newsletter on intellectual freedom

IFC ALA

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Supreme Court strikes down Internet censorship

In a sweeping endorsement of free speech on the Internet, the U.S. Supreme Court on June 26 declared unconstitutional a federal law making it a crime to send or display indecent material on line in a way available to minors. The decision in the consolidated cases of *American Library Association* v. *U.S. Department of Justice* and *Reno* v. *ACLU*, unanimous in most respects, completed a successful challenge to the so-called Communications Decency Act by the Citizens Internet Empowerment Coalition, in which the American Library Association and the Freedom to Read Foundation played leading roles.

The forceful opinion for the court by Justice John Paul Stevens held that speech on the Internet is entitled to the highest level of First Amendment protection, similar to the protection the Court gives to books and newspapers. That stands in contrast to the more limited First Amendment rights accorded to speech on broadcast and cable television, where the Court has tolerated a wide array of government regulation. (See excerpts from the opinion on page 139).

"Content on the Internet is as diverse as human thought," Justice Stevens said in a quotation from a special three-judge U.S. District Court panel in Philadelphia, which struck down the act a year before in a decision affirmed by the Supreme Court.

The decision made it unlikely any Government-imposed restriction on Internet content would be upheld as long as the material has some intrinsic constitutional value. Obscenity, which is outside the protection of the First Amendment, is also covered by the Communications Decency Act, and the Court left that provision intact without analyzing it.

Sen. Patrick J. Leahy (D-VT), who opposed the law, said, "I hope that nobody thinks that this is a victory for child pornographers. This is a victory for the First Amendment."

But a key sponsor of the original bill, Sen. Dan Coats (R-IN), said the Supreme Court was "out of touch with the American people on this. I'm very disappointed."

The indecent material at issue was not precisely defined by the 1996 law — one of its serious flaws, as the justices saw it — but was referred to in one section of the statute as "patently offensive" descriptions or images of "sexual or excretory

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to filter or not to filter

The following are edited texts of remarks presented by Bruce Ennis, Carolyn Caywood, Harriet Selverstone and Lisa Kochik at the program "To Filter or Not to Filter" at the 1997 ALA Annual Conference in San Francisco. The program was sponsored by the Intellectual Freedom Round Table, the ALA Intellectual Freedom Committee, the Intellectual Freedom Committees of the American Association of School Librarians, Association of College and Research Libraries, American Library Trustee Association, Association for Library Service to Children, Public Library Association, Young Adult Library Services Association, and the Access to Information Committee of the Reference and User Services Association.

remarks by Bruce Ennis

Bruce Ennis is an attorney with the firm of Jenner & Block, Washington, D.C. He was the lead counsel in American Library Association *v.* United States Department of Justice *and argued the consolidated case* Reno *v.* ACLU *before the U.S. Supreme Court.*

We won a wonderful, spectacular 9-0 victory in the Supreme Court on Thursday [June 26] and we can all be very proud. That decision will provide enormous strength and resource for us in many, many of the First Amendment battles yet to be fought. Unfortunately, that decision does not answer all of the hard questions, including and particularly the hard question of whether libraries can be forced to use filtering software or whether libraries can, if they choose, use filtering software without violating the First Amendment.

One of the reasons the Supreme Court's decision does not answer that hard question is that one of the reasons the Court struck down the Communications Decency Act, which blocks speech at the *speaker* end, was the availability of user-based software, which permits speech to be blocked instead at the *user* end.

But can libraries, if they wish, or can they be forced to, use those user-based blocking software devices? That's an extremely difficult question, even more difficult than the questions that were at issue in the CDA challenge. While I can't answer that question for you today, I can begin to draw some of the important distinctions we need to keep in mind.

The first distinction is one between my personal views and my professional views as an attorney. My personal view is congruent with the American Library Association's *Library Bill of Rights*, which basically takes the position that a library is a forum for access to information for all people, and that it is not the job of libraries or librarians to be making decisions on which materials are appropriate for patrons of different ages. Basically, it's an age-neutral policy. But what is likely to happen as a matter of law when this issue is litigated? Here, too, there are several distinctions to keep in mind.

The first is between public libraries and private libraries. If it is a private library, the First Amendment is not going to restrain what the library does. The First Amendment only applies to actions of governmental entities. So a private library can choose to use filtering software, or the governing board of a private library can order the library to use filtering software, and that almost certainly will not violate the First Amendment. Let's move on and talk about public libraries, governmental libraries, libraries that receive substantial amounts of public funding. There the First Amendment does apply and does restrain what libraries can choose to do and what they can be forced to do.

The second distinction when we're talking about public libraries is the distinction between school libraries on the one hand and community libraries on the other. There is an important distinction in First Amendment doctrine between these two types of libraries. Basically, although all the gray areas are not resolved, it is clear that the Supreme Court will allow greater restrictions on expressive material in school libraries than it will in community libraries. The reason for that is the perception that one of the jobs of the school library is actually to be selective and to be pedagogical and to inculcate values in students, not just make information available to them. Whether you agree or disagree with that is immaterial—that's the Supreme Court's view. So, broadly speaking, there will be more freedom from the First Amendment for public school libraries to filter than there will be for public community libraries. Now, let's go on to public community libraries.

There we have to keep in mind the important difference between adults and kids. This is really important because the Internet decision two days ago is a ringing, ringing reaffirmation of the principle that the First Amendment prohibits the government and government institutions from reducing the adult population to reading and viewing only what is appropriate for children. That was the basic, core concept of the opinion. I think we can safely say, therefore, that any public community library that chose to use filtering or that was ordered by its governing board to use filtering would violate the First Amendment if that filtering unreasonably interfered with the ability of adults to access any information that would be lawful for adults. In other words, it would clearly be unconstitutional, in my opinion, for a public library to install blocking/filtering software on all of the computers in the library and have no option for adults to override it.

Having said that, I should add that the Supreme Court is almost certainly going to uphold some burden on the rights of adults as long as it's not an unreasonable burden, whatever that is. So, if there is some mechanism in which

there can be filtering software that blocks access by minors, but without much burden permits access by adults, that might—might, I emphasize—squeak by a First Amendment challenge. Now, let's move on to kids.

There are in, I think, 48 states "harmful to minors" statutes, which make it a crime to distribute material that is harmful to minors, even though that material is completely lawful for adults. Many of those states have exemptions for libraries, so that a library can disseminate material that's harmful to minors, even if a book store or some other entity could not. But many states do not have exemptions for libraries. And many states are going to be adopting laws that target the Internet particularly, and are going to prohibit libraries from making available material that is harmful to minors, with no exceptions for libraries.

I want to emphasize that *harmful to minors* is a fairly narrow category of material, much narrower than the indecency provision that was at issue in the Communications Decency Act. One of the flaws that the Court found in the Communications Decency Act was that it prohibited speech that was indecent for minors, but did not appeal to a prurient interest of minors and even if the speech had serious value for minors. In contrast, the harmful to minors statutes in almost all states have been interpreted narrowly, so that material is only considered harmful to minors if it meets all three of those prongs: it is indecent or patently offensive, it appeals to a prurient interest of minors, and it has no serious value for minors. That's much narrower than the indecency standard in the Communications Decency Act. Furthermore, the vast majority of the states have interpreted their harmful to minors statutes even more narrowly, so that material cannot be considered harmful to minors if that material would have significant value even for a minority of seventeen-year-old minors. So when you put all that together, this scary phrase "harmful to minors," which is used often to threaten and scare librarians into taking material off shelves, is actually much, much narrower than you might think. It really only prohibits material that could be thought of as obscene for minors. But, if you're talking about that kind of material—and there is that kind of material available on the Internet today—I think that almost any court would uphold the constitutionality of a restriction if it did nothing more than to prevent access by minors to that narrow category of material. The problem is the way the Internet works. It's very difficult to limit access to that kind of material, and yet permit minors to have access to everything else. And minors do have First Amendment rights of access to everything else. That's what the hard question is here.

Significantly, in the Internet decision, nine Justices agreed on the major challenge we made. There were only two dissents to one specific narrow part of the act by Justices O'Connor and Rehnquist—they took the position that Congress could constitutionally make it a crime to use the Internet to send a one-to-one message from an adult to a person known to be a minor if that material was not only offensive, but also appealed to a prurient interest in sex and also had no serious value for minors. But the important part of this is the flipside. Even Justice O'Connor and Justice Rehnquist would not have approved a criminal law which made it a crime to use the Internet to knowingly send material to a person known to be a minor if that material was simply offensive and did not also appeal to a prurient interest and lack serious value. So basically, nine Justices of the Supreme Court have said minors—minors—have a First Amendment right of access to most of the material that's out there, even it's indecent or offensive. So the problem is how do you come up with a filtering system which would filter out from minors access alone, access to material truly harmful to minors, and yet allow these same minors to have access to everything else? That's going to be very difficult to do—to come up with filtering systems like that. That's why, I think, several years from now those of us who want to challenge forced use of filtering by libraries are likely to prevail in most of those challenges. But because of the nature of the issues and because they're not going to get resolved quickly by the Supreme Court in a direct appeal, they're going to come up through a lot of states and percolate for years, and we're going to lose some of those battles along the way. There's going to be a lot of litigation, a lot of ferment, a lot of misunderstanding, a lot of problems; this is not going to be a slam dunk. But in the end, I think we're likely to largely win 99 percent of those battles. But we're not going to win them all, and it's not going to be easy. On the other hand, this case we just won wasn't easy either. We just have to keep up the fight.

remarks by Carolyn Caywood

Carolyn Caywood is director of the Bayside Area Library in Virginia Beach, Virginia, a member of the ALA Council, and Chair-elect of the Intellectual Freedom Round Table.

"Something there is that doesn't love a wall," observed Robert Frost in a poem most of us studied in school, "Mending Walls," but the human impulse to put up walls continues unchanged from the time of Hadrian or ancient China. Today, it's the virtual landscape of electronic communication where we want to wall off the barbarians.

The old barrier of publishing's expensive investment in copying and distribution has been bypassed now that an amateur enthusiast's website can get more hits than

the typical book's print run, and a post to a single newsgroup can reach an audience of thousands. The Internet has made it easy for people to share ideas and passions that society would prefer to ignore or condemn. According to the Third District Court's decision in the CDA case in its Findings of Facts, #80:

> It follows that unlike traditional media, the barriers to entry as a speaker on the Internet do not differ significantly from the barriers to entry as a listener. Once one has entered cyberspace, one may engage in the dialogue that occurs there. In the argot of the medium, the receiver can and does become the content provider, and vice-versa.

Judge Stewart Dalzell, summed up the reaction to this new freedom:

> Indeed the Government's asserted "failure" of the Internet rests on the implicit premise that too much speech occurs in that medium, and that speech there is too available to the participants. This is exactly the benefit of Internet communication, however. The Government, therefore, implicitly asks this court to limit both the amount of speech on the Internet and the availability of that speech. This argument is profoundly repugnant to First Amendment principles.

Despite those principles, since the earliest days of USENET, there have been concerns that the content of some electronic communications was beyond the pale. But when technical developments made it easy to send pictures around the networks, that changed both the nature and the population of cyberspace. With pictures, the Internet was suddenly attractive in a way that ASCII text on a screen had never been. Commerce and consumers signed up, bringing expectations from older media, and those media promptly exploited cybershock, both real and invented.

This convergence of public, advertising, and news interest in the Internet met another trend in our culture's current desire to solve all problems through a combination of technology and regulation. From air bags to v-chips, politicians have found it easier to pass laws requiring new safety devices than to remind voters that their responsibilities are indivisible from their rights. These converging trends have resulted in attempts to criminalize Internet content that is protected by the First Amendment and to create technology that can impose value judgements on people's uses of the Internet. Both the law and the technology are supposed to make cyberspace a safe place to leave children unattended.

The very threat of regulation seemed to promise a golden opportunity for anyone who could devise a software solution to children's unsupervised use of the Internet. Beginning in Spring of 1995 with Surfwatch and Net Nanny, commercial software to limit access to the Internet has been for sale. While the range of products has continued to grow, the industry seems to be volatile. At least half the roughly 20 companies I have identified have changed names, addresses, or products. One of them is now on its third incarnation, but I think its first version is revealing of attitudes that are now given a more business-like gloss. SNAGS was marketed to schools as a way to catch teens.

The first methods were blocking patterns of characters presumed to occur in unsavory surroundings and making lists of forbidden addresses, usually compiled by company staff and kept secret. The ambiguity of language makes pattern recognition a wholly inadequate tool, as the number of useless matches returned by search engines should demonstrate. Proscription by secret list is always playing catch-up, but worse, it is an invitation for abuse by anyone with a political or social agenda.

As with SNAGS, some products report on what the user has sought in addition to, or instead of, blocking access. Some filters work on individual computers while others are proxy servers on the Internet to which the individual computer is directed to go first. Some can be modified to suit individual needs. All need continuous updating if they are to keep up with the growth and change of the Internet.

By Fall of 1995, these deficiencies led the World Wide Web Consortium (W3C) to look for a different approach. They proposed PICS, the Platform for Internet Content Selection, http://www.w3.org/pub/WWW/PICS/. As a platform, PICS itself doesn't make judgements about content. Instead, it sets up a common format for content information so the evaluator of content knows where to put it and software can be instructed where to look for it. PICS depends upon other organizations setting up evaluation schemes for content and upon individual content creators using those evaluation schemes to rate their work and embedding the resulting code in their work. RSACi, a subsidiary of the video game rater RSAC, and SafeSurf have devised PICS compliant evaluation schemes. The PICS labeling on the Yahooligans website looks like this: <meta http-equiv="PICS-Label" content='(PICS-1.0 "http://www.rsac.org/ratingsv01.html" 1 gen false comment "RSACi North America Server" by "lobo@yahoo.com" for "http://www.yahooligans.com/" on "1996.04.16T08:15-0500" exp "1997.07.01T08:15-0500" r(n0s0v010))'>

All the rated web pages I was able to locate were labeled as suitable for everyone. That raises the critical question of who is going to be willing to rate. Those who want to advertise to children and also those who don't want children around have an obvious motive to self-rate. (In this, there's a similarity to the "tagging" that was proposed as a way to comply with the CDA. Justice Stevens

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IFC report to ALA Council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council delivered on July 2 at the 1997 ALA Annual Conference in San Francisco by IFC Chair Ann K. Symons.

As chair of the ALA Intellectual Freedom Committee, I am pleased to report on the Committee's activities at this Annual Conference. Last week, the coalition led by the American Library Association won an impressive victory in *Reno v. ACLU* (consolidated with *U.S. Department of Justice v. ALA)*. The Supreme Court struck down the Communications Decency Act (CDA) in a resounding 9-0 decision.

Action Item: Resolution on the Use of Filtering Software in Libraries

The Intellectual Freedom Committee unanimously passed the Resolution on the use of filtering software in libraries. I move its adoption. (See page 119).

Statement on Library Use of Filtering Software

The Intellectual Freedom Committee anticipates this document will provide the guidance librarians need. (See page 119.)

Questions and Answers: Access to Electronic Information, Services and Networks: An Interpretation of the *Library Bill of Rights*

This document was finalized by the Intellectual Freedom Committee just before this meeting and is being distributed widely. The Committee plans on reviewing it regularly and issuing updates as needed. (See page 121).

Internet Librarian Project

In anticipation of the Supreme Court's decision, a group of members and staff worked during May and June to develop the Internet Librarian Project. The goal of this project is to focus the public's attention on what librarians have always done — identify and organize information, as well as guide all users to information and materials to fulfill their needs and wants. An ALA Web site has been established at **http://www.ala.org/parentspage/greatsites/** that provides links to fifty great sites for children. Two brochures, *The Librarian's Guide to Cyberspace for Parents and Kids* and an accompanying tip sheet for librarians, have been developed to assist librarians as they provide guidance to children and their families. Copies are available from the ALA Public Information Office and Office for Intellectual Freedom. Members and staff will continue to identify sites to be added to this list. We believe this activity will offer another tool for librarians providing Internet access.

Lawyers for Libraries

The Lawyers for Libraries training institute, funded by the Albert A. List Foundation, was held in May in Lisle, Illinois. Some of the best First Amendment lawyers in the country, including Bruce Ennis, addressed more than fifty participants on the laws affecting libraries and library services. The goal of Lawyers for Libraries is to have lawyers available on the local level to assist librarians when legal advice is needed. This was an extremely successful conference, and the Office for Intellectual Freedom is exploring funding opportunities to take this training program to the next level.

Leadership Development Institutes

The Office for Intellectual Freedom has concluded another year of successful Leadership Development Institutes (LDI). This program began in 1994 with a nationwide LDI that brought together librarians from across the country. In 1995-96, with funding provided by the Nathan Cummings Foundation, OIF held a series of training sessions in ten regions around the country. The participants in the original national session assisted in the planning and implementation of the regional sessions. In 1996-97, again with funding provided by the Nathan Cummings Foundation, a series of statewide sessions have been held, many planned by participants in the regional sessions. To date, LDIs have been held in Alaska, California, Indiana, Illinois, Maryland, Michigan, Ohio, Pennsylvania and Texas. By the end of this year, Institutes also will be held in Maine, Massachusetts, New Mexico, and Oklahoma.

Internet Policy Development and Implementation Training

The Intellectual Freedom Committee, Committee on Legislation, Chapter Relations Committee, and Library Advocacy Now, along with the Office for Intellectual Freedom, Washington Office, Chapter Relations Office, and Public Information Office, recently received a $5,000 ALA Goal Award. This award is titled "The Internet in Libraries: Strategy for the Future: A Prototype Leadership Development and Advocacy Institute for Librarians and Administrators Focusing on the Internet and Its Use in Libraries." The Office for Intellectual Freedom also has received a $40,000 grant from the Nathan Cummings Foundation. These funds will be used to conduct a series of regional training sessions on the Internet in libraries. Planning has begun on this project, and the first training session for state Intellectual Freedom and Legislation Committee Chairs and Trustees will be held at Midwinter on Friday, January 9.

Tin Drum

Last week, the videotape of the Oscar-winning film *Tin*

Drum was removed from the Oklahoma City County Municipal Library System; the film was declared to be child pornography by a local judge. It is our understanding that the film was then seized by local police from people who had rented it from the local Blockbuster Video (see page 123). While the IFC understands the Council's desire to take action at this Conference, the Committee does not believe we have enough information to address the matter in a meaningful way. The Office for Intellectual Freedom staff has been aware of this issue since last Friday and will continue to work with the parties involved in Oklahoma City and those elsewhere in the country considering action.

It has been my pleasure to serve as Intellectual Freedom Committee chair this past year. I would like to thank the members of the Committee — Norman Belk, Betty Blackman, Joe Boisse, Vicki Hardesty, Charles Harmon, Jane Kleiner, Pat Scales, Harriet Selverstone, Fred Stielow, and Vivian Wynn; our interns — Carrie Gardner and Joyce Taylor; and the OIF staff — Judith Krug, Cynthia Robinson, Bridget Sweeney, Don Wood, and Betty Sereno — for their hard work and dedication. □

Statement on Library Use of Filtering Software

American Library Association/ Intellectual Freedom Committee

On June 26, 1997, the United States Supreme Court issued a sweeping re-affirmation of core First Amendment principles and held that communications over the Internet deserve the highest level of Constitutional protection.

The Court's most fundamental holding is that communications on the Internet deserve the same level of Constitutional protection as books, magazines, newspapers, and speakers on a street corner soapbox. The Court found that the Internet "constitutes a vast platform from which to address and hear from a worldwide audience of millions of readers, viewers, researchers, and buyers," and that "any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox."

For libraries, the most critical holding of the Supreme Court is that libraries that make content available on the Internet can continue to do so with the same Constitutional protections that apply to the books on libraries' shelves. The Court's conclusion that "the vast democratic fora of the Internet" merit full constitutional protection will also serve to protect libraries that provide their patrons with access to the Internet. The Court recognized the importance of enabling individuals to receive speech from the entire world and to speak to the entire world. Libraries provide those opportunities to many who would not otherwise have them. The Supreme Court's decision will protect that access.

