

newsletter
on
intellectual
freedom



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Diana death spurs anti-tabloid backlash

The death in an automobile accident of Princess Diana of Wales, her companion Dodi Fayed, and their driver in Paris August 31 led supermarket chains throughout the U.S. to pull from sale tabloid newspapers, many of which have previously published unauthorized photographs of the princess and other celebrities. In California, two state senators proposed legislation that would restrict photographers' access to public personalities, and renewed attention was focused on efforts by Hollywood stars and their union to make it easier for public figures to file defamation suits.

Among the supermarket chains which took action against the tabloids were Kroger and Safeway, the nation's two largest chains; Winn Dixie, the nation's fourth largest chain; Lucky Stores, the second largest chain in California; and San Antonio-based H-E-B. Most announced that they would refuse to sell any tabloids featuring pictures of the auto crash that killed the princess, but some temporarily pulled issues of the tabloid publications regardless of content.

Safeway, which owns 1,368 stores in the U.S. and Canada, reserved the right to remove a tabloid if photos show something "absolutely egregious or inappropriate," said company representative Debra Lambert. "It's hard to determine what crosses the line." The chain said it was allowing individual stores to remove current and upcoming issues of *The Star* and *The National Enquirer* in response to "local sensitivities." Safeway's East Coast division removed issues from its 127 stores in Maryland, Virginia and Washington, D.C.

The September 9 *Enquirer* carried the front-page headline "Di Goes Sex Mad," while the *Star*'s inside pages included a piece titled "Di's New Loveboat Cruise." Both were printed before the princess's death.

"This week's edition is in poor taste because of the tragedy this last weekend," said Gregory Ten Eyck of Safeway's East Coast division. "It's just not something we would want to have on our shelves this week."

In California, San Leandro-based Lucky Stores, which has 411 stores in the state, said it would review the three major tabloids — *The Star*, *The Globe*, and *The National Enquirer* — before allowing their sale. Lucky's said, however, that issues
(continued on page 176)

in this issue

- Diana death spurs anti-tabloid backlashp. 157
- Tin Drum* beatsp. 159
- press in a hostile environmentp. 162
- in review: *Free Expression and Censorship Encyclopedia*p. 163
- SF schools nix Playboy awardp. 163
- Sturges under attackp. 164
- censorship dateline*: libraries, schools, student press, newspapers, art, foreignp. 165
- from the bench*: U.S. Supreme Court, schools, university, child pornography, periodicals, etc.p. 173
- is it legal?:* church and state, writers, publishing, adult video, etc.p. 177
- success stories*: libraries, schoolsp. 181

targets of the censor

books

- Adventures of Huckleberry Finn*p. 182
- All But Alice*p. 166
- American Government*p. 182
- Being There*p. 167
- Biological Science: A Molecular Approach*p. 170
- The Diviners*p. 169
- Economics in Our Time*p. 182
- The House of the Spirits*p. 169
- Insomnia*p. 165
- It's Perfectly Normal*p. 181
- Jock Sturges*p. 164
- Last Day of Summer*p. 164
- Making Life Choices*p. 169
- Of Mice and Men*p. 167, 168
- One Hundred Years of Solitude*p. 169
- Radiant Identities*p. 164
- Science Insights*p. 166
- Their Eyes Were Watching God*p. 170
- Ultimate Sex Book*p. 165
- Understanding Sexual Identity*p. 181
- What's Happening to My Body? Book for Boys*p. 167

- What's Happening to My Body? Book for Girls*p. 167
- Women on Top*p. 165

periodicals

- The Beat*p. 170
- El Nuevo Dia* [Puerto Rico]p. 171
- Nor'easter* [Northeast H.S.]p. 170
- Penthouse*p. 175
- Playboy*p. 175
- Playgirl*p. 175
- West Wing* [Mission H.S.]p. 163

films

- The Tin Drum*p. 159

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Tin Drum controversy keeps beating

The controversy surrounding the film *The Tin Drum* continues in Oklahoma City (see *Newsletter*, September 1997, p. 111). In June, videotape copies of the film were seized from several stores and individuals who rented the film.

The Oklahoma City police took action after the 1979 Oscar winning film was declared obscene by an Oklahoma County district judge. A pressure group, Oklahomans for Children and Families (OCAF), obtained the ruling after checking the film out of the Oklahoma City Metropolitan Library System. In response, suits were filed by the ACLU and the Video Software Dealers Association (VSDA), citing violations of the First, Fourth, and Fourteenth Amendments and the Video Privacy Protection Act.

The VSDA's brief, filed July 11 in U.S. District Court, provided further background on the case. Apparently, the incident began when a student at Bethel College and Seminary objected to a course assignment to view *The Tin Drum*, *Like Water for Chocolate*, and *Do the Right Thing*. She alleged the films were pornographic and not appropriate for viewing at a seminary. She filed a suit, which was dismissed in its entirety as "an improper attack on the general quality of educational experience Bethel College provided its students." Bob Anderson, the leader of OCAF, heard a talk radio discussion of the case, borrowed the film from the library, and turned it over to Oklahoma City police.

The police on June 25 brought the film to Judge Richard Freeman, who provided an ex parte review of a scene the police claimed represented child pornography under state law. Freeman agreed that the scene was child pornography under the law, but did not issue a formal written ruling or conduct an inquiry. Nonetheless, police acted on his opinion and, soon after, District Attorney Robert Macy decided to "simply remove the film from public access."

The VSDA suit maintains that police officers who seized copies of the video were abusive to clerks, threatening to charge them with obstruction of justice if they didn't hand over video and customer records, which are protected under the Video Privacy Protection Act.

"This motion picture is so worthy of First Amendment protection and the action by police so serious that we have every confidence we'll win the case," said VSDA general counsel Bo Andersen. "In terms of a First Amendment case, we have extraordinary good facts."

Andersen said the VSDA decided to include all Oklahoma retailers in the suit in case police decided to seize copies of *The Tin Drum* in other parts of the state. VSDA reported that it had already been contacted by the Tulsa district attorney seeking information about the film and a Blockbuster store in Ponca City contacted the

group over concerns it might be removed.

The ACLU suit was filed on behalf of its local development director, Michael Camfield, from whose home authorities seized a rented copy of *The Tin Drum* hours after Freeman's ruling.

After the ACLU and VSDA suits were filed, district attorney Macy filed a Petition for Declaratory Judgement and a motion to enjoin Blockbuster Video, Hollywood Video and the library system from distributing *The Tin Drum*. He asked that the film be found obscene and/or child pornography, in whole or in part, and that its rental or distribution be banned. Macy filed the suit in state court, but it was moved to federal court at the

Oklahoma Library Association Resolution in Support of Libraries

Whereas, the Oklahoma Library Association supports the essence of democracy that citizens have the right to free inquiry and the equally important right of forming their own opinions, and it is of the utmost importance that free access for persons to all types of information be preserved and defended, and

Whereas, the Oklahoma Library Association has worked with Oklahoma libraries to provide collection development policies which reflect the right to read and the right to view, as well as reflect the interest of the communities served, and

Whereas, the Oklahoma Library Association supports the concept that parents should be responsible for guiding their children's choice of reading materials, and

Whereas, the Oklahoma Library Association supports the concept that a work of art should be judged as a whole, not in pieces, and

Whereas, the Oklahoma Library Association supports the concept of due process of law, now therefore

Be it Resolved, That the Oklahoma Library Association expresses its concerns that the recent actions in Oklahoma County concerning *The Tin Drum* in the Metropolitan Library System are dangerous, alarming and unwarranted, and

Be it Resolved, That the Oklahoma Library Association supports Oklahoma libraries continuing to develop collections which support all interests and viewpoints.—*Adopted by the Oklahoma Library Association Executive Board, July 18, 1997.* □

request of Hollywood Video because it involves a constitutional question. The *Daily Oklahoman* reported that Macy took the action "to clear up once and for all whether the movie is child pornography."

At a meeting on July 19, resolutions of support for Library Director Lee Brawner and the library staff were presented by the Metropolitan Library Commission and the Friends of the Library. Brawner was given the opportunity to respond to the professional and personal attacks OCAF made against him. He asserted that "the assault is purely political at its base; it employs a classic political tactic, namely to plant the image of the library as dangerous and evil and then come rescue it by taking it over. These advocates of restriction and censorship talk about 'family values,' and what it means to be a 'good person,' namely the values defined by them. They have created a litmus test for pretty much every issue, thought or belief and have mounted an attack on public libraries. Our libraries have always supported parental concerns. . . Citizens have a constitutional right to consider many views and then to make their own informed decisions. Day after day, letter after letter, call after call, these good Oklahoma County library users tell us they do not want anyone or any organization deciding what information they and their families can read or access at their libraries."

Metropolitan Library Commissioner Linda Rogers took on OCAF and its leader Bob Anderson. "Month after month OCAF has attended our meetings and demanded the removal, exclusion and limitation of materials from the collection. It is not our duty as a Commission to evaluate materials for their inclusion in or exclusion from the library's collection. We have an established procedure for any patron to request a review of any material which he feels is appropriate for adding to or removing from the collection. Even though this point has been made clear many times during our meetings, Mr. Anderson continues to ignore the established procedure. He insists on receiving special consideration and has been extremely critical of this Commission when he has not been granted this exception. . . . Why would a man who stood before this commission on February 20, 1997, and stated that he had not used a library in some 25 to 30 years assume that any person with ordinary common sense would want him to make any kind of decision regarding the value of library material?"

Rogers also criticized Anderson for a letter he wrote to her citing current library policy as the cause of an increase in rapes, sexual molestation, sexual harassment, out-of-wedlock pregnancies, and teen suicides. Both Brawner and Rogers received standing ovations.

On July 18, the Oklahoma Library Association adopted a Resolution in Support of Libraries, which called the attacks on *The Tin Drum* "dangerous, alarm-

ing and unwarranted" (see page 159). A statement condemning the attacks was also issued by the Freedom To Read Foundation and other members of Media Coalition, as well as the National Coalition Against Censorship.

The controversy has had national repercussions. In Oneida County, New York, District Attorney Michael Arcuri declined to press obscenity charges against *The Tin Drum* and the Mid-New York Library System after being requested to do so by a library patron. In Antelope Valley, California, four Blockbuster stores decided to pull the film from their shelves in response to the Oklahoma City ruling. But on July 9, following newspaper inquiries, the stores abandoned the ban.

The four California stores — three in Lancaster and one in Palmdale — are franchises owned by Nevada-based Video Entertainment, Inc., and had stocked the film for years. Paul Heroy, supervisor of the four stores, called the removal a "mistake" and said the film "should be returned to the store's shelves."

For its part, parent company Blockbuster Entertainment Group, which owns more than 5,000 stores, said it had little control over what franchise owners deem obscene. "Who are we to say that they have to rent a particular video?" said Blockbuster official Jonathon Baskin.

By the same token, however, Baskin said that Blockbuster, which is owned by Viacom, had no plans to remove *The Tin Drum* from the non-franchise stores it operates directly. Blockbuster's policy is to rent any video that has not received an NC-17 or X rating from the Motion Picture Association of America. Reported in: *Intellectual Freedom Action News*, August/September 1997; *American Libraries*, September 1997; *Billboard*, July 26; *Los Angeles Times*, July 10; *Windsor Star*, August 9. □

Statement of Protest About the Censorship of *The Tin Drum*

Recently, police in Oklahoma City seized copies of the film, *The Tin Drum*, after a local judge, without a written decision, declared that it is obscene under state law. As a result, the film was confiscated from the library, video stores, and homes of private citizens who had rented copies of the film.

The Tin Drum is a prize-winning film about a young boy in Europe before and after World War II. According to the *Chronicle of the Cinema*, the movie, which is "based on Gunter Grass's complex allegorical novel, is a disturbing look at German history through the relentless gaze of a weird child. . . Oskar acts as a sort of conscience to the inhabitants of Danzig when the Nazis are in power and the war rages." A reviewer for the *Christian Science*

Monitor said the film had "the greatest performance by a child that I have ever seen in a movie." In 1979, *The Tin Drum* won both the Academy Award for Best Foreign Film and the Cannes Film Festival Palme D'Or as Best Picture.

It is ironic that the film was seized on the same day that the Supreme Court upheld the First Amendment challenge to the Communications Decency Act. In rejecting the argument that "indecent" or "patently offensive" materials could be prohibited on the Internet to protect children, the Court repeated that "the level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox."

The efforts to eradicate child pornography and protect children are crucial but must be undertaken with appropriate regard for the important values underlying the First Amendment — the right to see, to speak, to learn, and to think freely. Ordinarily, something is obscene only if "the work, taken as a whole, lacks serious literary, artistic, political, or scientific value," a determination made with reference to "national" rather than "community" standards.

It is difficult to see how this internationally-acclaimed film could be deemed "obscene." It would be equally absurd to call its sexual suggestiveness child pornography, when — as Gunter Grass explained — the film's ultimate message is about the effort "to escape the process of becoming an adult and the inherent responsibilities" of adulthood.

We believe that the censorious actions taken against *The Tin Drum* are indefensible. We urge officials in Oklahoma to resist the misinterpretation of the film urged by some, to respect the right of adults to decide for themselves whether to view this work of obvious artistic, historical and political significance, and to restore it to the "marketplace of ideas" in Oklahoma. □

The statement condemning censorship of *The Tin Drum* is endorsed by the following:

American Booksellers Foundation for Free Expression
American Society of Journalists and Authors
Stanley Aronowitz, Director, Center for Cultural Studies, City University of New York
Association of American Publishers
Association of Independent Video and Filmmakers
Authors Guild, Inc.
Peter Bondanella, Distinguished Professor, Indiana University
Boston Coalition for Freedom of Expression
Mary A. Burgan, PhD, General Secretary, American Association of University Professors
Right Reverend John H. Burt, Episcopal Bishop of Ohio, Retired College Art Association
Edward DeGrazia, Professor of Law, Cardozo Law School
Charles Desmarais, Director Contemporary Arts Center, Cincinnati, Ohio

Directors Guild of America
Fairness and Accuracy in Reporting
Reverend W.W. Finlator, Pastor Emeritus, Pullen Memorial Baptist Church, Raleigh, North Carolina
Gayle Fitzgerald, CyberHall, Norman, Oklahoma
Freedom to Read Foundation
Human Rights Watch
Institute for First Amendment Studies
International Periodical Distributors Association
Law and Humanities Institute
S. Jay Levy
Magazine Publishers of America
Massachusetts Music Industry Coalition
National Association of Artists' Organizations
National Association of College Stores
National Association of Recording Merchandisers
National Campaign for Freedom of Expression
National Coalition Against Censorship
National Writers Union
Newspaper Guild
PEN American Center
People for the American Way
Periodical and Book Association of America
Periodical Wholesalers of North America
Publishers Marketing Association
Recording Industry Association of America
Screen Actors Guild
Society of Children's Book Writers and Illustrators
Telluride Film Festival
Theater Communications Group
Zev Trachtenberg, Associate Professor of Philosophy, University of Oklahoma
Unitarian Universalist Association
Video Software Dealers Association
Richard Weisberg, Professor of Law, Cardozo Law School
Ellen Willis, Director of Cultural Reporting and Criticism, Department of Journalism, New York University
Writers Guild of America, East
Tom Zaniello, Professor of English and Director of the Honors Program, Northern Kentucky University □

**SUPPORT
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TO
READ**

the press in a hostile environment

The following edited remarks were presented by Richard Harwood, Washington Post Ombudsman, at the program "The Media in a Hostile Climate — What Can They Do About It and What Can We Do About It?" at the 1997 American Library Association annual meeting in San Francisco. The program was cosponsored by the ALA Intellectual Freedom Committee and the Association of American Publishers Freedom to Read Committee.

