newsletter
ON INTELLECTUAL FREEDOM

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DeGrazia Briefs Movie Decisions

March 16, 1965

To the Editor:

I thought you might be interested in these comments on the U. S. Supreme Court motion picture decisions just handed down in *Freedman* v. *Maryland* (decided March 1, 1965) and *Trans-Lux Distributing Corp.* v. *The Board of Regents* (decided March 15, 1965).

On behalf of the ACLU, I prepared and filed with Mel Wulf, (Legal Director of the ACLU) an amicus curiae brief in the *Freedman* case urging the Court to find unconstitutional Maryland's legislative system for the supression of "disapproved" motion pictures — that is, any which the Board or any member of the Board might consider "obscene" or of a nature that would "tend to debase or corrupt morals". The position which we urged (largely adopted by the Supreme Court), was that any system of restraint which took effect in advance of a full, adversary, *judicial* hearing was unconstitutional. Here, we leaned upon Mr. Justice Brennan's solid opinion in the recent case of *A Quantity of Books* v. *Kansas* and upon a "re-reading" of the older, somewhat troublesome case of *Kingsley Books, Inc.* v. *Brown*.

The U. S. Supreme Court, by Mr. Justice Brennan, declared Maryland's motion picture censorship statute unconstitutional and ruled, in effect, that motion picture exhibitors had no duty to submit to a system of censorship which failed to conform to the following constitutional safeguards:

(1) The censors themselves must institute *judicial* proceedings in order to block a screening or exhibition of any film; thus, censorship boards can no longer hope to block disapproved films merely by requiring submission of the film and then declining to license. Instead, censors must either license the film or go to court to restrain its public screening and they must go to court as rapidly as necessary to obviate delays in public screening.

(2) The censors themselves must *prove* that the film is unprotected by the constitution. Thus, the burden is no longer upon the exhibitor or distributor to prove his film is *not* obscene or otherwise illegal, but upon the censor to prove it *is* obscene and not constitutionally protected. This new, but long-overdue rule may have enormous importance for the further enlightened development of the literary obscenity field, generally, since it can serve, for example, to undermine the Prosecution's practice of merely submitting a book or magazine to a court without tendering the slightest proof or evidence that the book provoked the "prurient interests" of the "average person" applying "contemporary community standards", etc. This is not a minor matter because such propositions are rather difficult to prove, understandably so, inasmuch as they are notions generated by the Censorial Imagination, rather than demonstrable facts of life. The burden of the book prosecutor or the motion picture censor thus properly becomes that of proving by competent evidence that a work not only arouses the prurient interests of average persons, but also goes substantially beyond national standards of decency and has utterly no redeeming social importance.

The decision handed down by the Court two weeks after *Freedman*, in the *Trans-Lux* case, served to reinforce the Maryland decision by invalidating the New York censorship system. In *Trans-Lux*, the New York state censorship system had denied a license to the Danish movie "A Stranger Knocks" — which contained scenes of sexual intercourse — because of these scenes. In reversing the judgment below, the Supreme Court merely cited its *Freedman* v. *Maryland* decision, thus clearly indicating that the judgment below was reversed not because the film was not obscene, but because the New York motion picture censorship statute was invalid on its face, and could not, therefore, be admitted to restrain the exhibition of any film, whatever its character.

As a result of these two decisions, it rather surely appears that the motion picture censorship systems not only of Maryland and New York, but also of Virginia and Kansas and of the cities of Chicago, Detroit, Fort Worth and Providence are also unconstitutional, and exhibitors in these locations apparently need not submit to those systems of censorship any longer. I understand lawyers for the Motion Picture Association of America have already advised their members that films scheduled for showings in these states and cities need no longer be submitted to such municipal or state censorship boards. It remains to be seen whether such cities and states (the only ones which appear to have had any "active" government censorship systems) will come up with new and valid statutes. If so, they will have to be very tender indeed in their grip upon motion picture screenings. If the motion picture industry were ever able to rid itself completely of its own internal system of censorship, I believe the Supreme Court would not hesitate to erase even these last vestiges of motion picture censorship. For no other American medium of communication has ever tolerated such systematic prior restraints, not even television. — Edward de Grazia.

