Freedom to Read Foundation News

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President's Report to the ALA Council

In a report to the Council of the American Library Association at the ALA's 1986 Annual Conference, FTRF President Lee Brawner reported on the business transacted by the Foundation trustees at their June 26 meeting in New York City.

My name is Lee Brawner. I am the outgoing President of the Freedom to Read Foundation, and would like to speak to you this morning, not as the head of an organization, but, in a sense, as an individual.

And, although I am addressing the American Library Association Executive Board, Council, and guests, I really want to speak to each of you as individuals.

In this, my last official address as FTRF President, I want to share with you not only some highlights of the Foundation's 1986 Annual Meeting, but my observation about the state of intellectual freedom in this country and what we—individually and collectively—can do to protect and preserve that precious freedom.

What can one person do?

In one case—and I am proud to say in my home state of Oklahoma—one strong, determined and totally charming person was able to turn an incident of censorship into a victory for intellectual freedom.

The case, *Faulkenberry* v. *Board of Education* of Sallisaw, Oklahoma, arose over the Sallisaw School Board's decision to remove J.D. Landis' book *Sisters Impossible* from the school library after a couple complained about the book. The school board declined the recommendation of a review committee to return the book to the library shelves and the board chair further stated that other objectionable books may be removed.

At this point a Sallisaw resident, with the support of the school librarians and the Classroom Teachers Association, formed a Concerned Citizens and Parents of Children's Rights Committee, gathered the signatures of over 500 parents, and petitioned the school board to return the books to the library shelves. These and related petitions from the Oklahoma Library Association (OLA) met with a "stonewalling" and no avail attitude by the school board.

The spokeswoman diligently pursued the matter. At her request, the Freedom to Read Foundation entered the scene. Following a day-long conference with the Foundation President, the Executive Director and legal counsel, a federal suit, funded by the Foundation, was filed in October, 1985, in the U.S. District Court in Muskogee.

Four sets of parents representing their children attending grades two through seven in Sallisaw were the plaintiffs. The local attorney filing the suit was Harry Scoufos, the husband of the Concerned Citizens spokeswoman. The suit named the school board, school superintendent and the individual members of the school board who voted to remove the book as defendants. It also enjoined the board from removing other library materials, asked the court to require the defendants to follow established policy for review and removal of materials from the library, and sought compensatory damages for violation of constitutional freedoms and legal costs.

The successful ending to this lengthy struggle and ensuing litigation was the school's decision last month, as the trial date approached, to settle out-of-court. The school board returned the book to the shelves, agreed to adopt and follow ALA and OLA recommended review policies for library materials, and to pay a significant portion of the legal costs.

The censorship saga and success story in Sallisaw dramatically illustrates the significant impact that one concerned and dedicated person can make to help stem

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Nominations for Freedom to Read Foundation Board of Trustees

Nominations for candidates to run in the 1987 election for the Board of Trustees of the Freedom to Read Foundation are now being accepted.

Four vacancies on the Board of Trustees will be filled in the election to be held May 1 through June 1, 1987.

Nominations should be sent to:
Judith Farley, Chair
FTRF Nominating Committee
Reference Specialist
Library of Congress
1st & Independence Avenue, S.E.
Washington, D.C. 20540

Serving with Ms. Farley on the Nominating Committee are Elliot Goldstein, Social Issues Resources Series, Inc., P.O. Box 2348, Boca Raton, Florida 33427 and Judith Sessions, University Librarian, Meriam Library, California State University — Chico, Chico, California 95929.

Nominations must be received by December 31, 1986.

Report *(from p. 1)*
the tide of censorship and to defend our constitutional rights.

We are honored to have that stalwart spokeswoman here today as our special guest and I am pleased to recognize, from Sallisaw, Oklahoma, Lucretia Scoufos.