The Press in a Hostile Environment is always an appropriate subject because there has never been a time in American when it was otherwise. Our first newspaper, *Public Occurrences*, was published in 1690 and was immediately suppressed by authorities in Massachusetts who "strictly forbade anything in print without license first obtained from those appointed by the government to grant the same." Its publisher, Benjamin Harris, soon afterwards returned to England whence he had come.

In the centuries that followed, government influence and restrictions on the press were a constant fact of life, ranging from licensing laws, jail sentences and suppressions of the early 18th century to the Alien and Sedition Acts of 1799, to the suspension of press freedoms by Lincoln during the Civil War and the censorship regimes of both World War I and World War II. Editors often were assaulted and caned and sometimes shot by outraged readers. Mobs stormed the New York Tribune during the anti-draft riots of the 1860s. There were consumer boycotts against the smut and yellow journalism of the press beginning in the 1840s. As a small boy in Nebraska in 1934, I watched a mob of farmers destroy the type and printing press of the only local newspaper.

I will talk about some of our difficulties today, but I want to begin with some statistical facts that you may find indigestible but will illustrate the place of the media in our lives as this century comes to a close.

- India today has a population of approximately 1 billion people and will soon overtake China in that regard. Its gross national product is roughly \$300 billion a year, a sum that is only marginally greater than the annual revenues of America's media companies. If you think about that for a moment, you will recognize that this is a remarkable fact: the value of all the goods and services produced by a billion human beings is not significantly greater than the revenues of our media industry; its successes and wealth are breathtaking.

- This industry consists of radio and television broadcasting in their various forms, filmed entertainment and recorded music, newspaper, book and magazine publishing, business information services and various interactive digital media. It is the ninth largest industry in the United States. It is of course dwarfed by the industry

of government, the health care and insurance industries and is barely half the size of the construction, food, and education industries. But it is close to parity with the motor vehicle industry and is expected to surpass the aerospace industry in revenues before the new century arrives.

This year, ordinary Americans will spend more time using or being passively exposed to the media than they spend sleeping, working or in the pursuit of any other activity. On Average, Americans invest a little over 9 hours a day, 7 days a week, in reading, watching, listening, internet surfing, video game playing and so on.

The media environment is one we may enter at any hour of the day or night and in every city, every crossroads town, and in virtually every isolated farmhouse and mountaineer's shack in America. In my home, the television goes on in the breakfast room for the morning news programs, beginning at 7:30 a.m. and ending at 9. There are newspapers to consume for a couple of hours. Whenever and where ever we drive, the radio usually is on or a music cassette or a talking book. The evening news on television is good for an hour or two; frequently, there is appealing television entertainment or a sporting event after dark, followed by a book or magazine for bedtime reading or a radio broadcast of late innings of the baseball game after the lights are out. This personal audit omits time spent on professional reading or on-line professional activities. Because we are in a state of pseudo-retirement, my spouse and I have more time for media exposure than those of you working or studying 8 to 12 hours a day. But I suspect our media habits are not entirely alien to most of you and even the most driven and productive among you very probably spend a good deal of personal as well as professional time consuming products of the media industry.

Ninety-nine percent of our households have radios and television sets. More than half of our people read a daily newspaper; nearly three quarters of us read a Sunday paper. More than 1.6 billion consumer books and 166 million professional books were purchased in the United States in 1996, an average of 17 per household. We will buy this year nearly 400 million magazines. There are personal computers in 42 million households, a number that increases by 3 million households a year. More than half of these personal computers are equipped with modems that can link them to the internet; that number, too, is growing by 3 to 4 million households a year. Not included here is the important role of libraries in the media mix.

I have probably fried your brains with all these numbers but the point is that whatever the climate for the media and whatever successes or failures we claim for our political system cannot be attributed to any lack of media influence on our lives. We are drowned in the information and propaganda people may require or find useful in performing their roles as citizens in a democracy.

The availability of this information increases every day and not all of it comes from the traditional organs of the press. The entertainment media, for example, do not merely entertain. They carry many political messages. *All in the Family*, with the immortal Archie Bunker, was more than an endless series of punch lines. Health care issues are debated on *General Hospital* and *ER*. Political satire sustains Mark Russell, Jay Leno and David Letterman. Rap groups, no less than Peter Paul and Mary, are sending political messages of one kind or another. Novels such as *Primary Colors* and *The Grapes of Wrath* are not merely amusing fairy tales. They are full of political and social content. Issues of homosexuality, class and race often are more powerfully explored on Broadway and in Hollywood than in the conventional press.

It is often said that while the quantity of information poured out on our people by the media is immense, its impact on our civic life is minimal. Evidence in support of that argument is produced constantly in the form of polls and academic studies purporting to demonstrate the ignorance of the adult population, not to mention the young who think history began with boom boxes and untied shoe laces. Millions of our people can't name the members of their city council, the state government or their representatives in Congress. Ten times more people can identify Judge Ito or Judge Wapner of TV's *People's Court* than can identify the Chief Justice of the United States. Half of our people don't vote in presidential elections; 80 to 90 per cent don't vote in many of our local elections. The Pew Research Center for People and the Press reminds us constantly that people pay little attention to the latest happenings in Washington or in Bosnia and China. Most of us—although none in this crowd, I am sure—are pretty much oblivious to NATO expansion, the Eurodollar, the "contract with America" and other hot button issues of the day. One of the endearing anecdotes from my days as a political reporter in

(continued on page 183)

in review

Free Expression and Censorship in America: an Encyclopedia. By Herbert N. Foerstel. Greenwood, 1997. 272 pp. \$65.00.

This is a handy reference tool which should find a home in all libraries. Furthermore, many individuals will refer to it frequently enough to want a personal copy within easy reach.

The author has pulled together in this volume brief descriptions of organizations and longer essays on topics related to free expression and censorship. The approach is historical but the emphasis is on the twentieth century. Indeed, the topics of greatest interest in the 1990's receive extensive coverage.

In his introduction, the author admits to his bias: he is a dedicated First Amendment advocate. He is, however, committed to presenting the information in an objective narrative. This he succeeds in doing remarkably well.

Topics which receive essays include: "hate speech", "internet", "military censorship", flag desecration", "obscenity" and many more. Organizations ranging from the Freedom to Read Foundation to the Liberty Federation to People for the American Way are succinctly described. Brief biographies of many individuals are also included. The author explains that ". . .the biographies presented are unavoidably selective." They range from Peter Zenger to Frank Zappa and from Floyd Abrams to Scott Armstrong.

The book is carefully researched and general sources or recommended readings are included at the end of each article. A brief, very selected bibliography is included as well. Finally, a comprehensive index rounds out the volume.

The entries are very much current. The one problem that the reviewer found was in the essay on the Internet. Since the book was published before the Supreme Court decision concerning the CDA, that information is not included. Apart from that example, however, the reviewer did not encounter any other statements that are incomplete or dated.

Strongly recommended for libraries generally and for individuals interested in First Amendment issues.—*Joseph A. Boisse, University Librarian, Davidson Library, University of California, Santa Barbara, California.* □

San Francisco schools decline Playboy award

The San Francisco Unified School District said "thanks, but no thanks," to the Playboy Foundation, which had awarded Mission High School's newspaper its annual Hugh N. Hefner First Amendment Award for print journalism. In a September 17 letter, associate superintendents for high schools Gwen Chan and John Quinn thanked the foundation for "recognizing the quality" of the *West Wing*, but said it would be inconsistent with the school district's mission to accept the \$5,000 award.

"We believe that to accept an award, no matter how well-intentioned, from a foundation which represents an adult magazine and adult products that are inappropriate

for minors, and illegal to sell to minors, would represent a tacit endorsement for those products, and therefore [be] contrary to the mission of our schools," the letter said.

Katharine Swan, last year's faculty adviser to the *West Wing*, said she didn't think the award was tainted because it came from a foundation associated with *Playboy*, a monthly magazine that features naked women as Playmates of the month. "It is an honor to receive this award," said Swan, who now teaches at another high school.

"The people who do the judging are legitimate professional journalists. The people who have received past awards have done genuine good. There is nothing flaky about the award or the recipients," Swan noted. She said the foundation had offered to pay for travel and hotel accommodations for her, and for two students and their parents, to attend the award ceremony in New York City November 5. Swan said she would attend, despite the district's letter. "I plan to accept the award," she declared.

The award was the second won by the paper this year. In March, Mission High's journalists won the Edmund J. Sullivan Award from the Columbia Scholastic Press Advisers Association, which congratulated the students for "fighting for the right to speak their minds while in pursuit of the truth on behalf of their audiences."

The *West Wing* staff documented the replacement of three top administrators and the threat of "reconstitution" at Mission High, a city policy that completely replaces administrations at schools like Mission that rank at the bottom of the district. They also investigated issues such as why basketball players received brand-new, expensive shoes. Throughout the coverage, they were pressured to do more "positive" stories about their school.

The Playboy Foundation established the awards in 1979 to honor individuals who have made significant contributions to the effort to protect and enhance First Amendment rights. Reported in: *San Francisco Examiner*, September 21. □

photographer's nudes under attack

Jock Sturges photographs nudes, mostly children or young teenagers. He shows his models in innocent poses seemingly unaware of their nudity. In 1990 Sturges, a San Francisco artist, faced obscenity charges after police seized photos and negatives from his apartment and a photo lab. After a controversy that drew national attention and a lengthy investigation by the police and the FBI, the city dropped all charges against him. Since then, he has published at least three books of photos, which received favorable reviews by art critics. Most of his subjects were shot while playing with their families on nudist beaches in France.

Now Sturges is under attack again, as groups in at least four and as many as twenty-nine different U.S. cities have demonstrated to demand the removal of his work from local bookstores. Some of the demonstrations came during the annual Banned Books Week. Some protesters said a nationwide protest had been organized by Operation Rescue founder Randall Terry.

In Lincoln, Nebraska, Donna Bockoven asked the Lincoln Police Department to investigate the books. On July 20, she and her husband went to the local Barnes & Noble and asked to see a Sturges book after hearing a discussion of Sturges on the "Focus on the Family" program by James Dobson, broadcast on Christian radio stations. Later that day, she returned with her mother and ripped pages out of a copy of *Last Day of Summer*, a 200-page volume that sells for \$65. "We need somehow to cause a scene to let people know what's going on here," she said. Bockoven was cited for vandalism and paid for the book, but all remaining copies of Sturges's books were seized temporarily by Lincoln police.

In Wichita, Kansas, members of an ad hoc citizens group set up camps outside Borders Books and Barnes & Noble August 25 demanding that *Last Day of Summer* be removed from sale. "We know the child pornography statutes, and there's no doubt in our mind that action needs to be taken," said Lois Cunningham. "We're committed to staying here until something changes."

"They can stay out there as long as they want," replied Sarah DiFrancesco, regional community relations manager for Barnes & Noble, "but as of right now, the book stays on the shelf."

About a dozen people protesting Sturges ripped pages out of one of his books at the Glendale, Colorado, Barnes & Noble August 29. No one was arrested, but the protesters were asked to leave the store by police.

In Elmira, New York, about forty people gathered in front of Barnes & Noble September 6 to protest the sale of three Sturges photo books — *Jock Sturges*, *Last Day of Summer*, and *Radiant Identities*. "It's just exploiting these children and what happens is pedophiles buy this kind of stuff and it gets them excited," said protester Todd Conklin. "It's garbage and Barnes & Noble has no business selling this stuff." Organizers said the protest was one of 29 organized by Terry from New York to California.

"These books have been found to meet community standards basically everywhere in the United States," replied Elmira store manager Randy Lee, "so we don't have a problem carrying them or featuring them, and we will continue to do so. Barnes & Noble doesn't believe in censoring the rights of its readers." Reported in: *Lincoln Journal-Star*, August 15, 16; *Wichita Eagle*, August 26; *St. Joseph News-Press*, August 27; *Denver Post*, August 30; *Elmira Star-Gazette*, September 7. □

— censorship dateline —



libraries

Prattville, Alabama

A 13-year-old might have only been looking for a good scare when he checked out a Stephen King novel from the local public library, but it was his father who got the jolt when he discovered some of the book's language. Sixteen pages into *Insomnia*, the boy took the book, which was checked out of the Autauga-Prattville Public Library System, to his father. The language was "garbage," the man said.

"It just shocked me," the man recalled. "I'm not judging whether the book is good or bad or whatever. I was really surprised that my 13-year-old could go to the library and check out a book like that."

Margie Mullings, library system director, said the carousel case on which the book was displayed was moved to another section of the library after the man complained and signs labeling the carousel "adult" were ordered. But pulling the book would amount to censorship, she said.

"I understand exactly where he is coming from," she explained, but "there's no way we can censor material. If we used our own standards to determine which books we should have, they may be different than that of a particular child's parents. Some people might not object to their child reading that kind of a book."

The man said he was pleased the library had relocated the books, but didn't think it solved the problem. "I'm satisfied," he said, "but I think I would be more satisfied if when my son came up to the desk to check out one of those books, they would say, 'No, you can't check that out.'" Reported in: *Montgomery Advertiser*, September 3.

Gwinnett County, Georgia

The Gwinnett County Library Board of Trustees approved two new policies August 14, settling almost four years of controversy over keeping adult-themed books from children.

