton's guidelines and will be required to follow them, Superintendent Donald Shaw said January 24. The school district also will pay the boy's

\$10,000 legal fees.

"It clarifies that, yes, children can bring the Bible to school," Shaw said of the guidelines. "We spell it out very specifically. If it becomes disruptive, we can stop anything." Reported in: *Orlando Sentinel*, January 25.

Merrimack, New Hampshire

On February 15, a group of parents and educators filed a lawsuit in federal court challenging a policy passed by the Merrimack school board last August banning any instruction or counseling which has "the effect of encouraging or supporting homosexuality as a positive lifestyle alternative" in the schools. Already, the policy has led to the removal of several books, including Shakespeare's *Twelfth Night* from a high school English class, plaintiffs charged.

The suit, filed in U.S. District Court in Concord, New Hampshire, argues that the gag rule violates First Amendment guarantees of free speech and the right to receive information, and has triggered a tidal wave of self-censorship by educators and students.

"The policy harms Merrimack students who need the freedom to think, the freedom to learn, and the freedom to investigate and discuss ideas," said Susan Ruggeri, President of the Merrimack Teachers Association. Reported in: *Focus Point*, February 28.

Salt Lake City, Utah

A dozen gay and lesbian teenagers quietly formed a club in Salt Lake City to address some of their most private concerns. But their fledgling Gay/Straight Alliance triggered a most public controversy when, on February 20 by a 4-3 vote, the Salt Lake City school board banned all nonacademic extracurricular clubs — everything from the National Honor Society to the Native American club — in order to keep the Gay/Straight Alliance from meeting on school property.

Under federal law, no school that accepts money from Washington may selectively ban any nonacademic school club. Either all clubs must be allowed to meet or none can.

The controversy soon reached the state Legislature where a proposal emerged to reject the federal education aid entirely in order to bar the gay and lesbian group specifically. And a legislative committee began to consider a bill that would require public school teachers to lead private lives that "would not undermine the health, safety, welfare, or morals of school children."

"There's a nationwide idea of returning power to the states, and this is just a case in point," said state Sen. Charles Steward (R-Provo), who wants to use the state's budget surplus to replace the \$120 million that the federal government gives Utah for public education.

Ironically, the source of the controversy, the federal Equal Access Law, was sponsored by Utah Republican

Senator Orrin Hatch in 1984 to guarantee the rights of Bible clubs to meet in public schools. But some Utah residents were aghast when they found out that the law also applied to the Gay/Straight Alliance.

"I think that many legislators have serious concerns about the group's moving into recruitment of fresh meat for the gay population," said Grant Protzman, minority whip for the state House of Representatives.

That's not at all what the club is about, protested Keli Peterson, the 17-year-old East High School senior who founded the alliance to help her and her friends deal with a school atmosphere she found "horrifying on the best days."

Peterson said she and the other dozen or so students just wanted to meet and talk about some of the problems they faced, and ways of dealing with them. "Going to high school when you are gay or lesbian is a miserable, lonely experience," Peterson said. "I know, I've been beat up twice."

But publicity about the group only made those problems worse, she said. A group called SAFE — Students Against Faggots Everywhere — formed at West High School. And a teacher at East High said parents had been calling the school, demanding that works such as *The Importance of Being Earnest*, a play by Oscar Wilde, who was gay, be withdrawn from the curriculum. "Parents have called and wanted to know a teacher's stand" on supporting the club, the teacher said. "That's very difficult for a teacher."

The ban won't take effect until next school year, when more than two-thirds of the clubs in Salt Lake City's three high schools and five intermediate schools will be evicted from school property.

The Legislature is considering more stringent actions. One bill would require parental permission before students could join any extracurricular club. Another would forbid school employees and volunteers to "encourage, condone, or support in engaging in illegal conduct" either in school or in their private lives. Reported in: *Philadelphia Inquirer*, February 23.

cyberspace

Albany, New York

New York's Legislature completed passage of a bill January 22 that would make it a punishable offense to send pornographic materials to minors over computer networks. The legislation would regulate only material sent to minors by e-mail or other direct means, not material posted for general access. But the law also bars generally posted Web sites or chat groups that make

(continued on page 106)

— success stories —



libraries

Wilton, Iowa

Forever, by Judy Blume, will continue to be available to all junior and senior high school students in the Wilton School District. The Board of Education voted 3-2 February 12 to reject a proposal that would have restricted access to the controversial teenage novel. In January, a parent, Janet Boorn, requested that restrictions be placed on the book's circulation because of its sexual content. Boorn was upset after she found her 13-year-old daughter reading the book. Reported in: *Muscatine Journal*, February 13.

Belfast, Maine

In her first library board of trustees meeting and less than 48 hours into her new job as library director, Jeann Riedl was faced with a request that a book be removed from the Belfast Free Library. Don and Verna Violette asked the library to remove *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights*, by Richard D. Mohr.

"This is a public place and we encourage you to use discretion in the material you have," said Don Violette. "The First Amendment does not give people freedom to advocate ideas or beliefs that are contrary to the good of society. Would you allow books that promote wife-beating, polygamy, polluting the environment, drug use or murder? The purpose of the library is to help society by providing information but not all information is good, necessary or helpful. Let's try and help Belfast be more

conservative and truthful in its way of thinking. Homosexuality destroys marriages and families; it destroys the good health of the individual and the innocent are infected by it."

Several trustees responded by noting that "the issue here for us is whether there is reason to remove the book," as board chair Judy Stein put it. "We're for freedom of information," said trustee Anita Starrett. "I do not feel we should remove this book."

The other trustees agreed, voting unanimously to deny the Violettes' request. Reported in: *Waldo Independent*, March 21.

Webb City, Missouri

The Shel Silverstein book, *A Light in the Attic*, will remain on Webb City school library shelves. A parent had protested that the book imparts a "dreary" and "negative" message.

A review board composed of three teachers, an elementary principal and an elementary librarian met in late January at the direction of the R-7 Board of Education to discuss the book. Superintendent Ron Barton said the group recommended that no restrictions be placed on the book.