Resolution on the Use of Filtering Software in Libraries

Whereas, On June 26, 1997, the United States Supreme Court issued a sweeping reaffirmation of core First Amendment principles and held that communications over the Internet deserve the highest level of Constitutional protection; and

Whereas, The Court's most fundamental holding is that communications on the Internet deserve the same level of Constitutional protection as books, magazines, newspapers, and speakers on a street corner soapbox. The Court found that the Internet "constitutes a vast platform from which to address and hear from a worldwide audience of millions of readers, viewers, researchers, and buyers," and that "any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox"; and

Whereas, For libraries, the most critical holding of the Supreme Court is that libraries that make content available on the Internet can continue to do so with the same Constitutional protections that apply to the books on libraries' shelves; and

Whereas, The Court's conclusion that "the vast demoratic fora of the Internet" merit full constitutional protection will also serve to protect libraries that provide their patrons with access to the Internet; and

Whereas, The Court recognized the importance of enabling individuals to receive speech from the entire world and to speak to the entire world. Libraries provide those opportunities to many who would not otherwise have them; and

Whereas, The Supreme Court's decision will protect that access; and

Whereas, The use in libraries of software filters which block Constitutionally protected speech is inconsistent with the United States Constitution and federal law and may lead to legal exposure for the library and its governing authorities; now, therefore, be it

Resolved, That the American Library Association affirms that the use of filtering software by libraries to block access to constitutionally protected speech violates the *Library Bill of Rights.—Adopted by the ALA Council, July 2, 1997.*

The use in libraries of software filters which block Constitutionally protected speech is inconsistent with the United States Constitution and federal law and may lead to legal exposure for the library and its governing authorities. The American Library Association affirms that the use of filtering software abridges the *Library Bill of Rights*.

What is Blocking/Filtering Software?

Blocking/filtering software is a mechanism used to:

- restrict access to Internet content, based on an internal database of the product, or;
- restrict access to Internet content through a database maintained external to the product itself, or;
- restrict access to Internet content to certain ratings assigned to those sites by a third party, or;
- restrict access to Internet content by scanning content, based on a keyword, phrase or text string or;
- restrict access to Internet content based on the source of the information.

Problems with the Use of Blocking/Filtering Software in Libraries

- Publicly supported libraries are governmental institutions subject to the First Amendment, which forbids them from restricting information based on viewpoint or content discrimination.
- Libraries are places of inclusion rather than exclusion. Current blocking/filtering software prevents not only access to what some may consider "objectionable" material, but also blocks information protected by the First Amendment. The result is that legal and useful material will inevitably be blocked. Examples of sites that have been blocked by popular commercial blocking/filtering products include those on breast cancer, AIDS, women's rights, and animal rights.
- Filters can impose the producer's viewpoint on the community.
- Producers do not generally reveal what is being blocked, or provide methods for users to reach sites that were inadvertently blocked.
- Criteria used to block content are vaguely defined and subjectively applied.
- The vast majority of Internet sites are informative and useful. Blocking/filtering software often blocks access to materials it is not designed to block.
- Most blocking/filtering software is designed for the home market. Filters are intended to respond to the preferences of parents making decisions for their own children. Libraries are responsible for serving a broad and diverse community with different preferences and views. Blocking Internet sites is antithetical to library missions because it requires the library to limit information access.
- In a library setting, filtering today is a one-size-fits-all "solution," which cannot adopt to the varying ages and maturity levels of individual users.
- A role of librarians is to advise and assist users in selecting information resources. Parents and only parents have the right and responsibility to restrict their own children's access — and only their own children's access — to library resources, including the Internet. Librarians do not serve *in loco parentis*.
- Library use of blocking/filtering software creates an implied contract with parents that their children ***will not*** be able to access material on the Internet that they do not wish their children read or view. Libraries will be unable to fulfill this implied contract, due to the technological limitations of the software, thus exposing themselves to possible legal liability and litigation.
- Laws prohibiting the production or distribution of child pornography and obscenity apply to the Internet. These laws provide protection for libraries and their users.

What Can Your Library Do to Promote Access to the Internet?

- Educate yourself, your staff, library board, governing bodies, community leaders, parents, elected officials etc., about the Internet and how best to take advantage of the wealth of information available. For examples of what other libraries have done, contact the ALA Public Information Office at 800-545-2433, ext. 5044 or pio@ala.org.
- Uphold the First Amendment by establishing and implementing written guidelines and policies on Internet use in your library in keeping with your library's overall policies on access to library materials. For information on and copies of the *Library Bill of Rights* and its *Interpretation on Electronic Information, Services and Networks*, contact the ALA Office for Intellectual Freedom at 800/545-2433, ext. 4223.
- Promote Internet use by facilitating user access to Web sites that satisfy user interest and needs.
- Create and promote library Web pages designed both for general use and for use by children. These pages should point to sites that have been reviewed by library staff.
- Consider using privacy screens or arranging terminals away from public view to protect a user's confidentiality.
- Provide information and training for parents and minors that remind users of time, place and manner restrictions on Internet use.
- Establish and implement user behavior policies.

For further information on this topic, contact the Office for Intellectual Freedom at 800/545-2433, ext. 4223, by fax at (312) 280-4227, or by e-mail at oif@ala.org. □

Questions and Answers
Access to Electronic Information, Services and Networks: An Interpretation of the *Library Bill of Rights*

In January of 1996, the American Library Association (ALA) approved *Access to Electronic Information, Services and Networks: An Interpretation of the Library Bill of Rights*. ALA's Intellectual Freedom Committee then convened to produce a sample set of questions and answers to clarify the implications and applications of this Interpretation.

Many of the following questions will not have a single answer. Each library must develop policies in keeping with its mission, objectives, and users. Librarians must also be cognizant of local legislation and judicial decisions that may affect implementation of their policies. All librarians are professionally obligated to strive for free access to information.

Introduction

1. What are the factors that uniquely position American librarianship to provide access to electronic information?

Electronic media offer an unprecedented forum for the sharing of information and ideas envisioned by the Founding Fathers in the U.S. Constitution. Their vision cannot be realized unless libraries provide free access to electronic information, services, and networks.

Thomas Jefferson, James Madison, and others laid the basis for a government that made education, access to information, and toleration for dissent cornerstones of a great democratic experiment. With geographic expansion and the rise of a mass press, American government facilitated these constitutional principles through the creation of such innovative institutions as the public school, land grant colleges, and the library. By the close of the 19th century, professionally trained librarians developed specialized techniques in support of their democratic mission. In the 1930's, the *Library Bill of Rights* acknowledged librarians' ethical responsibility to the Constitution's promise of access to information in all formats to all people.

2. What is the library's role in facilitating freedom of expression in an electronic arena?

Libraries are a national information infrastructure providing people with access and participation in the electronic arena. Libraries are essential to the informed debate demanded by the Constitution and for the provision of access to electronic information resources to those who might otherwise be excluded.

3. Why should libraries extend access to electronic information resources to minors?

Those libraries with a mission that includes service to minors should make available to them a full range of information necessary to become thinking adults and the informed electorate envisioned in the Constitution. The opportunity to participate responsibly in the electronic arena is also vital for nurturing the information literacy skills demanded by the Information Age. Only parents and legal guardians have the right and responsibility to restrict their children's — and only their own children's — access to any electronic resource.

4. Do ALA intellectual freedom and ethics policies apply to the provision of access to electronic information, services and networks?

Yes, because information is information regardless of format. Library resources in electronic form are increasingly recognized as vital to the provision of information that is the core of the library's role in society.

5. Does the ALA require that libraries adopt the *Library Bill of Rights* or the ALA *Code of Ethics*?

No. ALA has no authority to govern or regulate libraries. ALA's policies are voluntary and serve only as guidelines for local policy development.

6. Does ALA censure libraries or librarians who do not adhere to or adopt the *Library Bill of Rights* or the ALA *Code of Ethics*?

No.

7. Do libraries need to develop policies about access to electronic information, services, and networks?

Yes. Libraries should formally adopt and periodically reexamine policies that develop from the missions and goals specific to their institutions.

Rights of Users

8. What can we do when vendors/network providers/licensors attempt to limit or edit access to electronic information?

Librarians should be strong advocates of open access to information regardless of storage media. When purchasing electronic information resources, libraries should thus attempt to empower themselves during contract negotiations with vendors/network providers/licensors to ensure the least restrictive access in current and future products.

Libraries themselves along with any parent institution and consortia partners should also communicate their

(continued on page 150)

FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council delivered on July 1 at the 1997 ALA Annual Conference in San Francisco by FTRF President June Pinnell-Stephens.

The recent decision in *Reno v. ACLU* and *U.S. Department of Justice v. ALA* was a monumental victory for both the First Amendment and for librarians. We can now continue to fulfill our responsibilities to provide all points of view on all questions and issues of our times, and to make these ideas and opinions available to anyone who wants or needs them, regardless of age, background or views. In this case, we put ourselves on the line and, because of who we are, what we do, and our role in society, we succeeded in convincing the U.S. Supreme Court that the Communication Decency Act is unconstitutional. Bruce Ennis, our general counsel, claimed that this decision is the legal birth certificate of the Internet and that, because attempts to restrict content on the Internet will have to meet the strictest constitutional review, Congress will find few ways left to limit speech in cyberspace. We asked Jenner & Block to prepare highlights of the decision, and they are attached to this report. (See page 137.)

In a related case, the Foundation and ALA secured another important victory in *ALA v. Pataki*. This statute also attempted to regulate information on the Internet that is available to persons under 18. The New York law, however, used the "harmful to minors" standard instead of the Communication Decency Act's "decency" standard.

Our complaint alleged the statute violated both the First Amendment and the Commerce Clause. Judge Preska ruled under the Commerce Clause. She found that the Internet is analogous to a highway or railroad. This determination means that the phase "information highway" is more than a mere buzzword; it has legal significance, because the similarity between the Internet and more traditional instruments of interstate commerce leads to analysis under the Commerce Clause. The Judge then ruled that the statute contravenes the Commerce Clause for three reasons: First, the Act represents an unconstitutional projection of New York law onto conduct that occurs wholly outside New York. Second, the Act is invalid because although protecting children from indecent material is a legitimate and indisputably worthy subject of state legislation, the burdens on interstate commerce resulting from the Act clearly exceed any local benefit derived from it. Finally, the Internet is one of those areas of commerce that must be marked off as a national preserve to protect users from inconsistent legislation that, taken to its most extreme, could paralyze development of the Internet altogether. Thus, the Commerce Clause ordains that only Congress can legislate in this area, subject, or course, to whatever limitations other provisions of the Constitution (such as the First Amendment) may require.

In yet another related case, this one in Georgia, the federal district court held unconstitutional a Georgia statute prohibiting anonymous or pseudonymous messages on the Internet. Although the Commerce Clause was also at issue here, the decision relied solely on the First Amendment. Neither the Foundation nor ALA were parties in this case.

In other litigation matters, the issue of whether a publisher can be held liable for civil damages because of a criminal act of one of its customers is back in the courts. On August 30, 1996, U.S. District Court Judge Alexander Williams, Jr., dismissed the plaintiff's action against Paladin Press (*Rice v. Paladin Press*) in its entirety by granting the defendant's motion for summary judgement. In short, the judge found that the book is protected speech under the First Amendment test adopted by the U.S. Supreme Court in *Brandenburg v. Ohio*, which holds that states may punish speech if the speaker intends imminent lawless action. The plaintiffs appealed their case to the U.S. Fourth Circuit Court of Appeals, and oral arguments were held in April, 1997. The appeal focused on whether Brandenburg establishes the proper test for this case and, if so, whether Paladin's speech is protected. The Foundation, as it had done at the trial court level, filed an amicus brief in the appeal, joining with the Association of American Publishers and the American Booksellers Foundation for Free Expression, among others.

In new litigation, the Foundation has joined with several other organizations in an amicus brief to challenge provisions of the Child Pornography Prevention Act of 1996. This act defines child pornography as the visual depiction of a minor engaged in sexually explicit conduct, the visual depiction of what *appears* to be a minor engaged in sexually explicit conduct or the advertising, promotion, presentation, description or distribution of a visual depiction in a manner that conveys the *impression* that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.

Finally, the Foundation was especially pleased to present its Roll of Honor Award to Bruce J. Ennis at the Opening General Session of this conference. Bruce Ennis has been general counsel to the Foundation for over ten years. In that time, he has assisted the Foundation in litigating the most important First Amendment cases of the last decade, including *U.S. Department of Justice v. ALA* and *Reno v. ACLU*, the challenge to the Communication Decency Act. Mr. Ennis, representing the Foundation, ALA, and a coalition of other organizations, argued this case before the U.S. Supreme Court and won that resounding victory for the First Amendment. It has

been a personal honor and privilege to work with Bruce, and he richly deserves this recognition. I know that he will continue the good fight to uphold the First Amendment and, in doing so, safeguard and protect our libraries. □

police raid seizes Oscar-winning film

Michael Camfield had not even finished watching the movie he had rented, 1979 Oscar-winner *The Tin Drum*, when police knocked on his front door and demanded that he give it to them. "I got the strong impression that verbal resistance on my part was futile and they were going to get that tape one way or another and arrest me if they had to," said Camfield, development director for the American Civil Liberties Union in Oklahoma.

The officers had used Blockbuster video store records to track down Camfield and another customer who had rented the film June 25. They also seized copies of the movie from six video outlets within hours of a judge's opinion earlier that day that it was obscene.

"Frankly, as long as the statute is the way it is, I couldn't do anything else," said District Judge Richard Freeman. He said that under Oklahoma law any depiction of a person under 18 — or anyone portraying someone under 18 — having sex is legally obscene. Freeman was responding to a complaint by Oklahomans for Children and Families (OCAF), an anti-pornography group originally upset that the film is available at the public library.

The Oklahoma City Metropolitan Library System pledged to heed Judge Freeman's decision and no longer offer the movie. The library's only copy of the film was given to the police and will not be replaced. The day before the judge's ruling, OCAF leader Bob Anderson asked the Oklahoma City Council to fire library system executive director Lee Brawner and replace the entire library commission. He complained that Brawner and the library staff were censoring this group because they would not act on their complaints.

Library system attorney William Comstock told the city council the group's demands to remove the film were premature until a judge ruled the film illegal. He also told the council that OCAF was misdirecting its attentions. "Oklahomans for Children and Families' statement of policy is to significantly reduce sexual violence and victimization of women and children in Oklahoma County and the state of Oklahoma," he said. "Folks, nobody supports that more than me. But the people heading up the wagon are getting out of control. They are not recognizing any boundaries. They are not going to be satisfied until they can dictate to you, me and everybody in this county what books they can read and what films they can view — it is getting out of hand."

After Judge Freeman's decision, however, Comstock said the library would not challenge the ruling. "I know there are some people in the community who think the library ought to fight this," he said, "but we think our resources can be used better elsewhere."

The Tin Drum, which won the Oscar for Best Foreign Language Film, is an adaptation of the Guenter Grass novel. It is the allegorical story of a boy, faced with the depravities of Nazi Germany, who refuses to grow up. The movie includes one scene where a boy, depicted to be about 6 or 7, has oral sex in a bathhouse with a teenage girl.

In the aftermath of the police raids on the video stores and Camfield's home, Joann Bell, executive director of the ACLU of Oklahoma, was inundated with messages of support and calls from reporters. The film's director, Volker Schlondorff, faxed a statement to Oklahoma newspapers humorously suggesting that the police might also want to round up copies of the novel from "all public libraries as well as private homes."

While legal experts agreed that the film could indeed violate state child pornography statutes, they also said the police and the court had acted precipitously. ACLU lawyers and officials subsequently filed suit on grounds that the police and video store may have violated federally protected privacy rights. In addition, there was the question of whether the Supreme Court's definition of obscenity, which says artistic merit must be taken into account, could discount the state law.

"No one disputes that child pornography is evil, but we cannot turn our cultural decisions over to people who would put a fig leaf in front of a Michelangelo statute," said Michael Salem, an attorney for the Oklahoma ACLU. Furthermore, Salem said, "it is a violation of federal law to acquire the records of a customer at a video store without a court order or a search warrant."

Salem was referring to the 1988 Video Privacy Protection Act, which prohibits anyone from obtaining or divulging information about customers without their explicit written permission. Its enactment was prompted by Robert Bork's contentious Senate confirmation hearings, when reporters obtained a list of movies he had rented.

Jonathan Baskin, senior vice president for corporate communications at Blockbuster, said, "It is a company policy never to give out names. . . . We take this very seriously. This is not only a legal issue for us — it's a moral issue. The employees know the policy. We don't know yet what went on in the store."

Subsequent reports suggested that Blockbuster clerks had been threatened with arrest by officers if they did not turn over the names of those who had copies of the film.

OCAF's Anderson said he heard about the movie on a Christian radio talk show in late April and then checked

to see if the library was circulating the film. According to library officials, card holder Sherry Verser, apparently an OCAF member, asked that the system's only copy be sent to Bethany Library. An employee at the branch where the film is usually kept said it was the first time the R-rated movie had been checked out in months. Anderson then brought the film to library commission meetings and the city council, where he demanded he be allowed to show excerpts. His request was denied and he turned over the video to the Oklahoma City police. Police officials reviewed the film and then handed it over to Judge Freeman, who in turn, verbally ruled the movie obscene.

After the ruling, Freeman told the news media he had not watched the entire film and his ruling only applied to the "movie with one scene" that police gave him. But in a previous interview, Freeman said he had watched the "entire film at the time of his ruling" and found the "entire film" to be obscene. Reported in: *Washington Post*, June 28, 30; *Oklahoma Gazette*, July 3; *Daily Oklahoman*, June 25; *Tulsa World*, June 27. □

new television ratings approved

The television industry formally agreed to an enhanced ratings system July 10, but its agreement to abide by the wishes of Congress and other critics by labeling programs that contain sex, violence and coarse language had all the qualities of a shotgun wedding.

While Vice President Al Gore and other politicians were joined by family advocates at a White House press conference to trumpet the agreement, television executives were noticeably absent, choosing to make their own announcement via a press release.

"This is not a day of celebration for us," said one network executive. "We're bowing to the inevitable in terms of political pressure."

Even the White House, which had called for the original ratings system to be given a ten-month trial when it was implemented in January, had abandoned that stance. Gore joined the growing political chorus calling for more content-specific guidelines.

All major U.S. broadcast and cable networks except top-rated NBC agreed to the new system under which the following changes to the previous age-based ratings code will take effect October 1:

- Networks will label shows with V (violence), S (sexual content), L (strong language), and D (suggestive dialogue). A fifth designation, FV, will be affixed to children's shows with high levels of "fantasy violence."
- Warning icons in the top left of the screen will be larger and last longer.
- Y will continue to denote shows for all youth.

The plan got generally poor reviews in Hollywood. In addition to NBC's decision not to participate, the guilds that represent writers, directors and actors expressed concern about chilling effects on programming.

"There's no such thing as a good 'V'" said John Wells, executive producer of NBC's top-rated "ER." "How are they going to differentiate, for example, between a show that examines the consequences of violence, and a show that's just exploitative?" Wells and others said they feared the ratings will stigmatize adventurous programs among advertisers, and possibly keep some shows from ever getting on the air. "A show that can be labeled can be boycotted, and that could affect the networks' choices," Wells said.

The guilds threatened to file a lawsuit challenging the agreement but said they would reserve their options while they evaluate the revised systems.

Industry executives negotiated the new system with the National PTA, the National Education Association, the American Medical Association, and seven other organizations in response to a Congressional threat to enact a ratings system into law if the industry did not act voluntarily.

Although network executives acknowledged they might have underestimated the depth of parental concern about violence and sex when they created the age-based system, they objected to negotiating with parent groups under threat of more restrictive legislation. In their public responses, broadcast officials did not hide their dissatisfaction with the process, even as they endorsed the agreement.

Representatives of the ten children's, medical and educational groups that negotiated the deal praised the industry for agreeing to review the system. But they noted that they viewed the new plan as a compromise on their part, because they would have preferred a system that indicated actual levels of sex, violence and language.