One policy created a "parental advisory" shelf of non-fiction sex and health books that extensively and explicitly depict human sex acts, either visually or verbally, or books the library staff deems are appropriate only for adults. Two books previously targeted at the library, *Women on Top* and *The Ultimate Sex Book* were likely to be placed on the shelf. But sex education books aimed at children and teenagers, anatomy, AIDS education and general health books, as well as romance novels and other works of fiction, will remain in the general collection.

The policy will not interfere with adult access to books. The policy warns, however, that the library cannot promise children won't be able to access the books and read them in the library. Library Director Jo Ann Pinder said it would take about three months to determine which books will be on the shelf.

The other policy adopted will force parents to decide — with electronic designations on new library cards — whether their child can check out books on the shelf. Parents can also restrict further what types of books the child can get from the library.

The definition of the materials to be placed in the new section dominated discussion of the proposal. Trustees Jennifer Toombs and Debbie Tuschall debated at length over the effect the words "predominantly" and "specifically" would have. Toombs warned that use of "predominantly" would require the placement of books according to quantity of objectionable material. Tuschall insisted that without "predominantly" in the definition, some materials that are not necessarily inappropriate for minors would be unjustly included.

With both words included, the policy was passed by a vote of 4-1, with only Toombs dissenting. She said the definition would not encompass many books to which parents have objected in the past. Reported in: *Gwinnett Daily Post*, August 12, 15, September 2; *Atlanta Constitution*, August 15.

Warren, Michigan

Gloria Sankuer, a Warren city councilwoman who tried to get a librarian to print pornography off the Internet at the public library, offered a written apology in a letter sent August 8 to local newspapers. "My persistence, in a just cause, was probably overbearing for someone else, namely the librarian who was following another set of rules. For this injustice to her and the entire people of Warren who may have been offended by what they may have perceived as rudeness, I apologize."

Sankuer's troubles began on July 9, when she went to the Dorothy Busch branch of the Warren Public Library

and asked a librarian to show her "naked pictures" on the Internet. Sankuer said she wanted the pictures for the Macomb County commissioners' meeting on pornography "blocking" devices the next day.

The librarian refused to help, saying she was prohibited by a council moratorium on such material at the library that Sankuer had helped pass in May. Library officials accused Sankuer of humiliating the librarian and the city employees' union filed a grievance.

The next day, the county Community Services Committee recommended that a pornography filter be installed in the computer mainframe of the county libraries. The county Library Cooperative rejected the proposal at the end of July and presented the Board of Commissioners with another recommendation that would give each library the right to decide whether to use the filters.

Library Director Spike Musselman said Sankuer should apologize directly to the librarian. "This is her policy and she wanted us to ignore it," Musselman said. "She has not apologized to our staff."

Deborah Frazier, administrative secretary for the library and steward for Local 1250 of the city employees' union, said Sankuer had other motives in mind when she sent the letter. "She's politically grandstanding," Frazier said. "It doesn't sound like she's apologizing at all. She's looking for space in a newspaper." Reported in: *Detroit Free Press*, July 18, 26; *Macomb Daily*, August 12.

Apple Valley, Minnesota

When a bright third-grader picked the book *All But Alice*, by Phyllis Reynolds Naylor, from the library at Diamond Path Elementary School last spring, she was attracted by the cover and how easily she could read the text. When she saw, however, that one of the chapters was titled "Sex," she showed it to her mother, Julie Yates.

Yates took the book, read it, and asked a District 196 committee of parents and school staff to take it out of elementary school libraries in the Rosemount-Apple Valley-Eagan district. The committee voted to keep the book on the shelves, but on July 28 the district board disagreed.

The issue was a brief passage on page 40, in which the seventh-grade heroine discussed sexually oriented rock lyrics with her father and older brother. Four librarians from the district spoke in favor of retaining the book, since it received good reviews and board policy was followed in selecting it. They said the book might not be appropriate for lower grades, but the district's elementary schools also include intermediate grade students.

"Our collection must include material for the most mature reader" in the school, Diamond Path media specialist Nancy Schueller told the board. "Parents in this district do not want other parents making that choice for them."

The board disagreed on a 5-1 vote. "It's an issue of common sense," said Gene VanOverbeke, who introduced the motion to remove the book. "It's not about censorship. It's not about the First Amendment. It's about selection of age-appropriate materials."

All But Alice is one in a series of books about a girl going through puberty whose mother has died. It is written at a fifth-grade reading level. The author won the Newbery Medal for juvenile fiction for *Shiloh*. Reported in: *St. Paul Pioneer Press*, July 29; *Dakota County Tribune*, August 7; *Burnsville Sun Current*, August 6.

Elizabethtown, Pennsylvania

Some district residents challenged the school board's July decision to stamp disclaimers in a seventh-grade science textbook that explains the theory of evolution. The board agreed to purchase *Science Insights* but approval was contingent upon a disclaimer being stamped inside the cover and at the beginning of a section containing material that the board considered questionable.

The disclaimer reads: "Section 7.3 describes the theory of evolution. The theory of evolution includes ideas about origin and development of life which have not been conclusively proven. Scientists continue to make new discoveries which change their ideas about the theory of evolution."

Members said they had concerns about the book presenting evolution as a fact rather than one of several theories about the origin of man.

Several residents spoke against the disclaimer at an August 12 board meeting. Reported in: *Harrisburg Patriot-News*, August 19, 21.

Bedford, Pennsylvania

In September, Pat Macciarolo, director of the local Discovery Time Preschool & Kindergarten, asked the Bedford County Library Board to remove about a dozen titles from the children's collection because they reinforce old stereotypes of Native Americans and are "excellent examples of bad books."

"I'm not a member of a ban-the-book committee. I'm not interested in burning any books," said Macciarolo. "What would be good would be to pull them from the shelves so they're not reinforcing any stereotypes that children have. I would like kids to see positive attitudes of Native Americans." Reported in: *Altoona Mirror*, September 12.

Loudon County, Virginia

The Loudon County Library Board adopted one of the most restrictive Internet-use policies in the country July 22 when it agreed to install screening software on library computers to block access to sexually explicit materials.

The policy was adopted on a 6-2 vote after a contentious four-hour public hearing. It specifies that children under 17 who want full access to the Internet must have a parent or guardian sitting with them when they use the computer. Adults who want the screening filter turned off and have access to all sites must request such access from a library employee.

Some speakers at the hearing derided the move as censorship, while others praised what they called a "common sense" restriction that protects children. "We're talking about whether pornography will or will not come into the library," said Richard H. Black, a library board member. "Parental rights are about nurturing children, not about damaging them."

The vote came despite opposition from Library Director Douglas Henderson, who said that parents "should have the right to decide what is appropriate for their children." Reported in: *Washington Post*, July 22.

schools

Los Angeles, California

Brushing aside the pleas of some teachers, parents and alumni to keep cherished traditions, the Los Angeles Board of Education voted September 8 to eliminate all references to American Indians in the names and images of school mascots. The 6-0 vote gave three high schools and one middle school a year to replace their current Indian mascots. It also provided district funds to pay for paint to cover up Indian images and to buy new school uniforms, if necessary.

Several Native American groups had asked the board September 2 to ban Indian mascots after it appeared that alumni groups from Birmingham and University High Schools were derailing an order to that effect issued by former Superintendent Sidney Thompson.

"Approximately thirty mascots fall into the category of politically incorrect, unless the animal rights activists come out; then it will be 100%," said Lee Marks, a Birmingham alumnus. Birmingham Athletic Director Louis Ramirez said the 44-year tradition of the brave "was done to honor the American Indian."

"We will tell you when you are honoring us," shot back Fern Mathias, one of several Indians who spoke against the mascots. Indian groups first requested elimination of the mascots seventeen years ago. The issue resurfaced two years ago when Indian parents complained about students in Indian garb simulating brutal tomahawk attacks at sporting events. Reported in: *Los Angeles Times*, September 10.

Windsor, Connecticut

Windsor High School's student council July 24 removed its student representative from the school board to protest a board member's denunciation of a book on

the senior reading list as "pornographic." The council said in a letter it sent after an emergency meeting that Mark Cashman's comments about *Being There*, by Jerzy Kosinski, were inflammatory and morally self-righteous.

"We found Mr. Cashman's remarks portraying the novel *Being There* as 'obscene' and 'something you might read in the letters column of *Penthouse Magazine*' offensive and insulting to staff, students and literature itself," the letter said. The students demanded that Cashman apologize for his remarks as a condition for the student representative's return to the board before November's election.

The book prompted Cashman to propose that parents be notified of the books their children read and sign a waiver concerning those that contain sexually graphic material. He said he read the book after a student brought it to his attention.

A compromise was reached asking teachers to come up with a proposal for informing students of required reading that might have potentially controversial material. Board members voted 5-4 to direct Superintendent Richard H. Silverman to draft a regulation. Reported in: *Hartford Courant*, July 22, 25.

Kissimmee, Florida

Two sex education books must be removed from the media center at Denn John Middle School, the Osceola County School Board voted 3-1 August 5. The books, written for 9-15-year-old children and their parents, will be accessible to parents only through the guidance office.

Some parents objected to two books by Lynda Madaras, *The What's Happening to My Body? Book For Girls* and *The What's Happening to My Body? Book For Boys*. Principal Jim DiGiacomo said he felt the decision was reasonable.

Parent Susan Besser, who objected to the books, said they had much good information but also treated inappropriate subjects, like group masturbation. "I don't feel it's censorship," she said. "Take it off the children's shelf and put it on the parents' shelf. We're just asking to move it."

Board member Donna Hart, a former middle school guidance counselor, voted against moving the books. She said they might be helpful to some students and she didn't want to dictate tastes. Reported in: *Kissimmee News-Gazette*, August 7.

Panama City, Florida

The committee that reviewed a recent challenge to the novel *Of Mice and Men*, by John Steinbeck, for the Bay County School Board was not formed in compliance with School Board policies. Superintendent Larry Bolinger confirmed September 4 that a materials review committee had not been formed at the school level and that the

district committee recommendation to reduce the book to an "optional" status would not be accepted.

Bolinger's ruling sent a lengthy process, during which the book was removed, restored, and then restricted, back to square one. The controversy actually began in December, 1996, when Rev. B.J. Richardson met with Mosley High School Principal Bill Husfelt to complain that *Of Mice and Men* used offensive language. She did not file a written complaint, but Husfelt placed the book on limited classroom use without review.

In July, however, following Husfelt's removal of a teacher from her longtime position as adviser to the school newspaper, complaints arose from teachers and students, and the ACLU and the National Coalition Against Censorship wrote to Bolinger and the Bay County School Board about censorship. "I urge you to summarily condemn the removal and the censorship of John Steinbeck's *Of Mice and Men*," wrote Robyn E. Blumner, executive director of the Florida ACLU.

In response, Husfelt issued a memorandum to all English teachers, which declared that teachers could use the book as they wished. Husfelt said he had only sought to follow policy by resolving the complaint through discussion with the teacher and parent(s) by offering an alternative reading and limiting the book's use to small groups.

"It was never my intention to censor this book," he said in a letter to Bolinger. "I followed School Board policy and resolved this objection after meeting with the parents and the teacher. In light of the recent concerns, and to remove any perception of censorship, I am sending a memorandum to all of the English teachers at Mosley allowing them to use the book as they deem appropriate."

Richardson, who represents a citizen group called 100 Black United, then submitted a formal written challenge to the book. "The 100 Black United, Inc., request the removal of the book, *Of Mice and Men*, and any other inadmissible literary books that have racial slurs in them, such as the using of the word 'Nigger,'" wrote Richardson in a complaint on letterhead from the Northwest Florida Coalition for Human Rights and Dignity. "This book does not encourage, inspire or motive our children youthful growth in Bay County (sic)," the complaint concluded.

At that point, board policy required the school to form a review committee. Instead, the book was passed to the district level for review. That committee, Bolinger ruled, was also improperly constituted, involving just ten of the required thirteen members. It recommended that the novel be used only as "optional reading," which was similar to Husfelt's earlier informal limitation on its use to "small groups."

"Because of the serious nature of reviewing challenged material, I must insist that all steps be followed to the

letter," Bolinger said. "I have sent the Request for Review forms back to Mosley to begin the process."

Following proper policy and procedure is of particular concern in Bay County because ten years ago a similar controversy attracted national attention when then Superintendent Leonard Hall prohibited classroom use of more than sixty books, including classics by William Shakespeare and other prominent writers. Restrictions on the use of most of those books were lifted after an uproar of protests led to Hall's resignation. Reported in: *Panama City News Herald*, July 11, 14, September 5; *Tampa Tribune*, July 17.

West Palm Beach, Florida

Monica Medlicott's seventh-grade science fair project was thorough enough to earn an A, but it was banned by the school principal when it came time to display it. The project asked "Which Brand of Condoms Is Most Durable?" Carver Middle School principal Carol Blacharski said it wasn't appropriate for families and removed it from a public showing last March.

Monica and her mother, Sandra Medlicott, were so upset by that decision that they filed suit against Blacharski and the school district in U.S. District Court in West Palm Beach.

"She did a lot of research. Her teachers had called to tell me what a wonderful job Monica was doing," said Medlicott, who recalled that the teachers were so enthused they urged Monica to attend the evening public opening. "She showed up there that evening and was publicly humiliated," Medlicott said.

The project had been on display for judging and student viewing. But Blacharski packed up the display boards, which were decorated with health pamphlets, charts and empty condom wrappers, and sent them to her office.

The project reviewed several brands of condoms and involved interviews with experts at health centers about them. In addition, strength tests were performed by filling the condoms with water and determining the point at which they burst. The project concluded that Trojan Ribbed condoms were the most durable. Reported in: *St. Petersburg Times*, August 16.

St. Cloud, Minnesota

The mother of two Sauk Rapids-Rice High School students asked school officials to remove *Of Mice and Men*, by John Steinbeck, from the reading list of the ninth-grade literature class. Marilyn Rabsatt said the book's use of racist language led to racist behavior and racial harassment of her daughter, Mary, last year. She hoped to spare her younger daughter from the same experience in ninth grade.

A derogatory word for African-Americans is used

often in the text. When parts of the novel were read aloud in class, Rabsatt said, other students snickered and looked at her daughter, the only black student in the class. After class, some students followed her in the hall, calling her by the word.

Rabsatt first lodged her complaints about the book with high school principal Tom Blair, and the course's teacher, Beth Gadola-Johnson, in April. Gadola-Johnson offered Mary an alternative reading and stopped having students read from the book aloud. She said she never witnessed the harassment Rabsatt reported. A committee was set to review the request. Reported in: *St. Cloud Times*, August 20.