Laurie Tandy, who objected to the book at the January 9 board meeting, said January 26 that she was disappointed by the decision. "I think the book is twisted and damaging to a child," she said. "My husband and I have already taken steps to make sure our first-grade daughter does not read this book or any other books by this author." She said she had written to her daughter's teachers instructing them that the girl was not to check out any Silverstein titles. "My husband and I are considering further steps that we could take in the future," she added. "We have considered circulating a petition."

Barton said the book was not part of any required reading and had never been the subject of a complaint. "The members of the review board either have young children or have had youngsters," he said. "I don't think they would have made this recommendation if they thought there was anything morally wrong with the book." Reported in: *Joplin Globe*, January 27.

Newton, North Carolina

Elementary students in Catawba County can still check out Madeleine L'Engle's science fiction classic *A Wrinkle in Time* from their school libraries. Catawba County School Board members voted unanimously January 29 to reject a parent's request to pull the book because it allegedly undermines religious teachings.

The board said Ed Palmer had the right to choose his daughter's reading material, but not that of other children. Board member Tim Goff, who ran for office on a conservative platform, said, "I can understand Mr. Palmer's concerns, but I believe the appropriate way to

handle them is for him not to let his son or daughter read the book." The board's decision came after two school system committees reviewed the novel and found nothing wrong with it.

Palmer's daughter, a fifth-grader at Mountain View Elementary School, brought the book home last fall to read for an assignment in an academically gifted class. He said she told him she didn't like the book. He read it and agreed. Teachers allowed the girl to read an alternative assignment, but Palmer raised questions about whether other students should be reading the book.

Palmer told the board the book was not right for fifth grade because it makes references to the occult, witchcraft, mysticism, and channeling. But his words provoked passionate responses from other parents, who praised the book for dealing with important themes.

"Allowing this kind of censorship to take place is far more dangerous than anything you'd find in this book," said Susan Rittiner. Reported in: *Charlotte Observer*, January 30.

schools

Tempe, Arizona

The Tempe Union High School District board voted 4-1 January 24 to keep books that contain the word "nigger" and other expressions offensive to African-Americans and other minorities on the required reading list. Board member Steve Rich's opinion was similar to that of the board majority. He said removal would violate the First Amendment and amount to a form of censorship.

Parent Kathy Monteiro had asked that books with words offensive to minorities be removed from the required reading list. She filed a protest with the board in October after officials at McClintock High School refused to remove *Themes in World Literature* from the English honors class reading list. The anthology included "A Rose for Emily," by William Faulkner, which uses the word "nigger" and other slurs half a dozen times in six pages. Monteiro also urged the board to remove Mark Twain's *The Adventures of Huckleberry Finn* from required reading lists for the same reason.

"No child should have to struggle through a required reading assignment in which members of his or her race are described in such a dehumanizing and disrespectful way," Monteiro wrote to the board. She also asked the district to apologize to her daughter for "such insensitivity resulting in a humiliating educational experience for her."

"This was an experience that was really uncomfortable for her as an African-American student," said Monteiro. "But there didn't seem to be much sympathy for her position."

Monteiro said she would consider continuing her fight in court. "We're not going away," she said. Reported in: *Mesa Tribune*, January 25; *Arizona Republic*, January 24.

Santa Barbara, California

The question before the Santa Barbara school board January 17 was whether to ban a textbook, and the answer was a resounding no. But just beneath the surface loomed a larger debate about America. Both supporters and opponents of *The Mexican-American Heritage*, by Carlos M. Jimenez, said they felt that way.

"The attacks on the book are not about the book, they're about the [Chicano Studies] course. You know it, I know it and the students know it," said Annette Cordero, president of the community group Latinos for Better Government. "This book is important not only to the Chicano Studies students but also to the entire community."

On the other side of the debate, Deborah Sutherland claimed that the Chicano Studies program at Santa Barbara high schools was created by the Latino student group MEChA with a "Chicano agenda" in mind. She said the group has as a goal the "physical takeover" of the southwestern United States. "The book is just a tool of the Chicano movement promoted by the Chicano agenda," she said.

Mary Ann Swinnerton, an opponent of the book, stood at the microphone and turned to look at the more than fifty Latino students in the audience. She said: "I bet these kids, who call themselves American, can't even say the 'Pledge of Allegiance.'" The students, in unison, responded by reciting the pledge.

Judy Rankin, who also opposed the book, began her comments by calling herself a "patriotic American." She said she was "appalled that my tax dollars are going to support such un-American activities," referring not only to the book but also to Chicano Studies courses taught at three Santa Barbara high schools and two continuation schools. "The book promotes Mexican nationalism," she said. "First is loyalty to the United States."

But Steve Terrill, who is married to a Latina, said he wondered how he was supposed to teach history to his family without such books. "I didn't learn about their ancestors in high school," he said. "If you take this away, just tell me what I'm going to tell my children [about their culture] because I wasn't taught that in high school."

The controversy was sparked last August and then fanned by school board member Sandee Becker and some parents. The four other board members doused it January 17 by declining to second Becker's motion to remove the book from elective Chicano Studies classes. Reported in: *Santa Barbara News-Press*, January 19.

Fayette County, Georgia

The Fayette County school system in February denied a request by several parents who wanted a book banned that they said degrades African-Americans. *The Slave Dancer*, by Paula Fox, is a 1974 Newberry Medal winner about a 13-year-old boy who is snatched from the docks of New Orleans and put on a slave ship bound for Africa.

Amelia Tucker-Shaw, whose son was assigned the book last fall as part of an eighth-grade social studies course at Fayette's Flat Rock Middle School, said the system should find other books that deal with slavery.

"There is continuous use of the 'n' word in the book," said Tucker-Shaw. "It is insensitive and degrading."

A media curriculum committee found the book "educationally appropriate." Its report said "the book is being used to enlighten students' views of the institution of slavery and the slave trade and is in no way taught in a manner that would embarrass or degrade any student." A systemwide committee of teachers, parents and students decided February 26 to uphold the decision. Reported in: *Atlanta Constitution*, February 28.

East Stroudsburg, Pennsylvania

Robert Cormier's *The Chocolate War* will remain in the East Stroudsburg ninth grade spring curriculum although a majority of the board opposed it in a 5-4 vote January 22. A two-thirds vote was needed to oust the controversial book because Superintendent John Grogan recommended it stay in the curriculum.