While promising to honor an eighteen-month moratorium on seeking ratings-related legislation, the groups said they want to subject the new system at some point to independent review. Reported in: *USA Today*, July 11; *Los Angeles Times*, July 11. □

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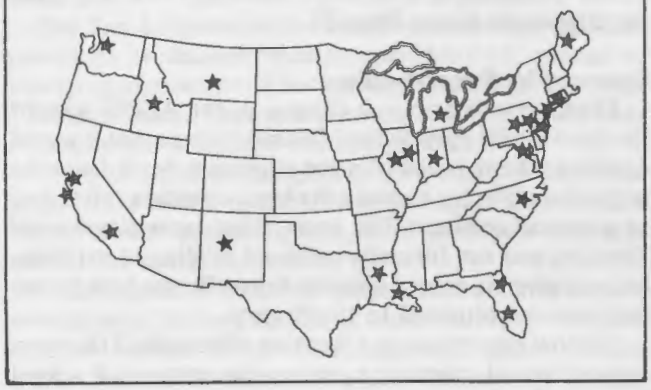
correction

On page 63 of the May, 1997, issue of the *Newsletter*, a story reporting the decision of the Peru Elementary School Board's consideration of a complaint against John Steinbeck's *Of Mice and Men* was incorrectly datelined Peru, Indiana. The events reported took place in Peru, Illinois. □

censorship dateline



libraries

Belmont, California

Horrified by what she considers pornography on a library shelf, a Belmont woman held a book hostage from her public library. Sometime in May, Linda McGeogh stumbled across *The Joy of Gay Sex* in the Belmont Public Library. The book was on a to-be-shelved cart, within reach of her young children. She picked it up, flipping through its pages, and was immediately struck by its graphic drawings and expletives in the text.

"It was shocking," she said. "I felt like I was being burned. I actually dropped the book." She wasn't bothered by the homosexual subject matter, she said, but rather the explicit sexual content, and, more importantly, the library's policy of mixing adult books and children's materials on the cart.

McGeogh asked the branch manager if the book and other sexually explicit materials could be placed in a separate section, perhaps behind a desk where it would be more difficult to find. When told that would violate library policy, McGeogh took the book and refused to return it.

"We try to respond to the needs of our clients," said librarian Linda Chiochios. "When something like this happens, we evaluate the content of the book and make a response. But without a formal complaint that's difficult." Reported in: *Oakland Tribune*, June 17.

Elgin, Illinois

The teenage romance novel, *Forever*, by Judy Blume, was banned from middle school libraries in Elgin School District U46 last winter by a committee of teachers, administrators, librarians and parents. That decision was confirmed in July by the U46 Board of Education.

The board voted 6-1 to endorse the decision. The only board member who voted "no," Doug Heaton, said he thought the committee had not gone far enough in keeping that novel and other books with sexually explicit scenes out of the hands of children.

The controversy began in December when a mother complained about *Forever* being available in the library at Eastview Middle School. That mother later withdrew her complaint to avoid embarrassing her eighth-grade daughter. But another Elgin woman took up the cause and filed a similar complaint.

In January, a seven-member committee decided by a 4-3 vote that *Forever* be removed from middle school libraries throughout the district; that it be left in high school libraries; and that the policy by which U46 selects library books be left as it was, largely under the control of each school's librarian.

At the July board meeting, Curriculum Director Sue Bernardi said she was asking the board to reaffirm the committee's decision because the committee had conducted its meeting behind closed doors. No board member made a single comment before voting to uphold the ruling.

But Heaton said later that he voted "no" because "they said that book can remain in high school libraries and, having read it, I don't think it's appropriate in any of our schools" because of its sex scenes. Heaton said he also disapproved of the district's new book challenge policy and its policy for selecting library books.

In particular, Heaton objected to the two policies endorsing the ALA's *Library Bill of Rights*. "That statement is much too broad for a school library," he said. Reported in: *Elgin Courier-News*, July 16.

Indianapolis, Indiana

Religious materials in the libraries of four Indiana universities and seminaries were the targets of vandals who mutilated the collection April 26. Jeff Siemon, assistant librarian, Christian Theological Seminary, Indianapolis, said that "controversial works about the Jehovah's Witnesses written by non-Jehovah's Witnesses" had been damaged or stolen. Some of the books had pages slashed, while others were torn entirely in half. A few volumes were recovered from trash containers where they had been dumped.

Staff members at two of the libraries, which are about a hundred miles apart, gave identical descriptions of a patron who requested the materials just prior to discovery of the damage. In addition to Christian Theological Seminary, the libraries involved were at Concordia Theological Seminary in Fort Wayne, Anderson University, and Marian College, Indianapolis. Reported in: *Library Journal*, June 1.

Monroe, Louisiana

The recent removal of periodicals from a Louisiana high school library prompted the ACLU of Louisiana to amend an anti-censorship federal lawsuit it had filed last year against the same school officials. The revised suit, filed in May in U.S. District Court in Monroe, challenged the constitutionality of a policy adopted in Ouachita Parish on the selection of library materials.

Among the periodicals that ACLU officials said were removed from the library or withheld from student access at West Monroe High School were certain issues of *Better Homes & Gardens*, *Bride's*, *Business Week*, *Education Digest*, *Education Week*, *Phi Delta Kappan*, and *Science News*.

Principal Ernest "Buddy" Reed said the list was inaccurate. He said out of 586 periodicals reviewed since September, certain issues of just seven magazines were not placed on the shelves because of sexual content: *Bride's*, *Discover*, *Ebony*, *Essence*, *Louisiana Cultural Vistas*, *Newsweek*, and *Vogue*. Reported in: *Education Week*, May 21.

Thorndike, Maine

Fifth-grade students at Monroe Elementary School wishing to check out *All But Alice*, by Phyllis Reynolds Naylor, must check with their mother or father first. A parent of a fourth-grade student who checked the book out of the library complained about a passage to school officials. An ad hoc committee agreed that the book was appropriate for fifth grade students or older. At the June 9 board meeting, it was decided to retain the book in the library, but restrict it to students in the sixth grade and above. The board then amended the motion to allow fifth-graders to read the book, but only with parental permission. Reported in: *Belfast Republican Journal*, June 12.

Greenville, North Carolina

A Greenville County school district committee will consider the complaints of parents who want two books removed from middle school libraries. The ten-member review committee will review both *Adam & Eve & Pinch Me* and *One Fat Summer*, and decide whether the books will remain on the shelves.

Pati Thomason said she was shocked by *Adam & Eve & Pinch Me*, by Julie Johnson, which her thirteen-year-old daughter brought home from Greer Middle School. The book uses objectionable language like "damn" and "jerk-ass," she said.

Georgia Bean objected to her son's class at Simpsonville's Hillcrest Middle School reading *One Fat Summer*, by Robert M. Lipsyte, a book that includes a passage on masturbation.

Adam & Eve & Pinch Me, about a girl who is bounced from foster home to foster home, was a South Carolina Young Adult Book Award nominee, according to librarian Pat Scales. *One Fat Summer* was a *New York Times* Outstanding Children's Book of 1977. Reported in: *Greenville News*, May 27.

Brownsville, Pennsylvania

The Greater Pittsburgh chapter of the ACLU warned the Brownsville Area School District in June that it would challenge the removal of a sex education book from the high school library because the book contains references to gays and lesbians. The book, *Understanding Sexual Identity*, was not formally removed by district officials, but was given to school director James Brown by a parent and was not returned to the library.

"School districts cannot function effectively if they permit individual parents to censor the content of school libraries based on personal moral and religious beliefs," ACLU director Witold Walczak wrote to Superintendent Dexston Reed June 11.

"If a parent were to remove every book that is offensive to someone, there would be little of any substance remaining. If a parent, as in this case, disapproves of a particular book, she may take measures to prevent her son or daughter from accessing the material. She may not, however, impose her values and beliefs on everyone else by removing the book from the shelves," Walczak wrote.

Parent Gina Wellington first complained to the school board about the book. "I find it all objectionable," she said. "I'll destroy it. I will not see another child in this district read this book." Other parents and a group of ministers also reviewed the book and told district officials that they believe it should not be available to students.

"There are a lot of people around here who are concerned about that book being in our library," said Rev. Robert Spence. "I just had a meeting with some other ministers and they're all opposed to it . . . how it talks about gays and their way of life. Myself, I think it's terrible."

Superintendent Reed said the ACLU letter was premature, however. He said the school board had made no decision to permanently remove the book. The first step of the district's reconsideration policy, he explained, calls for the complaining parent, the high school librarian, and the high school principal to read the book and discuss its place in the curriculum in order to reach an initial decision on its fate. He said that process was under way. Reported in: *Pittsburgh Post-Gazette*, June 12; *Uniontown Herald-Standard*, June 12.

schools

San Leandro, California

One week after the San Leandro School Board approved a controversial policy on school publications and

productions (see *Newsletter*, July 1997, p. 96), its effects were already reverberating loudly across the high school campus.

The San Leandro High School Drama Club opted to cancel its production, due to open May 15, instead of changing the script. The students canceled the play, "Raising Heck," because the new policy requires they eliminate any language deemed profane.

"I asked Principal Leigh Akins if we had to cancel the play," said drama teacher Terry Minton. "She asked if there was any profanity in it and I said 'yes.' She said we had to cancel it then."

"Raising Heck" is a four-play production made up of several small scenes, including ones that deal with such sensitive issues as gay bashing and sexual harassment. "Armandomundo," a play created by student Armando McClain, was the most affected by the policy.

The policy specifically prohibits the use of profanity in "student created" productions. One of the scenes in McClain's work centered around the loyalty of two brothers and contained the words "hell" and "prick."

McClain and his drama classmates said they felt strongly that changing the language would lessen the importance and strength of the work. The students said they would rather cancel the play than compromise their creative integrity.

The frustrations expressed by the students mirrored ones heard when last year's production of "The Breakfast Club" was canceled by the District because it contained what some called obscene language. That play was allowed to go on after a huge public outcry, but the controversy spurred the district to enact a new policy governing student productions that was passed in May. Reported in: *San Leandro Times*, May 15.

Windsor, Connecticut

When school board member Mark Cashman heard the book *Being There*, by Jerzy Kosinski, had been assigned to a class at the high school, he got worried. The book's sexual references prompted Cashman to research the school system's policy on sexually explicit literature. Cashman developed new language intended to protect parents who he believed might not want their children reading such works.

On June 23, school board members tangled over whether Cashman was moving too swiftly with his proposal, under which parents would have to be notified in advance if a literary work assigned to their student's class contains sexual content more intense than kissing. If consent is not given, an alternate text would be available. Also under the proposal, if parents give their consent, they still have a right to challenge the text at a later time.

As he attempted to make a motion for the board to discuss his proposal, Cashman was stopped by Vice President Elizabeth Kenneson, filling in as chair in the President's absence. "That motion is ruled out of order," she said. "This is proposed as an information item on the agenda, and the public was not notified of this in advance."

Cashman disagreed, but Kenneson responded, "I'm not saying your request is inappropriate. I'm just saying the timing is. No copies of the policies were given in advance for the board members to contemplate," she said. "Maybe it has happened in the past, but let me just say in your own words, 'Two wrongs don't make a right.'" Reported in: *Hartford Courant*, June 24.

Jacksonville, Florida

An attempt to ban Richard Wright's 1945 autobiography, *Black Boy*, from Jacksonville's public schools was called "an American tragedy" by the author's widow. Ellen Wright, 84, wrote to *The Florida Times-Union* from Paris in a letter co-signed by her daughter, Julia Wright.

"That such a record of survival against inhuman odds should be suppressed after fifty years of being fruitfully taught in our nation's schools would be tantamount to an American tragedy," Wright wrote. "*Black Boy* tells of a long-ago child who was not allowed to read books. Do we want this book denial to be repeated in today's South?"

In a phone interview with the newspaper, Ellen Wright said she also planned to send letters of encouragement to the Ribault High School teacher and principal who were criticized for assigning the book to students.

In early May, the Rev. Dale Shaw, president of the North Florida Ministerial Alliance and an associate pastor with Mount Olive Baptist Church, targeted the book. "It has historical value. But that doesn't make it right for high school students," he said.

At a Duval County School Board meeting, Shaw said *Black Boy* contained profanity and may spark hard feelings between students of different races. Reported in: *Miami Herald*, May 17.

Twin Falls, Idaho

Phil Jones wants to do away with movies in the classroom. The Twin Falls parent objects to *Schindler's List* and *Macbeth*, both of which are rated R and have been shown to Twin Falls High School seniors and juniors. Recently, he charged, Vera C. O'Leary Junior High School eighth and ninth-graders watched a PG-13 movie in science class that had nothing to do with science.

Jones told the Twin Falls School Board May 13 that students have harassed his children because they do homework rather than watch the movies that Jones finds personally offensive.

After a lengthy discussion, board members said they were reluctant to censor or ban movies. The public is

mixed about what it deems objectionable, they said, but the board agreed to look into the issue. Reported in: *Twin Falls Times-News*, May 15.

Ridgewood, New Jersey

On the last day of school, with a party scheduled, Maria Sweeney's fourth-grade class at the Hawes School was still brooding over the demise of their final project.

"This was our first really serious play," Jessica Greco said.

"We thought we could make a difference," said David Mishler.

And so it went as nineteen students tried to figure out why their class play on Nike and Disney sweatshops had been canceled. They had planned to perform the piece about conditions at Nike and Disney factories (with one skit about the McDonald's Happyland toy factories in Vietnam) for the whole school. But just before their final dress rehearsal, the principal scrapped the performance. The students could not possibly grasp the issue, she said. The play was not "age appropriate."

The students sent letters to district officials, but the decision stood. They could perform their play for their parents, in their classroom, but that was it.

The class, which chose the issue after reading an article on Nike in *Time for Kids*, delved into the subject for a month. "They chose this subject even though we hadn't studied it in depth," said Ms. Sweeney, who each year asks her students to choose a current or historic social justice topic for an end-of-year play.

The play became controversial when a parent of a student in another fourth-grade class raised objections in a letter to the district superintendent.

Some students said their parents were a little wary about the idea of the play being performed. But two mothers visiting the class said that most parents were upset that it was canceled. "The school could have limited the play to third, fourth, and fifth graders," said Andrea Mishler. "Or parents could have signed a form if they didn't want their children to watch."

"I know what's happening out there," said student Han Park. Han was so upset that he poured his heart out in his letter to the district: "We were learning about this for a month, learning it inside out. Three days until the actual play . . . then you stopped everything. Every single person in the class is even sadder than sad. Tears ran down my face. The world seemed to have ended. It's like I live in a world with no heart."

"These workers are not being treated as humans," Han said. "They're like dolls being bitten by dogs who are the bosses." Reported in: *New York Times*, June 26.

Bernalillo, New Mexico

The leader of Bernalillo's Catholic community on May 22 protested Bernalillo High School's production of Tennessee Williams's *Cat on a Hot Tin Roof*, calling a poster advertising the play "sacrilegious." Rev. Bill Sanchez told Bernalillo school board members that neither the play nor the poster was suitable for young people.

School officials supported the play, but Superintendent Gary Dwyer apologized for the poster, which portrayed a man with a liquor bottle standing over a woman on a bed. The image was above the words "Our Lady of Sorrows Gym," the school district-owned location where the play was performed. Sanchez said putting a name for the mother of Jesus next to such an image was culturally offensive.

School board members said they would put together a plan to change the name of the gym, which was once part of the parish church. Reported in: *Albuquerque Journal*, May 23.

Levittown, New York

A Levittown school superintendent's decision to remove a book from the required reading list at the Jonas E. Salk Middle School over the recommendations of a school-appointed committee was called censorship by some. The book, *One Fat Summer*, by Robert Lipsyte, was pulled from the list after parent Doreen Smith complained that it was "sexually explicit and full of violence."

Assistant Superintendent Robert Davis said Superintendent Herman Sirois's decision had little to do with the complaint. "It outlived its usefulness," he said. "It wasn't a terrific book for developmental reading." Davis acknowledged, however, that "had the complainant not come forward, we might not be cognizant of these issues."

But civil libertarians said the decision smacked of censorship. "There's no question if a parent objects to a book, the teacher would offer another book," said Don Parker of the Long Island Coalition Against Censorship. "But when you bring this to a particular committee, by professionals who 4-1 favored the use of the material as required reading, and the superintendent steps in and rejects the recommendation — once that happens, this is censorship."

The book became an issue after Smith said it was inappropriate for students. Her seventh-grade son was enrolled in the developmental reading class at Salk, where the book was part of the required list. "They read it in class, they dissect it in class. They go over it paragraph by paragraph," she said. "Children were told they could skip certain areas if they were uncomfortable with it."

Smith complained to Sirois, who appointed an ad hoc faculty committee whose members read the book and reported back to the board. "What they found was a quality book, and that no change should be made," Davis said. But in March, Sirois announced his decision to withdraw the book from the required reading list,

although it will remain in the school library.

Marilynn Berman, a retired English teacher from Salk, disputed Sirois's contention that the book did not provide an adequate reading level. "There's nothing wrong with that for a seventh-grade level," said Berman.

Davis said the situation had been blown out of proportion. "We've chosen not to require a book. That happens thousands of times a year across Long Island," he said. "It was a fine book in its day. I'm sure the teachers can choose another book." Reported in: *Newsday*, June 14.

Snohomish, Washington

A group of Snohomish School District parents urged the school board June 11 to reject a committee's decision to keep a highly acclaimed novel on a recommended reading list. School faculty and staff have passionately defended *Snow Falling on Cedars*, by David Guterson, winner of the prestigious PEN/Faulkner award, saying it is a powerful literary work by a contemporary author with wonderful insight into Pacific Northwest history. They, and many parents, viewed the request to take it off the lists as a form of censorship.

A committee of district staff and residents that reviews curriculum and instructional materials voted in January to keep the book on the recommended reading lists for high school English and American literature honor students. In March, a group of parents submitted a written appeal, which ultimately led to the June 11 school board hearing.

The complaining parents acknowledged the book's literary value, but argued that its descriptions of sexual intercourse, masturbation, and use of obscene language make it inappropriate for high school students.

Philip Bastian and his wife originally raised the issue in October, 1996. More than a dozen other parents also wrote letters agreeing with the Bastians. Bastian said he didn't necessarily want the book removed from the library, but would like it taken from reading lists.

"While the book may have certain literary qualities, we believe those qualities are outweighed by the repeated references to graphic sex, human genitals and obscenities, which we find to be offensive, objectionable and inappropriate for students," he told the board. Reported in: *Everett Herald*, June 12.

student press

Baton Rouge, Louisiana

Administrators at Louisiana State University were not amused by a yearbook photograph of a fraternity member exposing his genitals. The picture, which appeared in this year's *Gumbo*, showed about forty men in front of the Delta Kappa Epsilon house, hoisting cups, bottles, and cans in the air. One of the men is exposing himself.

The photo prompted students, parents, professors, and alumni to call the university with complaints. "In this kind of thing, you just say 'Doesn't the stupidity ever end?'" said Thomas Risch, dean of students. "And of course it doesn't. We're dealing with 18-year-olds."

He said the university had investigated and learned that the yearbook staff didn't have a recent photo of the fraternity and pulled one from an old file of party pictures. The students said they hadn't noticed the man exposing himself.

Since the yearbook contains about a thousand pictures, the dean said the oversight was possible. "It's not real conspicuous," he said. Reported in: *Chronicle of Higher Education*, May 16.

Frederick, Maryland

Students at Gov. Thomas Johnson High School removed articles and photos they contributed to *The Patriot* after the principal decided to reprint the paper without a headline that administrators found libelous. The May 22 issue of the student paper had contained an article about one classroom's efforts to win a plastic bag recycling contest. The headline read, "Students Bag Ethics in Contest."

After he saw the paper, Principal Joseph Heidel prevented its distribution. In response, all but five writers and photographers pulled their submissions from the edition.

Co-editor Hilary Walker, who was one of the authors of the contested article, said she believed the headline had been a mistake. "But we don't feel they have a right to censor us for a journalistic error," she said. "Had they asked us, we would have removed it. That's not what occurred." Reported in: *Frederick Post*, May 29.

Roseville, Michigan

What one principal called a learning process some students called censorship. The recently graduated editorial board of Roseville High School's *Panther Prowl* said Principal Claudia Varblow carried things too far this past spring semester. Among their complaints, the principal wouldn't allow one of the student journalists to write an informational article on sexually transmitted diseases, cut a story about a controversy in the sports department, and wouldn't allow the *Prowl* to write an article when a group of vandals covered Roseville High with graffiti.