Clark, New Jersey

Director of Language Arts Doug Felter, who compiled the summer reading list for the Clark school district's seventh-graders, removed the Margaret Lawrence novel *The Diviners* from the list. The book caused an uproar when one of the students read it; it included detailed descriptions of sexual intercourse and oral sex between two characters. Felter apologized in a public letter to parents and to the student who felt uncomfortable reading the book.

"It was my mistake but it wasn't a question of intentional oversight," he said. "Upon receiving word that there was such language I had the book immediately retracted from the list." He said the novel had been designated by its publisher as "a reading level appropriate for an average seventh-grader."

The controversy began when a parent telephoned Council member Lyle Hatch and expressed outrage over the book. Hatch then sent notification to the newspapers alerting other parents of what he called "filth." Board President Martin Axelrad said the appropriate channel would have been for Hatch to notify the school board. "The school board has not received one phone call concerning this book," Axelrad said. "It should have been taken care of in a more professional manner."

"I didn't want to see this get swept under the rug," Hatch responded. "We have to make sure that our educational guidelines directly reflect our moral codes." Hatch has formed a group called Parents Against Pornographic Adult Literature. He said the group was formed to ensure reading lists are correctly oriented and reviewed for Clark students. Reported in: *Clark Eagle*, July 10, 17.

Bunn, North Carolina

Saying the material does not fit with a policy of strictly teaching students to abstain from sex until marriage, the Franklin County school board ordered three chapters cut out of its ninth grade health textbook.

The action, which came after months of discussions in the county about how to handle sex education in the rural school system, raised concerns among teachers and

others that those students who decide to have sex anyway will be at risk of getting pregnant or catching a disease because they won't know how to protect themselves.

"Shades of 1936, Germany," said Wayne Wilbourne, principal of Bunn High School, whose ninth-graders were issued their copies of *Making Life Choices: Health Skills and Concepts* minus chapters 17, 20, and 21. The chapters, which were sliced out by a school volunteer and destroyed, deal with AIDS, HIV and other sexually transmitted diseases; pairing, marriage and parenting; and sexual behavior and contraception.

Franklin County students have used the textbook for the past three years without complaint. Then, last fall, a state law took effect ordering all districts to teach abstinence until marriage and requiring those who want a more comprehensive sex education program to go through a public hearing process to get approval of materials to be used.

The Franklin County board decided its schools would teach only abstinence until marriage. Under that policy, if students have questions about birth control, they can only be told about the failure rates of products like condoms or pills and referred to their parents or guardians for more information. If they ask about AIDS, they are told it is a virus transmitted primarily by contaminated needles and by a homosexual act that is illegal in North Carolina.

To make sure the policy was being followed, the board appointed a committee to review all materials used to teach sex education. The committee recommended against using the textbook because, for example, it uses the word "partner" instead of "spouse," and encourages students to abstain from sex until they are ready, rather than until they are married.

While they would only spend four or five days on sex education, teachers said they needed the book to teach a range of other topics during the semester, including nutrition, first aid and the respiratory and circulatory systems. The teachers voted unanimously to use the book with the sex-ed chapters removed, if necessary, and the board of education agreed. Reported in: *Raleigh News & Observer*, September 25.

Brentsville, Virginia

A Brentsville family's protest over three high school English books sparked a debate among Stonewall Jackson High School families. Are sexually explicit novels such as Isabel Allende's *The House of the Spirits* and Gabriel Garcia Marquez's *One Hundred Years of Solitude* great works, appropriate for academically advanced teenagers? Or are they little more than literary pornography with no place in a public school?

The debate began for the Smelsers, who raised the issue, in June, 1996, when Amy Smelser received her summer reading list. The list was an entree into the Interna-

tional Baccalaureate program, an advanced series of courses for juniors and seniors, available world-wide at participating high schools. Stonewall hosts Prince William County's only TB program and students across the county participate.

On the list was Zora Neale Hurston's *Their Eyes Were Watching God*, a 1937 novel by a renowned black female writer. Smelser and her family objected to its language and sexual explicitness. They were granted permission to substitute another work by an African-American. Smelser read Colin Powell's autobiography, *My American Journey*.

The issue arose again with the two Latin American novels. Unhappy with the assignments, the Smelsers began a series of meetings with teachers and administrators at Stonewall, which led to a July letter from Principal Steve Constantino, supporting his staff's decision to adhere to the curriculum of the overseeing IB Organization and to not allow Amy Smelser or others to bypass or substitute for the assigned works.

The Smelsers withdrew their daughter from the IB English program but simultaneously entered their son, Nathan, into the preparatory portion of it. They also began a public campaign to inform other parents of the reading material. Part of that campaign included Jeff Smelser's presence in the high school parking lot in late August distributing a packet of Allende excerpts with the heading, "Would you allow your 16-year-old daughter to read this material? And if not, why should the public school be allowed to *require* my 16-year-old daughter to read this material?"

School Superintendent Edward L. Kelly telephoned the Smelsers to tell them there is a formal appeal process for objecting to school material, and the Smelsers then delivered appeals on all three books to administrators. A Stonewall committee of parents, teachers and students will respond to the appeal. Reported in: *Washington Post*, August 20, September 7; *Alexandria Journal*, September 3.

Fairfax, Virginia

Some Fairfax County parents have asked a judge to give them what the county school board would not. The parents filed suit against the board asking that a label be inserted in a high school biology book that apologizes for the text's characterization of creationism as a pseudoscience like astrology and states that it is a legitimate scientific theory. The labels, the suit asks, would also state that evolution is a theory not a fact.

Biological Science: A Molecular Approach "disparages any religion based on a belief in a Creator by comparing creationism to pseudoscience, such as astrology, miracle cures for cancer and dieting cures," said attorney William Beeton, Jr., in the suit filed June 30 in Fairfax County Circuit Court.

The parents are members of the Fairfax arm of the American Family Association, which fought the issue unsuccessfully in several school book challenge hearings during the school year. In May, the school board denied the group's request to insert labels in the book apologizing for its text.

William Nowers, president of the group, said it was never given a fair hearing. "The board made insulting comments that were irrelevant and arrogant to smokescreen the real issue," he said. "I object to them teaching evolution as if it were fact." Nowers said the text violates school policy prohibiting schools from engaging in activities that disparage religion. Reported in: *Fairfax Journal*, July 2.

student press

St. Petersburg, Florida

Students at Northeast High School got to see the back-to-school issue of their student newspaper, along with a cover sheet clarifying a sensitive story about the school's future. More than a thousand copies of the *Nor'easter* were held back in August after school officials objected to a story that said Northeast would become the district's first "traditional" high school in 1998-99.

Principal Michael Miller said the story was inaccurate and misleading because Northeast was still developing a plan that would have to be approved by the superintendent and the school board. Miller and student newspaper adviser Kathy Preble mutually decided to hold the paper.

"We just decided to add a cover sheet and explain [the process] in detail," Miller said. "We have some parents who truly want a fundamental or traditional school. But we also have those parents who are concerned about their family being rezoned to another school."

Student editors wrote the clarification. Reported in: *St. Petersburg Times*, August 23, 28.

newspapers

Phoenix, Arizona

Law enforcement officers in black ski masks seized hundreds of copies of an adult newspaper in raids stemming from a new law that restricts the sale of sexually explicit publications from public racks. Jerry Evenson, publisher of *The Beat*, said that seizing copies of his newspaper from vending machines violated the Constitution.

Bill Fitzgerald of the Maricopa County Attorney's office disagreed. "This is not a First Amendment issue," he said. "It has to do with the distribution of pornography and its availability to minors." Reported in: *Santa Fe New Mexican*, August 29.

San Juan, Puerto Rico

Puerto Rico's leading daily newspaper is locked in a battle with the governor over what it says is the most fundamental of press issues — its right to aggressively report on its government without fear of reprisal. Editors at *El Nuevo Dia* said that Gov. Pedro Rossello, a leader of the movement to win statehood for the U.S. territory and a rising star in the U.S. Democratic Party, pulled all government advertising April 15 after the paper published articles critical of his administration.

The newspaper called Rossello's move a "clear attempt to censor the press." Co-editor Maria Luisa Ferre said Rossello's administration also ordered tax audits of the newspaper and some of its reporters, stopped taking reporters' calls and blocked a major construction project by a cement firm co-owned by the Ferre family.

These alleged moves followed a spate of articles dealing with corruption in the government-owned Puerto Rico Telephone and a highly critical story about the first hundred days of Rossello's second term.

The paper recently took the government to court to force release of documents related to irregularities at the water authority. Just before the court ruling, the information was given to a rival newspaper, Ferre said.

Rossello's press secretary insisted there is no vendetta against *El Nuevo Dia*. The ads were canceled, he said, because the paper raised its rates, a fact Ferre conceded.

The American Society of Newspaper Editors, the Freedom Forum, the Latin American Federation of Journalists and the World Association of Newspapers have all called on Rossello to lift the "economic boycott." The Inter-American Press Association said it may send a fact-finding mission to the island.

"This is an unprecedented situation against the press in Puerto Rico," said Leila Andreu, president of the Puerto Rican Association of Journalists. "If the government is willing to use its power against the major newspaper on the island, imagine what it could do to the other media." Reported in: *USA Today*, August 20.

art

Cypress, California

A Cypress College student's photo exhibit of graffiti throughout the world was missing a picture because it contained a derogatory statement against police that some students found offensive.

Glenn Stern said he was being censored. "It's ironic what's happening because the story line of the collection is that when people are oppressed and can't freely express their thoughts, they turn to public walls," he said.

Photo gallery curator Jerry Burchfield said he removed the picture, taken in Spain, because students were upset by an obscene comment about police. They were offended

because a sheriff's deputy was killed during a robbery near campus just days before the exhibit opened.

"We had several students ask how we could hang this in light of what just happened," said Burchfield. Reported in: *Orange County Register*, September 9.

Damariscotta, Maine

Natasha Mayers gave a lot of thought to her show at Miles Memorial Hospital. She chose pieces she thought "all related to emotional, physical and mental health, and were most appropriate for a hospital." Hospital officials disagreed. On August 11, after Mayers hung 46 pieces, they took down nine.

Mayers said she was told the art was "unsuitable, offensive, pornographic." She said the hospital has no art guidelines; there are technical stipulations, but "nothing about content or the hospital's right to remove art." Mayers called the move "a cowardly, craven, small-minded act."

Miles's Director of Development and Community Relations, Scott Shott, called the incident "unfortunate." Stressing that the hospital's "primary focus is on patient care," Shott said that two complaints were received within the first hour that the art went up. "There are places in the world for provocative art. We don't feel our first floor is one of those."

Mayers hoped local press attention would put pressure on the hospital and lead them to reconsider. But a week after she had hung the show, Mayers took the whole thing down, saying the hospital would not compromise.

Betty Ensign, who served on the hospital's art committee and suggested inviting Mayers to exhibit, was "absolutely furious" about the action and immediately resigned from the committee. Reported in: *Maine Times*, August 21.

Salt Lake City, Utah

Some University of Utah students were angry that school administrators rearranged an art exhibit in the Union Building, placing Trevor Southey's painting "Prodigal Son" in a less conspicuous place.

"The university is well within its right to say that there is a time, place and manner for all things," responded Union manager Peter Richards, who ordered the painting to be moved. "I had received a couple of complaints that the artwork was offensive."

Richards stressed that "Prodigal Son" remained in the Union exhibit, although it was moved around a corner. That way, people passing through the Union lobby would be less likely to be exposed to the large triptych of two nude men.

But students Kevin Haasch and Deidre Hughes said the action was tantamount to censorship. They and other students posted a "notice of protest" in the gallery declaring that administrators moved the work without student

consultation.

The work was part of a larger exhibit connected to a conference of gay and lesbian Mormons. Reported in: *Salt Lake Tribune*, August 27.

foreign

Bogota, Colombia

The owners of Colombia's prestigious QAP national newscast, including Nobel Prize winning novelist Gabriel Garcia Marquez, say they are so upset by a new law regulating television that they may go off the air at the end of December rather than bid for a new six-year license in a process they say is rigged against them.

"The television law is fundamentally a smoke screen to take QAP away from us," Garcia Marquez said. "The government managed the whole operation to be able to expropriate the news program. I think we were the principal target."

Others said the television law's aim was to stifle investigative journalism that has dogged President Ernesto Samper and dozens of members of Congress who have been linked to drug cartel donations. Samper endorsed the law last fall and has not heeded calls by the Inter-American Press Association to backpedal on its implementation.

In a final hurdle, the law was approved in early August by a narrow 5-4 vote of the Constitutional Court, the nation's highest tribunal.

The measure terminates the contracts for ten private news programs at the end of this year and requires them to bid again for the right to continue broadcasting. It is widely known as the "Daniels law" for its principal sponsor, Martha Catalina Daniels, a legislator who led a drive to clear Samper of charges in the drug money scandal.

As the law was originally written, it empowered the National Television Commission to evaluate news programs each year and sanction those that did not satisfy criteria of "objectivity." That clause was eventually struck down by the high court. Reported in: *Miami Herald*, August 11.

Tokyo, Japan

An esteemed Japanese historian acknowledged his victory August 29 in a court battle that took three decades, compelling Japan to tell schoolchildren the full story of its actions in World War II. For the first time, the Supreme Court limited Japan's power to rewrite history, ruling that the Education Ministry broke the law in removing mention of a Japanese atrocity from historian Saburo Ienaga's high school history textbook.

"Today's ruling was not a complete victory," said the 84-year-old Ienaga, one of Japan's most internationally

renowned historians. "But one more case of screening has been judged illegal. In other words, the Supreme Court has admitted that textbook screening is illegal." Ienaga had been battling government censorship of his textbooks on World War II since 1965.

The justices ruled 3-2 that the Education Ministry acted illegally in 1980 and 1983 when it removed from a textbook that Ienaga wrote a description of Japan's biological experiments on 3,000 people in northern China during World War II. The disputed section has since been restored.

"The education minister illegally stepped beyond the boundary of appropriate screening," the court said, accusing the ministry of "erroneous judgment." However, the justices dismissed or rejected claims by Ienaga that seven other portions of his book had been illegally censored, including one about Japanese soldiers raping Chinese women during World War II.