After complaints from community members over the novel's language and content, the district formed a committee to study it last summer. In September, the board voted 5-4 to keep the book. However, in January, board member Bill Zacharias said another vote should be taken because he believed three new board members would vote against the book. Two of them did, but one didn't and the attempt to reverse the decision fell short by one vote of the two-thirds majority needed.

Audience members, including Monroe County Public Library Director Phil Hearn, students, parents, and a teacher, spoke in favor of the book.

"This vote is not about education. It's about a moral standard some people want to impose on others," said student Sarah Lavelle.

This school year, each ninth-grade student had a choice between *The Chocolate War* or Charles Dickens' *Great Expectations*. Many more students chose *The Chocolate War*, said English teacher Sandy Magnes. One parent said that her son, who chose the Dickens, was sent to the library for forty-five minutes while others in the class discussed *The Chocolate War*. School officials said the books were supposed to receive equal class time. Reported in: *Pocono Record*, January 23.

Round Rock, Texas

In a boisterous meeting attended by nearly three hundred parents, teachers, and students, the Round Rock Independent School District board debated a proposal calling for books to be dropped from high school reading lists. The meeting began at 7:30 p.m. and lasted seven hours. One board member left the meeting ill around midnight. Finally, in the early hours of January 19, the board voted 4-2 against a proposal by board member Nelda Click to drop twelve books from reading lists at Westwood and McNeil high schools.

The books challenged by Click, all of which are used in honors or advanced placement courses, were: *Winter in the Blood*, by James Welch; *The Power of One*, by Bryce Courtney; *House Made of Dawn*, by Scott Momaday; *Beloved*, by Toni Morrison; *I Know Why the Caged Bird Sings*, by Maya Angelou; *Bless Me Ultima*, by Rudolfo Anaya; *Black Boy*, by Richard Wright; *Ceremony*, by Leslie Marmon Silko; *The Color Purple*, by Alice Walker; *A Thousand Acres*, by Jane Smiley; *Native Son*, by Richard Wright; and *Slaughterhouse Five*, by Kurt Vonnegut.

Some parents and school officials had charged that the books contain too much violence. Click's proposal would have circumvented a review system put in place following a previous uproar over *I Know Why the Caged Bird Sings*. Some parents protested that the system, which provides descriptions of books to parents, fails to highlight offensive material.

Click's opponents countered that a minority of parents was trying to impose its standards on everybody and noted that nine of the twelve books challenged by Click were written by minority authors. They suggested that Click's move was linked to a broader effort to stamp out multicultural curricula.

"It's a concerted attempt to eliminate studies of communities or ethnicities that are different than what they grew up with," said Cecile Richards, president of the Texas Freedom Network, a statewide group formed to counter religious conservatives' influence in public education.

The board also accepted a proposal by Superintendent Tom Norris that the district create a curriculum council to come up with a new policy for selecting reading material. Click, however, was dubious about the venture, as were many of her opponents. She said she would "certainly plan to watch and see who is on the committee Dr. Norris sets up," but accused the superintendent of ducking the issue. Reported in: *Austin American-Statesman*, January 14, 19, 20; *Round Rock Leader*, January 15, 22; *Hill Country News*, January 17, 24; *Dallas Morning News*, January 28.

Yorktown, Virginia

The York County School Board February 26 rejected a couple's request that a science fiction novel containing profanity and references to sex and drinking be removed from a middle school reading list. The board voted unanimously to retain *Flowers for Algernon*, by Daniel Keyes, as part of the language arts curriculum.

The board also endorsed Superintendent Steven Staples's suggestion that the school system provide parents with reading lists containing expanded summaries of the books their children are reading, in part to warn of such content.

Flowers for Algernon is the first-person account of a mentally retarded man made intelligent through brain surgery. He experiences twenty years worth of emotional development in a few months, and along the way discovers and expresses his sexuality.

John and Tracey Crawley had requested the book's removal in September after their 13-year-old son, who attends Yorktown Middle School, expressed discomfort with reading the book. "We felt the adult themes and sexually explicit messages were inappropriate for eighth-graders," said John Crawley. "We're not radicals; we're not book banners or censors."

"If family life teaches abstinence, then why sabotage it with literary examples of promiscuous behavior?" asked Tracey Crawley.

The Crawleys appealed to the school board after committees at the school and district level reviewed the book and opted to keep it on a list of approved works. "Getting middle school students to read any novel is a challenge," Staples said. "We feel the novel is appropriate for eighth grade under the direction of a professional teacher." Reported in: *Richmond Times-Dispatch*, February 28; *Newport News Daily Press*, February 4, 6.

obscenity

Bellingham, Washington

The owner and manager of an international news stand in Bellingham who sold a controversial magazine about rape were found not guilty February 1 of distributing obscene materials.

"I, of course, feel great about having a clear acquittal," said Ira Stohl, owner of The Newsstand International. Stohl and his girlfriend, Kristina Hjelsand, were charged with the felony after a man visiting from California filed a complaint with police about a 130-page magazine called *Answer Me!* sold at the store. The issue included articles by rape victims and by rapists and used graphic language, drawings and photos.

Prosecutors charged that the privately published issue crossed the line into obscenity, especially in its depictions

of children. The defense contended that the graphic stories and other depictions of rape, torture, and murder in the publication were a satiric message about rape and rapists.

Brean Beggs, a Bellingham lawyer who coordinated the defense on behalf of the ACLU, said jurors did not reach any conclusions about the magazine, but rather decided that Stohl and Hjelsand never knew enough about its contents to know whether it was obscene. "We didn't even have to get into whether it was satirical at all," confirmed jury foreman Gene Wovk.

Juror Steve Land agreed that community standards on pornography were not an issue. A key point for him was the prosecution's inability to bring in any of the people who had supposedly bought the magazine. "Except for Maloy, and he didn't have the receipt," Land said, referring to Marcus Maloy of Santa Barbara, California, whose purchase of the magazine and complaint first to a rape crisis center and then police led to the criminal charges. Wovk said jurors weren't impressed with Maloy or other prosecution witnesses.

For the couple to be found guilty it had to be proved that they knowingly sold obscene material. The newsstand carried more than 4,000 publications at any one time.