None at All

In a separate opinion in the Maryland case Justice Douglas, joined by Justice Black, wrote: "I do not believe that any form of censorship — no matter how speedy or prolonged it may be — is permissible."

ALA Opposes H. R. 980

March 31, 1965

The Honorable Thomas Murray
Chairman, Committee on Post Office and Civil Service
House of Representatives
Washington 25, D. C.

Dear Mr. Chairman:

Having learned on March 23rd that testimony on H. R. 980 before the Subcommittee on Postal Operations was invited for March 30th, and being unable on such short notice to appear personally or provide a witness, I am grateful for this opportunity to submit to you a statement for the record on behalf of the American Library Association.

The American Library Association is a non-profit, professional association of some 29,000 members consisting of librarians, trustees, and friends of libraries. It is the oldest library association in the world. Our association, by action of its Council in 1953, jointly with the American Book Publishers Council endorsed a statement on "The Freedom to Read," which is as timely now as it was then. I would like to quote briefly from that statement.

"THE FREEDOM TO READ is essential to our democracy. It is under attack. Private groups and public authorities in various parts of the country are working to remove books from sale, to censor textbooks, to label 'controversial' books, to distribute lists of 'objectionable' books or authors, and to purge libraries. These actions apparently rise from a view that our national tradition of free expression is no longer valid; that censorship and suppression are needed to avoid the subversion of politics and the corruption of morals. We, as citizens devoted to the use of books and as librarians and publishers responsible for disseminating them, wish to assert the public interest in the preservation of the freedom to read.

"We are deeply concerned about these attempts at suppression. Most such attempts rest on a denial of the fundamental premise of democracy: that the ordinary citizen, by exercising his critical judgment, will accept the good and reject the bad. The censors, public and private, assume that they should determine what is good and what is bad for their fellow citizens.

"We trust Americans to recognize propaganda, and to reject obscenity. We do not believe they need the help of censors to assist them in this task. We do not believe they are prepared to sacrifice their heritage of a free press in order to be 'protected' against what others think may be bad for them. We believe they still favor free enterprise in ideas and expression."

As recently as last January, 1965, the Association's Intellectual Freedom Committee sponsored a conference on censorship and intellectual freedom, in Washington, D. C., at which 65 representatives from Church and law, press and publishing, education and libraries, participated. The many organizations represented included the American Civil Liberties Union, the National Education Association, the National Council of Teachers of English, and the American Book Publishers Council. The relationships between Freedom to Read and political problems, delinquency, racial problems, religious problems, and pressure groups were explored.

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California Organizes Opposition

Anti-obscenity legislation is coming up in state legislatures this Spring like dandelions in a well-kept lawn. (p. 37), Wisconsin (p. 35), and the California State Association Intellectual Freedom Committees have organized effective opposition. The California Workshop on Censorship Legislation reported below, held on 20 February, was attended by 32 individuals representing seven professional organizations in Southern California. It was sponsored by the California Library Association and the California Association of School Librarians. The Statement of Position on Obscenity Legislation was issued jointly by CLA and CASL. The statement by the immediate past CLA president outlines the activity lying ahead until the last bill is defeated. The Editor will welcome news of similar activity in other states.