Another victory for intellectual freedom was the defeat on June 10 of an obscenity referendum in the State of Maine. In that case, a particularly draconian statute—that included prison terms of up to five years and fines up to $10,000, for anyone who possessed, carried, sold, created, distributed or made available material that was later found to be obscene. In that example, not only was there no clear definition of what material was objectionable, there were no exemptions for libraries, booksellers or distributors. In short, any librarian, author, bookseller, artist or publisher was facing severe criminal penalties if a jury were to find that certain material was "distasteful." A brave campaign was waged by a few individuals—publishers, librarians, writers and others—to defeat a bill that had been supported by over 30,000 petition-signers.

Those two victories, my friends, are the only two bright spots in a rather bleak picture. The urge to censor seems to be quite the style these days.

Of great concern to the Foundation—to libraries, librarians, publishers and others—is the just-finished report of the Attorney General's Commission on Pornography. This Commission, the subject of controversy from its conception, has come out with recommendations aimed more at censorship of anything having to do with sex than at attempting to address the serious societal concerns of violence and abuse. The Commission has never been able to agree on even a working definition of what "pornography" encompasses—and they admit that many of their findings are based on "tentative scientific evidence"; the Commission has boldly stated its "right and duty" to condemn material that is legally protected and non-obscene, but which they find offensive. It concludes that there is a causal link between sexually explicit material and violent, anti-social behavior. This, despite the fact that the social scientists who conducted many of the studies upon which they base this claim say that their work has been misinterpreted.

Some of the Commission's recommendations include:

- a ban on sexually explicit material on cable TV and on "telephone sex messages"
- mandatory prison sentences for anyone convicted a second time on federal obscenity charges
- formation of citizens groups to monitor newsstands, videocassette stores and other outlets for allegedly obscene material.

Despite the ongoing controversy surrounding the Commission's procedures and methods—including the outcries of numerous groups dedicated to civil liberties—and the significant dissents from two of the eleven panel members, a U.S. representative has already called for the Commission's recommendations to be implemented.

Other First Amendment issues that the Foundation continues to review include the surge of government interest in regulating, labeling and limiting the availability of material, books, ideas and information. This can be seen in the increasing number of states that are enacting laws mandating the display of the Motion Picture Association of America rating on motion picture videocassettes which are sold or rented.

This issue is not a new one—we and the Intellectual Freedom Committee have addressed the question in the recent past. At that time, it was presented as an ethical dilemma for librarians who have videocassette collections: whether or not to keep or remove the labels that came on boxes.

Today, it is a legal question—one that all too often brings the threat of a fine and jail sentence for those who would defy the intent of the state legislature, whether or not the MPAA, itself, discourages the use of its rating system in this manner, or the *Library Bill Of Rights* discourages labeling.

We are monitoring this situation—and we and the Intellectual Freedom Committee will keep you informed.

Another issue is a request of three-years' standing to the Department of Justice on behalf of the ALA to reconsider its classifying as propaganda under the Foreign Agents Registration Act, three films produced by the National Film Board of Canada. The ALA and the Foundation hold that this action represents "labeling" and is fundamentally inconsistent with the library's role in the free marketplace of ideas. The Supreme Court is expected to rule on this issue sometime in 1987.

But the Foundation's meetings have not been totally bleak. We have, in conjunction with the good efforts and offices of the American Library Association Executive Board's Directions and Program Review Committee, completed an enlightening and encouraging review of the relationship between the Foundation and the Association—a review that has endorsed the role and existence of the Foundation—that has helped us develop new ways to increase and strengthen our communications with you, the ALA membership, and that—I am convinced—will enable us to work together on these vital issues that face us in the years to come. I would like to personally thank the DPRC members: E.J. Josey, Margaret Crist, Regina Minudri, Lucille Thomas, and Thomas Alfred.