A related suit was still active in federal court. In that suit, the ACLU is seeking to make Whatcom County and the City of Bellingham pay for the costs of Stohl's and Hjelsand's defense, alleging that County Prosecutor David McEachran illegally engaged in prior restraint. Beggs noted that federal court decisions prohibit prosecutors from threatening criminal charges against booksellers for selling publications that have not yet been found obscene.

"There is a statute out there that allows the government to prosecute a particular magazine without charging the booksellers," Beggs explained. "They could have used that."

"I think the jury understood, by saying they never even got to the magazine, the basic unfairness of the prosecution," Stohl said. Booksellers and newsstand operators can't be expected to read or censor everything they put on the shelves, he said. "I think the jury got that that's the most unpalatable, unfair and impossible way to exist in a free society. It doesn't work. You couldn't have a bookstore or a library if that was the standard."

Stohl paid tribute to the Bellingham community and the ACLU. "Since day one we've received just overwhelming support. That's one thing that heartens me about this community," he said. "When something like this happens and the ACLU comes to your aid, it's like the cavalry coming," he added. "It's important that they're there to defend things on principle whether they're popular at the moment or not." Reported in: *Bellingham Herald*, February 2; *Seattle Post-Intelligencer*, February 2. □

(excerpts . . . from page 74)

type of user-based blocking. The Platform for Internet Content Selection ("PICS") defines the precise method by which content ratings can be transmitted to user-based blocking software. The PICS standard allows all user-based blocking software to be compatible, and to utilize common databases of content ratings. Under the PICS standard, any third party organization (such as a church, parents' organization, or pediatric association) can rate Internet content according to that organization's own values, and those ratings can be accessed by user-based blocking software. The PICS standard has been implemented in blocking software such as SurfWatch and Cyber Patrol, and Cyber Patrol has made its ratings available on the Internet in a PICS-compatible database. With PICS, parents will be able to further tailor the content available to their children according to the parents' own values. . . .

"At the heart of the First Amendment lies the principle that each person should decide for him or herself the ideas and beliefs deserving of expression, consideration, and adherence. Our political system and cultural life rest upon this ideal." For this reason, "the First Amendment. . . does not countenance governmental control over the content of messages expressed by private individuals," and courts must "apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content."

The Act is such a law. It singles out for suppression words and images that describe or depict sexual or excretory activity in a manner deemed "indecent" or "patently offensive" for persons under 18. Thus, the Act is subject to the most exacting First Amendment scrutiny. It must be struck down unless the government demonstrates it serves a compelling interest, and that it does so "by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms."

The Supreme Court has foreclosed any argument that so-called "indecent" expression should be subject to a less exacting standard of review. Noting that "[s]exual expression which is indecent but not obscene is protected by the First Amendment," the Court unanimously held that an act of Congress prohibiting the transmission of indecent messages over telephone lines for commercial purposes was subject to, and could not survive, *strict scrutiny*. This Circuit has likewise held that laws regulating so-called "indecent" expression must receive the most exacting First Amendment scrutiny.

Strict scrutiny is amply justified because the category of "indecent" sweeps in vast quantities of valuable — though often controversial or unsettling — expression. The Act prohibits the transmission of serious works of

fiction or drama that treat sexual themes with any degree of explicitness. It likewise prohibits constitutionally protected profanity, whether in robust political debate, in biting social criticism, or in casual, private conversations. And the Act also encompasses works of science and medicine, or public health information dealing with sex. . . .

Application of strict First Amendment scrutiny to "indecent" regulations poses a particular challenge because such expression is *simultaneously* valuable (and protected) for an adult audience and potentially harmful (and thus regulable) for children. But one thing is clear: government may not resolve this tension by simply suppressing indecent speech altogether in order to protect children. Indeed, it is bedrock First Amendment law that "government may not 'reduce the adult population . . . to . . . only what is fit for children.'" "The level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox," and this is so "regardless of the strength of the government's interest" in protecting children. It is settled that government may not constitutionally "quarantin[e] the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence." A federal statute is unconstitutional if it has the "effect of limiting the content of adult [communications] to that which is suitable for children."

Thus, in the "indecent" context it is particularly important that strict scrutiny not be reduced to a mechanical, formalistic inquiry into whether government's posited interest is compelling, and its chosen means are narrowly tailored. Rather, strict scrutiny demands that "the benefit gained [by a content-based restriction] must outweigh the loss of constitutionally protected rights." . . .

Applying these principles, *no* court has ever upheld an indecency regulation that on its face, or in its practical application, banned "indecent" from any medium. In *Sable*, a unanimous Supreme Court struck down a ban on telephone indecency, notwithstanding that "enterprising youngsters could and would evade" less restrictive regulatory mechanisms which would have better protected adults' rights. In *Bolger*, the Court struck down a ban on mail advertisements for contraceptives for the same reason. In *Butler*, the Court invalidated a conviction for distributing indecent publications for the same reason. Indecency regulations have been upheld *only* when government has *proven* that the regulation will provide substantial protection for children, while ensuring that adults have continued access to expression that is constitutionally protected for them.

As we will show, a straightforward application of these settled principles invalidates the Act, for two reasons. First, the burden imposed by the Act's restrictions on indecency is so severe in relation to the marginal gains in

protecting minors achieved by the law that it must be struck down. Second, the government cannot meet its heavy burden of proving that the Act directly advances a compelling interest in the least restrictive way. . . .

The Act is also substantially overbroad because it bans and restricts speech that is sent or made "available" to persons under 18, without accounting *in any way* for relevant differences among the different age groups within the prohibited under-18 class. Rather than acknowledging the vast intellectual and emotional differences between seven-year-olds and seventeen-year-olds, the Act erects a total prohibition based on what "community standards" deem inappropriate for very young children. The constitutional defect in this "one-size-fits-all" prohibition is particularly pronounced because of the absence in the Act of any exemption for material with serious literary, political, scientific, or other educational value. Because a great deal of material that might be deemed objectionable for young children would nonetheless be appropriate (indeed, highly valuable) for older minors, the Act's procrustean age restrictions are substantially overbroad. Just as the Act indiscriminately bans speech appropriate for adults in the name of protecting children, it also bans speech appropriate for high school seniors and college freshmen in the name of protecting elementary schoolchildren. This prohibition most palpably infringes the First Amendment rights of older minors, but it also infringes the rights of persons who would otherwise communicate with them via the Internet.