Summary Report

The morning session of the Workshop heard Mr. Philip Gray, Assistant in Charge of the Criminal Division of the Los Angeles City Attorney's Office, and Mr. Stanley Fleishman, attorney for the defense in many prominent censorship cases. Mr. Gray, speaking for bills before the current session of the state legislature concerned with the supression of allegedly obscene or indecent materials, stressed the point that the enactment of laws is not censorship. He traced briefly the history of municipal ordinances against selling or distributing obscene materials passed in aid of existing state laws, and eventually declared unconstitutional by the U. S. Supreme Court because they did not specify that the seller must be shown to have had lewd or wilful intent. In 1961 the California Legislature re-defined the concept of "lewd or obscene." Only such material as can be proved to be "utterly without redeeming social importance" can now be legally defined as obscene. One bill now in the Sacramento hopper, AB 207, said Mr. Gray, will remove the phrase from the 1961 law. Other bills under consideration, including AB 87, sponsored by the Los Angeles City Attorney's Office, are primarily concerned with the sale of obscene materials to minors under 18. Mr. Gray characterized only one bill as censorship since it provides for the review of publications by the County Probation Officers of the state.

Mr. Fleishman stated that the problem is not obscenity, but censorship. The essence of censorship is the right of one group to decide on withholding a body of material from another group as too dangerous. Mr. Fleishman maintained that neither the police, city attorney, juries nor judges are qualified to make such a decision. Only the individual is qualified to determine for himself what he can see or read. He stressed that all obscenity laws include an element of terror since the police cannot lose and the defendant cannot win. Even if he wins the case, he has lost money and time and has a police record. Mr. Fleishman reminded the audience that the current legal definition of obscenity, promulgated by the U. S. Supreme Court, has three parts: The material must be proved to be

1. beyond the customary limits of candor.
2. appealing to prurient interests.
3. utterly without redeeming social importance.

He emphasized that all three parts are essential for guaranteeing the constitutional right of free speech in the First Amendment. Any bill, he maintained, including AB 87, which omits any mention of social importance is unconstitutional even if its intent seems to be the protection of minors. Mr. Fleishman pointed out the religious basis of all obscenity legislation, the religious belief of many citizens that sex is a sacrament.

The afternoon session of the Workshop heard Mr. Robert Kirsch, Book Editor of the *Los Angeles Times* and lecturer at the University of California at Los Angeles, speak on some of the philosophical aspects of censorship legislation. He argued for the importance of books, intellectual instruments which can both elevate and corrupt the human mind. He argued against suppression of books for their corrupting influence, however, because we do not know the individual effect of the book in the intellectual process and because we must keep as open and free as possible all avenues of inquiry and expression. Mr. Kirsch pointed out that the proposed legislation is so speculative and leaves so uncertain what punishment can be meted out for making available what materials that all teachers, out of fear of reprisal, will be forced to present only "safe" materials. He stressed the capacity of man to perfect himself, to choose good over evil, and to tolerate the co-existence of standards and beliefs different from his own.

Eason Monroe of the American Civil Liberties Union introduced Mr. Coleman Blease, the ACLU legislative representative in Sacramento. Mr. Blease reminded the audience that censorship is not mere selection but adds the element of coercion and that a censorship law adds the element of coercion by the state which has the power to punish. He spoke of seven current bills on censorship all of which must be defeated in the Criminal Procedure Committee of the Assembly and all of which must be able to withstand withdrawal motions (i.e., a vote by the majority of the legislature to bring the bill out of committee) before they can be considered dead. Mr. Blease also warned that current efforts in the degislature to allow local communities to pass their own obscenity ordinances would result in a confusing multiplicity of standards in the state.

In the following discussion Mr. Louis Epstein of Pickwick Bookshop asked for literature which could be mailed to booksellers, and Mr. Fleishman suggested that a statement of policy issued by the California Library Association could be circulated to many interested organizations. Mrs. Sebby, speaking for the California Association of School Librarians, agreed to participate in the formulation and circulation of such a statement. Representatives of the California Teachers' Association also indicated their agreement to work with the California Library Association on the problem.

A motion for the establishment of a co-ordinating committee of representatives from all interested organizations was carried unanimously.

Mrs. Cox, representing the Congress of Parents and Teachers, expressed hesitation about the participation of her organization. The Board, meeting in March, she stressed, is entirely bound by the resolutions submitted from local Parent-Teacher Associations, many of which are incensed at the availability of pornographic materials to minors. It was suggested that librarians could do effective educational work by presenting the California Library Association position at local P. T. A. meetings. Mr. Blease stressed the importance of both organizational and individual letters to state legislators. — Fay M. Blake.