At Roseville High, the principal approves a list of article ideas and edits a completed version of the paper before it goes to press. Students said this procedure wasn't as stringent before the school got a new, nontenured journalism teacher this year.

"Anything that might make the school look bad, we

cannot put in there," former editor Ann-Marie Stanley said. "Everything this year was all fluffed up and nicey-nicey. Our circulation dropped and people said our paper wasn't something they wanted to read."

Business Manager Devon Stec agreed. "She [Varblow] sprung it on us out of the blue," she said. "She never really explained it. It got to a point where we had to start cutting quotes and stories out and couldn't put any real facts in the paper. Everything had to be happy."

In a letter sent to legislators and the media, members of the student editorial board said their rights were trampled. "We have done nothing wrong, except report the truth at Roseville High School," the letter stated. "We, the editorial board . . . cannot sit back and allow this disservice to continue on to the underclassmen of our school. The disservice being that the students cannot be given the news and the journalists cannot report it."

"Part of the educational process is teaching students to write appropriately," responded Varblow, who had been principal for two years. "I think what happened here is that they had a gripe that got out of hand."

Stanley and Stec cited three examples of unjustified censorship:

• The paper was forbidden by Varblow to cover a graffiti incident at the school in April. Vandals marred about 75 percent of the building with spray paint. No story appeared in the *Prowl*.

• Stanley was told not to do an informational article on the dangers of unprotected sex and sexually transmitted diseases. The board called that decision "the most upsetting part of prior review that we have encountered." According to Stanley, "The principal said it would be inappropriate for our school and would promote sex. I wanted to do a well-researched informative article. If anything, my story would have discouraged people from having sex."

• Varblow took out a sports editorial because it was critical of other students, former staff members said.

"I do go through and make editorial changes and grammatical corrections," said Varblow, who said she did not recall the specific incidents cited by the editors. "I don't often strike out something, but we're talking about students that are trying to say all kinds of things and sometimes have to be guided in the way they say things."

The U.S. Supreme Court's 1988 decision in *Hazelwood School District* v. *Kuhlmeier* gives administrators broad powers of control over school-sponsored student publications, although several states — but not Michigan — have passed legislation providing student journalists greater protection from administrative review. But Gloria Olman, a journalism instructor at nearby Utica High School, said *Hazelwood* does not give principals a right to censor arbitrarily.

She noted that the decision states educators "do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."

"These school administrators are working under a false premise," Olman said. "The *Hazelwood* decision allows them to censor forms of expression as long as they can justify it on an educational basis. They just can't censor because they don't like the article or because it would make the school look bad."

Olman said the *Panther Prowl* had won several awards in recent years at the Macomb English Teachers Conference but this year didn't have a strong showing. "They're not winning anything because the paper is filled with fluff," she said. "I can see it and the kids can see it." Reported in: *Macomb Daily*, June 23.

Great Falls, Montana

Student editors at the University of Great Falls fought a decision by the president of the Roman Catholic university to ban from the student newspaper a public-service advertisement for methods of birth control. The ban was protested in a May issue of the paper, the *Lumen Press*.

Frederick W. Gilliard, the president, told the student editors in April to stop running an ad describing means of contraception. The ad, paid for by Planned Parenthood, had drawn some complaints, administrators said. In a letter to the paper's staff, Gilliard said that the ad advocated practices contrary to church teachings and that his action did not amount to censorship.

The paper's editor, T.J. Nelson, disagreed. In an editorial, he said the paper's by-laws guarantee it freedom from censorship and give it the right to disseminate all forms of information. He said the newspaper, which is supported by student fees, had not advocated a position but had simply "provided the means for people to make an informed decision in a responsible manner." Reported in: *Chronicle of Higher Education*, May 16.

university

Philadelphia, Pennsylvania

Officials at Villanova University banned the popular Cliff's Notes study guides to literature series from the campus store. "We're trying to make a statement," said John R. Johannes, vice-president for academic affairs. "We want to encourage students to plunge into a piece of literature. It is more important that they ask questions than get the right answers."

The decision triggered criticism from Cliff's Notes and some students, who called the policy "censorship." "It is disappointing when students are subjected to book ban-

ning and censorship in a university setting," wrote the company in a letter printed as an advertisement in the student paper, "especially when professors label such censorship 'academic integrity.'" Reported in: *Chronicle of Higher Education*, April 25.

periodicals

New York, New York

Kmart Corporation and Wal-Mart Stores, Inc., the nation's largest retailer, said June 2 they would not carry an issue of the tabloid newspaper, *The Globe*, that included a transcript of what purportedly was said in a New York hotel room where Frank Gifford was alleged to have groped a woman. In May, the tabloid printed photos it claimed showed Gifford groping a 46-year-old married woman. Kmart pulled that issue from its stores.

Gifford and his wife, talk show host Kathie Lee Gifford, have not denied the authenticity of the fuzzy photos.

Wal-Mart representative Dale Ingram said the decision was consistent with providing customers products "they would expect to find" at the store. He said the decision would not affect Wal-Mart's relationship with Mrs. Gifford, whose name appears on apparel sold by the chain. Reported in: *Gwinnett Daily Post*, June 5.

Morrow, Ohio

A local convenience store cleared *Hustler* and other allegedly obscene magazines from its shelves in late May following a civil complaint by Warren County Prosecutor Tim Oliver. Donna Campbell, owner of the Beverage Depot in Morrow, said on May 27 the store ceased selling *Hustler*, *Club*, *Hawk* and other magazines, complying with an agreement reached a week earlier in Warren County Common Pleas Court.

After the prosecutor received complaints about the Beverage Depot, an investigator bought the magazines there on three occasions. The magazines were sold from behind the counter from blinder racks, which displayed only their titles. "The advertisements in them was a big part of our determination that these magazines were obscene, as much as the articles and the materials themselves," said Assistant Prosecutor Michael Powell.

The magazines included three published by Larry Flynt. If Campbell reconsiders and takes this case to trial, "we'll pay 100 percent of her fees to litigate this matter," Flynt said.

"People won't sell the magazine for fear that they're going to be prosecuted," Flynt said. "We can pay their legal fees. But if there's an adverse outcome at trial, we can't do the prison time for them." Reported in: *Cincinnati Enquirer*, May 29.

recording

Los Angeles, California

Less than a week after Southern Baptists voted to boycott Walt Disney, Co., for alleged anti-family practices (see page 133), the entertainment giant released and then yanked from stores 100,000 copies of an obscenity-laced music album.

In a rare, if not unprecedented, action in the record business, the company pulled the compact discs from stores June 24 only six hours after Insane Clown Posse's "The Great Malenko" went on sale. Sources said the decision was made by top company executives, including Chairman Michael Eisner and studio chief Joe Roth. Disney said the album released by its Hollywood Records division contained lyrics "inappropriate for a product released under any label of our company." The move was expected to cost Disney more than a million dollars, but public relations is an issue for the company.

The album was believed to have been shipped June 18, the day the Southern Baptist Convention began its Disney boycott. "I think Disney is bowing to pressure from the Southern Baptists," said Alex Abbiss, manager of Insane Clown Pose. The Detroit hip-hop and rap group signed with Disney in June, 1996. "All of a sudden they had a change in taking the moral high ground. They pulled the record. They canceled our 25-city tour. They haven't told us what the bottom line is, but it's pretty clear that they're dropping the band."

A Disney representative denied the recall's timing had anything to do with the boycott. Reported in: *Atlanta Constitution*, June 27; *Tampa Tribune*, June 27.

television

New York, New York

ABC network news executives killed a story about alleged Congressional malfeasance that was to have aired May 16 on the newsmagazine "20/20," prompting a censorship charge from the journalist who originated the probe.

The story, based on a new book, *Inside Congress*, by Ronald Kessler, included allegations of sexual harassment against Rep. Sonny Bono (R-CA) and of sexual activities by other unnamed lawmakers. Bono has denied the allegation. Kessler charged that the story was killed because ABC feared Congress, but network officials said it was shelved because it was weak and unsubstantiated.

"Everything that was in the TV piece is in the book," said Kessler, who previously collaborated with "20/20" on a story about his book *Inside the White House*. "I think ABC killed it out of fear of Congressional regulation and sensitivity on the part of [ABC News President] David Westin about having some congressmen talk about Westin's own personal life."

Westin has been the subject of articles about a reported romantic relationship with ABC public relations executive Sherrie Rollins.

An ABC News producer said, "Westin is a former corporate lawyer from Washington, and Disney [ABC's parent company] has regulatory issues pending before Congress. There's fear here that this piece was killed because the network didn't want to take on Congress."

ABC News representative Eileen Murphy strongly denied that there were any non-journalistic reasons for yanking the story. ABC News Chairman Roone Arledge "killed the story and Westin agreed with the decision," Murphy said. "There were serious problems with the story. We're not afraid to take on Congress — we do that all the time in stories on ABC News. This story said that sexual harassment was rampant in Congress but it did not support those allegations."

Sources at ABC said the story had been cleared by network lawyers before Arledge and Westin made their decision. The network already had sent out press releases promoting the story. Reported in: *Los Angeles Times*, May 17.

art

Rolling Meadows, Illinois

Is it art or a slap in the faces of military veterans? That was the debate at the Rolling Meadows courthouse May 20 when officials removed a student painting on display which depicted a famous image from World War II — soldiers raising the flag at Iwo Jima — but replaced the Stars and Stripes with a happy face.

The oil painting, "War at Home," dismayed military veterans, from prosecutors to judges, who worked at the courthouse. But its removal outraged patrons of the arts.

Cook County Circuit Judge Sam Amirante said the painting was offensive to any Marine, including himself. "The courthouse itself is not a place where political statements should be made," he said.

Organizers of the exhibit of paintings by Harper College students saw nothing offensive about the painting. "I am personally outraged" by the removal of the painting, said Richard Valentino, a board member of the Cultural Encounters Foundation, which had organized three art shows at the courthouse since December.

The artist, 19-year-old David Kasir, said he never meant to offend veterans. "This is probably one of my favorite paintings," he said. Kasir said his painting is anti-war but meant to be humorous.

It was unclear who gave the order to remove the work. Margaret McBride, the presiding judge, said she did not order the removal. The sheriff's office said they could not determine if someone in their agency had ordered the action, although Cook County Sheriff Michael Sheahan said he supported the removal when he learned of it. Reported in: *Daily Herald*, May 21.

airport

Orlando, Florida

Orlando International Airport decided June 6 there was too much body in the window of The Body Shop. Two weeks after a marketing poster of a scantily clad male torso was posted in the airport cosmetics shop, airport officials demanded the store remove the poster because of passenger complaints it was obscene.

The incident was similar to others around the country in response to The Body Shop's campaign for its Watermelon Self-Tan Lotion. The promotion's poster features a bronzed, muscular torso with a bottle of lotion stuck halfway into the front of green briefs. It reads' "Fake It: Self-Tan Lotion."

Though several locations in the three hundred-store chain removed the poster after complaints, the promotion sparked increased sales. "Perhaps it was a bit naughty, but it's just intended to be fun," said Body Shop representative Randy Williamson. "We're just trying to poke fun at the traditional overexposure of female anatomy in Western advertising. Look at Wonderbra promotions. They don't cause an uproar."

"We don't have a Victoria's Secret here," said airport representative Carol Harger. "We have a standard here to have the terminal reflect the expectancy of family values. We want to have an appeal that reflects the entire community. Reported in: *Orlando Sentinel*, June 7.

foreign

Warsaw, Poland

A best-selling biography of Pope John Paul II has become the center of a rare international battle over censorship and copyright law, pitting reporter Carl Bernstein and his New York publisher against a defiant Warsaw publishing house. The copyright duel ended up in the Polish civil courts in May when Bantam Doubleday Dell, a subsidiary of Bertelsmann A.G., sued for damages and the seizure of more than 14,500 Polish copies of the biography of the Pope, which it contended were heavily edited to remove references to the Pontiff's ill health, Polish anti-Semitism, and criticisms of the Roman Catholic Church in Poland.

"Clearly, the Polish publishing industry suffers from the same kind of mentality that characterized the Communist era," said Bernstein, who wrote the book with Italian journalist Marco Politti. "In this case, rather than there being Communist censors, there are people who fear some kind of imagined reprobation from the church of Polish readers."

Ordinarily, international copyright violations involve foreign companies that simply steal a book and publish pirated copies without paying royalties. But this case is unusual, many publishing executives said, because they

had never heard of a company that bought a book and then drastically changed its content.

The book, which was published in more than ten countries without incident, started circulating in Polish bookstores in early May, despite Doubleday's orders to halt publication. The biography was published by Amber Publishing, Ltd., of Warsaw, which bought the Polish rights for more than $10,000, plus royalties.

Amber defended its treatment of the Pope in its editing of the book for sale in Poland. "We thought that these two or three fragments, presenting him just before he came to Poland as a very old, ill and angry man, couldn't be good for his reception," explained Malgorzata Cebo-Foniok, Amber's editor-in-chief. "These fragments, in our opinion, don't in any way change the whole meaning of the book. This is a wonderfully written book."

Doubleday charged that the text was reduced by almost 35 percent because Polish translations are typically longer than the English versions. The American edition of the book had 538 pages, while the Polish edition had 422 pages. But Foniok insisted that fewer than four pages were actually changed and that material was added in a supplement to the book with a warning note that the information was subjective. Doubleday said the supplement did not restore all the missing material and objected to the warning note. Reported in: *New York Times*, May 29 □.

Baptists boycott Disney

The Southern Baptist Convention voted overwhelmingly June 18 to boycott the Walt Disney Co. because of what Baptist leaders called its "gay-friendly" employee benefits, theme parks and television shows — especially the controversial Disney-owned show, "Ellen."

The non-binding resolution was approved by a show of hands among the 12,000 "messengers," or delegates, at the denomination's annual meeting. But it wasn't clear how many of the country's fifteen million Southern Baptists actually are willing to do without Disney theme park vacations, the upcoming Disney movie *Hercules*, Anaheim Mighty Ducks hockey games, Mickey Mouse watches, and Disney-owned television shows, such as "Home Improvement."

Many Southern Baptists object to Disney's policy of providing health benefits to same-sex partners of employees and allowing "gay days" at its theme parks, although such days are not officially sponsored by the parks. Church members also complained about movies with violence and sex, such as *Pulp Fiction*, produced by Disney companies. Convention representative Herb Hollinger said the crowning insult was the episode of the ABC sitcom "Ellen" in which Ellen Degeneres's character revealed she is a lesbian.

The resolution urged "every Southern Baptist to take the stewardship of their time, money and resources so seriously that they refrain from patronizing the Disney Co. and any of its related entities." The Southern Baptists last year gave Disney a year to change its ways. The company ignored their complaints, church leaders said.

In a statement, Disney said: "We are proud that the Disney brand creates more family entertainment of every kind than anyone else in the world. We plan to continue our leadership role and, in fact, we will increase production of family entertainment."

Analysts expected the boycott to have little impact on Disney's earnings. Earlier boycotts of the company by the American Family Association, the Assemblies of God, and the National Association of Free Will Baptists, all for the same reasons, had no visible effect. Reported: *St. Petersburg Times*, June 19. □

(filter . . . from page 117)

noted that "this defense may significantly protect commercial purveyors of obscene postings while providing little (or no) benefit for transmitters of indecent messages that have significant social or artistic value." In other words, many personal or non-profit homepages.)

The more serious or diverse the content, the less easy it is to force it to fit a necessarily simplistic rating scheme. For example, even without full text, library catalogs contain content reflecting the range of positions on controversial topics. And, ratings are surprisingly old-fashioned in their disregard for the interconnectedness of hypertext, where a rating on a document that is an index to other links is useless if those other links aren't also rated.

In his article, "Rating the Net" (http://www.msen.com/~weinberg/rating. htm), Jonathan Weinberg worries that, ". . .running Microsoft Internet Explorer to set to filter using RSACi tag (say), would have a browser configured to accept duly rated mass-market speech from large entertainment corporations, but to block out a substantial amount of quirky, vibrant individual speech from unrated (but child-suitable) sites. This prospect is disturbing."

Weinberg concludes, "It seems to me that at least some of the rating services' problems in assigning ratings to individual documents are inherent. It is the nature of the process that no ratings system can classify documents in a perfectly satisfactory manner, and this theoretical inadequacy has important real-world consequences." Librarians, of course, long ago discovered the same thing in the course of book reviewing.

In the July, 1997, issue of *Wired*, Lawrence Lessig's "Tyranny in the Infrastructure" goes even further:

"Blocking software is bad enough — but in my view, PICS is the devil." In spite of his prediction that the next legislative move may be to mandate provision of blocking technology for users, Lessig believes that censorship embedded in computer architecture will be harder to eradicate than censorship through law.

Later on in "Mending Wall," Frost said, "Before I built a wall I'd ask to know What I was walling in or walling out," but that is precisely what we cannot know once we've put up any kind of filter. Still, as long as filters are used in home settings as a part of parental guidance or as a protection from unpleasantness, they can be regarded as a more automated version of the kinds of judgements families make anyway. Justice Stevens reminded us that "the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." It is for parents to decide if the convenience of relying on software is an acceptable tradeoff for accepting someone else's value judgements. And, at least, some products can be customized for a closer fit to an individual family's values.

It is when filters are applied to public access to the Internet that they become a threat. It is hard to see this threat if you believe that your own values will be shared by every right-thinking person. It is necessary to learn the humility described in Justice Holmes' dissent in the 1919 *Abrams* v. *United States*, case:

> [W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market . . . .

The library has embodied that market by erecting as few barriers as possible to participation. Because of physical and financial limitations, however, libraries have contained far less than the full range of human expression. Our profession has dealt with this necessity through selection, which we have carefully distinguished from censorship. The distinction rests in motive — inclusive or exclusive — and the intangibility of that lets some dismiss the difference as just semantics. Now, faced with the ultimate inclusiveness of the Internet, there are librarians who do not want to carry that distinction to its logical conclusion. For them, the only issue is finding censorware that reliably excludes the offensive but doesn't block what they want to find. X-Stop is one of the filters now being marketed to meet that desire.

Nevertheless, the whole idea of filtering public access is antithetical to selection and to Holmes' free trade in ideas. Censorship usually bans what is disagreeable to authority, or to the majority, but if a library installs commercial software to filter, it has outsourced decisions to an entity with no qualifications beyond the technical, no certain motive except profit, and no ties to the local community. Worse, the library that announces its Internet access is now protected by a filter has made an implied promise to the community that is inherently impossible to keep. Library Safe, for example, believes it is "Making the Internet as Safe as the Public Library."

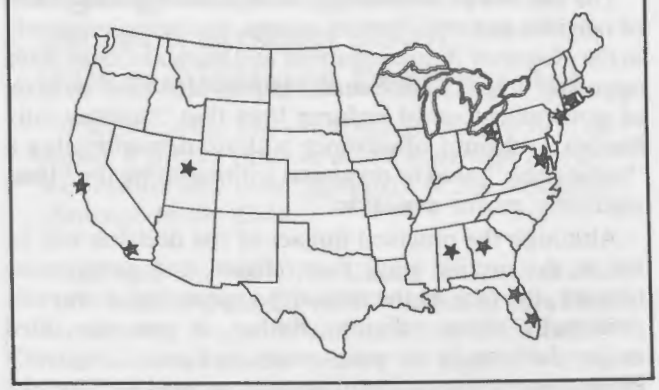
Part of the rationale for installing a filter is to publicize that "protection," but that raises the possibility patrons may feel their rights have been violated. But, if there is any library that filters without publicly admitting, to the extent possible, what is being blocked, that library has broken faith with its reason for being.

The Internet is different from other media that libraries have handled in its low threshold and constant change, but the justifications for censoring it sound remarkably familiar. Always, the youth of those to be protected is emphasized, while any ability to think for themselves is ignored. And, descriptions of the material to be censored are drawn from the furthest extreme. What is often ignored is that the law already covers obscenity and child pornography. By contrast, much of what filters block is more a matter of taste than of law.