This is not a statute dealing with a narrow type of "adult" speech (such as the "dial-a-porn" services at issue in *Sable*). Such material is arguably harmful for *all* minors (albeit perhaps *more* harmful for young children than for teenagers). But the open-endedness of the Act's prohibitions of "indecent" and "patently offensive" material, combined with the immense diversity of material on the Internet, ensure that the Act applies to a great deal of material that is arguably harmful for 7-year-olds but is *not* even arguably harmful for 17-year-olds. . . .

Without seriously disputing that the Act's content-based prohibitions require strict First Amendment scrutiny, the government nonetheless suggests that the Internet should be governed by an unspecified but comparatively relaxed standard of First Amendment review similar to the standard *Pacifica* adopted for FCC regulation of broadcast indecency. In *Pacifica*, the Court upheld the FCC's administrative reprimand of a radio station that aired a satiric monologue entitled "Filthy Words" at two o'clock in the afternoon. The Court based its holding on the "uniquely pervasive" quality of broadcast which, like an "intruder," "confronts the citizen," who cannot protect himself from "unexpected program content" because he is "constantly tuning in and out," and because of the "uniquely accessible" nature of broadcasting to children. In contrast to a "written message"

such as the "Fuck the Draft" jacket in *Cohen v. California*, the monologue as broadcast "could have enlarged a child's vocabulary in an instant." This ease of access even to very young children justified a degree of restriction on indecent *broadcast* expression not permitted on "[o]ther forms of offensive expression" such as books and motion pictures, which "may be withheld from the young without restricting the expression at its source." The *Pacifica* Court "emphasize[d] the narrowness of [its] holding," noting, among other qualifications, that the Constitution might preclude a "criminal prosecution" even for *broadcasting* the "Filthy Words" monologue, and that different considerations might apply in the case of a "two-way radio conversation between a cab driver and a dispatcher, or a telecast of an Elizabethan comedy."

In the 18 years since *Pacifica* was decided, the Supreme Court has declined repeated invitations to extend the relaxed broadcast standard to any other media. . . .

As with other media that have been asserted to resemble broadcast in relevant respects, it is possible to argue that some aspects of online communication resemble some aspects of broadcasting. But a comprehensive appraisal of the technical capabilities and communicative possibilities of cyberspace demonstrates that in relevant respects cyberspace is *not* like radio or broadcast television. The marked differences between the Internet and the broadcast media, coupled with the Supreme Court's steadfast unwillingness to extend the "sliding scale" approach to reviewing content regulation of any other non-broadcast media, leave no doubt that pleas to extend *Pacifica* to cyberspace should be rejected.

First, the Internet is emphatically *not* a medium on which individuals lack the power to choose the communications they wish to receive or to protect themselves or their children from unwanted or unexpected speech. To the contrary, recipients of online communications enjoy a degree of individual control over incoming material that is attainable in few, if any, other media. With the exception of point-to-point e-mail, *no* information travels online to a particular individual *unless the individual requests it*. . . . Furthermore, when a user makes such an affirmative request it is usually clear what type of content will be delivered. The online medium offers users the ability to exercise control over precisely what information they access. . . .

Second, online communications require a level of sophistication that militates against fashioning a special, lenient standard of review. Unlike radio and television, online communications are not easily accessible to very young children. At a minimum, recipients need to be able to read in order to execute the commands necessary to access communications. Moreover, parents can control their children's access to online expression through a

variety of means, including the many user-end screening options discussed above. . . .

Third, unlike broadcasting, cyberspace presents no problem of scarcity. To the contrary, one of its most valuable features is open accessibility to millions of new users at low cost. . . . Accordingly, there is no need for government regulation to allow speakers to be heard or to ensure diversity. . . .

The Act is unconstitutionally vague in at least two fundamental respects. First, no ordinary person could determine with reasonable certainty which communications Congress sought to proscribe in the Act. The terms "indecent" and "patently offensive as measured by contemporary community standards" are hopelessly vague. Second, the defenses established by the Act, especially as applied to content providers who do not charge for access to their speech and those who host Web pages and other online sites, are also fatally vague. Plaintiffs, their members, and their subscribers, patrons, and customers are forced to guess at whether their online expressive activities may give rise to criminal prosecution. These law-abiding citizens take the duty to obey the law, and the prospect of criminal penalties, seriously. They will self-censor a great deal of protected speech in order to avoid potential criminal prosecution. The Act thus impermissibly chills constitutionally protected expression. . . .

The public has a substantial, constitutionally protected interest in having access to a robust, uninhibited flow of constitutionally protected speech. This interest is severely damaged by the Act. Although the public's interest in protecting children from communications that would be inappropriate for them is also substantial, that interest is — at best — only marginally advanced by the provisions plaintiffs ask this Court to enjoin.

The damage to constitutionally protected expression that has already occurred, and the further damage that will occur if defendants are not enjoined, is incalculable. Substantial quantities of constitutionally protected speech are being and will continue to be suppressed across the Nation. The concomitant negative impact on the burgeoning medium for interactive computer services will be substantial.

Entry of the relief requested, pending final resolution of the merits, will cause defendants no significant harm, especially because there are other criminal statutes (including this Act's application to "obscene" communications) that prohibit the communications they claim are the principal focus of the Act. Any delay in entry of relief, however, perpetuates and compounds the damage to plaintiffs' First Amendment rights and the First Amendment rights of millions of adults to send and receive communications that are indisputably constitutionally protected for them. □

(Asia . . . from page 77)

host computers acting as Internet gateways compared to 3.9 million in the U.S. A major obstacle is cost, but perhaps equally important are "rigorous regulatory regimes in places like Taiwan, China, Japan, and Korea," says Henricus Cox, executive director for Sprint International.

Like the U.S., many Asian countries find their traditional values at risk. Increasingly, they fault technology and the corrupting images and ideas it delivers for such societal breakdowns as rising crime and divorce rates. However, while many Americans are also concerned about pornography, tax evasion, and destructive hackers, there is also strong resistance to government intervention. There is little such popular resistance in Asia, however.