Good Trick

The Commerce, California, City Council on 5 April adopted a resolution asking the State Legislature "to enact new and stronger obscenity legislation that is observant of the basic liberties yet practical to administer."

Statement of Position on Obscenity Legislation, 1965

The California Library Association and the California Association of School Librarians affirm their opposition to the several Bills introduced in the current session of the California Legislature which are intended to regulate the sale, distribution, or exhibition of allegedly obscene materials. Such legislation which proposes to curtail the availability of published material contains certain inherent dangers in that it tends to limit full and free access to literature and the arts, and to sources of information.

Under present California law, and under the free speech provisions of the Federal and State Constitution, a work is obscene if, and only if, it meets the following three tests: (1) it must go substantially beyond customary limits of candor, in the Nation as a whole, in the description or representation of matters pertaining to sex, nudity or excretion; and (2) the dominant theme of the material, taken as a whole, and applying contemporary standards, must appeal to the prurient interest of the average adult; and (3) it must be utterly without redeeming social importance.

Additionally, under present Califorina law, a person charged with writing or distributing obscene material must be shown to know that the charged material is in fact obscene.

Several of the currently proposed Bills seek to expand the "crime" of obscenity by condemning works even though they have some social importance. Other Bills would make a person criminally liable for distributing an "obscene" work even if the person believed in good faith that the work was not obscene. Several Bills would make it an offense to distribute or exhibit to a person under 18 works which are believed to be "morally corruptive." Finally, there is legislation which would permit each city and county in the State to enact its own obscenity laws, thus enabling a work to be condemned in one city or county even though it is freely available in the country and State generally.

The California Library Association and the California Association of School Librarians hold that the proposed Bills will do more harm than good. Under present law, "hard core pornography", and only "hard core pornography", may be considered as obscene. We believe that the present law, which narrowly confines obscenity, is adequate, and that the proposed Bills constitute a threat to free expression and free inquiry.

We invite support of this position by other organizations and by individuals who are concerned with the preservation of our constitutional rights of freedom of expression.

The above statement of position was authorized by participants in a Workshop on Obscenity Legislation co-sponsored by the California Library Association and the California Association of School Librarians, held at the Burbank Public Library, February 20, 1965.

Further Activity

I think we had a remarkably broad representation of interests and organizations. We had verbal assurance of support of our position in general opposition to the new proposals for obscenity legislation from nearly all groups represented. We are planning a continuing coordinating committee composed of representatives of the groups and organizations represented at the workshop (plus others not present who should be included). We hope to make it a more truly statewide representation, and so we are considering the possibility of another workshop in the North. Meanwhile, it seems as if we have the ability we have not had in the past to get the cooperation of other groups and to present a strong front in Sacramento against the obscenity bills. — Everett T. Moore.

Heil, Gronouski

In an obvious aping of Communist methods Congress decided in 1962 to protect Americans from the lure of Communist propaganda by blindfolding them and keeping the propaganda out of their hands. The prevailing view in Congress appears to have been that communism was so attractive and American devotion to democracy so weak that, left to its own devices, the country would be subverted overnight.

The 1962 statute authorized the Post Office Department to withhold any mail from abroad which the Customs Bureau deems to be Communist propaganda, unless the addressee makes a written request to have it delivered. Not unnaturally, addressees are reluctant to say that they want to read material which an all-wise Customs Commissioner says is subversive; consequently, they often forego the old-fashioned American practices of judging for themselves. And this tendency is fortified by knowledge that the Postmaster General follows the totalitarian practice of compiling a list of all those who insist on looking at their own mail; and in the past similar lists have been routinely turned over to that ultimate arbiter of political purity, the House Committee on Un-American Activities.