From comic books to television to music lyrics to computers, the arguments follow Dr. Fredric Werther's 1953 book *Seduction of the Innocent*, in emphasizing the helplessness of parents to counteract whichever medium is perceived to corrupt children. Werther's campaign nearly eradicated the comics he abhorred, but children didn't improve. MPAA ratings flag those films needing parental guidance, but PG ratings are more likely to be used to avoid guiding a child's understanding of the content. After thirty years of PG, the belief is widespread that anything can be rated, probably even books.

There are important concerns about Internet use by children and teens that filters trivialize or ignore. What kids really want is their own parents' guidance, not an automated alternative that denies their individuality. Parents and their children together must sort out how much time dialed up is healthy, how much trust that child has earned, how the family will protect its privacy, how to respond to advertising, and how far to follow curiosity. As a child's critical thinking skills change with age and with experience, parents can adapt their rules where institutions cannot. No filter can teach children how to say no, because it says it for them. It is parents' values that give a child the inner strength to resist peer pressure. A filter cannot help a child evaluate the subjective content of e-mail or discuss an upsetting experience like being flamed. In the Supreme Court's decision in the CDA case, Justice Stevens quotes from *Prince* v. *Massachusetts* (1944), "It is cardinal with us that the

(continued on page 153)



U.S. Supreme Court

(from page 113)

activities." Justice Stevens said that the Court regarded the law's goal of protecting children from indecent material as legitimate and important, but concluded that the "wholly unprecedented" breadth of the law threatened to suppress far too much speech among adults and even between parents and children.

"The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship," Justice Stevens wrote.

Stevens noted that people could not "confidently assume" that discussions of birth control, homosexuality, or prison rape, or even the transmission of "the card catalogue of the Carnegie Library," would not violate the law and place computer network users at risk of severe criminal penalties. "The severity of criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images," Stevens said.

The law made it a crime to use a computer to transmit indecent material to someone under 18 years old or to display such material "in a manner available" to a person under 18. Justice Stevens said that given the nature of the Internet, there was no way someone transmitting indecent material could be sure that a minor would not see it. He noted that most uses of the Internet, like chat rooms, newsgroups, and the World Wide Web, "are open to all comers."

Nor, Justice Stevens said, could people rely on a defense provided by the law for those who take "good faith, reasonable, effective and appropriate actions" to restrict access by minors.

Justice Stevens's opinion was joined by Justices Antonin Scalia, Anthony M. Kennedy, David H. Souter, Clarence Thomas, Ruth Bader Ginsburg, and Stephen G. Breyer. In a separate opinion by Justice Sandra Day O'Connor, she and Chief Justice William H. Rehnquist, who signed her opinion, subscribed to much of the Court's approach. They joined the other justices in unanimously striking down the "display provision" of the law, which made it illegal to place "patently offensive" material online in a way that minors could find it. But they dissented on the other major provision, which criminalized knowingly sending indecent materials directly to a minor.

O'Connor said this provision of the law could be constitutionally applied, but only in the very limited circumstance of deliberate transmission of indecent material "where the party initiating the communication knows that all of the recipients are minors." If an adult might be among the recipients, the speech cannot constitutionally be suppressed, she said.

Justice O'Connor added that, on the surface, the Communications Decency Act was analogous to a zoning regulation, similar to the "adult zones" for bookstores and X-rated movie theaters the Court has upheld. But the analogy was inexact because there is no way in cyberspace to ensure that minors can be screened out while still allowing adults to have access to the regulated speech.

Justice O'Connor said the law was clearly unconstitutional because it was "akin to a law that makes it a crime for a bookstore owner to sell pornographic magazines to anyone once a minor enters his store."

The Communications Decency Act was a last-minute Senate amendment to the Telecommunications Reform Act of 1996. It originally had been proposed in 1995 by former Sen. James Exon (D-NE). It was adopted without hearings and amid substantial doubts about its constitutionality. For that reason, its sponsors agreed to add a provision guaranteeing quick Supreme Court review after a hearing by single three-judge court.

President Clinton signed the bill and administration lawyers defended the law with vigor. At the same time, White House officials worked on a substitute Internet policy in the event the law was overturned.

The law was challenged by two main coalitions, the Citizens Internet Empowerment Coalition, which included the American Library Association and the Freedom to Read Foundation, many businesses and policy groups, and over 60,000 individual Internet users, and a coalition headed by the American Civil Liberties Union. The U.S. Chamber of Commerce entered the case at the Supreme Court stage to argue that the law presented a threat to the country's ability to compete globally in an age of new communications.

The trial in Philadelphia produced opinions by the three judges, Dolores K. Sloviter, Ronald L. Buckwalter, and Stewart Dalzell, totaling 147 pages with 123 separate factual findings. The Supreme Court relied heavily on these findings, including Justice Stevens's observation that the Internet was not as "pervasive" a medium as television or radio because computer users have to actively search for indecent material and "seldom encounter such content accidentally."

In his opinion, Justice Stevens was critical of several aspects of the government's defense of the law, but singled out one in particular. That was the argument that unless the law was upheld, development of the Internet would be stifled by parents' fears about having on-line access if they could not shield their children from indecent material.

"We find this argument singularly unpersuasive," Justice Stevens said, adding that "the dramatic expansion of this new marketplace of ideas contradicts the factual basis of this contention" given the "phenomenal" growth of the Internet. "As a matter of constitutional tradition," he wrote, "in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it."

In defending the law, the Justice Department had relied on the touchstone case on indecency, *FCC* v. *Pacifica Foundation*. But the Court noted that *Pacifica* required narrowly tailored solutions for media regulation.

Supporters of the law said they would find a way to return to the issue. Bruce Taylor of the National Law Center for Children and Families helped draft the act, and he said that "protecting children is not going to go away — either from Congress or this administration." Reported in: *New York Times*, June 27; *Washington Post* June 27.

In an important ruling on both freedom of religion and the limitations of Congressional power, the Supreme Court said June 25 that Congress exceeded its authority when it passed a law four years ago to give the practice of religion more protection than the Court itself had found to be constitutionally required.

The 6-3 decision in *City of Boerne* v. *Flores* to strike down the Religious Freedom Restoration Act was a forceful reminder of judicial power and a warning to the other branches of government not to trespass into the Court's domain.

"The power to interpret the Constitution in a case or controversy remains in the judiciary," Justice Anthony M. Kennedy said in his majority opinion, which was joined not only by the Court's three most conservative members, Chief Justice William H. Rehnquist and Justices Antonin Scalia and Clarence Thomas, but also by two of the most liberal Justices, John Paul Stevens and Ruth Bader Ginsburg. Justices Sandra Day O'Connor, David H. Souter, and Stephen G. Breyer dissented.

The act, the product of the work of a broad coalition of religious and civil liberties groups, passed unanimously in the House of Representatives and attracted only three opposing votes in the Senate. It provided that no level of government could enforce laws that "substantially burden" religious observance without demonstrating a "compelling" need to do so and without using the "least restrictive means available."

Although the practical impact of the decision will be felt in the myriad ways that religion and government interact, the case as the majority approached it was not principally about religion. Rather, it was the third major decision in as many years to reject Congress's expansive interpretation of its own powers and to take a generous view of the role of the states in the federal system.

Justice Kennedy said that by requiring "searching judicial scrutiny" of any state law that had the effect of making it more difficult for people to practice their religion, the Religious Freedom Restoration Act was a "considerable intrusion into the states' traditional prerogatives and general authority to regulate for the health and welfare of their citizens."

The Religious Freedom Restoration Act was widely unpopular in the states, sixteen of which filed a brief with the court recounting the sometimes fanciful religious claims that prison inmates were making under the law.

In the case before the Court, a Catholic church in the Texas city of Boerne, near San Antonio, had tried to invoke the law to challenge the city's refusal to let it enlarge its church building in a neighborhood zoned for historic preservation. The city responded by challenging the constitutionality of the Religious Freedom Restoration Act.

A U.S. District Court Judge in San Antonio declared the law unconstitutional, but the U.S. Court of Appeals for the Fifth Circuit reversed that decision and upheld the law last year.

The law was passed in response to a 1990 Supreme Court decision that rejected the "compelling interest" test, which the Court had previously applied in some contexts. The Court decision in rejecting the test held that there was no religious exemption from laws that apply generally to everyone and that were not passed to single out or discriminate against religion.

That 5-4 decision, *Employment Division*, v. *Smith*, held that members of a Native American church who used the illegal hallucinogen peyote in their religious rituals had no constitutionally based exemption from Oregon's narcotics laws.

While a constitutional ruling of the Supreme Court can only be overturned by a constitutional amendment, and not by ordinary legislation, supporters of the Religious Freedom Restoration Act argued that they were not con-

highlights of Supreme Court decision striking down Communications Decency Act

The following was prepared by the law firm of Jenner & Block, Counsel to the American Library Association and other plaintiffs in the successful challenge to the CDA.

On June 26, 1997, the United States Supreme Court issued a sweeping re-affirmation of core First Amendment principles and held that communications over the Internet deserve the highest level of constitutional protection. The Court's decision affirmed the injunction entered in June, 1996, against portions of the Communications Decency Act ("CDA") by a three judge court in Philadelphia in the consolidated cases of *American Library Association v. U.S. Department of Justice* and *Reno v. American Civil Liberties Union*. Bruce Ennis of Jenner & Block argued the case in the Supreme Court on behalf of the American Library Association and the other plaintiffs.

The Court's most fundamental holding is that communications on the Internet deserve the same level of constitutional protection as books, magazines, newspapers, and speakers on a street corner soapbox. The Court found that the Internet "constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers," and that "any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox."

The Court's legal analysis emphasizes that the Communications Decency Act, if allowed to stand, would "reduce[] the adult population [on the Internet] to reading only what is fit for children." The Court specifically acknowledged that the CDA would have harmed the ability of libraries and non-profit institutions to provide content to their patrons. The Court rejected the attempt to regulate and restrict the Internet, and, instead, the Court embraced the idea that the Internet would flourish in the *absence* of governmental interference.

For libraries, the most critical holding of the Supreme Court is that libraries that make content available on the Internet can continue to do so with the same constitutional protections that apply to the books on libraries' shelves. A library's posting on the Internet of literature, or research, or popular culture, or even a card catalog is constitutionally protected, even if some of the material is controversial or might be considered by some to be offensive.

The Court's conclusion that "the vast democratic fora of the Internet" merit full constitutional protection will also serve to protect libraries that provide their patrons with access to the Internet. The Court recognized the importance of enabling individuals to speak to the entire world, and to receive speech from the entire world. The library can provide that opportunity to many who would not otherwise have it, and the Supreme Court's decision will go a long way to protecting that access. □

fronting the Court directly but simply legislating a more protective standard of review for laws affecting religion, a standard the Court had deemed neither necessary nor forbidden.

"Congress does not enforce a constitutional right by changing what the right is," Justice Kennedy countered, adding, "It has been given the power 'to enforce,' not the power to determine what constitutes a constitutional violation."

Justice Kennedy said the Act reflected "a lack of proportionality or congruence between the means adopted and the legitimate end to be achieved." Describing the law as "sweeping" and intrusive — "displacing laws and prohibiting official actions of almost every description and regardless of subject matter" — Justice Kennedy said it placed burdens on the states that "far exceed any pattern or practice of unconstitutional conduct" revealed in Congressional hearings or elsewhere.

He said there was no evidence of "some widespread pattern of religious discrimination in this country," but at most, evidence of "incidental burdens" such as the zoning dispute in the case before the Court.

The three dissenting Justices did not take issue with the standard the Court applied. Justice O'Connor, in fact, endorsed it. But Justice O'Connor said the Court should have used the case to revisit and overturn the 1990 decision in the peyote case, from which she dissented and still regards as profoundly wrong. Justices Breyer and Souter also called for reexamining the 1990 case.

Douglas Laycock, a University of Texas law professor who helped draft the law and who argued the case at the Court, said the ruling would invite new challenges to "all the civil rights laws that apply to state and local government." Laycock said the Court was asserting "the power to unilaterally contract our liberties and to deprive Congress of its power to protect those liberties."

Many members of the coalition behind the Religious Freedom Restoration Act were more concerned with what

they saw as the Court's minimizing of the religious interests at stake, but calls by some groups for a constitutional amendment met with, at best, a cautious response.

"Every religious person will be hurt by this decision," said the Rev. Oliver Thomas, special counsel to the National Council of Churches. He said the Court misunderstood the goal of the law, which was not to deter "a bunch of wicked people" from discriminating against religion but to prevent the "unintended consequences" of ordinary laws that make religious observance difficult or impossible. Reported in: *New York Times*, June 26.

A federal program that funds remedial instruction and counseling of disadvantaged children in public and private schools does not violate the Establishment Clause of the First Amendment to the extent public employees are sent into parochial schools to teach, the U.S. Supreme Court decided in a 5-4 vote June 23.

In an opinion by Justice O'Connor, the court in *Agostini* v. *Felton* overruled its 1985 decision in *Aguilar* v. *Felton*, which involved the same parties. The earlier decision held that New York City's program under Title I of the 1965 Elementary and Secondary Education Act created excessive church-state entanglement by requiring pervasive monitoring of instruction in parochial schools.

The Court said that *Aguilar* and a similar case had been undermined by *Zobrest* v. *Catalina Foothills School Dist.*, a 1993 decision which upheld a parochial school student's use of a publicly funded sign language interpreter. *Zobrest* abandoned the premise of *Aguilar* that placement of public employees on parochial school grounds inevitably results in state-sponsored inculcation of religion, constitutes a symbolic union between church and state, or requires pervasive monitoring, the court said. Providing Title I services on a "supplemental," religion-neutral basis with safeguards to assure that instruction remains secular has none of those effects.

The court further found that the New York City schools properly sought post-judgment relief from the *Aguilar* injunction, given the significant intervening changes in the law.

Dissenting, Justice Souter, joined by Justices Stevens, Ginsburg, and Breyer, argued that *Aguilar* drew a workable line by requiring that such instruction of parochial school students occur off-premises. The dissenters also agreed with Justice Ginsburg that the plaintiffs improperly obtained a rehearing in the Supreme Court. Reported in: *U.S. Law Week*, June 24.

The Supreme Court declined March 30 to hear an appeal from two parents who argued that a Wisconsin school district violated their son's constitutional rights when they refused him permission to distribute a flier about a church youth meeting. The parents had argued that the principal at their son's elementary school denied permission for the flier because its subject was religious.

A U.S. District Court judge ruled for the family, but three-judge panel of the U.S. Court of Appeals for the Seventh Circuit sided with the school district. The court found the district's rules for evaluating outside literature reasonable. Reported in: *Education Week*, April 9.

After three years, cartoonist Michael Diana's legal fight is over. The U.S. Supreme Court refused to hear an appeal by Diana, the first cartoonist in U.S. history to be jailed for obscenity.

Diana, who produced his *Boiled Angel* comic books in Florida, must being serving his sentence. Although his works circulated to only three hundred subscribers, the notoriety of his case led to appearances on national television and the publication of a book called *The Worst of Boiled Angel*.

At his March, 1994, trial, Diana testified he was not trying to sexually arouse readers with crude drawings of rape, murder, and dismemberment. However, a psychologist said his work appealed to "those who have a libertine bent" and experts said it had no esthetic value. Reported in: *St. Petersburg Times*, July 2.

cyberspace

Atlanta, Georgia

A federal judge enjoined the state of Georgia June 20 from enforcing a year-old state law that criminalized the use of pseudonyms or anonymous communication over the Internet. U.S. District Court Judge Marvin Shoob ruled that the law was unconstitutionally vague. He issued a temporary injunction declaring the legislation too broad to be enforced.

"The court concludes that plaintiffs are likely to success on their claim that the act is void for vagueness, overbroad and not narrowly tailored to promote a compelling state interest," Judge Shoob wrote.

Shoob said the law would effectively ban constitutionally protected speech, like the use of pen names to "avoid social ostracism, to prevent discrimination and harassment, and to protect privacy." He said its failure to spell out prohibited content could lead to selective prosecution of those expressing minority views.

The lawsuit pitted a number of public interest groups and Internet freedom organizations against the state of Georgia. It also brought together the unlikely pairing of the ACLU with conservative state Rep. Mitchell Kaye. The ACLU argued the law not only violated the First Amendment but interstate commerce rules as well. The judge did not rule on those grounds.

Kaye, a conservative firebrand, fought the bill to no avail on the floor of the Georgia House. He complained it targeted a home page he and other conservative Republicans had organized that was a thorn in the side of the House leadership. Reported in: *Atlanta Journal*, June 21; *Marietta Daily Journal*, June 21, 24.

excerpts from opinions on Internet 'decency'

Following are excerpts from the Supreme Court's decision June 26 in Reno v. ACLU *finding that two provisions of the Communications Decency Act of 1996 violate the First Amendment. Justice John Paul Stevens wrote the majority opinion. Justice Sandra Day O'Connor wrote an opinion, joined by Chief Justice William H. Rehnquist, concurring in part and dissenting in part. The full texts of the decisions are posted at the Web site of the Citizens Internet Empowerment Coalition at* **http://www.ciec.org**. *The site also reviews the history of the act and its progress through the courts, along with reaction from members of Congress and others.*

from the decision by Justice Stevens

At issue is the constitutionality of two statutory provisions enacted to protect minors from "indecent" and "patently offensive" communications on the Internet. Notwithstanding the legitimacy and importance of the Congressional goal of protecting children from harmful materials, we agree with the three-judge District Court that the statute abridges "the freedom of speech" protected by the First Amendment. . . .

Regardless of whether the CDA is so vague that it violates the Fifth Amendment, the many ambiguities concerning the scope of its coverage render it problematic for purposes of the First Amendment. For instance, each of the two parts of the CDA uses a different linguistic form. The first uses the word "indecent," while the second speaks of material that "in context, depicts or describes, in terms patently offensives as measured by contemporary community standards, sexual or excretory activities or organs." Given the absence of a definition of either term, this difference in language will provoke uncertainty among speakers about how the two standards related to each other and just what they mean. Could a speaker confidently assume that a serious discussion about birth control practices, homosexuality, the First Amendment issues raised by the Appendix to our Pacifica opinion, or the consequences of prison rape would not violate the CDA? . . .

Sexually explicit materials on the Internet are created, named, and posted in the same manner as material that is not sexually explicit, and may be accessed either deliberately or unintentionally during the course of an imprecise search. . . . Almost all sexually explicit images are preceded by warnings as to the content. For that reason, the "odds are slim" that a user would enter a sexually explicit site by accident.

Unlike communications received by radio or television, the receipt of information on the Internet requires a series of affirmative steps more deliberate and directed than merely turning a dial. . . . Systems have been developed

(continued on page 146)

New York, New York

A federal judge ruled June 20 that a 1996 New York law making it illegal to send child pornography over the Internet was unconstitutional and barred prosecution of violators. U.S. District Court Judge Loretta Preska held that the law violated the commerce clause of the U.S. Constitution.

While finding the Internet "wholly insensitive to geographic distinctions," and thus not susceptible to regulation by any single state, the court analogized the Internet to a highway or railroad, state regulation of which is traditionally analyzed under the commerce clause to prevent overreaching by any individual state that might jeopardize "the national infrastructure of communications and trade."

"The protection of children from pedophilia is an entirely valid and laudable goal of state legislation," Preska wrote. But, she added, "the act represents an unconstitutional projection of New York law into conduct that occurs wholly outside New York. . . . The unique nature of cyberspace necessitates uniform national treatment and bars the states from enacting inconsistent regulatory schemes."

The New York law was challenged by the American Library Association, the Freedom to Read Foundation, The Association of American Publishers and the ACLU. The complaint in the case, *American Library Association* v. *Pataki*, alleged the statute violated both the First Amendment and the Commerce Clause. Judge Preska ruled under the Commerce Clause only, finding it appropriate with respect to the First Amendment issue to "await the guidance to be provided by the Supreme Court's forthcoming opinion" in the challenge to the Communications Decency Act. Reported in: *New York Post*, June 21.

Salt Lake City, Utah

A federal appeals court has upheld the child pornography prosecution in Utah for computer pornography images received from a California computer bulletin board service operator. The service run by Robert Alan Thomas offered images through forty-eight phone lines from his Milpitas, California, home. Federal authorities in Tennessee connected to his Amateur Action BBS in 1994, copied photos of women and men engaging in sex

acts with animals, and convicted him of pornography charges.