In places as politically divergent as China and Singapore, government attitudes are reflected in efforts to control the kind of information that enters the country over the Internet.

China's honeymoon with the 'net ended January 16 when the State Council issued an edict curbing the flow of information to the Internet, suspending new Internet connections, and requiring that foreign news agencies submit to regulation by the government's Xinhua news agency. Xinhua is now to decide what kinds of electronic news and data can enter the country and who can receive it — and what share of the profits will accrue to Xinhua.

"Weak management and lack of control over what enters the Internet has allowed pornographic and other harmful materials on to the system," said a council statement. "We must take effective measures to deal with this." The shutdown coincided with a nationwide campaign to stem the availability of electronic pornography on laser disks and CD-ROMS.

The Internet slipped quietly into China in March, 1995. It was opened up by the profit-oriented Ministry of Telecommunications, which provided the main access link through its ChinaPac electronic mail service. Soon, private setups were fed off the system and 42,000 users were registered with perhaps five times more pirating the system.

Xinhua is also backing a small Hong Kong-based company called China Internet Corporation, run by U.S.-trained computer scientist James Chu, which is promoting what Chu calls the "intranet," an insulated, but not isolated corner of cyberspace.

The idea is simple, although the execution remains unproved. Using the latest filtering technology from Sun Microsystems, Inc., Chu aims to create a for-profit network within the Internet. Chinese users would have unlimited access to each other, but only screened links with the world beyond. "We've eliminated what is

undesirable and kept what is good," Chu explained.

Industry insiders say China ultimately aims to create a monolithic Internet backbone, centrally administered, that minimizes the threat posed by the Internet's amoeba-like structure.

In Singapore, on March 5, the government announced sweeping plans to filter what the average Singaporean can access on the Internet. The government declared it would hold both content providers and access providers responsible for keeping pornographic and politically objectionable material out of the country's 100,000 Internet accounts.

In contrast to China, Singapore's plans came even as the country was promoting the Internet as part of an ambitious effort to fashion itself into an information and technology hub for the southern Pacific Rim. Singapore's government is one of the world's most enthusiastic users of the Internet; nearly every ministry has its own World Wide Web site. So as the government promotes online connections for schools and community centers, it is also cracking down on the content of the Internet.

Singapore plans to enforce its laws in cyberspace by concentrating on two groups it can readily control: individuals or organizations in Singapore putting content on the Internet and the country's three access providers. The Singapore Broadcasting Authority (SBA), assigned responsibility for policing the Internet, said it would ensure that the companies don't distribute material that could "undermine public morals, political stability, or religious harmony."

Already the SBA said local providers of Internet access have blocked access to an unspecified number of commercial sites, including *Penthouse* and *Playboy*. The Socratic Circle, an informal discussion group that ran a computer site that briefly held some animated political discussions last year, has also disappeared.

In less authoritarian regimes, such as Japan, it is heavy regulation, the low rate of computer use and a reluctance to share information that mainly inhibit growth. There is little tradition of access to public information in most of Asia. Even Japan has few research libraries and those that do exist are often poorly organized, seldom store key documents, and are often inaccessible to ordinary citizens.

The Internet may yet evolve into a hybrid that can put deep roots into Asia's local and traditional cultures. But early signs are that the Internet in Asia is a long way from becoming a vibrant community and efforts to control "undesirable" material could stunt the network's growth without stemming the flow of unwanted information. Reported in: *Los Angeles Times*, February 15; *San Jose Mercury-News*, March 5; *Wall Street Journal*, February 1, March 6; *Chicago Tribune*, January 17. □

(*ALA leads challenge . . . from page 71*)

suitable for children."

The expression barred by the CDA does *not* include obscenity, child pornography, or any speech that is currently prohibited by law. Communication that would be banned on the Internet by the legislation includes valuable works of art and literature, information about health and medical issues, and examples of popular culture.

The Act attempts to prohibit material on the Internet that is "indecent" or "patently offensive as measured by contemporary community standards." These terms are being challenged on the grounds that they are undefined, vague and overbroad and, therefore, unconstitutional. For instance, there is no distinction made between material on the Internet appropriate for a five-year-old and for a seventeen-year-old college student.

The lawsuit argues that publishers on the Internet, which allows anyone with a modem to be a publisher, should be accorded the same freedoms as print publishers. Moreover, the plaintiffs contend that there are alternative ways to protect minors from inappropriate materials on the Internet that would not violate the First Amendment rights of adults and would be more effective. These alternative measures were not considered by Congress, which neither held hearings nor invited any testimony on the issue before passing the sweeping legislation. Excerpts from the plaintiffs' complaint begin on page 73.

"We believe that parental involvement, education and technology provide far more effective solutions to children accessing inappropriate content than this or any law ever could," Steve Case, Chairman and CEO of America Online, said. "Unfortunately, Congress passed this law without understanding that many technological tools are available and under development that empower parents, rather than the government, to determine what their children receive on the Internet."

While the Federal Communications Commission has regulated "indecent" speech in broadcast media, critics of the new law have argued that the Internet is a less centralized, more democratic medium and should not be subject to such regulation but should be treated more like print media.

"The 'indecent' concept is an approach to regulating speech in a broadcast environment and we're trying to draw a line here," said Marc Rotenberg of the Electronic Privacy Information Center. "This is a completely different communications world, there is no use of scarce spectrum, and there is a profound interest in preserving traditional civil liberties." The government is expected to argue that speech on the Internet and online information services should be regulated just as the content of radio and television broadcasts is regulated.

"We believe this lawsuit will determine the nature of First Amendment rights in the twenty-first century," said Jerry Berman, director of the Washington-based Center for Technology and Democracy. "We want to educate the courts and get the hearing that we never got in Congress on the nature of the Internet. If the judges don't understand the Internet, they may pick the wrong paradigm, and this case of first impression will decide the limits of free speech for the twenty-first century."

The suit was quickly consolidated with an earlier suit by the American Civil Liberties Union and eighteen other groups filed February 8, the day the Telecommunications Act was signed into law by President Clinton. In that case, U.S. District Court Judge Ronald L. Buckwalter issued a temporary restraining order February 15 barring the government from enforcing the provision in the law barring "indecent" or "patently offensive" material.