Although the decision marked the first time the court had declared a limit to the ministry's power to screen and censor textbooks, it unanimously upheld the Education Ministry's right to keep screening all textbooks before they are used and removing anything found objectionable. The judges simply ordered the ministry to censor the books as little as possible.

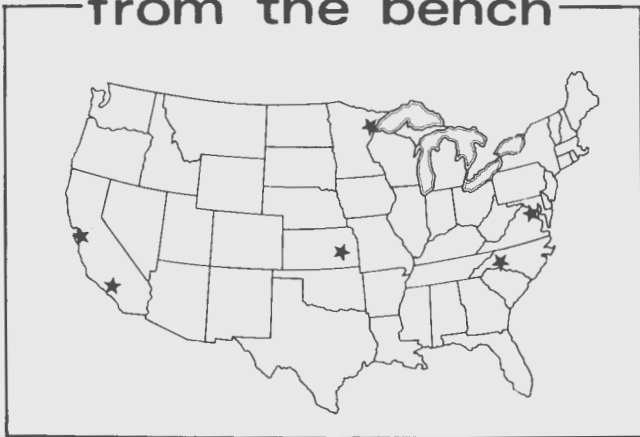
Lack of historical debate and the sanitized textbooks in Japanese schools "create people who are not aware of their own responsibility for the war," Ienaga said. "It leads the entire nation to not be responsible for itself. This promotes the remilitarization of Japan and means we cannot deny the possibility of another miserable war."

The textbook case became the battleground for those Japanese who believed the nation should own up to its wartime activities and those who argued that Japan was forced into World War II and did little to be ashamed of. The conservatives have stepped up their campaign since junior high school textbooks started carrying accounts of the Japanese army's use of sex slaves during the war. They argued that there was no conclusive evidence the women were abducted by the army and that the military's role was limited to logistics such as hygiene and transportation.

"Academically speaking, that's nonsense," Ienaga said. "But what's important is that the government should not intervene in an academic debate by ordering inclusions or deletions of certain historical facts."

Ienaga stressed that he had not asked the court to judge whether his interpretation of history was correct as compared to the government's. "The outcome of the court ruling was secondary to me. What's important is that we must fight for our freedom to express what we want to," he said. "I never intended to fight in court, but I am happy to have fought for the freedom of expression." Reported in: *Riverside Press-Enterprise*, August 30; *Detroit Free Press*, September 3. □

from the bench



U.S. Supreme Court

Offended by a depiction of the Prophet Muhammad etched in marble inside the U.S. Supreme Court chamber, a coalition of Islamic organizations is pushing to have the artwork sandblasted. But the Supreme Court has declared that the sculpture in its chamber "is not a form of idol worship" and will not be altered.

A petition signed by sixteen groups asked that the frieze of great lawgivers be altered "in the spirit of religious tolerance and pluralism" because Islamic tradition discourages artistic renderings of people, and showing the face of Muhammad is considered particularly offensive.

Chief Justice William H. Rehnquist told the Muslims it would be "unlawful to remove or in any way injure an architectural feature of the Supreme Court building."

Designed by Adolph A. Weinman in 1931 and 1932, the frieze on the chamber's north wall is part of the original Supreme Court architecture. The Beaux-Arts sculpture in ivory Spanish marble features a procession of history's great lawmakers, from the ancient Egyptian ruler Menes to Napoleon. The bearded Muhammad is shown clutching a scimitar in one hand and the Koran in the other.

The coalition also complained that the curved sword "reflects long-held stereotypes of Muslims as intolerant conquerors." Furthermore, they charged, Supreme Court literature about the frieze incorrectly identifies Muhammad as the "founder of Islam," when he is recognized by that faith as "the last in a line of prophets that includes Abraham, Moses, and Jesus."

Rehnquist dismissed the group's objection to the sword in Muhammad's hand, stating that it should not be viewed as a stereotypical image. However, he said the description and literature would be changed to identify Mohammed as a "prophet of Islam." Reported in: *Washington Post National Weekly Edition*, March 17.

schools

Buncombe County, North Carolina

A federal appeals court in North Carolina joined a growing number of jurisdictions when it ruled in October, 1996, that the U.S. Supreme Court's 1988 decision in *Hazelwood School District v. Kuhlmeier* applied to the classroom speech of teachers as well as students. In its ruling, however, it also said that a high school drama teacher with thirteen years experience and "a national reputation for excellence" could proceed with a First Amendment claim against school officials after they transferred her to a nearby middle school to teach an introductory drama class.

In the case, Margaret Boring claimed that her former principal at Charles D. Owen High School in Buncombe County, Fred Ivey, requested her transfer after she selected and directed a play that a parent found objectionable.

Before rehearsals began for *Independence*, Boring notified the principal of her selection and sent the student actresses home with scripts to discuss the play with their parents. Neither the principal nor the parents objected. The students then performed the play in regional competition, where it won 17 of 21 possible awards.

After the regional competition, but before the state finals, an English teacher at the high school suggested that the scene be performed in her class. Boring agreed, but only after the teacher promised to obtain permission slips from parents of those in the class. After the performance, however, one student's parents said they had not been contacted and complained to Principal Ivey. Ivey read the script and told Boring her students would not be permitted to perform the play in the state finals. After much persuasion, he reneged, but only if certain scenes were deleted. *Independence* then won second place.

At the end of the school year, the principal requested and the system approved Boring's transfer to the middle school. She sued, claiming a violation of her rights under the U.S. and North Carolina Constitutions.

The federal district court dismissed Boring's case without trial, ruling that her selection of the play did not constitute "speech" subject to protection. The court based its decision on *Hazelwood*.

The U.S. Court of Appeals for the Fourth Circuit disagreed, ruling that Boring's selection was "speech." However, the court also accepted that the *Hazelwood*

standard was appropriately applied, but refused to defer completely to the school's judgment that the standard had actually been met in Boring's case. Because no evidence had been introduced on the issue, the court remanded the case for trial. Reported in: *Student Press Law Center Report*, Spring 1997.

university

Duluth, Minnesota

A state university chancellor is not entitled to qualified immunity from professors' claims that he violated their First Amendment rights in ordering that photographs of them in historical military regalia be removed from a history department display case, the en banc U.S. Court of Appeals for the Eighth Circuit held July 11.

The en banc court, reaching a different result from a divided panel, held that the chancellor's action was clearly prohibited viewpoint discrimination and that the balancing test of *Pickering v. Board of Education* did not apply.

In 1992, students in the history club at the University of Minnesota, Duluth, sought to publicize the interests and expertise of history department faculty by persuading eleven of them to pose with props for photographs, which were then exhibited in the department display case. The two plaintiff professors, Albert Burnham and Ronald Marchese, whose specialties were American military history and ancient Greek and Roman history, posed with a .45 caliber military pistol and a Roman short sword, respectively.

The school's affirmative action officer requested that the photos be removed from the display as "insensitive" and "inappropriate." She linked them to written threats against a female professor and stated that she considered the photos to constitute sexual harassment. The university chancellor, Lawrence Ianni, ordered the two photos removed from the display by campus police, saying the affirmative action officer had received anonymous complaints about depiction of faculty with weapons, and that he sought to prevent aggravation of the atmosphere of fear on the campus in the wake of death threats against the female professor and a female vice chancellor.

The district court ruled that Ianni violated the clearly established First Amendment rights of the professors and denied the chancellor's bid for qualified immunity. The Eighth Circuit panel reversed, holding that the university's interest in avoiding the potential disruption posed by photos of armed professors on the tense campus outweighed the professors' interest in communicating their interest in military history.

But the en banc court disagreed. Although the right of free speech is not absolute, the First Amendment "generally prevents the government from proscribing

speech of any kind simply because of disapproval of the ideas expressed," Judge C. Arlen Beam wrote. That goes even for non-public forums, he said, rejecting the chancellor's contention that the extent of permissible restriction on speech in the display case was unclear. "Since the purpose of the case was the dissemination of information about the history department, the suppression of exactly that type of information was simply not reasonable."

Removing the photos was impermissible viewpoint discrimination, the court found. "To put it simply, the photographs were removed because a handful of individuals apparently objected to the plaintiffs' views on the possession and the use of military type weapons and especially to their exhibition on campus even in an historical context. Freedom of expression, even in a non-public forum, may be regulated only for a constitutionally valid reason; there was no such reason in this case."

Faculty members' First Amendment rights have been clearly established since *Pickering*, the court continued. At the same time, however, it suggested that *Pickering* requires balancing the government's interests against a teacher's free speech rights only in disciplinary cases in which the governmental employer produces evidence that the teacher's expression adversely affected the efficiency of the employer's operations.

Even assuming that *Pickering* balancing applies, the court said the chancellor did not meet his burden. "It is simply unreasonable, as a matter of law, to assert that a photograph of a cardboard laurel-bedecked faculty member holding a Roman short sword, as part of an eleven-person faculty display, somehow exacerbated an unestablished ambiance of fear on the UMD campus," it said.

The only dissenters were Judges Theodore McMillian and John R. Gibson, members of the original panel. They emphasized the seriousness of the death threats and argued that a genuine issue of fact existed as to the atmosphere on campus. They also argued that the chancellor "was attempting to address the potential disruptiveness of the photographs, not any viewpoint expressed by them."

The university will not appeal. The system's new president, legal scholar Mark G. Yudof, who was installed July 1, declared that "with 20-20 hindsight" he would not have advised Ianni "to use the police to take down the pictures." Reported in: *U.S. Law Week*, August 5; *Denver Post*, August 8.

child pornography

San Francisco, California

A federal judge on August 12 upheld an expanded federal child pornography law that bans computer-

generated sexual images of children and pornography featuring adults who are depicted as minors. Rejecting arguments by sex film distributors and the ACLU, U.S. District Court Judge Samuel Conti said the new law protected children without violating freedom of speech.

Judge Conti dismissed the rights group's fears that the law could criminalize a film of *Romeo and Juliet* or a doctor's sex education manual. Only pictures that are marketed as child pornography are covered by the law, Judge Conti said.

The day after the decision, the plaintiffs filed an appeal with the U.S. Court of Appeals for the Ninth Circuit. Ann Brick, a lawyer for the civil rights group, said the rationale used by Congress and Judge Conti — that the images would help molesters recruit young victims — would apply equally to “literature that describes sex in a way that makes it seem beautiful.”

The law, passed in September, 1996, enlarged the federal definition of child pornography, which had covered only erotic pictures of actual minors. Although such material may not be legally obscene, its prohibition has been upheld by the Supreme Court to prevent exploitation of minors.

The new law applies to computer-generated images as well as films and photographs. It bans any visual depiction that “is, or appears to be, of a minor engaged in sexually explicit conduct.” Distributors of sexually explicit pictures of adults who appear to be minors can avoid conviction if they can show that they did not advertise or present the material in a way that would “convey the impression” that it showed sexual acts by a minor.

The lawsuit was initiated by the Free Speech Coalition, an adult entertainment industry association, and three other plaintiffs, with support from the ACLU. The plaintiffs argued that the law was overbroad, unconstitutionally vague, and an impermissible prior restraint of speech, since any judgment about who “appears to be” under 18 is inherently subjective. Reported in: *New York Times*, August 13; *Bay Area Reporter*, August 21.

periodicals

Los Angeles, California

A judge ordered the recall of the August issue of *Playgirl* magazine, which published unauthorized nude photographs of actor Brad Pitt. But before the recall could go into effect August 7, the magazine filed notice of appeal, placing a temporary stay on the ruling.

Los Angeles Superior Court Judge Robert O'Brien had earlier stopped *Playgirl* from selling any more copies of the issue, but on August 7 he went further by ordering a complete recall of the magazine. Pitt sued the magazine July 14, alleging invasion of privacy and infliction of emotional distress for publishing the photographs.

The pictures were taken when a photographer trespassed on the grounds of a Caribbean hotel two years ago. Some of them, which have appeared in European publications and on the Internet, also show Pitt's former fiancée, actress Gwyneth Paltrow.

Playgirl attorney Kent Raygor said the ruling raised “very serious First Amendment concerns. It restrains *Playgirl*'s freedom of speech and censors the public's right to see information that is newsworthy and of great public interest. This is the first time that a California court not only has restrained the publication and sale of an entire magazine, based on a few photographs appearing in it, but has gone even further and ordered the recall of a magazine that has already been mailed to subscribers and sold throughout the U.S.” Reported in: *Reuters*, August 8.

Washington, D.C.

Federal prisoners can purchase copies of *Playboy* and *Penthouse* magazines again, a federal judge ruled August 13, saying an effort by Congress to ban sexually explicit publications from prisons was unconstitutional. U.S. District Court Judge Stanley Sporkin said legislation sponsored by Rep. John Ensign (R-NV) violated the First Amendment rights of inmates and the publishers of adult magazines.

Sporkin said the provision violated the Constitution because it focused on the sexually explicit content of the publications rather than their impact on rehabilitation or security in prisons. Instead, Sporkin found that Congress was simply trying to be tough with prisoners. “Regardless of the merit of this argument . . . it is clear that as a matter of law, any such concerns cannot be addressed without considering the legitimate First Amendment rights of prisoners,” he wrote.

The Ensign provision, an amendment to the Omnibus Appropriations Bill passed in September, 1996, allowed wardens to stop distributing sexually explicit magazines and other publications inside prisons that inmates had paid for themselves.

Jodie Kelley, one of the attorneys for *Playboy*, *Penthouse* and the Periodical and Book Association of America, Inc., said the law was “a complete change in direction” from the way federal prisons had operated under regulations adopted in 1979. Those regulations gave wardens the discretion to keep prisoners from receiving publications only if they determined that the material posed security or disciplinary problems.

But the Ensign amendment had no such caveat, Sporkin said, and allowed wardens to be more subjective in what they banned. *Playboy* and *Penthouse* were banned, for example, but the *Sports Illustrated* swimsuit edition and Victoria's Secret lingerie catalogs were not.

“While there is little doubt that *Playboy* and *Penthouse* have stronger sexual content, there is no reason to believe

that they are any more or less rehabilitative than the latter two publications," the judge said.

Sporkin also said he was troubled by how the Ensign amendment became law, with no debate or committee hearings. "It is of concern to this court that this law ignores the history of careful and time-tested regulation and replaces it with a hastily drafted statute tagged on to a massive budget bill," he wrote. "It is clear that this amendment had nothing to do with budgetary concerns." Reported in: *Washington Post*, August 14.

etc.