Following the 1985-86 Foundation Board meeting on Thursday of this week, I performed my final official act by welcoming the incoming elected Trustees for the new board. Those Trustees included two re-elected members: J. Dennis Day, Director of the Salt Lake City Public Library and Judith A. Sessions, University Librarian, California State University at Chico. Three newly-elected Trustees are: Elliot Goldstein, SIRS, Boca Raton, Florida; Burton Joseph of Barsy, Joseph & Lichtenstein, Chicago, Illinois; and Judith Farley, Reference Specialist, The Library of Congress, Washington, D.C.

Finally, I would like to introduce to you the Foundation officers for 1986-87: Dennis Day, President; Bruce Rich, Vice-President; Judith Sessions, Treasurer; Burton Joseph, Executive Committee; and Pamela Bonnell, Executive Committee.

Other Annual Conference Meeting News

Foundation Reaffirms Support of Media Coalition

The Board of Trustees voted to contribute $5,000 to the Media Coalition in "continuing support of its services." The trade association coalition was created to monitor First Amendment rights in the area of sexually related materials and to ensure that protection against obscenity does not extend to restrictions on First Amendment-protected materials. Established in 1973 to monitor legislation spawned by the U.S. Supreme Court's landmark obscenity decision that year, the Media Coalition is supported by five trade organizations: the American Booksellers Association, the Association of American Publishers, the Council of Periodical Distributors Association, the International Periodical Distributors Association, and the National Association of College Stores.

Use of MPAA Rating System

The Trustees discussed the growing trend for states to legislate the use and display of the Motion Picture Association of America (MPAA) rating system with regard to the sale or rental of videocassettes. In at least two states, Maryland and Illinois, the requirement of the MPAA rating system also impacts libraries. The Board directed counsel to prepare an analysis of this situation and suggest various ways to challenge this use of the rating system.

Bethel School District No. 403 v. *Matthew N. Fraser*

U.S. Supreme Court Rules against Fraser

Taking a broad view of school official's disciplinary authority, the Supreme Court on July 7, 1986 upheld by 7 to 2 a school's three-day suspension of a 17-year-old student who made what it called a "lewd and indecent" speech to a Bethel High School assembly.

"Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse," Chief Justice Warren B. Burger said for himself and four other members of the majority. His broadly worded opinion said "schools must teach by example the shared values of a civilized social order" and must have broad discretion to punish what officials consider "inappropriate" speech in classrooms and assemblies.

The decision upheld a Spanaway, Wash., school's suspension of Matthew N. Fraser, who had used sexual metaphors and innuendoes to tout the virility of his candidate for student government. The text of Fraser's one-minute speech that Bethel administrators allege caused an uproar at the student-run assembly, and which carried him into the legal limelight, was as follows:

> I know a man who is firm—he's firm in the pants, he's firm in his shirt, his character is firm—but most of all, his belief in you, the students of Bethel is firm. Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts—he drives hard, pushing and pushing until finally he succeeds. Jeff is a man who will go to the climax, for each and every one of you. So vote for Jeff for ASB vice-president—he'll never come between you and the best our high school can be.

Although administrators were not present during the assembly, some of the teachers said they were shocked by the speech and complained to school officials. Administrators took action the next day, suspending Fraser for three days and striking his name from the graduation speaker ballot. The school said Fraser had used vulgar and indecent language and that administrators had a right to control such speech. The school's regulations prohibit conduct that "materially and substantially interferes with the education process . . . including the use of obscene, profane language and gestures."

After exhausting the school district's appeals process, Fraser took Bethel to court claiming a violation of his First Amendment rights. A Federal judge ruled that Bethel High officials had violated the student's free-speech rights by disciplining him, and the United States Court of Appeal for the Ninth Circuit upheld that ruling by a vote of 2 to 1. School officials were ordered to pay Mr. Fraser, now a student at the University of California at Berkeley, $278 in damages and $12,750 in legal costs.

Bethel appealed the decision to the nation's highest court arguing that student speech could be restrained "if officials have a reasonable basis for the regulation grounded in the maintenance of an atmosphere of civility or the transmission of basic societal values."