A Utah grand jury indicted Thomas on new charges while he was on trial in Tennessee, citing photographs of nude and seminude children. Thomas protested the Utah charges were double jeopardy. Defense attorneys argued the photographs were stored and available through the same computer system, and had already been generally considered in the Tennessee case.

U.S. District Court Judge Bruce Jenkins refused to dismiss the indictment, ruling the Utah charges involved different viewing of different images. The U.S. Court of Appeals for the Tenth Circuit in Denver upheld Jenkins's "thorough and well-reasoned" decision.

"The district court noted that none of the images which form the basis of the Utah indictment were the basis of the Tennessee charges, and that the Tennessee jury made no findings regarding child pornography on the bulletin board," Chief Judge Stephanie K. Seymour wrote.

Thomas's dual prosecutions have drawn national attention as the first charges filed in the locale where images were received instead of where they originated. California authorities once confiscated Thomas's equipment but then returned it without charging him, said Andrew McCullough, an Orem, Utah, attorney affiliated with the ACLU who worked on the case. But Tennessee's different community standard for judging obscenity led to the charges there, he said.

"We're concerned about long-distance censorship like this," McCullough said, noting there was no evidence Utahans other than officials in the investigation and prosecution had access the photos.

The appeals court also upheld Thomas's 26-month prison sentence from Jenkins, handed down in May, 1996. He is serving it concurrently with a 37-month sentence he began in 1994 from Tennessee. Thomas unsuccessfully argued his Utah sentence should be reduced to end with his Tennessee sentence. Reported in: *Salt Lake Tribune*, June 5.

church and state

Atlanta, Georgia

A Georgia law mandating a moment of silence in public schools — in lieu of the silent prayer called for by its precursor — doesn't offend the Establishment Clause, the U.S. Court of Appeals for the Eleventh Circuit held May 6. The statute requires teachers in public school classrooms to conduct a minute of "quiet reflection" at the opening of each school day, "with the participation of all the pupils therein assembled." A Gwinnett County high school teacher defied the law and was fired.

Applying the Establishment Clause test of *Lemon* v. *Kurtzman*, the court first found that the statute has the secular purpose of providing students with a brief period of silent reflection before beginning the day's activities. The statute explicitly bars conducting the moment "as a religious service or exercise," it noted. Moreover, the law's main sponsor stated that he intended it as a way of addressing problems of violence rather than as providing for school prayer. Although some legislators voiced a desire to reinstate school prayer through the statue, their motives can't override the statute's express purpose, the court said.

The teacher argued that a clause stating that the statute "shall not prevent" student-initiated, non-sectarian, non-proselytizing voluntary prayers showed an intent to authorize school prayer. But the court said that section was only intended to clarify that the statute doesn't prevent activity that has been held constitutional, and in any case is severable. Reported in: *U.S. Law Week*, May 20.

Cleveland, Ohio

An Ohio appeals court struck down the Cleveland school voucher program May 1, ruling that it violated federal and state constitutional provisions barring government aid to religion. The three-judge panel ruled unanimously that the state-established program primarily benefits religious schools in Cleveland because most of the 1,900 participating students use their vouchers to attend such institutions. The program also violated a separate state constitutional provision because it was targeted at a single school district.

The Cleveland program, in its first year, was the first large-scale program in the nation to provide vouchers that allow low-income children to attend religious schools at state expense. State officials said they would appeal the decision to the Ohio Supreme Court.

The court "rejected the two pillars of the arguments that have been made in defense of vouchers across the country," said Robert H. Chanin, general counsel of the National Education Association, who argued against the program before the appeals court.

Chanin said the ruling dismissed the idea that vouchers are a neutral government benefit "because the benefit available is primarily an incentive to send your children to religious schools." And the court rejected the argument that government aid is flowing to religious schools only through the private, independent choices of parents, he said.

The appeals court was clearly troubled by the fact that eighty percent of the participating private schools were religious. And the court noted that no suburban public school districts had agreed to accept Cleveland students bearing vouchers, although the program authorized them to do so.

"The only real choice available to most parents is between sending their child to a sectarian school and having their child remain in the troubled Cleveland city

school district," Judge John C. Young wrote for the court. Such a choice, he added, "steers aid to sectarian schools, resulting in what amounts to a direct government subsidy."

Opponents of the Cleveland program had argued before the appeals court that even if the program passed muster under the U.S. Constitution, it still violated Ohio's, which they argued has stronger prohibitions against government aid to religious schools. But the appeals court said the program violated the federal Constitution. The Ohio Supreme Court has interpreted the language of the state document to be consistent with the federal Constitution's prohibition against government establishment of religion, Judge Young said.

The appeals court ruling overturned a state trial court decision last summer that upheld the constitutionality of the program and allowed it to begin operation. Reported in: *Education Week*, May 7.

gays in military

New York, New York

A federal district judge in New York, who was one of the first to invalidate the Clinton administration's "don't ask, don't tell" policy on homosexuals in the military, expanded his ruling this summer, declaring the policy was designed to encourage prejudice against gays.

In 1995, U.S. District Court Judge Eugene Nickerson held the law violated the free speech rights of homosexuals. On July 2, he went further, declaring that rules prohibiting homosexual conduct violated the constitutional right of gays and lesbians to equal protection under the law.

"It is hard to imagine why the mere holding of hands off base and in private is dangerous to the mission of the armed forces if done by a homosexual but not if done by a heterosexual," Nickerson wrote.

"We are now one step closer to having this archaic law overturned once and for all," said Matt Coles, director of the ACLU's Lesbian and Gay Rights Project. Beatrice Dohrn, legal director of the Lambda Legal Defense and Education Fund, said, "It's as broad and as deep as the significance of this case could be."

The ruling was as direct and critical of the Pentagon policy as was the judge's 1995 ruling when Nickerson likened the government's policy toward homosexuals to Hitler's persecution of the Jews. The U.S. Court of Appeals for the Second Circuit sent that ruling back to the judge, saying he had dealt only with the free speech rights of the six homosexual military personnel who had sued to block the policy.

The appeals court told Nickerson he needed also to examine the Pentagon's prohibitions on certain types of conduct mentioned in the policy. The judge said he could find no acceptable basis for those rules. "There can be no doubt that the purpose of the act is to foster or at least acquiesce in the prejudice of some heterosexuals," he concluded.

"The obvious basis for defining 'homosexual act' to include such an act as holding hands was not because the act is inherently dangerous but because of what the act says about the actor, namely, 'I have a homosexual orientation,'" the judge wrote.

Judge Nickerson also rejected the government's contention that allowing homosexuals to remain in the military would interfere "with unit cohesion." That suggestion "is a euphemism for catering to the prejudices of heterosexuals," he said, citing government statements that such policies refer to the "moral precepts and ethical values" of service personnel who disapprove of homosexuals.

Homosexual advocacy groups are hopeful that the Second Circuit in New York or the Ninth Circuit in San Francisco will declare the policy unconstitutional. That would force the Supreme Court to take one of the cases to resolve the issue. Reported in: *St. Petersburg Times*, July 3.

abortion

West Palm Beach, Florida

A Palm Beach County judge squelched Florida's new abortion consent law July 2, declaring it will subject women seeking abortions "to inaccurate and/or misleading information." The so-called "Women's Right to Know" law — which required doctors to give women seeking abortions a long list of procedures and alternatives — was just two days old when Circuit Judge Kathleen Kroll granted an emergency motion to prevent its enforcement.

Kroll said the "fetal development" pamphlet the state Department of Health began mailing out is vague and the law is confusing. "If the main purpose of the law is to give knowledge, then it would benefit all parties if that information was accurate and not haphazardly gathered," Kroll wrote. Reported in: *Miami Herald*, July 3.

curfew

San Diego, California

A tough San Diego curfew law banning youths from hanging out in public after ten p.m. is unconstitutional because it's too broad, too vague and interferes with free speech, the U.S. Court of Appeals for the Ninth Circuit ruled June 9. The decision could gut similar curfew ordinances in dozens of other cities.

The court rejected the law for three reasons. First, the

judges deemed its language too vague. Under the law no one under 18 was allowed to "loiter, idle, wander, stroll, or play" in public after ten p.m. on any night of the week unless supervised by an adult. Youths scanning the list of prohibited activities could not be expected to understand exactly what kind of behavior was illegal, the court ruled. And police had too much discretion in deciding when and how to enforce the law.

Second, the court found that the curfew unfairly blocked teens from exercising their right to free speech. They could not, for example, stay out late to attend a political rally, or to pray at midnight Mass. Writing for the court, Judge Charles Wiggins noted that "the ordinance restricted minors' ability to engage in many First Amendment activities during curfew hours."

Finally, the court ruled that the curfew burdened parents as well as minors by usurping their rights as guardians. "The ordinance was an exercise in sweeping state control irrespective of parents' wishes," Wiggins wrote. "Without proper justification, it violated the fundamental right to rear children without interference."

The judges made clear that less restrictive curfews are acceptable. "This opinion deals with the language of this curfew specifically," said John Clarke, a San Diego lawyer who took the case for the ACLU. "I don't think the court made any broad pronouncements." San Diego's law was especially objectionable, Clarke said, because "it essentially put kids under house arrest after ten p.m."

Terra Lawson-Remer, an 18-year-old San Diego resident who just finished her freshman year at Yale University, challenged the law with help from the ACLU. She said one of her friends had been arrested for eating in a restaurant after water polo practice.

"That's just not acceptable at all that anyone can be punished for participating in a law-abiding activity just because they're under 18," she said. Reported in: *Los Angeles Times*, June 10.

etc.

Montgomery, Alabama

Montgomery's policy of banning tables from public sidewalks doesn't violate pamphleteers' First Amendment rights, the U.S. Court of Appeals for the Eleventh Circuit held May 9. The district court had ruled the ban an excessive infringement of the free speech rights of a political organization that wished to distribute literature from tables on city sidewalks.

Leafletting on public sidewalks is expressive activity in a public forum, and thus any regulation of it must satisfy the test for reasonable time, place, and manner restrictions on speech, the appeals court said. The district court erred in finding the city's interest at stake insignificant. "The first priority of a sidewalk is for the use of pedestrians," the court said. Reported in: *U.S. Law Week*, May 20.

San Francisco, California

California doctors can recommend marijuana to their patients without punishment as long as they do not help patients buy or grow the drug, a federal judge ruled April 30. Calling the Clinton administration's policy on medical marijuana vague and contradictory, U.S. District Court Judge Fern Smith said the federal government has no right to stop doctor(s) from recommending marijuana to treat certain diseases, although the treatment may be illegal.

"The government's fear that frank dialogue between physicians and patients about medical marijuana might foster drug use . . . does not justify infringing First Amendment freedoms," Smith wrote. "The First Amendment allows physicians to discuss and advocate medical marijuana, even though use of marijuana itself is illegal." Reported in: *Washington Post*, May 1.

Norwalk, Connecticut

A strip club and an X-rated video store won a major legal victory against the city of Norwalk, which had tried to outlaw the operations through a zoning law change. In a written decision April 16, Superior Court Judge Frank D'Andrea said the city "clearly has no power to prohibit the continuation of the . . . businesses in their present location."

The declaratory judgment came in a suit filed in 1995 by Flix Video and the Zebra Club. While sex and First Amendment questions made this a high profile dispute, D'Andrea's decision focused on the zoning law. He ruled Norwalk did not have the right to force the existing adult businesses to eventually close their doors by virtue of a zoning change made while they already were open. Reported in: *Stamford Advocate*, April 22.

Washington, D.C.

A federal appeals court sided with the National Park Service June 6, reinstating a ban on all T-shirt sales on the federal Mall in Washington. In May, 1995, the Park Service banned the sale of T-shirts on the District's federal park land in an effort to stop Washington's monuments from becoming giant open-air bazaars. A group of veterans who sold shirts near the Vietnam Veterans Memorial sued the Park Service, claiming the ban violated their right to free speech. A U.S. District Court judge agreed and overturned the ban.

But the U.S. Court of Appeals for the District of Columbia ruled that the Park Service ban "does not burden substantially more speech than necessary" in the effort to clear the grassy promenade of a glut of vendors. Vendors on the Mall still may sell books, newspapers,

leaflets, pamphlets, buttons and bumper stickers. And the court noted that nothing prevents interest groups from distributing T-shirts for free. Reported in: *Washington Times*, June 7.

Pasco, Florida

Susan Hoffman's bumper sticker displayed a middle finger raised in an ageless sign of insult and defiance. The sticker read, "Censor This!" When Pasco Deputy Michael Erstling saw it in 1993, he thought it was a crime and pulled her over. Nearly four years later, a U.S. District Court judge ruled May 13 that the deputy violated Hoffman's constitutionally guaranteed right to free speech.

Judge Henry Lee Adams, Jr., also ordered the Pasco Sheriff's Office to pay Hoffman $13,000 in costs and legal fees — even though the charge against her was never pursued. Incidents "such as these, even without convictions, come at the expense of the freedom of personal expression under the First Amendment," the judge ruled. "Stickers placed on bumpers, windows or other parts of automobiles are a significant public forum through which individuals make political and social statements." Reported in: *St. Petersburg Times*, May 16. □

William J. Brennan, Jr.

Retired U.S. Supreme Court Justice William J. Brennan, Jr., a towering figure in modern law and a firm defender and expansive interpreter of the First Amendment, died July 24 at the age of 91. Justice Brennan had been in failing health for several years.

Brennan, who sat on the Court from 1956 to 1990, wrote a total of 1,360 opinions, including 461 majority opinions and 425 dissents. Through his powers of persuasion and force of intellect, he was the prime mover behind many other decisions. Only five justices in the history of the court served longer than Brennan, and only one, William O. Douglas, another First Amendment champion, by more than a few months. Only Douglas wrote more opinions.

Justice Brennan left a legacy that is visible everywhere in the law and in American political and social life. It ranges from the one-person, one-vote doctrine, to the decisions that transformed the Constitution's equal protection guarantee into a weapon against sex discrimination, to cases that opened the federal courthouse doors to penetrating scrutiny of the quality of justice dispensed at the state and local levels.

One of his best-known opinions, *New York Times* v. *Sullivan*, reshaped the law of libel. In that 1964 ruling, the Court determined that even when the press publishes false statements about public officials, the First Amendment permits no finding of liability unless the official can show that the statement was deliberately false or published in reckless disregard of the truth.

The First Amendment requires "breathing space" for free expression, Justice Brennan wrote, as an element for "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

Twenty-five years later, Justice Brennan had not wavered in his view of the First Amendment. In *Texas* v. *Johnson*, a 1989 decision that found First Amendment protection for the act of burning an American flag as a political protest, Brennan wrote for the 5-4 majority: "If there is a bedrock principle underlying the First Amend-

Justice Brennan on free speech

Following are excerpts from three of Justice William J. Brennan, Jr.'s opinions interpreting and applying the First Amendment.

In 1964, Brennan wrote the Court's landmark opinion in New York Times v. Sullivan, *holding that the First Amendment shields the press against liability for publishing false statements about public figures unless the falsehood was deliberate or in reckless disregard of the truth.*

We consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. . .

A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions — and to do so on pain of libel judgments virtually unlimited in amount — leads to a comparable 'self-censorship.' Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. . . .

Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone.' The rule thus dampens the vigor and limits the variety of public debate. It is

(continued on page 147)

ment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

Brennan was also the author of the plurality opinion in the 1982 case of *Board of Education, Island Trees (N.Y.) Union Free School District 26* v. *Pico*, which barred the arbitrary removal by local school boards of school library materials deemed "objectionable" by some. The case involved the right of one junior high school and four high school students to challenge the removal from school libraries by a school board of all copies of nine books because they were, in the board's view, "anti-American, anti-Christian, anti-Semitic and just plain filthy." Five books were removed despite a committee report that recommended their retention. There was evidence, too, that the board violated its own policies and procedures.

Justice Brennan also believed that the First Amendment required strict separation of church and state. Asked in a 1986 interview to name his hardest case, he cited his concurring opinion in the 1963 *Schempp* case, one of the early decisions prohibiting organized prayer in the public schools.

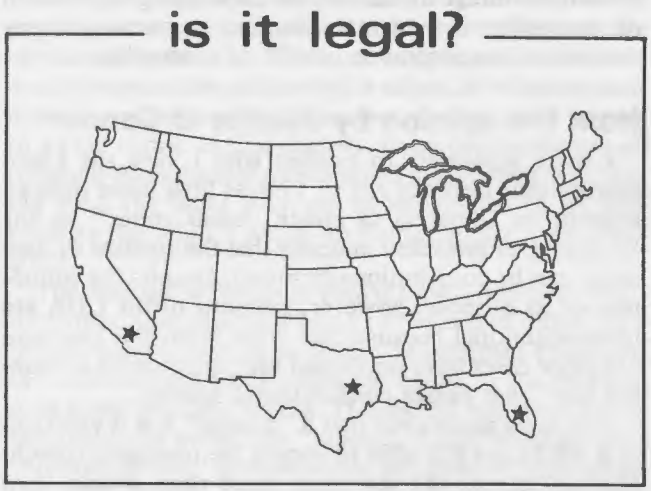
"In the face of my whole lifelong experience as a Roman Catholic," he said, "to say that prayer was not an appropriate thing in public schools, that gave me quite a hard time. I struggled." But he added that at the moment he joined the Court, "I had settled in my mind that I had an obligation under the Constitution which could not be influenced by any of my religious principles."

In 1987, he wrote the majority opinion in *Edwards* v. *Aguillard*, declaring unconstitutional a Louisiana law that required the teaching of "creation science." The law was a device to advance the teaching of religious views, he said, and as such amounted to an unconstitutional "establishment" of religion. His opinion explained the reason for his strictly separationist views:

"Families entrust public schools with the education of their children," he said, "but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary."

Stanford University Law Professor Kathleen Sullivan wrote of Brennan, "He was the most influential justice of his era. . . . It was Justice Brennan who laid the groundwork for modern voting rights law . . . . It was Justice Brennan, too, who made clear that the right to criticize government is 'the central meaning of the First Amendment'. . . . More than any other member of the Court, Justice Brennan found constitutional reasons to allow poor people to challenge adverse government actions.

"[W]hile some Brennan decisions have been overturned, a greater number have endured — a remarkable feat considering how much criticism some of them have received for their supposed judicial 'activism.' Justice Brennan maintained that the Court was the only branch of Government that could speak for minorities, dissidents and underdogs. He saw protecting them from the tyranny of political majorities as his duty." Reported in: *New York Times*, July 25. □



religion in schools

Fort Myers, Florida

Lee County may become the first Florida county to implement a high school Bible studies curriculum that, among other things, presents the story of Adam and Eve as "universal history." A three-person majority on the all-Republican school board proposed the curriculum, which is to be offered in the fall barring court challenges.

Bible study supporters say that drugs, violence, promiscuity and failing test scores among teenagers can be traced to U.S. Supreme Court decisions barring prayer in schools.

A focal point of the conflict in this community of 375,000 has been the board's effort to establish Bible studies as electives in the county's public high schools. The school superintendent, who opposed the plan, was forced out. The final plan, which is to be offered in the fall, is heavy on Biblical history from a fundamentalist Christian perspective.

Critics charge the real purpose of the curriculum is to introduce creationism under the guise of teaching the Bible as history or literature. They say the curriculum will violate the separation of church and state. Reported in: *Tampa Tribune*, June 3.

New Caney, Texas

The parents of two Texas high school student filed a federal lawsuit challenging a school district's policy that bars Roman Catholic rosary beads as a gang symbol. The New Caney district, thirty miles north of Houston, has included rosary beads on its list of prohibited gang symbols for several years, Superintendent Jerry Hall said.

Two freshmen at New Caney High School began wearing the beads early this year. In March, they were told they could not wear them outside their clothes because they were considered gang apparel. The boys' parents sued the district in U.S. District Court on May 19. The suit claims the gang policy violates the boys' First Amendment right to freedom of speech and religion. Reported in: *Education Week*, June 4.

airport solicitation

Los Angeles, California

On May 14, a federal judge blocked enforcement of a city law barring solicitations for charitable contributions at Los Angeles International Airport until a hearing can be held on a claim that the measure violates free speech rights. U.S. District Court Judge John Davies issued the temporary restraining order pending a hearing in a suit by charitable groups, including the International Society for Krishna Consciousness, which claims the ordinance is overbroad.