Fortunately, the Supreme Court is going to review all this nonsense to see whether it can be considered compatible with the First Amendment. It has noted probable jurisdiction in the *Lamont* case from New York—in which a three-judge Federal Court held the issue to be moot when the Post Office gave Mr. Lamont the mail he had refused to request. And the Government has asked the Court to review at the same time the *Heilberg* case from San Francisco in which another three-judge Federal Court declared flatly that the statute is "unconstitutional on its face" and is a "clear and direct invasion of First Amendment territory."

Whatever the outcome of the constitutional question, the law itself must be set down as a flagrant piece of anti-American propaganda. It treats Americans as fools.—Washington *Post*, 27 January.

Notes from Abroad

Seven months ago, Acting Postmaster General Belarmino Navarro banned an issue of *Time* magazine from the Philippine mails because it contained a reproduction of Goya's 200-year-old masterpiece "The Naked Maja."

The resulting newspaper uproar cost Navarro his job. Yesterday Postmaster General Enrico Palomar banned the current issues of *Time* and the international edition of *Life*. The reason: more reproductions of "The Naked Maja" along with photographs of scantily clad women.—AP, 13 January.

Kama Sutra and *The Perfumed Garden* were declared indecent by Edinburgh Magistrate Bailie Norman McQueen. Bookseller James Patterson had pleaded not guilty in allowing the books to be sold to a policeman. He was admonished and the books were confiscated. Patterson said he would appeal.—Columbus, Ohio, *Star*, 19 December.

A secret mark to distinguish books which are considered unsuitable for children under 16 is being used by Birmingham Corporation Libraries Department in all of its 34 libraries. *The Observer* (London), 6 December.

The New York *Times* reported on 7 February that an American magazine called *Arizona* has been blacklisted by Soviet authorities as subversive literature, "propagandizing the American way of life." The *Times* morgue could find no such title in "available reference books," and considers the reference is to *Arizona Highways*.

Italian officials invoked the 1929 concordat with the Vatican on 15 February and banned performances of *The Deputy*, by Rolf Hochhuth, after one performance in a book shop.

Mexico City — A formal complaint alleging "obscenity" and statements "derogatory to Mexico" was filed against the book *Children of Sanchez* by American anthropologist Oscar Lewis. The complaint was lodged with the Attorney General by the Mexican Geographical and Statistical Society. The book is based on tape-recorded narratives by a Mexican slum family. The English-language edition was a best-seller in the United States and the Spanish edition, recently published in Mexico, is doing well. — Washington *Post*, 13 February.

An appeal by John Calder Ltd. against a decision of Sheffield City Justices last May (July, p. 50) that *Cain's Book*, by Alexander Trocchi, was obscene, was dismissed in the High Court last week by the Lord Chief Justice, Mr. Justice Sachs and Mr. Justice Ashworth. The appeal was dismissed with costs, and an application on behalf of the publishers that the case should go to the House of Lords as involving a point of law of general public importance (the interpretation of "obscenity") was refused. — *The Bookseller*, 19 December.

The South African government has barred all blacks from seeing *Zulu*, a motion picture featuring the 1897 Zulu war, including a bloody battle between Zulus and British troops. Hundreds of Chief Gatsha Buthelezi's tribe took part in the picture, enthusiastically and realistically, but they have been barred from seeing themselves in action. — AP, 7 March.