Topeka, Kansas

A Topeka Baptist minister and several of his flock who engaged in anti-homosexual picketing activities will get another day in court to argue they were victims of "bad faith prosecution." An August 12 ruling by the U.S. Court of Appeals for the Tenth Circuit marked the latest round in a battle between the Rev. Fred Phelps, Sr., and Topeka District Attorney Joan Hamilton.

Hamilton focused her 1992 election campaign on opposition to "hate speech," particularly Phelps's anti-

gay activities. After her election, Hamilton brought nine prosecutions against Phelps and five of his followers for actions related to their anti-gay activities. The group has carried signs reading "No Fags in Heaven" to the private funerals of gay AIDS victims. The Kansas Funeral Picketing Act was in part aimed at Phelps.

Phelps and his followers sought to have the charges against them declared unconstitutional and to enjoy any future prosecutions for conduct that is protected speech, specifically overturning the Kansas Funeral Picketing Act, the Kansas Anti-Stalking Statute, and the Kansas Telephone Harassment Statute. But the U.S. District Court on March 31, 1995, granted the district attorney partial summary judgment, ruling that the state prosecutions were not brought in bad faith, and on July 27, 1995, lifted a stay so the trials could proceed.

The Phelps group then appealed to the Tenth Circuit, which reversed the district court on the bad faith prosecution claim, affirmed the lower court's lifting of the stay, and dismissed or threw out plaintiffs claims on the funeral picketing, anti-stalking and telephone harassment issues. The result was that Phelps's bad faith prosecution claim must still be considered by the district court. Reported in: *Denver Post*, August 14. □

(Diana . . . from page 157)

removed from racks would be available for sale in the manager's office. Similar decisions were announced by representatives of the Raley's chain in Nevada. Washington, D.C.-based Giant Foods also removed the September 9 *Enquirer* from its 175 stores.

Some smaller markets and chains acted quickly to remove the tabloids without review. In Dickson City, Pennsylvania, Kevin Stickles, a manager at Wegman's, said *The Star*, *The Globe*, and *National Enquirer* were all removed from sale September 4 and would not return until after Diana's funeral at the earliest.

In Corpus Christi, Texas, Feudo Foods dumped all tabloid publications. "This decision was something our family had been talking about for a while. The tabloids were really not news or mainline press in our opinion," said Susan Feudo, one of the owners of the 51-year-old family business. "We didn't want to be a part of innuendo or profit from someone else's misery so we decided not to carry them any longer."

The Southern California-based Von's, Ralph's and Food 4 Less chains also pulled all tabloids, as did the Hughes Family Market in Simi Valley. Also in California, Albertson's Food & Drug Stores pulled all tabloids featuring pictures of Princess Diana and her boyfriend, and notified distributors not to ship coming editions with material on Diana.

But Long's Drugs said it would not participate in any boycott of the tabloids. "We have decided not to dictate what our customers should read," said company representative Shawna Doughman. Officials of Penn Traffic Co., which owns 262 supermarkets in Pennsylvania, also declined to remove the newspapers. "Our customers have a right to choose," said Sue Hosey, vice president for consumer affairs. "It is not our responsibility to censor."

Editors at the *Enquirer* and *Star* criticized the decisions to remove their September 9 issues. The tabloid editors said they had no connection to the photographers who chased Diana before the accident. The *Enquirer* and *Star* said they don't accept pictures from photographers who stalk their subjects, and both said they had turned down agencies offering to sell them photos of the accident.

In a letter to retailers, Richard E. Smith, Vice President, Circulation, of American Media, Inc., which publishes both the *National Enquirer* and the *Star*, said: "With approximately five million purchasers and twenty million readers each week, these publications obviously have a large and loyal following among your customers. Their goal is to cover the news and entertain (without offending anyone)." He added: "If you find anything that troubles you, we would appreciate hearing from you immediately."

(continued on page 180)

is it legal?



church and state

Downey, California

The dispute is headed for a legal showdown over the First Amendment, the separation of church and state, and baseball. If businessman Ed DiLoreto wins, he will be able to post the Ten Commandments in an advertisement along the outfield fence of the Downey High School baseball diamond.

DiLoreto insists that he is simply exercising his First Amendment rights and promoting good morals. He reserved a spot on the fence for \$400 in 1995, but rather than hawk the machine parts he sells, he decided to post the biblical text. "I'm not trying to sell religion," he said. "I'm trying to sell rules to live by."

Downey school officials resisted and the two sides are locked in litigation. "We are in existence to educate, not to get involved in religious demands," said Gary Gibeaut, an attorney for the school district. "I can think of a lot of different entities that would like to come in and push their messages on kids. We felt the interests of the district were not being served."

Because school officials opened the field to outside businesses without restricting the sort of advertisements they could post, the district will probably face an uphill battle in court, said Steven Green, legal director of Americans United for Separation of Church and State. "Ten to one they can't keep the church, or whoever, from posting this," Green said. DiLoreto's sign "raises some real problems," he added. What if someone wanted to buy an ad and say something disparaging about the Catholic Church, Green asked. "Where do you draw the line?" Reported in: *Los Angeles Times*, August 18.

Washington, D.C.

Federal employees will be free to express their faith at work in ways that include wearing religious jewelry and discussing their beliefs under guidelines issued by President Clinton August 14.

"Religious freedom is at the heart of what it means to be an American," Clinton told a gathering of religious leaders. "These guidelines will ensure that federal employees and employers will respect the rights of those who engage in religious speech, as well as those who do not." The guidelines apply to all civilian, executive branch agencies, but not to military personnel.

Clinton's order requires federal agencies to allow workers to engage in personal religious expression and "reasonably accommodate" holy days, even if that creates some hardship for the agency. They also prohibit agencies from discriminating on the basis of religion and bar federal workers from using their official positions to campaign for or against religion.

While the guidelines drew strong praise from many quarters, they came under fire from influential critics on both the right and the left who complained they further confused one of the murkiest areas of constitutional law. Some liberals said the guidelines all but invite federal employees to evangelize at the office, while some conservatives contended they did not go far enough to protect religious expression.

"They really urge . . . all government employees to set up kind of a religious shrine at their own workplace," complained Barry Lynn, executive director of Americans United for Separation of Church and State. He said it could color public perception and imply government endorsement of a particular faith.

On the other side of the spectrum, the Family Research Council said the rules "could muddy the waters for religious freedom" because they are too subjective and entrusted to supervisors to interpret. "The guidelines leave much room for discrimination based on the employer's judgment," said Cathy A. Cleaver, the group's legal policy director.

The guidelines were drafted with the help of a cross-section of religious groups, including the National Council of Churches, the Center for Law and Religious Freedom, People for the American Way, and the American Jewish Congress, that went to the White House to lend their support. Other organizations, including the Christian Coalition, also welcomed the guidelines as well-intentioned, if imperfect.

The guidelines came at a time of renewed interest in the intersection of religion and government. In July, Sens. Dan Coats (R-IN) and John Kerry (D-MA) introduced legislation making it tougher for employers to restrict workers religious expression in the private sector. Reported in: *Orlando Sentinel*, August 15; *St. Petersburg Times*, August 15.

Lee County, Florida

In one of the most heated debates to ever strike the county, the Lee County School Board by a 3-2 vote August 2 approved a Bible history class despite pleas from students, teachers, pastors, and taxpayers to scrap the class.

The fifteen-member citizen committee that spent sixteen months developing a Bible history curriculum came under fire from many. Some said they hoped the board has a lot of money because they will be hit with a lawsuit. "This does not step over the line of separation of church and state — it leaps over it," said Michael Jenkins.

Bruce Merton, pastor for Cypress Lake Presbyterian Church, said the board was making a grave mistake. "This is not a history course. Let the schools do their job and educate and let the churches do their jobs," he said.

Five area high schools will be teaching the class, which is an elective. Reported in: *Island Reporter*, August 8.

writers

Los Angeles, California

The Hollywood screenwriters union took the City of Los Angeles to federal court September 8 to challenge an ordinance requiring writers and artists to get city permits to work out of their homes. The Writers Guild of America said the ordinance recalled the "tyrannical and repressive" registration system used by the former Soviet Union and other Communist countries to regulate writers.

The ordinance does not mention writers and artists. It requires all people operating businesses out of their homes to get permits and to pay either a minimum tax or a gross receipts tax on all revenues. The ordinance also provides that "the City Clerk and all of his deputies shall have the power and authority to enter, free of charge, during business hours any place of business required to be registered and taxed."

Ramona Ripston, executive director of the ACLU of Southern California, said the gross receipts tax "inevitably embroils city taxing authorities in investigations into the creative process that are at odds with the First Amendment." She said disputes were sure to arise over whether a check sent to the home of a writer was for work performed at home or elsewhere.

The ordinance requires a permit to conduct business from a home and it imposes a gross receipts tax at various rates for various businesses. The Writers Guild said that a gross receipts tax on writers was unconstitutional, but that even if allowed, the city could not tax writers at different rates depending on the media for which they write.

Prominent First Amendment attorney Martin Garbus, who specializes in literary litigation, predicted the Guild would win. "Writers don't have to have permits, period," Garbus said. "This is unconstitutional on its face. You

cannot put any burden on creative expression even if all you have to do is get a permit that is free." Reported in: *New York Times*, September 4.

publishing

New York, New York

Whitewater prosecutors abruptly ended their effort August 27 to obtain from a publisher the notes and unfinished manuscript of a book by Webster L. Hubbell, the former Associate Attorney General and confidant of President Clinton. After a day of heated discussions, a lawyer for William Morrow & Co. and prosecutors with the office of Kenneth W. Starr agreed that the New York publishing house would not have to provide editorial material in connection with a broad subpoena issued August 8 by the office.

As part of the agreement to resolve the subpoena, the sides continued to disagree on whether a publisher has a right of "qualified privilege" under the First Amendment to protect its notes and unpublished material from disclosure. Morrow had resisted providing notes and unpublished material to the prosecutors, arguing that their demands were so sweeping that it would have entitled them to "each page of each draft as it comes out of the word processor." Reported in: *New York Times*, August 28.

adult video

Manassas, Virginia

Just down the street from the library and a preschool playground in Manassas, Virginia, stands a shopping center that includes a bank, a beauty salon — and an adult store boasting 10,000 sexually oriented videos, explicit magazines, and an array of sex toys.

The combination is increasingly common in Northern Virginia, as the booming adult video industry reaches into suburbia. Its growth has caught the attention of local prosecutors, provoking investigations into whether the movies that stores rent and sell violate "community standards."

On July 24, Fairfax officials announced obscenity charges against MVC Latenight Entertainment for the sale of a single video purchased at its new Springfield store. Earlier in the month, three stores in the Prince William area, including the MVC store in Manassas, were targets of similar charges. In both counties, citizen panels had been reviewing videos selected by prosecutors to determine whether they are offensive.

"We appear to be witnessing the beginning of a new censorship movement in Virginia," said Kent Willis, director of the Virginia ACLU.

Nationally, the adult video business had grown dramatically, ballooning from a \$1.6 billion industry in 1992 to \$3.9 billion last year. Adult films now represent 13 percent of the overall video market, up from 11 percent in 1993. About 7,800 new titles were released last year.

According to the *Washington Post*, about forty stores in northern Virginia sell or rent hard-core adult videos. What has most caught the attention of authorities, however, has been the rapid growth of Manassas-based MVC Latenight, which features only adult products. MVC has seven stores in Fairfax and Prince William counties, each with at least 10,000 adult titles, as well as magazines and sex toys. The MVC stores, with their blacked-out windows, have infuriated county supervisors, who previously ignored mom-and-pop general video stores that also offer a relative handful of adult titles.

MVC's first store, the one in the shopping center in Manassas, began as a traditional family video shop. But John Kenney, who is the husband of the chain's owner, Shannon Biggs, said he and his wife converted the store to adult-only titles after they realized that's what their customers were buying and that they could not compete with larger chains like Blockbuster.

In Fairfax and Prince William, prosecutors have used special grand juries or panels of local volunteers to review material stocked in video stores, asking them whether it violates community standards. In Prince William, a panel of twelve residents reviewed six videos purchased by local police. Four of the films were deemed obscene by the group, and based on that finding misdemeanor charges were filed against three county stores that carried them.

Steve Mai, the manager of Video Connection in Manassas Park, said he is frustrated by the arbitrary nature of the process. The movies that his store rents are the same ones carried by other stores, he said, and those cited as indecent are similar to many others that weren't.

"If we had a guideline of what we should carry or what we should sell, we would follow the guidelines," he said. "We thought we were doing what everybody else was doing." Reported in: *Washington Post*, July 25.

etc.

Deland, Florida

In summer, 1996, Jeff Coleman called state officials to ask whether he and some fishing buddies could adopt a Volusia County highway and pick up trash. Most of all, they wanted their group's name on one of those signs: The Royal Knights of the Ku Klux Klan.

The Department of Transportation turned down the Klan's offer to pick up trash. Now, the Klan says the agency violated its First Amendment rights.

Coleman's Klan group enlisted the help of the ACLU

in Miami. "It's not rocket science," said ACLU legal director Andrew Kayton. "It's just a matter of being logical. The public streets are the quintessential public forums. An adopt-a-highway program is among the opportunities for a political organization to promote its civic and charitable deeds."

That was not how the state saw it.

"Given the historically adverse and oftentimes violent public reaction to organizations such as the Royal Knights, your participation would hinder the department's ability to safely administer the program," Nancy Houston, district secretary of the Department of Transportation, said in a letter to Coleman. If the department had granted permission, a sheriff's deputy would have to be on patrol during the clean ups, said Steve Homan, another department official.

Since 1993, Klan factions have won the right to participate in such programs in Alabama and Missouri, but have lost in Colorado, North Carolina, and Texas. In Florida, two previous efforts to join the program by other Klan groups in Fort Lauderdale and Jacksonville were rejected.

The ACLU has agreed to represent the Klan and will try to resolve the dispute with state officials. A lawsuit is possible, Kayton said. Reported in: *St. Petersburg Times*, July 23.

Panama City Beach, Florida

One t-shirt depicted a woman in an indiscreet pose with a bulldog. Another featured cartoon breasts on the front pockets. Those were among items police found objectionable when they inspected 65 shops selling souvenirs in this resort town. On July 24, they warned sixteen stores they probably were violating state obscenity laws that make it a crime to distribute, sell or display nudity or sexual conduct to people younger than 18.

Most shopkeepers quickly took heed. Two Sunations stores that received police warnings removed racy t-shirts and towels. At Tracers, owner Dennis Austin was quick to heed a police warning about items that displayed sexual cartoons. "We're going to move our stuff to the back room," he said.