The Freedom to Read Foundation filed an *amicus curiae* brief in support of Mr. Fraser arguing that censorship based on notions of "civility" and "decent behavior" has no place in our system of ordered liberty and urged the Court's decision in *Tinker* v. *Des Moines Independent Community School District* govern in this case. Citing examples from William Shakespeare, Walt Whitman and others, the brief attempted to prove that Mr. Fraser was punished for using sexual imagery and rhetorical devices that are commonly found in great works of literature that are taught in the classroom.

Justices William J. Brennan, Jr. concurred with the majority opinion, but not in Chief Justice Berger's broad endorsement of official power to regulate "inappropriate" student speech or the Chief Justice's description of the speech as "obscene." Justice Brennan said the speech was properly punished as "disruptive" but was neither obscene nor indecent. The speech was "no more 'obscene,' 'lewd,' or 'sexually explicit' than the bulk of programs currently appearing on prime-time television or in the local cinema." Also joining the majority but not the Chief Justice's opinion was Justice Harry A. Blackmun.

Justice Thurgood Marshall, dissenting in the case, *Bethel School District No. 403* v. *Matthew N. Fraser*, said the speech was not even "disruptive." Justice John Paul Stevens dissented separately, saying the student "should not be disciplined for speaking frankly in a school assembly if he had no reason to anticipate punitive consequences." He noted that Mr. Fraser had discussed his planned remarks with three teachers in advance and had not been warned he risked discipline.

Playboy Enterprises, Inc., et al. v. *Edwin Meese III*

Judge Rules Pornography Panel Violated First Amendment

A U.S. District Court on July 3, 1986 ruled that the Attorney General Meese's Commission on Pornography violated the First Amendment when it sent a letter to major booksellers and drugstore chains, with the "implied

threat" that they might be listed in the panel's final report as distributors of pornography. The letter informed recipients that they were involved in the "sale and distribution of pornography," and a list of "identified" distributors of adult magazines was being prepared.

U.S. District Court Judge John Garrett Penn ordered the Commission not to publish the list and to notify all recipients that the letter was being withdrawn. According to the *Washington Post*, "because of the letter, more than 10,000 stores nationwide, including 7-Eleven, pulled *Playboy* from their shelves." The court order came as a result of a suit filed by *Playboy*.

The Freedom to Read Foundation filed an *amicus curiae* brief in support of *Playboy* and co-plaintiffs, the American Booksellers Association and the Council for Periodical Distributors Association. In its brief, the Foundation expressed concern that the Commission had "overstepped the bounds of its charter and its advisory role to the Attorney General" and warned that the "chilling effect . . . will be wide and far-reaching."

Citing past attempts to remove books from libraries, the Foundation warned of the dangers faced by libraries if the Commission or the Justice Department continued to disregard procedural safeguards in its condemnation of sexually explicit materials:

"As public institutions, libraries are necessarily open to public scrutiny," the brief said, "but such scrutiny is inherently laden with the possibility of attempted suppression of protected works. Unfortunately, the acts of the Commission not only encourage censorship by elected officials responding to public opposition to controversial works in libraries, they seem to set legal precedent for administrative acts to remove such works from library collections.

"Moreover, libraries are extremely vulnerable to pressures exerted during the budgeting process at every level of government. Control of the federal deficit has already been seized upon to suppress the braille edition of *Playboy*, which had been provided through a program of The Library of Congress. . . . The Commission's seemingly authoritative, but, in fact, unsupported charges of 'pornography' will lend undeserved credibility to opponents of 'objectionable' works in libraries when libraries are most vulnerable to attack."

According to the *New York Times*, a Justice Department spokesman, Dee Kuhn, said "the panel had no plans at the moment to publish the list but added that the Commission might appeal portions of the judge's decision." She said, "It's something we have to look at."

The court order would require the Commission to send a letter to each of the retailers notified last winter "advising them that the original letter has been withdrawn." The letter shall also "advise the corporations that their names will not be included in the final report as sellers or distributors of pornographic materials."