Baptist Editor Survives Attack

Can you fire a Baptist editor of a Baptist magazine because he insists on being a Baptist in his devotion to freedom of speech and of the press? The executive board of the Concord Baptist Association, a group in the Fort Smith area of Arkansas, believes that you can. This group of ministers asked the executive board of the Arkansas Baptist Convention to censure or fire Erwin L. McDonald, editor of the *Arkansas Baptist Newsmagazine.* McDonald's misdemeanor, as these ministers saw it, was his defense of a Methodist chaplain at the University of Arkansas who permitted a Bulgarian cultural affairs officer to speak at the Methodist student center after university officials had barred the Bulgarian from speaking on campus property. The communist official, Peter Vassilev, had been invited by the university's Foreign Relations Club as one of a series of speakers from various foreign governments. In defending the chaplain the editor said: "We must not overlook the fact that if we use the methods of communism to fight communism we have lost our battle for American democracy. Let us continue to hold onto our freedom of the press, of assembly and of worship." McDonald's opinion—published not in his own magazine but in the daily press—aroused the ire of 21 Fort Smith area Baptist pastors who came in a body to a meeting of the executive board of the Arkansas Baptist Convention to demand that McDonald retract his defense of the chaplain or be fired. By a vote of 50-5, that board defeated the attempt to muzzle the editor. When the ministers countered with the threat that their churches would stop buying and circulating the *Arkansas Baptist Newsmagazine,* the editor replied that subscription cancellations would not affect his belief in freedom of speech and of the press. Our compliments to editor McDonald for his courageous witness, and even more to the state board for protecting his freedom. —*Christian Century,* 23 December.

Students Bored with 'Howl'

About 2,000 University of Oregon students assembled on 4 February to hear a dozen of their professors take turns reading Allen Ginsberg's *Howl.* The public reading was an outgrowth of a controversy at Central Oregon College at Bend, where prexy Don Pence has banned the reading of *Howl* and some other poems which he says rely too heavily on expressions of filth and sex. COC professor Ashleigh Brilliant says Pence told him he will be fired because of the Bend poem reading controversy and that the Parnassus literary society, which was headed by Brilliant, had been dissolved by Pence.

The UO faculty members took up Brilliant's battle and said they read *Howl* on the UO campus to test their own academic freedom and freedom of expression. Said Professor Owen Edwards, "We will read the poem because we believe that the rights of a university's faculty and students to free intellectual, artistic, and political activity must be reasserted whenever they are brought into doubt." Student reaction at the reading was largely one of boredom.

Litigated Literature Collected

Librarian Roy Mersky is collecting litigated literature — literature which at some time has been banned by some authority and which has become the subject of litigation. The collection ranges from the *"Oddessy"* and the *Bible,* both of which were banned at one time, to the more recent *"Tropic of Cancer"* by Henry Miller.

With regard to the place of such a collection in a law library, Mersky said one is always faced with making value judgments when dealing with acquisitions for a library, be it public or private. In a law library, Mersky said he feels that a proper atmosphere exists to explore the question of why these books were banned without the danger of exposing children to the literature. These books will present students with the opportunity to make their own value judgments — to see the issues involved.

"The question of free speech versus what is sexually moral is an important issue, one of expanding litigation in our courts and one of increasing interest to legal writers. This collection is an example of an approach to the purpose and function of a law library," Mersky said. — Bill Gray in University of Colorado Student Bar Association's *Quare,* January.

Statement of Principles on Freedom To Read

The Library Association of Australia affirms the following principles as basic and distinctive of the obligations and responsibilities of a librarian within a democratic community:

1. The librarian has a responsibility to keep open the channels of communication at his disposal so that he may both discover and serve the needs and interests of his community.
2. Having regard to his resources, to the special needs of his locality and the purpose of his library, the librarian should not, in the acquisition and use of library material, exercise discrimination against an author or a reader on grounds of race, sex, religion or political affiliation.
3. The function of the librarian is to promote reading and to cater for interest in all facets of knowledge, literature and contemporary issues, including those of a controversial nature, but not to promote or suppress particular ideas and beliefs.
4. The selection of books for libraries is not a form of censorship. It presumes the right of the reader to read books widely and to form his own judgments, and it is designed to achieve this.
5. The librarian should resist attempts by individuals of organized groups within the community to determine what library materials are to be, or not to be, available to the users of the library.
6. The librarian must obey the laws relating to books and libraries, but if the laws or their administration conflict with the principles put forward in this statement, he should be free to move for the amendment of these laws.—*The Australian Library Journal,* September.

Many Libraries?