"It's a pretty draconian measure," said David Liberman, an attorney for the groups. "This bans a tremendous amount of speech."

The ordinance, approved April 1 by the City Council, would prohibit people from asking for monetary contributions at the airport and on surrounding sidewalks and parking lots. Airport Department officials cited a U.S. Supreme Court decision upholding a similar law in New York as a sign the measure is lawful.

However, the lawsuit charges that the Los Angeles ordinance goes beyond the New York law in that it also bans solicitation in parking lots and on sidewalks. The suit also said the previous court decision did not address all of the free speech and freedom of religion issues involved in the Los Angeles law. Reported in: *Los Angeles Daily News*, May 15. □

(Internet opinions . . . from page 139)

to help parents control the material that may be available on a home computer with Internet access. . . .

The vagueness of the CDA is a matter of special concern for two reasons. First, the CDA is a content-based regulation of speech. The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech. Second, the CDA is a criminal statute. In addition to the opprobrium and stigma of a criminal conviction, the CDA threatens violators with penalties including up to two years in prison for each act of violation. The severity of the criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images. . . .

We are persuaded that the CDA lacks the precision that the First Amendment requires when a statute regulates the content of speech. In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another. That burden on adult speech is unacceptable if less restrictive alternative(s) would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve. . . .

Given the vague contours of the coverage of the statute, it unquestionably silences some speakers whose messages would be entitled to constitutional protection. That danger provides further reason for insisting that the statute not be overly broad. . . .

The breadth of this content-based restriction of speech imposes an especially heavy burden on the government to explain why a less restrictive provision would not be as effective as the CDA. It has not done so. The arguments in this Court have referred to possible alternatives such as requiring that indecent material be "tagged" in a way that facilitates parental control of material coming into their homes, making exceptions for messages with artistic or educational value, providing some tolerance for parental choice, and regulating some portions of the Internet—such as commercial Web sites—differently than others, such as chat rooms. Particularly in the light of the absence of any detailed findings by the Congress, or even hearings addressing the special problems of the CDA, we are persuaded that the CDA is not narrowly tailored if that requirement has any meaning at all. . . .

The CDA, casting a far darker shadow over free speech, threatens to torch a large segment of the Internet community. . . . As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.

from the opinion by Justice O'Connor

I write separately to explain why I view the Communications Decency Act of 1996 as little more than an attempt by Congress to create "adult zones" on the Internet. Our precedent indicates that the creation of such zones can be constitutionally sound. Despite the soundness of its purpose, however, portions of the CDA are unconstitutional because they stray from the blueprint our prior cases have developed for constructing a "zoning law" that passes constitutional muster. . . .

Our cases make clear that a "zoning" law is valid only if adults are still able to obtain the regulated speech. If they cannot, the law does more than simply keep children away from speech they have no right to obtain. It interferes with the rights of adults to obtain constitutionally protected speech and effectively "reduce(s) the adult population . . . to reading only what is fit for children." The First Amendment does not tolerate such interference. If the law does not unduly restrict adults' access to constitutionally protected speech, however, it may be valid. . . .

Although the prospects for the eventual zoning of the Internet appear promising, I agree with the Court that we must evaluate the constitutionally of the CDA as it applies to the Internet as it exists today. Given the present state of cyberspace, I agree with the Court that the "display" provision cannot pass muster. Until gateway technology is available throughout cyberspace, and it is not in 1997, a speaker cannot be reasonably assured that the speech he displays will reach only adults because it is impossible to confine speech to an "adult zone." Thus, the only way for a speaker to avoid liability under the CDA is to refrain completely from using indecent speech. But this forced silence impinges on the First Amendment right of adults to make and obtain this speech and, for all intents and purposes, "reduce(s) the adult population (on the Internet) to reading only what is fit for children." As a result, the "display" provision cannot withstand scrutiny.

The "indecency transmission" and "specific person" provisions present a closer issue, for they are not unconstitutional in all of their applications. As discussed above, the "indecency transmission" provision makes it a crime to transmit knowingly an indecent message to a person the sender knows is under 18 years of age. The "specific person" provision proscribes the same conduct, although it does not as explicitly require the sender to know that the intended recipient of his indecent message is a minor. Appellant urges the Court to construe the provision to impose such a knowledge requirement, and I would do so.

So construed, both provisions are constitutional as applied to a conversation involving only an adult and one or more minors, e.g., when an adult speaker sends an e-mail knowing the addressee is a minor, or when an adult and minor converse by themselves or with other minors in a chat room. In this context, these provisions are no different from the law we sustained in *Ginsberg*. Restricting what the adult may say to the minors in no way restricts the adult's ability to communicate with other adults. . . .

The analogy to *Ginsberg* breaks down, however, when more than one adult is a party to the conversation. If a minor enters a chat room otherwise occupied by adults, the CDA effectively requires the adults in the room to stop using indecent speech. If they did not, they could be prosecuted under the "indecency transmission" and "specific person" provisions for any indecent statements they make to the group, since they would be transmitting an indecent message to specific persons, one of whom is a minor. The CDA is therefore akin to a law that makes it a crime for a bookstore owner to sell pornographic magazines to anyone once a minor enters his store. Even assuming such a law might be constitutional in the physical world as a reasonable alternative to excluding minors completely from the store, the absence of any means of excluding minors from chat rooms in cyberspace restricts the rights of adults to engage in indecent speech in those rooms. The "indecency transmission" and "specific person" provisions share this effect.

But these two provisions do not infringe on adults' speech in *all* situations. And as discussed below, I do not find that the provisions are overbroad in the sense that they restrict minors' access to a substantial amount of speech that minors have the right to read and view. Accordingly, the CDA can be applied constitutionally in some situations. □

(Brennan . . . from page 143)

inconsistent with the First and Fourteenth Amendments.

The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' — that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

In 1982, Justice Brennan wrote the lead plurality opinion in Board of Education, Island Trees (New York) Union Free School District 26 v. Pico, *which determined that local school authorities may not arbitrarily remove materials from school libraries without following predetermined and unbiased procedures, and then only owing to "pervasive vulgarity" or lack of "educational suitability."*

Just as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members. . . .

[School boards have] significant discretion to determine the content of their school libraries. But that discretion may not be exercised in a narrowly partisan or political manner. . . . If petitioners [the school bard] *intended* by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioners' decision, then petitioners have exercised their discretion in violation of the Constitution. . . .

This would be a very different case if the record demonstrated that petitioners had employed established, regular, and facially unbiased procedures for the review of controversial materials. . . .

In a 1989 case, Texas v. Johnson, *Brennan wrote for the Court that burning an American flag as a political protest was a constitutionally protected form of free expression.*

If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. . . .

There is, moreover, no indication — either in the text of the Constitution or in our cases interpreting it — that a separate juridical category exists for the American flag alone. Indeed, we would not be surprised to learn that the persons who framed our Constitution and wrote the Amendment that we now construe were not known for their reverence for the Union Jack.

The First Amendment does not guarantee that other concepts virtually sacred to our nation as a whole — such as the principle that discrimination on the basis of race is odious and destructive — will go unquestioned in the marketplace of ideas.

We decline, therefore, to create for the flag an exception to the joust of principles protected by the First Amendment. . . .

The way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong. . . . We can imagine no more appropriate response to burning a flag than waving one's own. . . . □

success stories

libraries

Gwinnett County, Georgia

The Gwinnett County Board of Education voted May 15 to allow two controversial books to remain on the shelves of elementary school media centers. In two separate appeals, concerned parents asked the board to overturn the prior unanimous decision of their school-committee and a system-level media committee and remove the books.

In the first appeal, Wanda Criswell cited profanity in the book *The Sisters Impossible*, by James D. Landis, in the J.G. Dyer Elementary School library. "In the discipline manual, students are taught they will be disciplined if they use disrespectful language or curse," she said. "Then, they go to the library and read books that use the very same words and they think it's OK. This is not a matter of censorship, it is a matter of responsibility."

Executive Director for School Improvement Martha Brady responded that the book taught valuable lessons. "When profanity was used, that character was admonished and told that was not the way to speak. The family played a large role in teaching right and wrong," she said. "That value outweighs the profanity."

In a 2-2 vote, the board upheld earlier decisions to keep the book, but had suggestions about how books are chosen. "We need to address content before a book goes into a media center," said Bob McClure, who voted against keeping the book.

In the second appeal, Victor Williams asked the board to remove *Ghost Camp*, by R.L. Stine, from the Jackson Elementary School library because of graphic content and references to the occult. He charged that the book "gets into matters of a spiritual nature" and goes against Christian values. But the board concluded that the educational value of Stine's novels lay "in the fact that these are fun books that get kids to read." Reported in: *Gwinnett Daily Post*, May 16; *Atlanta Journal*, May 16.

Rosemount, Minnesota

Rejecting parents' concerns about the appropriateness of the book *All About Alice*, by Phyllis Reynolds Naylor, for District 196 elementary school libraries, the district Reconsideration Review Committee chose to let the book remain.

Julie and Bruce Yates had asked the committee to pull the book after their eight-year-old daughter selected it and, reading the table of contents, found a chapter titled "Sex," which she brought to her parents' attention. The Yateses read the book and took offense at song lyrics which prompted a character's brother to discuss sexual activities, including necrophilia.

"Reading the synopsis you don't know the heaviness of the issues raised here," Julie Yates told the committee on May 28. "If you're going to bring up sex with dead people, you shouldn't have a cartoon cover."

But according to Nancy Schueller, media specialist at Diamond Path Elementary School, attended by the Yates' daughter, there are students who have the maturity to read the book. "I feel this book is realistic," Schueller said, adding that "books for the library shelves are not required reading."

The review committee, composed of five parents, three teachers, a principal and a media specialist, mostly favored retaining the book. Reported in: *Dakota County Tribune*, June 5.

schools

Clayton, Georgia

By a narrow 3-2 margin, the Rabun County school board killed a proposal to ban books that include profanity and sexually explicit scenes from assigned reading. According to school superintendent Charles Prince, the motion could have jeopardized the college preparatory program at Rabun County High School.

"It would have eliminated books used in college prep," Prince said. "It would have eliminated books used in AP classes and it possibly could have eliminated books used in G-SAMS [college classes taught on the school campus]."

The board's vote came after an intense debate erupted during discussion over a revised procedure for challenging instructional materials. "We should eliminate anything that would violate already established policies," said board member Nancy Mullis. These policies included a new Internet policy banning sexually explicit material and a policy on student use of profanity. Board chair

Lawrence Stockton opposed Mullis's motion and rallied two other board members to his side. The vote was met with cheers and applause by the large crowd in attendance. Reported in: *Clayton Tribune*, June 5.

Prince George County, Maryland

On June 11, the Prince George's County Board of Education rejected a proposal for a committee to review reading lists for students and remove books considered offensive. The measure, proposed by board members Marilynn Bland and Bernard Phifer, would have banned books believed to sometimes cause "permanent damage to character, self-esteem and motivation for students in grades K-12, with special emphasis on grades K-8." The proposal failed by a vote of 8-2.

Superintendent Jerome Clark told board members that the school system has a book review procedure in place and that another committee was unnecessary. Several county residents and board members said the proposal was worded too broadly and would result in censorship.

Bland, who argued for the measure, said there are times when censorship is appropriate. She said the issue was brought to her attention by parents who objected to *The Cay*, by Theodore Taylor. Bland read several passages from *The Cay*, which she claimed has "no redeeming value," and from Mildred Taylor's *The Friendship* in support of the proposal. Reported in: *Washington Post*, June 12; *Bowie Blade-News*, June 12.

Guilford County, North Carolina

The Guilford County School Board decided against banning two books required in an advanced placement English class, although most of the members found parts in the books offensive. At a standing-room-only meeting February 4, the board also declined to adopt a rating system for school books, similar to the systems in place for movies and television.

Parents Richard and Kathy Penschell said the rating system was needed to allow parents to keep their children from such books as *The Color Purple*, by Alice Walker, and *Native Son*, by Richard Wright, which were assigned to their son in his Advanced Placement English class at Northwest High School. "Parents weren't told there were controversial books," Penschell said. "You don't have academic freedom with our children. We never gave it to you."

Northwest English teacher Sherry Little, who assigned *The Color Purple* and *Native Son*, said she was pleased with the decision to keep them on her reading list. "I chose these books because they speak to the students in a powerful way," she said. Both books have appeared numerous times on the Advanced Placement Text used by many college admissions boards. Reported in: *Greensboro News & Record*, February 5.

Fairfax, Virginia

The Fairfax County School Board decided July 14 that *The Adventures of Huckleberry Finn*, by Mark Twain, will remain on the required reading list at McLean High School, despite a parent's complaint that the book offends African-Americans. Board members said the book is a classic American novel and is taught widely in college and high school English and history classes across the country.

"Let's face it, it is one of those wonderful classics of American literature," said board chair Kristen J. Amundson. "The lines that are troubling to people are very clearly intended ironically." The vote was 8-0, with four members absent. Twain's novel is required reading in eleventh-grade English classes at fourteen of the county's twenty-three high schools.

McLean resident Bessie E.H. Alkisswani first complained to school officials in February, after her daughter read the first hundred pages of the book and became "extremely disturbed" by Huck's frequent use of the word "nigger." The girl did not finish the book. Her teacher allowed her to read *Uncle Tom's Cabin*, by Harriet Beecher Stowe.

Alkisswani appealed to the school board when a committee of McLean High parents and teachers rejected her request to remove the book. "If it's doing damage to one student, then why require it?" she asked board members. The Alkisswani family stormed out of the hearing room before the vote was taken. Reported in: *Washington Times*, July 15.

Fairfax, Virginia

The Fairfax County School Board rejected a request May 29 to disavow language in a high school biology textbook that equates creationism with astrology, fad diets and other "pseudoscience." The board voted 6-4 against an appeal by the American Family Association, a conservative Christian organization, to put a label on the ninth-grade textbook *Biological Science: A Molecular Approach*. The association, acting on behalf of parents of a student at Thomas Jefferson High School for Science and Technology, said the book demeaned the family's belief in the Bible.

The majority of board members, all Democrats, turned away arguments from the board's four Republicans that the issue was "religious bigotry," not the teaching of the biblical version of creation. "I'm sorry, this is about creationism," said Stuart D. Gibson, who voted with the majority. "It's all about how creationism is not science. . . . Evolution is not faith, it's a science. . . . And I hesitate to be lectured to about disparaging religion from an organization that says I'm not part of this nation because this is a Christian nation."

The vote was part of a debate that began last fall when parents Bob and Vicky Carr asked that school officials

either to remove language they considered offensive or to insert a disclaimer in each book. The American Family Association challenged the book in February. After school officials and system administrators denied the group's request for a disclaimer, the group appealed to the school board.

The book challenge revived a debate over the teaching of creationism that flared up two years before during the county's first school board election campaign. Reported in: *Washington Post*, May 30; *Fairfax Journal*, May 30.

university

Lincoln, Nebraska

Regents of the University of Nebraska decided May 16 that they should not become censors over what ideas are expressed or what plays are produced on the campuses, even when public tax dollars pay part of the tab.

The Board of Regents unanimously approved a policy statement supporting First Amendment freedom of expression and academic freedom after much discussion and the defeat of two efforts to narrow language in the policy. The public controversy over a University of Nebraska, Lincoln, play that included a homosexual theme and a brief nude scene led to the policy, said Regent Charles Wilson of Lincoln, who brought it to the regents meeting.

Regent Robert Allen of Hastings had been publicly critical of the play, *Six Degrees of Separation*, by John Guare, produced in April. Allen said he found out about the play after someone complained to him that students were being required to participate in the production even though they did not approve of the content.

The statement covered three areas: First Amendment freedom of expression, academic freedom in a university, and the ability of a student to "freely decline participation in a production they find personally offensive," Wilson said.

Regent Drew Miller proposed an amendment to the policy that said faculty "should avoid theatrical productions which are offensive to the general community standards when taxpayer funds are involved." The amendment was opposed by Wilson and University President L. Dennis Smith.

"This is not only a slippery slope, it is potentially a fatal cliff where we, like lemmings, will jump off and never be seen again," Smith said. "I think it would be disastrous to put these kinds of restraints on the faculty."

The regents rejected Miller's amendment and an amendment from Regent Chuck Hassebrook that encouraged faculty to find ways of presenting ideas without offending "the moral standards of citizens and students." Reported in: *Omaha World-Herald*, May 17. □

(Questions and answers . . . from page 121)

intellectual freedom concerns and public responsibilities in the production of their own electronic information resources.

9. How can libraries help to ensure library user confidentiality in regard to electronic information access?

Librarians must be aware of patron confidentiality laws on library records for their particular state and community. In accordance with such laws and professional ethical responsibilities, librarians should ensure and routinely review policies and procedures for maintaining confidentiality of personally identifiable use of library materials, facilities, or services. These especially include electronic circulation and online use of records. Hence, libraries and their consortiums should ensure that their automated circulation systems, other electronic information resources, and outside provider services strive to conform to applicable laws and the library's ethical duty to protect confidentiality of users.

Electronic records on individual use patterns should also be strictly safeguarded. Software and protocols should be designed for the automatic and timely deletion of personal identifiers from the tracking elements within electronic databases. System access to computer terminals or other stations should also be designed to eliminate indicators of the research strategy or use patterns of any identifiable patron. For example, the efforts of the last user of a terminal or program should not remain on the monitor or be easily retrievable from a buffer or cache by subsequent users. Library or institutional monitoring for reserving time on the machines and the amount of time spent in electronic information resources should be similarly circumspect in protecting the patron's privacy rights.

Libraries and their institutions should provide physical environments that facilitate user privacy for accessing electronic information. For instance, libraries should consider placing terminals, printers, and access stations so that user privacy is enhanced. Where resources are limited, libraries should consider time, place and manner restrictions.

Finally, libraries must be sensitive to the special needs for confidential access to electronic information sources of physically challenged patrons.

10. Our library is just one of many autonomous institutions in a consortium. How can we be sure that our cooperating partners honor the confidentiality of our library users in a shared network environment?

This is a contractual and legal manner. The importance of confidentiality of personally identifiable information about library users transcends individual institutional and type of library boundaries. Libraries should establish and

regularly review interlibrary and interagency cooperative agreements to ensure clear confidentiality policies and procedures, which obligate all members of a cooperative, or all departments and branches within a parent institutions.

11. Do libraries need an "acceptable use policy" for electronic information access? If so, what elements should be considered for inclusion?

Access questions are rooted in Constitutional mandates and a *Library Bill of Rights* that reach across all media. These should be professionally interpreted through general service policies that also relate to the specific mission and objectives of the institution. Such general policies can benefit from the legacy and precedents within the ALA's *Intellectual Freedom Manual*, including new interpretations for electronic resources.

Reasonable restrictions placed on the time, place, and manner of library access should be used only when necessary to achieve substantial library managerial objectives and only in the least restrictive manner possible. In other words, libraries should focus on developing policies that ensure broad access to information resources of all kinds, citing as few restrictions as possible, rather than developing more limited "acceptable use" policies that seek to define limited ranges of what kinds of information can be accessed by which patrons and in what manner.

12. Why shouldn't parental permission be required for minor access to electronic information?

As with any other information format, parents are responsible for determining what they wish their own children to access electronically. Libraries may need to help parents understand their options during the evolving information revolution, but should not be in the policing position of enforcing parental restrictions within the library. In addition, libraries cannot use children as an excuse to violate their Constitutional duty to help provide for an educated adult electorate.

The Library Bill of Rights—its various Interpretations (especially Free Access to Libraries for Minors; Access for Children and Young People to Videotapes and Other Nonprint Formats), and ALA's Guidelines for the Development and Implementation of Policies, Regulations and Procedures Affecting Access to Library Materials, Services and Facilities—also endorse the rights of youth to library resources and information as part of their inalienable rights and the passage to informed adulthood. Electronic information access is no different in these regards.