"This strikes me as being serious because the undefined word 'indecent,' standing alone, would leave reasonable people perplexed in evaluating what is or is not prohibited by the statute," Judge Buckwalter wrote in his decision. He declined, however, to strike down other parts of the law, which imposed more restrictive standards of speech on the Internet and other computer-based communications networks than for books, newspapers or other printed material.

The CDA poses a potential risk of criminal prosecution for libraries that post content on the Internet — which nearly a third of the nation's 15,000 libraries now do. ALA is involved because, according to Judith Krug, "the Internet will be a major medium of communication in the twenty-first century and, therefore, will be an important part of the future of libraries and librarianship."

Under the Act, a library that simply provides "access" to the Internet would *not* be subject to liability if a patron, using the facility, sent or received "indecent" material without the knowledge of the library staff. A problem might arise, however, if the transmissions violate the provisions of the Act, the library learns of the transmissions, and takes no actions to discontinue transmissions.

A library that does provide "content" on the Internet — i.e., actually places or posts materials — faces a greater risk of criminal prosecution. Thus, a library would be liable for material created by it (card catalog or home page) or for material simply placed on the Internet (such as text or excerpts from library materials). It is possible that titles in the card catalog, great works of art and literature, information on health issues such as AIDS and breast cancer, might be deemed "patently offensive" or "indecent" by some community standards.

"If the indecency standard remains, it will enormously limit the kinds of materials we can distribute," said ALA President Betty Turock.

The suit reflects the breadth of opposition to the law and raises the prospect of strong political opposition, even if the legal challenge fails. The scope of the organizations involved in the suit could add up to a powerful lobby that was lacking before the provision became law. Even if a court challenge proves unsuccessful, there may be considerable pressure from the plaintiffs to rewrite the legislation.

A Microsoft representative said the firm did not lobby harder against the original legislation because it was packaged in the huge communications reform act, which the technology industry hoped would unleash competition and boost consumer demand for all sorts of communications products.

"I think it took some time to sink in," said Paul Russinoff, an attorney for the Recording Industry Association of America, which also joined the coalition. "Basically you're talking about a situation where you are criminalizing speech that contains a stand-alone expletive. There's an incredible level of interest among our members in using the Internet to distribute recorded music, and I think it's fair to say there's music out there right now that contains expletives."

Sen. J. James Exon (D-NE), who spearheaded the effort to pass the CDA, said in a statement that the law was aimed at shielding children from pornography. "It is indeed a sad state of affairs if the corporate giants of the computer industry are choosing to join forces with the ACLU to say that providing pornography to children is OK," he said. "The selfish industry is clearly more interested in profits from pornography than protecting children."

But Barry and Michelle Fagin also joined the suit as founders of Families Against Internet Censorship. The Colorado Springs couple said they resented the impression created by supporters of the law that families with children were unanimously behind it.

"I don't think there's a mother in the world who would want to expose her eight-year-old son to pornography," said Michelle Fagin, who has a son, 8, and a daughter, 6. "But it's my responsibility as a parent to decide what's appropriate and what's inappropriate." The Fagins said more than two hundred families have joined their organization since they posted information on the World Wide Web and Internet newsgroups.

Although the government said it would not enforce the provisions of the Act until legal challenges are resolved and despite Judge Buckwalter's restraining order, there was evidence that the ban on "indecency" was already having a chilling effect. *Penthouse's* site on the World Wide Web has replaced pictures of naked women with a box that declares the picture was deleted "in accordance with U.S. censorship laws."

"We are expending a great deal of money and person hours to comply" with the law, *Penthouse* tells its Web

site visitors, "and even more to see that these are overturned as rapidly as possible."

"Nobody's quite sure what indecency means," said Nina Guccione, vice president of New Media Operations at Penthouse. And without that definition, she said, "Penthouse is a sitting duck out there."

A Los Angeles Internet user said he was reprimanded for putting his employer at risk of prosecution after forwarding a widely posted e-mail message that used profanity to criticize the CDA. Reported in: *Intellectual Freedom Action News*, March 1996; *Los Angeles Times*, February 16, 27; *New York Times*, February 26; *Philadelphia Inquirer*, March 7. □

(is it legal? . . . from page 96)

deliberate, specific efforts to attract children to viewing pornography. Some online services argued that the measure would mire them in legal battles or compel them to become censors. Reported in: *San Francisco Chronicle*, January 23.

broadcasting

Berkeley, California

Free Radio Berkeley is not your average station. And if the Federal Communications Commission (FCC) gets its way, it never will be. The 25-watt "microstation", which has a signal radius of about ten miles, is operating without a license because the FCC does not grant licenses to stations broadcasting at less than 100 watts.

In 1993, the FCC hit Stephen Dunifer, the founder of the station, with a \$20,000 fine, and in January, 1995, argued before U.S. District Court Judge Claudia Wilken that the station should be shut down. The FCC lost that round, but was set to try again before Judge Wilken April 12.

The station's volunteers contend that, in trying to shut them down, the FCC is violating their free speech rights in the interests of protecting huge, corporate-owned radio stations. "This is our way of fighting back and say, 'No, our radio waves are not going to be given over completely to private corporations,' which is basically what is happening," said Dunifer.

The FCC argues that so-called "pirate" stations interfere with licensed stations' signals and could disrupt air traffic communications. Free Radio Berkeley and similar microstations throughout northern California say that is nonsense, that their signals are too weak to disrupt anything. "The way they talk, you'd think we'd see 747s doing water landings in the Bay," muttered Dunifer. Reported in: *Oakland Tribune*, March 12. □

(in review . . . from page 81)

elite colleges and universities as a means to keep laws out of their institutions. We regularly hear the accusation that affirmative action is causing massive unemployment among white male Ph.D.s. This is somewhat difficult to understand when Blacks and Hispanics combined fill only 5.1% of the faculty positions in research universities. These are the kind of data that Wilson presents to demonstrate the speciousness of the anti-affirmative action arguments.