American Council of the Blind v. *Boorstin*

Refusal to Print *Playboy* in Braille Violation of First Amendment

On August 28, 1986, U.S. District Court Judge Thomas F. Hogan ruled that the Library of Congress violated the First Amendment rights of blind people by eliminating Braille editions of *Playboy* magazine.

In his oral decision announced from the bench, Hogan stated Boorstin's decision to halt publication of the Braille *Playboy* after 15 years was unconstitutional because "it was viewpoint-oriented." Hogan said his opinion did not personally fault Boorstin. "Despite his own views that he felt that it was wrong, he still went ahead with what he thought the sense of Congress was. . . . He was in a bad position," the judge continued. "He was in a classical position of a bureaucrat who faced . . . sanctions . . . if he did not restrict *Playboy*."

The Library of Congress ceased production of Braille editions of *Playboy* last December, after Congress withheld $103,000 in library funds, the exact amount it costs to print 1,000 copies of the magazine for the blind. The Braille edition of the magazine, which comes in four volumes, contains no pictures or advertisements. None of the other 35 magazines published in Braille was dropped except *Playboy* which was the library's sixth most popular publication, according to The Library of Congress.

The other plaintiffs in *American Council of the Blind* v. *Boorstin* (see *FTRF News* vol. 13, no. 4—for excerpts from complaint) include the Blinded Veterans Association, the American Library Association, Playboy Enterprises and blind Braille magazine readers. The Freedom to Read Foundation provided the financial and legal assistance for the ALA's participation in the suit. It is not known at this time whether the Government will appeal.

Bullfrog Films v. *Wick*

USIA Guidelines Invalidated

On October 24, 1986, U.S. District Judge A. Wallace Tashima ruled in *Bullfrog Films* v. *Wick* (see *FTRF News*, vol. 12, no. 3; vol. 12, no. 4) that the United States Information Agency (USIA) illegally refused to grant six films "certificates of educational character," stating that the agency's guidelines for picking films that qualify for such certificates "on their face violate the First and Fifth Amendments to the Constitution." Tashima had previously termed the issue in the case "a damn good question—whether or not the First Amendment applies abroad."

In his 41-page ruling, the judge stated that the USIA guidelines are vague and unenforceable: they are "inherently incapable of objective application" and in some cases "hopelessly unclear." "These regulations," Tashima wrote, "are not merely inflexible, they are boundless" and put the USIA "in the position of determining what is the 'truth' about America, politically and otherwise. This, above all, the First Amendment forbids."

Tashima permanently enjoined the agency from enforcing its guidelines for certifying films until it formulates "standards consistent" with the Constitution. Joseph Morris, USIA general counsel, said the ruling will put its certification process on hold until new guidelines can be written. Morris estimated that more than 100 films are awaiting review.

The Foundation had provided financial assistance to support this litigation which grew out of the concerns of small, independent filmmakers who had been denied "Certificates of International Educational Character" because their films had been judged by USIA as "misrepresentative" or liable to "misrepresentation by foreign audiences lacking adequate American points of view." Under the terms of the 1948 Beirut Agreement, once an exporting country has certified a film as being educational, scientific or cultural, importing countries will exempt the material from all import duties, fees and taxes. These fees can range upwards to $10,000.

The majority of films denied certificates by the USIA fell into one of three categories: blatant promotion of a specific product or service, offensive religious proselytizing or political propaganda. The last category had raised the most questions. David Cole, attorney for the Center for Constitutional Rights which filed the suit, argued that USIA regulations allow the agency "to discriminate on the basis of political viewpoint." He said that the USIA granted certificates only to those films that reflect the current Administration's attitudes.

"They do so under regulations that are so vague that they invite administrative officials to make their own rulings," Cole said. "In that way the government is acting beyond its constitutional authority in restricting those rights. . . . Is it constitutional that 'Save the Planet' (one of the disputed films) was denied certification because, according to the USIA, it resurrected guilt by stating that the U.S. dropped the bomb on Hiroshima?" he asked.