The warnings were issued after police asked a panel of parents to review questionable material to determine whether the items were suitable for children. Reported in: *Fort Lauderdale Sun-Sentinel*, July 30.

Great Neck, New York

After closing an investigation into the conduct of a Great Neck attorney who appeared in sexually suggestive advertisements, a lawyers' ethics committee decided July 31 to reopen the case after she publicly proclaimed that the decision allows "plenty of cleavage and leg" in legal ads.

Attorney Rosalie Osias first came to the attention of the grievance committee two years ago, when she began running a series of controversial advertisements in banking trade magazines that featured her in suggestive poses and clothing. After exchanging letters with Osias, the committee informed her it was closing her file without pressing charges.

That prompted Osias to release a statement July 30 that the committee's action meant "a dramatic shift in advertising guidelines for attorneys." Proclaiming it a "major First Amendment victory for our profession," she added, "Lawyers can now use plenty of cleavage and leg in advertising their law firms and their expertise."

The next day Osias was served with a complaint in which the grievance committee charged her with making "false and misleading statements" in her news release.

"I opened the door and I said, 'Now let it snowball,'" Osias told an interviewer. "I mean, how many disciplinary proceedings can the grievance committee bring? The truth is that they closed my file and couldn't verbalize distinct problems with my ads. But I don't think they wanted to be coopted and be known as the committee that helped me put in place an opening for advertising that is provocative and novel. My position now is that I'm fighting censorship." Reported in: *Newsday*, August 1. □

(Diana . . . from page 176)

Smith also forwarded a copy of the letter to the Periodical Wholesalers of North America, whose President, Ray Argyle, wrote its members September 3: "We are aware of a number of chains, including Winn Dixie in the U.S. and Safeway stores in Canada, having announced withdrawal of certain issues from sale. . . . While it is up to wholesalers and retailers individually to decide on the marketability and suitability of specific publications in their communities, there are certain aspects of the situation which you may wish to draw to the attention of retailers or consumers with complaints: 1) The sale of legal publications is protected by law (in the U.S., by the First Amendment and in Canada by the Charter of Rights and Freedoms). 2) Consumers have the right to determine by their purchases the demand for publications or other products. 3) It is our understanding that the management of the popular weekly tabloids are responsive to public concerns in the present circumstances and that this will be reflected in future issues."

The attacks on tabloid sales came amid talk of creating legislation to restrict paparazzi and campaigns by Hollywood celebrities to pressure them to stop tailing public figures during private moments.

State Sen. Tom Hayden (D-Los Angeles), ex-husband of actress Jane Fonda, said he would propose legislation that would impose an automatic "safe zone of at least fifty feet" around all public figures in California. Hayden, whose district includes the Beverly Hills homes of many celebrities, said photographers violating the rule would be subject to stiff penalties.

Hayden said his law would include "an anti-harassment provision, along the lines of prohibiting willful behavior that has the reasonable expectation of causing alarm or intimidation or potential of bodily harm." He said he would explore a "licensing" system for professional photographers, and perhaps a limit on the amount of money that could be paid for photographs.

Another California state senator, Charles Calderon (D-Montebello), who chairs a legislative committee on the entertainment industry and has been working with actors to develop anti-defamation legislation, said he would introduce a bill requiring tabloid photographers to stay back fifteen feet from their subjects upon request.

The senators were responding not only to Diana's death but also to as yet unsuccessful efforts by the Screen Actors Guild, which has been working for two years to promote legislation protecting celebrities from tabloid intrusions. The guild's main effort — a bill introduced earlier this year that would have made it easier for stars to sue tabloid publishers and broadcasters for defamation — was defeated in committee with just a single vote in its favor.

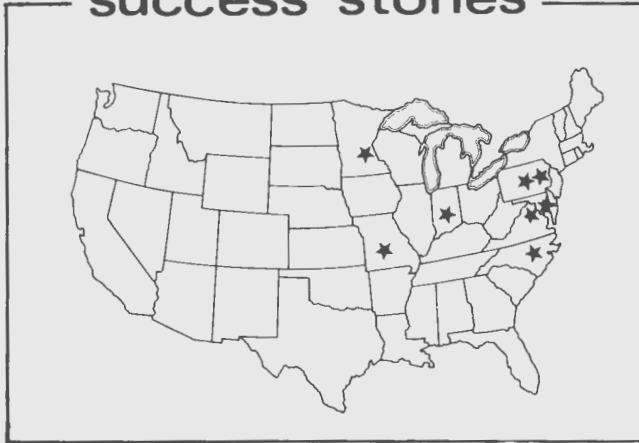
Although that bill had the support of Hollywood stars like Sharon Stone and Tom Hanks, it was opposed by the Motion Picture Association of America, a trade group representing the major movie studios, which joined with publishers and media groups to defeat the measure. The association testified that the sweeping new defamation statute would have placed entertainment companies at legal risk for making controversial reality-based films.

After hearing a crescendo of complaints from members, guild President Richard Masur in 1996 began to explore ways to create new protections. Along the way, he hooked up with Sen. Calderon, who introduced a bill creating a criminal penalty for defamation in cases that involved paying for information or photographs that publishers had sufficient reason to believe were false and defamatory. The bill briefly gained momentum, especially after actors Paul Reiser and Steven Seagal appealed to legislators. But media lobbyists successfully scurried to reverse the tide.

Sen. Calderon and SAG overhauled the bill, seeking instead wholesale revisions in the state's civil defamation laws. The legislation also attempted to make a tricky distinction between tabloids and mainstream news organizations, based on a publication's deadlines and

(continued on page 182)

success stories



libraries

Mexico, Missouri

The book *It's Perfectly Normal* will remain in the children's section of the Mexico-Audrain County Library, the board of trustees decided unanimously August 20. The sex education volume uses text and cartoons to discuss the human body, sexuality, and ways to prevent sexually transmitted diseases.

The Rev. Kevin Weber of the Ole Country Baptist Church objected to the book's placement in the children's section, but Librarian Kurt Lamb said it was written and illustrated as a children's book and was thus appropriately shelved.

In a letter to the library, Weber said he objected not only to *It's Perfectly Normal* but also to other "material concerning family sensitive issues, such as sexuality, the death of a loved one, or the birth process," which "should not be placed in the Children's Library." Lamb said the minister's statement could affect more than 130 titles. "Those were just the obvious titles," he said. "There's probably a lot more."

Library Board President Karen Scott said the board supported the library's selection policies and their application by Lamb and his staff. "We have a library policy in place," she said. "I don't have any other comment beyond that."

The library's policy states: "Censorship is an individual matter. While anyone is free to reject for himself books and materials which he does not approve, he cannot exercise this right of censorship to restrict the freedom to read of others. This library holds that it is the parent — only the parent — who may restrict his/her child from access to library materials." Reported in: *Mexico Ledger*, August 21.

Brownsville, Pennsylvania

A controversial book for gay teenagers will remain on the shelves of Brownsville Area School District's high school library, with parents permitted to control whether their own child can check the book out. Dexston R. Reed, Brownsville Superintendent of Schools, said a review committee of teachers and parents decided August 4 that *Understanding Sexual Identity: A Book for Gay Teens and Their Friends* would remain in the school library.

The committee reviewed the book after parent Gina Wellington complained about it in May. Among passages she and some other parents found objectionable were descriptions of how to use a condom and a vignette describing a fictional seven-year old boy's fascination with an altar boy.

The controversy prompted the Greater Pittsburgh chapter of the ACLU to write to the school district saying it would challenge in court any effort to ban the book from the high school library because of its references to homosexuality. Reported in: *Greensburg Tribune-Review*, August 5; *Pittsburgh Post-Gazette*, August 5.

schools

Chesterton, Indiana

A classroom poster on the historical contributions of gays and lesbians won approval of a school district committee, despite objections by some parents who said it "promotes" homosexuality. A review committee of the Duneland School Corporation voted unanimously August 21 to allow the poster to remain in a high school English classroom, where it had hung without prior objections since 1991.

"I looked at it and looked at it and looked at it, and I didn't see any sexual overtones or undertones," said committee member John Corso, who directs Duneland's Instructional Materials Center. "The material does say, 'Look at people for what they've done, not who they are,'" Corso explained. Teacher Bonney Leckie said she hoped to make that point when she first hung the poster in her classroom.

The poster, produced for the Gay and Lesbian Community Action Council, includes photographs of Errol Flynn, Michelangelo, Eleanor Roosevelt, and others. The text reads, "Sexual orientation does not determine a person's ability to make a mark in the world, let alone history."

Cathy Podguski, the parent whose complaint prompted the review, said the poster lacked educational value. "This is propaganda promoting a homosexual lifestyle," she said. "It is promoting coming out of the closet."

Ruth Woodward, one of fifteen people who spoke against the poster, called it immoral. "Man and woman belong together," she said. "God made Adam and Eve,

he did not make Adam and Adam.”

But another district resident, Tom Davidson, said the poster had value for the English curriculum. “A study of [poet Walt] Whitman, for example, cannot be properly made without acknowledgment of the way his bisexuality affected his poetry,” he said. Reported in: *In News-weekly*, August 24.

Peters Township, Pennsylvania

The Peters Township School Board approved a new social studies curriculum, including the purchase of ten new books that one school director said promote “revisionist history.” The board voted 8-1 for the curriculum in early August, with Director Marlene Tobin casting the only negative vote. Tobin said she voted against the curriculum because of the new books.

“I voted against it for two main reasons,” she explained. “The new books teach revisionist history and I believe the current books were good enough. History is history.” She said the social studies curriculum was created to fit the books instead of the books fitting the curriculum.

In May, Tobin cited two books as offensive. She said *Economics in Our Time* insinuated that conservatives were cold-hearted and liberals soft-hearted. In another, *American Government*, Tobin objected to a photograph at the beginning of a chapter that showed President Clinton on the cover of *Rolling Stone* magazine and former President Bush with several senior citizens. She said the pictures depicted Clinton as cool and Bush as uncool. Reported in: *Pittsburg Tribune Review*, August 10.

Fairfax, Virginia

The Fairfax County School Board denied a request to remove *The Adventures of Huckleberry Finn*, by Mark Twain, from McLean High School’s required reading list, despite an angry, boisterous appeal by the family making the request. The board voted 8-0 July 14 not to change the English curriculum, arguing the book is a classic with significant literary and social value.

But student Halima Alkisswani argued the book is racist and offensive to African-Americans. Before the board voted, Fouad Alkisswani, father of the McLean High senior, interrupted the meeting and demanded to address the board. He was refused by board chair Kristen Amundson. Alkisswani then stormed out of the room, yelling at Amundson: “Let’s go children. Let’s get the hell out of here. I like to be rude. . . Where did you go to school, lady?”

Board members acknowledged some aspects of the book may trouble students, but they said taking it off the required reading list or meddling with teacher lesson plans would be inappropriate. “It forces us to grapple with racism,” said Amundson. “It’s an unfortunate part of life, but it’s real.” Reported in: *Fairfax Journal*, July 16. □

(Diana . . . from page 180)

whether it had paid for information or photographs.

The legislation would have allowed district attorneys, or the state attorney general, to pursue defamation actions on their own, with the incentive of keeping half of the punitive damages if they won. Defendants who had previously lost more than one libel action would have been open to a new penalty for engaging in a “pattern and practice of publishing or broadcasting defamatory statements.”

While publishers complained bitterly of a “chilling effect” the legislation would have on press freedom, Masur boldly told a Senate committee that “it was intended to [have a chilling effect]. It would cause those who have defamed with impunity to stop and consider the consequences before they do it again.”

The objections of news and publishing organizations were expected. SAG and Sen. Calderon were surprised, however, that the list of objectors included the MPAA. SAG believed the industry had an unstated agenda: to protect the tabloid television shows and publications that are corporate brethren to the movie studios and record labels in today’s entertainment conglomerates. “They made a choice to give cover to *Hard Copy* and *A Current Affair*,” said Masur. “In the days before the consolidation of the media, I don’t think we would have seen this reaction.”

Masur and some guild members have also met with Los Angeles police and Mayor Richard Riordan to explore ways to control photographers at Los Angeles International Airport. The guild later contacted major airlines in hopes of persuading them to fire employees caught leaking passenger information to the press. A preliminary contact also was made with the U.S. Department of Transportation to explore the possibility of setting up celebrity access to flights that bypasses the main terminal. Reported in: *Corpus Christi Caller-Times*, September 11; *Killeen Daily Herald*, September 4; *Nevada Appeal*, September 3; *Oakland Tribune*, September 4; *Sacramento Bee*, September 3; *Scranton Times*, September 5; *Simi Valley Star*, September 5; *Wall Street Journal*, September 5; *Washington Times*, September 3. □

READ BANNED BOOKS

(press . . . from page 163)

Kentucky involved a congressional candidate who in the 1950s was asked to state his position on the Taft-Hartley Bill amending the Labor Relations Act. He did not equivocate: "By God, if we owe it we ought to pay it.!"

Walter Lippmann 70 years ago gave us a sketch in "The Phantom Public" of the democratic condition:

"The private citizen," he wrote, "has come to feel rather like a deaf spectator in the back row, who ought to keep his mind on the mystery off there, but cannot quite manage to stay awake. He knows he is somehow affected by what is going on. Rules and regulations continually, taxes annually, and wars occasionally remind him that he is being swept along by great drifts of circumstance.

"Yet these public affairs are in no convincing way his affairs. They are for the most part invisible. They are managed, if they are managed at all, in distinct centers, from behind the scenes by unnamed powers. As a private person he does not know for certain what is going on, or who is doing it, or where he is being carried. No newspaper reports his environment so that he can grasp it; no school has taught him how to imagine it; his ideals, often, do not fit with it; listening to speeches, uttering opinions and voting do not, he finds, enable him to govern it. He lives in a world which he cannot see, does not understand and is unable to direct.

"In the cold light of experience, he knows that his sovereignty is a fiction. He reigns in theory, but in fact he does not govern. Contemplating himself and his actual accomplishments in public affairs, contrasting the influence he exerts with the influence he is supposed according to democratic theory to exert, he must say of his sovereignty what Bismarck said of Napoleon III: 'At a distance it is something, but close to, it is nothing at all.'"

It is not, I think, entirely cynical, to conclude that these sentiments are as relevant now as then. We may be born equal in the sight of the divinity and we may possess certain inalienable rights. But equal status in the political system and in the economic order are not among them. You are all familiar with the Washington dictum that your Rolodex defines who you are. I would add that it is not only the names on your Rolodex that count but the names—especially your own—on the Rolodexes of the people we call. After unanswered phone calls following his retirement, a journalistic colleague said he had made a marvelous discovery: "I'm not a has-been. I'm a never—was."