13. Does our library have to make provisions for patrons with disabilities to access electronic information?

Yes. The Americans With Disabilities Act and other federal and state laws forbid providers of public services, whether publicly or privately governed, from discriminating against individuals with disabilities. All library information services, including access to electronic information, should be accessible to patrons regardless of disability.

Many methods are available and under development to make electronic information universally accessible, including adaptive devices, software, and human assistance. Libraries must consider such tools in trying to meet the needs of persons with disabilities in the design or provision of electronic information services.

Equity of Access

14. My library recognizes different classes of users. Is this a problem?

The mission and objectives of some libraries recognizes distinctions between classes of users. For example, academic libraries may have different categories of users (e.g., faculty, students, others). Public libraries may distinguish between residents and non-residents. School library media centers embrace curricular support as their primary mission; some have further expanded access to their collections. Special libraries vary their access policies depending on their definition of primary clientele. Establishing different levels of users should not automatically assume the need for different levels of access.

15. Does the statement that "electronic information, services, and networks provided directly or indirectly by the library should be equally, readily, and equitably available to all library users" mean that exactly the same service must be available to anyone who wants to use the library?

No. It means that access to services should not be denied on the basis of an arbitrary classification, for example, age or physical ability to use the equipment. This phrase, from "Economic Barriers to Information Access: An Interpretation of the Library Bill of Rights," clarifies that simply making printed information sources available to those unable to pay while charging for electronic information sources abridges the principles of equality and equity.

16. Which is a higher priority to offer more information or not to charge fees? Does this mean my library cannot charge fees?

The higher priority is free services. Charging fees creates barriers to access. That is why ALA has urged librarians, in "Economic Barriers to Information Access," to "resist the temptation to impose user fees to alleviate financial pressures, at long term cost to institutional integrity and public confidence in libraries."

17. Does "provision of information services" include printouts?

Whenever possible, all services should be without fees. Any decision to charge for service should be based on whether the fee creates a barrier to access. For example, some libraries have long provided free access to printed magazines while charging for photocopies. Translated to the electronic environment, this means that some libraries will provide the text on the screen at no charge, but might charge for printouts.

18. If my library has no "major support from public funds," can we then charge fees?

Yes, but ALA advocates achieving equitable access and avoiding and eliminating barriers to information and ideas whenever possible.

19. What do you do if one person monopolizes the equipment?

This is a policy issue to be established within each library according to its mission and goals. Time, place, and manner restrictions should be applied equitably to all users.

Information Resources and Access

20. How does providing connections to "global information, services, and networks" differ from selecting and purchasing material for an individual library?

Selection begins with the institution's mission and objectives. The librarian performs an initial selection from available resources, and then the user makes a choice from that collection. Many electronic resources, such as CDs, are acquired for the library's collection in this traditional manner. Collections consist of fixed discrete items.

When libraries provide Internet access, they provide a means for people to use the wealth of information stored on computers throughout the world, whose ever-changing contents are created, maintained and made available beyond the library. The library also provides a means for the individual user to choose for him or herself the resources accessed and to interact electronically with other computer users throughout the world.

21. How can libraries use their selection expertise to help patrons use the Internet?

Libraries should play a proactive role in guiding parents to the most effective locations and answers. Library websites are one starting place to the vast resources of the Internet. All libraries are encouraged to develop websites, including links, to Internet resources to meet the information needs of their users. These links should be made within the existing mission, collection development policy and selection criteria of the library.

22. Should the library deny access to Constitutionally protected speech on the Internet in order to protect its users or reflect community values?

No. The library should not deny access to constitutionally-protected speech. People have a right to receive constitutionally-protected speech, and any restriction of those rights imposed by a library violates the U.S. Constitution.

23. Does using software that filters or blocks access to electronic information resources on the Internet violate this policy?

The use of filters implies a promise to protect the user from objectionable material. This task is impossible given current technology and the inability to define absolutely the information to be blocked.

The filters available would place the library in a position of restricting access to information. The library's role is to provide access to information from which individuals choose the material for themselves.

Technology could be developed that would allow individual users of public terminals to exercise a choice to impose restrictions on their own searches. If these types of filters become available, libraries should carefully scrutinize them in light of their mission and goals.

24. Why do libraries have an obligation to provide government information in electronic format?

The role of libraries is to provide ideas and information across the spectrum of social and political thought and to make these ideas and this information available to anyone who needs or wants it. In a democracy libraries have a particular obligation to provide library users with information necessary for participation in self-governance. Because access to government information is rapidly shifting to electronic format only, libraries should plan to continue to provide access to information in this format, as well.

25. What is the library's role in the preservation of electronic formats?

The on-line electronic medium is ephemeral and information may disappear without efforts to save it. When libraries create information, they have the responsibility to preserve and archive it, if it meets the library's mission statement.

26. Does "must support access to information on all subjects. . ." mean a library must provide material on all subjects for all users, even if those users are not part of the library's community of users or the material is not appropriate for the library?

The institution's mission and objectives will drive these decisions.

27. The Interpretation states that libraries should not deny access to resources solely because they are perceived to lack value. Does this mean the library must buy or obtain every electronic resource available?

No. The institution's mission and objectives will drive these decisions.

28. How can the library avoid becoming a game room and still provide access to this material?

Libraries sometimes seek to prohibit the playing of computer games because the demand for terminals exceeds the supply. The libraries impose time, place or manner restrictions to the use of electronic equipment and resources. Such restrictions should not be based on the viewpoint expressed in the information being accessed.

29. Do copyright laws apply to electronic information?

Yes. Librarians have an ethical responsibility to keep abreast of copyright and fair use rights. This responsibility applies to:

1. the library's own on-line publications.
2. contractual obligations with authors and publishers.
3. informing library users of copyright laws which apply to their use of electronic information. □

(filter . . . from page 134)

custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."

To insure children's physical health, we have them vaccinated, rather than trying to keep them in sterile bubbles. The Internet can offer families the social equivalent, allowing kids to encounter the troubles of the adult world at a distance, virtually and safely. For example, many of the filters block hate groups, but seeing their websites can inoculate kids against racism. On the Stumpers e-mail list, John Henderson described his eighth grader's use of the Internet for a report. "Sarah did some of her Klan research using the Web. The Web actually provided a bunch of source materials for her that she couldn't have found in the local public or [college] library. I don't know many libraries that collect klan propaganda, but she found ample "primary source material" just from a simple Yahoo search. So her Web research was educationally valuable and scary at the same time."

Librarians can help parents best by linking them with more information on how others are coping with the issues the Internet raises. With that in mind, I compiled a list of websites for a public program for Log On @ the Library day in 1996. "Guiding Children Through Cyberspace — URLs" can be found at http://www6.pilot.infi.net/~carolyn/guide.html. Keeping it up to date and accessible has been more work than I expected, but the traffic on parent-oriented websites shows that many parents are using the Internet's communication possibilities rather than its technological fixes to help guide their children.

While the Internet is unique, the way libraries react to it will inevitably influence all our services, just as we now confront the last half century's efforts to make children better through censorship. Few libraries will manage Internet access without facing these cumulative expectations, but avoiding controversy should not be our highest professional aspiration. If it were, we would have to wonder if a filter is enough. Perhaps we also need parental signatures, Acceptable Use Policies, disclaimers, and who knows what, because there is simply no guarantee that someone won't be offended. I've seen e-mail posts on library listservs that beg for reassurance that something will satisfy the smut hunters. But the truth is that censoring is labor intensive because it rarely satisfies those who demand it.

Worse yet, filters are going to tempt the computer savvy to try to defeat them. As one parent observed to me, filtering at home had raised the blocked sites to the status of forbidden fruit, and kids who had been surfing responsibly now spend their time trying to hack the filter. Libraries that filter can expect the same in a spiraling cycle of distrust.

Public libraries also need to remember that they are part of the government, and if the Communications Decency Act was government imposed censorship, so are library imposed filters. In his opinion in the CDA case, Justice Stevens said, "The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship." Yet in some libraries, the Internet is hedged about with rules that would cause outcry if applied to any other medium. David Burt analyzed 75 library policies in "Policies for the Use of Public Internet Workstations in Public Libraries" in May/June, 1997, issue of *Public Libraries*. He found 26 ingredients in those policies, and of them I count 22 that forbid, limit, or warn users.

Policies that are written out of fear instead of responsibility provide very temporary security. When whoever is in charge of policy believes that the public will not understand library principles, policies will waver between authoritarian prescriptions and pacifying complainers. But, citizens must understand and support public library policies, or trouble has just been postponed. The Internet in particular quickly undermines claims to unquestioned authority. Our only viable alternative is a continuous process of educating and involving the community. Some libraries are experimenting with Internet programs and classes, advisory boards or user groups, and even docents. We have natural allies in local Internet service providers,

computer stores, and even traditional information providers like newspapers. Trusting that the community can endorse library principles doesn't come with a guarantee of success, but to the extent that the public joins in wrestling with Internet issues, they will know that the library is not ignoring their concerns.

A public library is not intended for the comfort of the librarian or even of the community. To be the institution a democracy needs, the library must stretch the envelope, but not tear it. Confronting real issues will keep both librarians and the community uncomfortable, but not so uncomfortable that they cease to support the library as an institution. This balancing act has a unique center of gravity in each community, and it is best found by working with the community, not prescribing for it.

Adjusting library service to the reality of the Internet may well present the most difficult issues we encounter in our professional careers. This is not a reason to toss away everything we have learned in a century of building the public library. Rather, it is a time when the public library has precisely the principles and experience to help families and communities make a successful transition into the wired world of the next generation.

remarks by Harriet Selverstone

Harriet Selverstone is Library Media Specialist at Norwalk High School, Norwalk, Connecticut, and an immediate past member of the ALA Intellectual Freedom Committee.

Both my personal and professional concerns regarding filters for Web sites sites are reflected in the philosophy that encompasses intellectual and academic freedom. The use of filters that block selected sites on the Internet really tests the boundaries of First Amendment rights in the arena of electronic information.

I am speaking from the perspective of a high school library media specialist. Student use of the Internet is both curriculum and interest driven. The curriculum would encompass areas in the sciences, social sciences, literature, math, humanities, and their interests cover a broad spectrum of what might be considered by some to be controversial issues: abortion, HIV/AIDS, homosexuality, date rape, etc. Information obtained in these areas is of monumental importance to these young adults. Do we who serve children and youth, who work with them on a daily basis—and I have done so for the past 25 years, not to mention my own children—shirk our responsibility to ensure that these patrons and readers have every opportunity to obtain information they need and want on any topic, in any format, and to read electronically any material they choose without constraints? I believe not. Do we leave the responsibility of deciding what is "appropriate" or not to a commercial enterprise? The whole idea of selecting certain parts of the Internet or deselecting others runs counter to my way of thinking and proceeding as an information provider and facilitator.

I believe and promulgate that parents or legal guardians have the right and responsibility to decide what their OWN children can view, read, or hear; yet many commercially produced filters do the opposite. These companies: Surfwatch, CyberPatrol, Net Nanny and others, take the parental responsibility out of the hands of care givers.

These filtering products would filter out important information that students need to obtain; information that is appropriate for children. For example, the Web site on MARS exploration (http://rsd.gsfc.nasa.gov/marslife/marsexpl.htm) which is a NASA site, could not be accessed because the address (marsexpl.htm) has the letters SEX, in that order. Also, any word with SEX as a root would be blocked: sextant, for math, part of a circle and an instrument used by navigators for measuring angular distance from the sun; sextet (group of 6 persons), sextillion, the number represented by 1 followed by 21 zeros; sexton, a church official or employee in charge of maintenance of church property; or, sextuplet, 6 offspring born at a single birth.

There are many superb sites on the Internet, and, as a school library media specialist, I encourage the use of those by students and staff. Magazines, such as *Classroom Connect* and *Yahoo* feature various educational and curricular-related sites. Even some of these sites may be deemed controversial in content, but students must have their minds stretched, not shrunk.

The American Library Association has provided positive ways of facilitating access to the Internet. This is part of their "Kids Connect at the Library" Campaign. This site promotes good, healthy, interesting, educational viewing of the Internet. The WEB site is http://www.ssdesign.com/ALAkids/lol.shtml#pages.

Parents and guardians should take an active role and become more involved in their child's education. There was a parent of two students in my high school who came to observe and talk to me and my staff about Internet sites and, as a gift to us, asked if we would like a subscription to *Yahoo* magazine. As a result, we now have this wonderful resource.

Computer-aided censorship (blocking software or filtering) sends the wrong message to our children. It says we do not trust them to act responsibly. It indicates that quick technological fixes are appropriate answers to social problems or that adults are too busy to supervise children, so let our computer filters do the job for us.

Some filtered software blocks sites which my students have accessed on the Internet, for example: issues of intolerance, with pictures or text advocating prejudice or discrimination against any race, color, national origin, religion, disability, handicap, gender or sexual orientation. Students working on the 1960's on civil rights issues,

used the Internet for this data; another site which features satanic cults, with pictures or text advocating devil worship, an affinity for evil, was searched by students doing research on cults in our society. The drug culture and/or drugs used for medicinal purposes is a topic that is researched by students in health classes and in the Contemporary Issues classes in the Social Studies Department. Militant/extremist groups that advocate extremely aggressive and combative behaviors have been studied as a result of the Unabomber attacks and the bombing of the Federal building in Oklahoma City. Students in the health and Contemporary Issues classes also searched for information on contraceptive products and methods, the new RU486 pill, HIV/AIDS data, alcohol and tobacco use, second-hand smoke and on other topics of that ilk; all of this data would be kept out of the reach of these young adults as a result of filtering software.

If filters are not used on the Web, a logical question from parents, legal guardians, teachers, and administrators might be:

How might children be "protected" from inappropriate sites? In response to that query, I would suggest that placement of computers is important, with maximum visibility to staff. Students should have computer time restrictions placed on the use of workstations, since in many cases, schools might only have a single workstation dedicated to the Internet. It is permissible to impose limits as long as this policy is applied equitably to all users. Restrictions on "time, place and manner" use of library resources have long been a part of library practice. Also, publicize valuable educational information available on the Internet.

I wish to conclude by paraphrasing Clark Kerr, former President of the University of California, who said the purpose of a library is to make people safe for ideas, not ideas safe for people.

remarks by Lisa Kochik

Lisa Kochik is Children's Services Coordinator at Mid-Hudson Regional Library System, Poughkeepsie, New York.

Information on the World Wide Web has been variously described as a library where all the books are heaped in a pile on the floor, a network of networks, a Web of electronic communications. The terminology describing efforts to locate Internet information resources including surfing, cruising and navigating. There is no order, no organization, no logic to help users find the information they are seeking. With such chaos, who better to provide people with meaningful access than librarians?

Librarians who provide services to young people are obligated to make sense of the Internet and create tools that make electronic resources accessible and understandable to their patrons. We also must be aware that we have certain educational responsibilities and can be the focus of intense scrutiny and even legal and legislative actions—especially when it comes to the Web. Therefore, many libraries have taken the step of creating their own value-added children's resource on the Web.

For a public library, a children's web page can provide a highly adaptable resource to meet specific diverse information needs and interests of the community it serves. For example, a Kids Page can incorporate subject or curriculum-based sites, non-English language sites, and community-based local resources. A Kids Page might also be used to enhance deficiencies in a library collection: for example, a library without space for lots of books on geography could connect to the CIA fact book. I would like to share with you our experience in developing a Children's Web Page and suggest that a library-based Web Page can become a key resource (even an information utility) that addresses both service needs and freedom of access.

The Mid-Hudson Library System is not a public library but a cooperative library system providing services and support to 65 public libraries in a five county area. According to our most recent annual report, the total population served by the system is just over 574,000. 269,000 people are registered card holders, and if recent studies indicating 3 out of 5 public library users are children or young adults, an estimated 162,000 young people use the services of the Mid-Hudson Library System.

As more information sharing and communication is accomplished via electronic media, Mid-Hudson Library System is working towards a goal of having all our member libraries provide public access to the vast resources of the Internet. Our development of a Children's Page would be a service both to young patrons and to our member librarians who were in need of training on Internet information services.

At Mid-Hudson, a publicity event prompted the System to "get something up" as a working prototype for a value-added web page—our Virtual Library. The concept was to provide electronic one-stop library services including access to a regional catalog, online subscription services, reference tools, Dewey-based web stacks and specialty areas including an area for kids.

A rushed prototype Kids Page was up in just a few weeks. We had some general design rules and a framework; however, the design and technical aspects of launching the site were done by other members of the Mid-Hudson Web Team, and are beyond the scope of this speech; content development is what I will address.

As a first step, we defined our target audience to be

7-12 year old children in the MHLS service area: the range of children who could read on their own but were younger than the teen page. We then listed subject areas we thought would be of interest to this age group based on the services we and member libraries provide to young patrons. At the same time, we wanted to provide the traditional information services of a public library—to promote reading and literacy, provide access to local community resources and help to meet homework and educational information needs. About 15 broad areas were identified as being of potential interest.

The next step in development was to narrow these areas into 7 or 8 categories—a scientifically predetermined limit for design and utility purposes. We envisioned our Kids Page to contain a series of pages with all information appearing on a single screen—no scrolling, no paging down required—and with a limited number of clicks or selections needed to reach information. As Web users know, it is easy to spend time trailing from link to link to link without reaching actual information (but rather viewing list after list after list). Children would have little tolerance for endless selection, especially if their time is limited by computer use sign-up, homework deadlines, or the need to keep to a schedule like rides to practice or to be home for dinner.

A manageable 8 categories were decided on, which fit well with our design principles. Selecting any category would lead users to a list of hyperlinked sites, making a selection from that list would take you to a site containing information.

Exceptions to category lists were an area called LOOKOUT and an area FOR PARENTS ONLY. These two areas were intended to address issues of education about electronic media and communication via the Web and intellectual freedom.

LOOKOUT initially took users to an electronically published version of *Child Safety on the Information Highway*, a much noted brochure describing the risks of online and electronic communication and how parents and children could responsibly minimize those risks.

FOR PARENTS ONLY led to a statement on access and intellectual freedom written by Mid-Hudson Library System Executive Director, Dr. Fred Stielow.

The other categories led to lists of sites assembled from reviews in professional journals, favorite picks by kids via Internet projects like K.I.D.S. (Kids Identifying and Discovering Sites) and from Internet training sessions for librarians being conducted at Mid-Hudson. We tried to be aware of technological issues in sites selected for inclusion such as Web browser requirements and load time for hypertext links. Lengthy document files and large image files take a significant time to load. If users must wait more than a few seconds, many people become impatient and their frustration is directed at your site, not the site being loaded. We wanted the Mid-Hudson page to be a convenient point-of-access tool for Web resources that patrons would choose to return to time and again.

Our working prototype was up and running approximately 4 weeks after inception.

The next phase of developing our Kids Page involved librarians' review of the page, solicitation of "wish lists" of types of sites young patrons wanted and needed, and training librarians to use the Internet for youth services. We conducted a series of Internet training sessions called HotHits, covering a variety of topics including Children's Authors and Illustrators, Homework Helpers, Parents & Preschoolers, and Homeschooling Resources.

As Mid-Hudson staff became more familiar with Web page design and writing programming scripts, the "Kids Room" prototype evolved into "Electric Kids." Sites were added, removed, and categories redesigned; the Teen Room was developed and plans for a parent resource area and preschool area are underway.

We are currently initiating a project in conjunction with member librarians where Children and Young Adult users will evaluate the MHLS Pages for useability, content, and design, and suggest directions for future development.

There are many benefits to libraries in developing a Children's Web Page. It

- offers novice users, both children and parents or grandparents, a starting point to learn technical and intellectual skills for navigating resources on the Internet;
- can provide guidance on resources to assist users to find needed information quickly and efficiently, as with homework help and high interest topics;
- forces librarians to stay current on information resources available on the Internet, to improve information retrieval skills and to monitor trends in this rapidly-changing environment.
- allows users to move freely about the Internet without imposing restrictions on access.

Our role as librarians is not to parent or to police, but rather to help people find the information they need. Such a role is more crucial when helping young people learn how to find the information they want for school, recreation, personal enrichment and, perhaps, even how to become adults. Developing a Children's Web Page offers libraries an active tool for accomplishing one of the most fundamental services of our profession: to provide access, organization and easy-to-retrieve information. □