Cole added that the original Beirut treaty stipulated that the certification process be implemented to "promote the free flow of ideas through word and image." He said that information shouldn't be judged on whether it is "pro or anti the Reagan administration."

Government attorney Richard Stearns argued that the regulations were "neutral with respect to the political content of films," and that the regulations "have the backing of Unesco, which authored and sponsored the Beirut agreement."

The lawsuit marks the second time during the Reagan administration that charges of film censorship have been leveled at a government agency. In 1983, the Justice Department classified as "political propaganda" three documentaries produced by the National Film Board of Canada—two on the politically charged issue of acid rain and the other, "If You Love This Planet," an anti-nuclear film which went on to win an Academy Award that year. A case involving those films is currently before the U.S. Supreme Court.

The disputed films are "In Our Own Backyard," which describes the hazards of uranium mining in the United States; "Whatever Happened to Childhood?" looks at the changes in childhood in the United States; "Peace, a Conscious Choice," a plea against nuclear war; "Save the Planet," a history of the atomic age; "Ecocide: A Strategy of War," a look at environmental effects of U.S. tactics during the Vietnam War; "The Secret Agent," which examines the use of dioxin—the key ingredient in the defoliant Agent Orange, and "From the Ashes: Nicaragua Today," an Emmy-winning International Women's Film Project production tracing the historical roots of the Nicaraguan National Liberation Movement and U.S. Nicaraguan relations.

American Library Association, et al. v. *Lincoln Faurer.*

District Court Rules in Favor of NSA

On March 27, 1986, the United States District Court for the District of Columbia ruled that the National Security Agency (NSA) does have the authority to direct the Marshall Library to remove the documents from the public shelves and that the public does not have a First Amendment right of access to the material, despite their previous disclosure to the public.

As reported in earlier issues of the *FTRF News* (vol. 12, no. 3; vol. 12, no. 4; vol. 13, no. 2-3), the case concerns the National Security Agency's directive to the George C. Marshall Library, a private library on the campus of the Virginia Military Institute, to reclassify government documents as secret and to halt public access to the personal letters of William F. Friedman, a former NSA cryptographer. The suit was brought when Jay Peterzell, a research associate for the ACLU Foundation's National Security Project, was denied access to letters that were cited in James Bamford's book, *The Puzzle Palace*, a book highly critical of NSA. The lawsuit was filed against Lincoln Faurer, Director of the National Security Agency, by the American Library Association, the District of Columbia Library Association, the American Historical Association, the Organization of American Historians, the Center for National Security Studies, and Jay Peterzell. The Freedom to Read Foundation provided support for the plaintiffs.

The suit sought the restoration of public access to 34 of the documents donated to the Marshall Library by Friedman, including 31 now-classified pieces of private correspondence and three government publications. In 1969, Friedman left his private papers to the library, which obtained them upon his death that year. Public access to the collection was not available, however, until—with NSA's knowledge—a biographer, Ronald Clark, used the collection to research a book about Friedman in 1975. The collection was opened to the public in 1978.

Between 1970 and 1978, NSA representatives conducted three reviews "devoted to assessing the organization of the collection and its historical significance." Classification reviews occurred in July 1975 and again in November and December 1976. In 1981, a visit by NSA representatives resulted in the declassification of numerous documents. In 1982, Bamford published his book based in part on research in the Friedman collection. In 1983, NSA representatives returned to the library to identify and review materials previously declassified. The representatives declassified some materials, but reclassified others, including documents previously available to the public and used by Bamford. They directed the staff of the Marshall Library to withdraw these materials from public access, even though several had already been used by researchers and cited in published and readily accessible works.

Shortly thereafter plaintiff Peterzell visited the library and reviewed the open portions of the Friedman collection. He found that each withdrawn document had been replaced by a notice of withdrawal. These notices identified the withdrawn document and indicated the reason for withdrawal, either "classified" or "for other reasons." The majority of withdrawn items had been withdrawn "for other reasons." These are the materials to which the plaintiff sought access.