The forces alleging "political correctness" in higher education have made their case by the passion of their argument. Mr. Wilson's research clearly demonstrates how groundless much of their argument has been. His attention to documentation gives this book an authoritativeness that the work of the likes of Rush Limbaugh certainly lack. This book is highly recommended to anyone who wants to discuss these issues from a basis of fact rather than just from emotion.—*Reviewed by Joseph A. Boisse, University Librarian, University of California, Santa Barbara.* □

(censorship dateline . . . from page 90)

he ordered the unit moved to a back lot, saying he did so to reduce chances a blind student might be hit by a car.

Roger Axford, the retired Arizona State University professor who founded the museum, objected. "This is shoddy treatment," he said. "We don't put up with censorship." Reported in: *Tucson Citizen*, March 5.

Mill Valley, California

An artist's collection of nude figure drawings was banned by City Manager Doug Dawson out of concern that the work might be offensive to some. Dawson ordered the removal of Juliana Jensen's year-long project from city chambers, claiming that several employees had mentioned they were troubled by nude drawings.

"I've got to have a friendly workplace, and if I have employees come to me and say, 'I'm uncomfortable,' I have to change that," said Dawson. "To me, it takes a nanosecond to decide what to do about it." Dawson asked the Art Commission, which organizes monthly shows in city offices, to ban nudes from City Hall and the library.

Jensen said she was "dismayed and disappointed." She said she had spent a year preparing the show and was ready to hang it when she learned of the ban. Barbara Mortkowitz, who curates the shows for the Art Commis-

sion, said the commission would reimburse Jensen for her framing and other expenses, and would try to place the show in another exhibit spot. Reported in: *Marin Independent Journal*, January 10; *Sacramento Bee*, January 10.

Wilmington, North Carolina

A potholder, gloves, and dollies have become the modern version of the fig leaf at a Wilmington establishment. State alcohol agents told the Deluxe coffee house in early March to remove eleven nude paintings because state regulations said they were too revealing to be displayed at a business that serves alcohol. Deluxe serves beer and wine along with coffee. Rather than close the exhibit, however, the artists and gallery sponsoring the show found an alternative. On March 7, they covered the offending parts with the abovementioned items. Reported in: *Orlando Sentinel*, March 8.

Philadelphia, Pennsylvania

Sculptor Jack Thompson, who thought he had an exhibition at Pentimenti Galleries but arrived at the opening to find most of his pieces had been removed, pulled all seventeen sculptures March 6. The dispute began when an owner of the gallery objected to the erotic nature of Thompson's ceramic figures.

Without informing the artist or the director of the gallery, who was ill at the time, owner Tom Pfister took down several sculptures, some with prominent penises and suggesting sexual activity, just prior to the exhibit's opening.

"I was shocked," Thompson said. "I thought I was going to have a show and I arrive and it's censored." According to Thompson, Pfister said he was concerned that Philadelphia was "too conservative" an environment for such work and the gallery's corporate clients would be offended. Reported in: *Philadelphia Inquirer*, March 7.

Pasco, Washington

City Hall didn't take kindly to artist Sharon Rupp's political message. Her sculpture, "To the Democrats, Republicans and Bipartisans," was removed from an exhibit at City Hall February 15 after officials said they received numerous complaints. The sculpture depicted a woman mooning her audience.

Rupp had asked the city to place a bag over the piece, rather than remove it, with a sign reading "Censored by City Hall." Instead, all three of the artist's works were removed from an exhibit area. "It's a city hall, not a gallery," said Kurt Luhrs, assistant to City Manager Gary Crutchfield. Reported in: *Atlanta Constitution*, February 18.

foreign

Paris, France

An Internet user broke the French government's ban on a book by Francois Mitterand's former doctor when he posted its text on a Web site in eastern France. By promising electronic delivery of the banned book, which says the former French President concealed his ultimately fatal cancer for years, Pascal Barbraud sparked a legal and ethical debate over censorship in the era of electronic communication.

"In the old days when governments censored a book, they would actually go to a publisher's and seize the type," said Olivier Iteanu, a Paris attorney. "But now, information is intangible."

Le Grand Secret, by Dr. Claude Gubler, caused a sensation in France when it was published in January immediately after Mitterand's death. Gubler charged that Mitterand was incapable of performing his duties for the last several months of his presidency and claimed he misled the public for eleven years about his health.

The Mitterand family accused the doctor of violating doctor-patient confidentiality and persuaded a court to impose a ban on the book — a highly unusual move in France. Under French law, however, the ban applies only to the book's publisher and its author and not to private individuals who redistribute copies. "There's an enormous legal loophole" that almost invites electronic distribution, said Barbraud.

Frustrated Internet users, however, reported that they were unable to access the book from Barbraud's Web site because of heavy demand. Reported in: *Wall Street Journal*, January 25.

Stockholm, Sweden

Filmmaker Martin Scorsese has agreed to Swedish censors' demands that he cut three violent scenes from his film *Casino*, the movie's distributors said February 7. At issue were scenes of what the Swedish authorities termed gratuitous violence in the film about the Mafia in Las Vegas in the 1970s. In one, a man's skull is crushed in a vise. In another, two men are pummeled with baseball bats. In the third, a man is buried alive. Scorsese initially fought the censors, defending the scenes as an "honest" depiction of organized crime. The distributor lost three appeals of the cuts. Reported in: *Washington Times*, February 8.

Hanoi, Vietnam

Hundreds of videos portraying sex and violence were destroyed and pornographic posters were incinerated at a public ceremony in Hanoi January 31 to mark a new

phase of a government assault on so-called "social evils."

"Protection against poisonous cultural items is the duty of all society," proclaimed a garish poster on the back of a truck. "No drug addicts. No prostitutes. No gambling," demanded another.

Billboards with similar messages have adorned Hanoi since the government announced in December that it was stepping up the morality war. The ritual destruction kicked off the campaign's second stage: a clampdown on

"social evils," "poisonous cultural products," and negative foreign influences.

The drive against social evils had been focused as well on the country's prosperous southern metropolis, Ho Chi Minh City, the former Saigon, where an illegal sex industry is flourishing. The daily *Vietnam News* said owners of video stores, hotels and saunas had been asked to send all banned videos to the police and asked to sign pledges not to circulate pornographic films or show them on their premises. Reported in: *ClariNet e.News*, January 31. □



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