In terms of political access, that is the normal plight of the average man and woman. They know, like Lippmann's man in the back row, that real political power is as unequally distributed as wealth and health

in our democracy. The Friends of Bill are not on the same row with the Friends of Joe Six-Pack. This gets our attention in the press every few years but it is quite unclear if we in the media bear responsibility for this state of affairs or, if we do, how we can repair the system. I'll refer to this later on.

In any case, the large promises implicit in the idea of "one man, one vote" have never been realized whatever roles the press has assumed in political affairs. In an earlier age, when the concepts of self-government and citizen legislators became the foundation stones of this society, it was taken for granted that the tasks of governing should be assigned to a small element of society—men of property and learning. We attached many qualifications for voting and other participations in public affairs—sex, race, literacy, age, residency and property ownership. It also was taken for granted that newspapers on the whole would be controlled subsidiaries of the political parties and, even today, political bias in the news is seen by the electorate as a common sin. .

Many of the requirements for voting and office holding eventually were discarded. We entered a long era, beginning roughly with the Jackson administration, in which great numbers of the unwashed and less privileged not only gained the franchise but gained office and substantial political power. A passion for politics stirred the masses as Tocqueville and other travelers noted. But not everyone was pleased. In Boston, having the Irish in City Hall was seen by the Brahmins as comparable to having barbarians in the Temple. There were similar reactions elsewhere as rewards for political activism became more and more visible and political participation became more common. . There was job patronage on a large scale; turkeys, coal and bail money from the precinct captain; immunities from arrest for barkeeps, gamblers and prostitutes, and light or suspended sentences from flexible judges if you wound up in court; construction contracts and franchises for loyalists and high bidders.

This was more raw democracy than the world had ever seen. It was inspired not only by greed or hope of material gain but also by the partisan fraternalism and sense of belonging which we now call communitarianism and by lasting emotional bonds arising out of shared experiences, most especially the Civil War. An obvious legacy was the Solid South's century long commitment to the Democratic party and to Republican voting patterns elsewhere that have endured even longer. The poorest county in Appalachia for a long time was the most Republican county in America and still is so far as I know.

The rituals and celebrations of politics strengthened and sustained these bonds. Thousands gathered for grand feedings where the suds and whiskey flowed all night. There were spectacular rallies with songs and banners, hours of speechmaking, parades with bands and torch-

lights, dances and games of chance at the precinct club house. Newspapers stoked these fires for a public in which education, as we define it today, was a scarce commodity.

When the first popular election for president was held in 1824, the turnout of eligible voters was about 27 per cent. By the end of the century, turnouts of 70 to 80 per cent were common and then fell off precipitously.

There are many speculations about the decline in popular political participation in this century. One theory assigns blame to the reformers who are always with us. They concluded that too much democracy was ruinous. So there arose among the middle and upper classes a strong Progressive movement designed to destroy the city political machines and the patronage and corrupt practices on which they thrived. This movement involved such radical proposals as a merit system for public employment; the use of trained accountants and auditors to keep the books in order; anti-nepotism laws; universal suffrage coupled with fool-proof voter registration systems and various other safeguards against electoral fraud. These proposals coincided with the rise of social science as a legitimate field of scholarly endeavor and with the rise of credentialism as a panacea for many ills. Doctors, lawyers, architects, teachers and engineers, among others, would henceforth be credentialed by colleges and universities and licensed to pursue their professions or vocations. Eventually, licensing boards were set up for hairdressers, barbers, morticians, cabdrivers, the building trades and so on. So why not credentialed public employees?

The thrust of it all was that we should have "clean" government and "clean" elections and should bring to government business-like management of its financial affairs and bring to government and business alike "professional" management and skills. Even newspapers began talking about the need for an educated newsroom labor force and for journalism schools to provide the training.

A generation of "muckrackers," led by such figures as Lincoln Steffens, Ida Tarbell and Ray Stannard Baker, exposed the inner workings of the corrupt political machines, the corrupt use of economic power by corporations such as Standard Oil and American Sugar. Their work inspired newspaper people all over the country to emulation.

The results of the Progressive movement were mixed. Many reforms were achieved with lasting beneficial effects on society—child labor and anti-trust laws, for example. But they had some unintended consequences.

By cleaning up government and elections, the rewards of political activism were greatly diminished for those whose credentials were non-existent. You now had to pass a test or have a diploma to get a job; political loyalty was no longer the prime consideration. Second, the Progressives and their muckraking allies had hoped that an

"aroused public opinion would fulfill the promises of democracy," clean up the mess and move society toward a more utopian state. Instead, apathy, disillusionment and political alienation were common responses. There was a 40 per cent fall off in voter turnout during the Progressive era from 1896 to 1920. Steffen's marvelous book on the underside of politics, "The Shame of the Cities," sold only 3,000 copies. Peter Finley Dunne's character, Mr. Dooley, asked a salient question: "Is there an institution that isn't corrupt to its very foundations? Don't you believe it."

The years since the mid-1960s are regarded by many journalists as the Second Muckraking era. All institutions have been fair game for investigative reporting and critical assessment. In part, because of these efforts, the political process in one sense has been "purified." The spoils system is by and large a thing of the past or, at minimum, greatly weakened. Barriers to voting have been eliminated. Political party bosses are an extinct species; the smoke filled room is an archaic memory. The party machines that once provided the foot soldiers of politics have been replaced by a professional class of political consultants who in 1992 were paid \$250 million dollars to manage the elections of Congressional candidates; that does not include the tens of millions paid consultants that year for presidential campaign services. These professionals create the propaganda, raise the money, train and market the candidates, define issues and election strategies, organize rallies, get out the vote and write the script for party conventions. They perform virtually all of the functions once performed by ordinary people who now sit on the sidelines often viewing elections, as Peter Shapiro has written, with indifferent detachment or as "shameful exercises in mudslinging, obfuscation and demagoguery." The primary elections and caucuses that were intended to open up the system have been no cure for political alienation and mistrust. The participation rate in the primaries of 1992 and 1996 was barely 20 per cent of the potential voters.

There are two important questions here. The first is whether apathy and lack of participation constitute a "problem" for American democracy. The second is this: If it is a problem, are the media responsible in one degree or another?. On the first point, some would agree with Lippmann and others that non-voting by uninterested and uninformed people is not a problem at all. It was their view that instead of grading democracy on the basis of popular participation, we should judge the system by the well-being of its citizens—their health, education, safety, housing and material standards of living. If those tests are met, this argument goes, the system works regardless of the numbers who participate in elections or otherwise take part in the political life of the nation.

That is not a popular argument. Academicians, politicians and journalists tend to view the indifference or non-

engagement of the electorate as a crisis. They are looking for causes and one of the suspects is the press.

Professor Thomas Leonard, a student of the Progressive Movement concluded that the work of the muckrakers was a major factor in the decline of political activism in that era. "It was," he wrote, "the discrediting of some basic assumptions about how democracy worked that made muckraking both shocking. . .and a message to pull back from political life."

That theory is now widely accepted as an explanation for much of the current alienation of our people from political affairs and for their alienation from the press. More than 20 years ago, Dr. Michael Robinson concluded that news and public affairs programs of the television networks were, in a broad sense, consistently propagandistic and sometimes malign. They evoked images of American politics "which are inordinately sinister and despairing," causing the viewer to "turn against the social and political institutions involved, or against himself, [for] feeling unable to deal with a political system like this."

More recent studies have reached similar conclusions: "negative" news stories and "negative" political ads create cynicism, drive people away from political participation and often confuse them to such a degree that they refuse to vote or even read about politics and government.

Millions of citizens have withdrawn from civic life. A majority among us have developed distrustful and cynical attitudes toward virtually all of our social institutions, the clergy included.

Given the overwhelming presence of the media in our lives it is impossible to dismiss the notion they are a powerful force in shaping these attitudes. The public is obviously disturbed by what we are doing.

This is reflected in the demand for laws to control content on the internet. It is reflected in the widespread revulsion against the violence and sex on television and the demand for chips and rating systems to shield children from this fare. I'm sure many of you have experienced public pressure to ban books or restrict access to some of the materials in your collections.

We in the news business have witnessed serious repercussions in the marketplace. Newspaper readership has been in a steady decline since the 1960s. The audience for network news and public affairs programming is half what it once was.

We also have image problems.

As great corporate conglomerates—Time-Warner is the favorite example—have seized control of the media, we are often seen, not as tribunes of the public, but as creates of Wall Street. Newspapers now enjoy a monopoly in 99 per cent of our cities and towns. Seventy to 80 per cent of our papers are owned by a handful of chains which, themselves, in many cases are subsidiaries of media com-

panies with interests all across the media spectrum—broadcasting, cable television, magazines, newsprint mills and other branches of the information and entertainment media. General Electric owns NBC; Disney owns ABC; Westinghouse owns CBS.

These media companies exert great influence in Washington. They obtain anti-trust exemptions; they are awarded priceless broadcasting frequencies—which supposedly belong to all of us—at virtually no cost. It is not surprising that jury verdicts against the press in libel or defamation cases or in cases of privacy invasion have reached record levels, as they have in product liability cases across the board. When the media now face a jury, it is not in the guise of the legendary country editor exercising First Amendment rights, but as wealthy and privileged institutions whose CEOs measure their compensation in the millions and can well afford to pay for their sins.

So we function in a troubled environment these days. Our economic health is far more robust than our reputations. There is a pervasive sense, even within news organizations, that our standards are quixotic or non-existent, that we search vainly for popularity through sensationalism and trivialization of the news. Morale has further suffered from the wave of corporate downsizing. Television news divisions have had their budgets cut, many of their foreign bureaus closed, their correspondents laid off, their libraries and archives trashed, their journalistic standards corrupted. That has also occurred in more than a few newspaper and magazines offices and in book publishing houses as well. The overall quality of American journalism remains high but the trends are discouraging.

This may be a momentary phenomenon. The profitability of news corporations remains high. There is no lack of resources to rebuild, through the quality of our work, our flagging image among the people. We continue despite attrition in our various audiences, to command huge followings. So as we deplore our shortcomings in the media and the sores on the democratic process in America, it helps to clear the mind by asking: compared to what and to whom?

I can say without reservation that the press we have today is far superior in virtually every respect to the press I knew 50 years ago when my career began.

We must not close our minds to the problems we face or take a Panglossian view of our condition. There is also no cause for despair. We can apply to gloomy speculations and fears about the future, Winston Churchill's great message to his countrymen in the dark days of 1940 when German armies had been encamped for several months across the English Channel:

"We are waiting," he said, "for the long-promised invasion. So are the fishes." □

intellectual freedom bibliography

Compiled by Cynthia M. Robins, Associate Director, Office for Intellectual Freedom.

- Biskupic, Joan. "Setting Bench Marks for the Next Century." *The Washington Post National Weekly Edition*, vol. 14, no. 36, July 7, 1997, p. 29.
- Boston, Rob. "Joel Barlow and the Treaty with Tripoli: A Tangled Tale of Pirates, a Poet and the True Meaning of the First Amendment." *Church & State*, vol. 50, no. 6, June 1997, p. 11 (131).
- Burt, David. "In Defense of Filtering." *American Libraries*, vol. 28, no. 7, p. 46.
- Childs, Kelvin. "Problems Persist Despite CDA Ruling." *Editor & Publisher*, vol. 130, no. 27, July 5, 1997, p. 3.
- Godwin, Mike. "Free Speech 1, Censorship 0: Looking Beyond the CDA Victory." *Wired*, vol. 5, no. 9, September 1997, p. 94.
- Granick, Jennifer. "Scotty, Beam Down the Lawyers! When Free Speech Collides with Trademark Law." *Wired*, vol. 5, no. 10, October 1997, p. 86.
- Index on Censorship*, vol. 26, no. 5, September/October 1997. (Special issue on poetry.)
- Juergens, David A. "What You Need to Know Before Using the IFC/MLA Bookmarks." *Mississippi Libraries*, vol. 61, no. 2, Summer 1997, p. 38.
- Lessig, Lawrence. "Tyranny in the Infrastructure: The CDA was bad — but PICS may be worse." *Wired*, vol. 5, no. 7, July 1997, p. 96.
- Lieberman, Trudy. "Censorship that Dare Not Speak Its Name." *The Nation*, vol. 264, no. 24, June 23, 1997, p. 10.
- Luce, Eric F. "Censorship and Surfing: Internet Safety In and Out of School." *Mississippi Libraries*, vol. 61, no. 2, Summer 1997, p. 27.
- Minow, Mary. "Filtering the First Amendment for Public Libraries: A Look at the Legal Landscape." *California Libraries*, vol. 7, no. 6, June 1997, p. 1.
- Mitchell, Deb. "Attempted Censorship — a Case Study." *Mississippi Libraries*, vol. 61, no. 2, Summer 1997, p. 36.
- Nathan, Catherine. "Caught in the Web: The World Wide Web, the Internet and the First Amendment." *Mississippi Libraries*, vol. 61, no. 2, Summer 1997, p. 33.
- The Nation*, vol. 265, no. 3, July 21, 1997. [Cover story: "Speech and Power: Is First Amendment Absolutism Obsolete?"]
- Peck, Robert and Ann K. Symons. "Kids Have First Amendment Rights Too." *American Libraries*, vol. 28, no. 8, September 1997, p. 64.
- Powers, William. "Censor This." *The New Republic*, vol. 217, no. 1, July 7, 1997, p. 15.
- Pressley, Sue Ann. "The Fine Alabama Line Between Church and State." *The Washington Post National Weekly Edition*, September 8, 1997, p. 30.
- Rauch, Jonathan. "Offices and Gentlemen." *The New Republic*, vol. 216, no. 25, June 23, 1997, p. 22.
- Scardino, Albert. "Sunset Over Britain." *The Nation*, vol. 265, no. 9, September 29, 1997, p. 10.
- Shapiro, Andrew L. "Privacy for Sale: Peddling Data on the Internet." *The Nation*, vol. 264, no. 24, June 23, 1997, p. 11.
- Weeks, Linton. "Testing the Legal Limits of Cyberspace." *The Washington Post National Weekly Edition*, September 8, 1997, p. 29.
- Williams, Mary Elizabeth. "Antiporn Pusher: Cathy Cleaver is the All-American Censor Next Door." *Wired*, vol. 5, no. 7, July 1997, p. 67. □

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