Although NSA insisted that the plaintiffs were claiming a First Amendment right to classified information under control of NSA, the defendants argued that "the true posture of the case is much different." At issue is information which was made available to the public at the Marshall Library after NSA's review and approval, and were it not for NSA's subsequent intervention, that information would still be available to the public. Accordingly, plaintiff's claim is that NSA's intervention was (1) unauthorized by any law, (2) in violation of the First Amendment, and (3) exceeded the authority on which

NSA does rely . . . Thus, the fundamental question in this case is not whether plaintiffs have a right to NSA information, but whether NSA has a right to interfere with plaintiff's access to information that was available to the public."

In ruling in favor of NSA, Judge Green wrote: "The arguments presented by both sides place before the Court essentially one novel issue for determination: whether plaintiffs have a First Amendment right of access to classified documents which were previously disclosed to the public where their disclosure may pose a threat to national security. . . . While it is true that the disputed documents were part of the public domain for varying lengths of time, public disclosure alone is not a sufficient basis for finding a First Amendment violation where the national security is at stake. . . . Given the important interest of national self-preservation, the Court finds that plaintiffs do not have a First Amendment right of access to classified materials previously disclosed to the public where their disclosure might endanger national security."

Judge Green acknowledged that NSA might have classified the documents at issue improperly. After an *in camera* review of an affidavit submitted by NSA's deputy director, however, "the Court concluded that NSA had classified properly the information at issue." Moreover, Judge Green continued, "the Court's decision is not altered in this instance by NSA's apparent failure to comply strictly with the classification scheme authorized in [the most recent Executive Order on classification]. The Court does not condone by any means NSA's cavalier attitude toward its classification determination of the materials at issue, especially the 31 pieces of correspondence. However, the Court believes that this fact alone should not be used as a means to accomplish by the back door what the Court would not permit by the front door—invalidation of NSA's classification determination and disclosure of the information in question. The threat posed to the national security is just too great."

Mark Lynch, formerly with the American Civil Liberties Union Foundation National Securities Project, has agreed to continue as counsel on a pro bono basis in the appeal of this case to the District of Columbia Circuit of the U.S. Court of Appeals.

Arcara v. *Cloud Books*

Bookstore Closing Permitted

States are free to close adult bookstores for lengthy periods if they are found to be public nuisances because of the conduct of their patrons, the Supreme Court ruled on July 7, 1986. By a vote of 6 to 3, the Court upheld a New York law that allows the closing for one year of any premises, including bookstores, found to be public nuisances.

The High Court, led by Chief Justice Warren E. Burger, said the law did not violate constitutional rights to freedom of expression when applied to bookstores because it did not seek to censor or control the books sold there.

The bookstore, Village Books and News, in the Buffalo suburb of Kenmore, was charged with being a public nuisance after an undercover Erie County deputy sheriff witnessed various sex acts in the store in 1982.

The New York Court of Appeals, the state's highest court, acting on a preliminary motion before the case went to trial, ruled that closing the store for a year would represent an impermissible "prior restraint" on the bookstore owner's rights of free speech. The bookstore's attorney, Paul Cambria Jr. of Buffalo, told the Supreme Court in oral arguments in April that the New York law attacked the perceived problem with "a machete rather than a scalpel."

But, writing for the Court, Chief Justice Burger said the Court did not subject the law "to 'least restrictions means' scrutiny simply because each particular remedy will have some effect on First Amendment activities of those subject to sanction."

Joining the Chief Justice's opinion were Associates Justices Byron R. White, Lewis F. Powell Jr., William H. Rehnquist, John Paul Stevens and Sandra Day O'Connor. Justices Harry A. Blackmun, William J. Brennan Jr. and Thurgood Marshall voted to strike down the New York law.

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