Book selection policies of the Coalinga, California, Public Library were challenged when local businessman John E. Bunker read a long letter at the 11 February meeting of the Board of Trustees, a small part of which follows:

"My wife and I have been considerably disturbed by the gradual deterioration in the quality of the books that have been appearing on the shelves of our tax-supported district library. . . . We have very strong ethical, moral and religious objections to the increasing number of books that either stress sexual relations, often very descriptively, to homosexual or other perverse relations between members of the same sex, to obscene or latrine-style language, or a combination of two or more of these. We believe that this type of so-called literature is completely out of place in a tax-supported library such as ours, which serves all ages, including a very substantial portion of our young people."

Bunker cited as cases in point the following titles: *Tropic of Cancer* and *Tropic of Capricorn* by Henry Miller; *Memoirs of a Woman of Pleasure* by John Cleland; *Naked Martini* by John Leonard; *Naked Lunch* by William Burroughs; *A Literary Guide to Seduction* edited by Robert Meister; *The Life of an Amorous Man* by Saikaku Ihara; *Jubb* by Keith Waterhouse; *Boys and Girls Together* by William Goldman; *An Uninhibited Treasury of Erotic Poetry* edited by Lewis Untermeyer; *Radcliffe* by David Storey; *Modern Sex Techniques* by Robert Street.

The following week, a crowd of 200 citizens jammed the public library at a public hearing called by the Coalinga Board of Trustees. After some two hours, the Library Board passed a vote of confidence in Librarian Grady Zimmerman and reaffirmed its Library Bill of Rights policy of uncensored book-buying, but also stated that "we do not buy lighter fiction which limits its appeal to sensation simply for the sake of sensation and shock."

Having thus stood shakily on principle, the Board proceeded to whittle it away with procedure, by unanimously passing the following motion:

1. Controversial (or questionable) books may not be circulated to juveniles or young people under 18.
2. If a parent desires a controversial book for his child, the parent may check it out.
3. Controversial books will be coded for identification by staff and patrons. (This regulation introduces a new gray area in book classification; instead of only two groupings — restricted shelf and open shelf — there will now be three: a. Controversial and restricted; b. Controversial but open shelf; c. open shelf.)
4. In order to check out any book on the restricted shelf, the adult patron must make his request on a short, written form.

On this latter point Board member Ron Allen said this was not new and explained that the information was needed to "aid the librarian", and Libraraian Zimmerman called this "reasonable procedure, practiced in many libraries as an extra safeguard." Will some of the many libraries please step forward and identify themselves?

Criticism, but Not Censorship

Birth of a Nation has been variously described as a cinematic masterpiece and a racist film.

The late James Agee, well-known movie critic, once wrote in *The Nation: "The Birth of a Nation* is equal with Brady's photographs, Lincoln's speeches, Whitman's war poems: for all its imperfections and absurdities it is equal, in fact, to the best work that has been done in this country."

Thomas F. Gossett, in his book, *Race: The History of an Idea in America,* says of the film: "Quite as racist as Thomas Dixon's *The Clansmen,* the anti-Negro novel upon which it was based, *Birth of a Nation* was a masterpiece of technical virtuosity and a landmark in the history of films. On the other hand, its version of history is frankly and crudely racist."

The National Association for the Advancement of Colored People is trying to prevent the reissuance of a copyright for the movie in time to prevent its showing across the country on Feb. 8, 50th anniversary of the film. It also is asking the New York Board of Censors and the Division of Licenses not to relicense the epic.

Granted that the movie is pro-Rebel and distorted in its chronicling of the Civil War and the Reconstruction Era, and in its presentation of the Negro, those aspects serve as a valid basis for criticism, but not for blocking its showing.—Providence *Bulletin,* 25 January.

Anti-Propaganda Laws

The attempt of Canada to stop the flow of hate literature shows the difficulties confronting those who seek to legislate right thoughts. There is no solution to this problem, just as there is no prospect that an end will be brought to hatred, superstition, and ignorance.

The first impulse after viewing examples of hate propaganda is to demand a law banning it. But one man's poison is likely to be another man's prescription for the defense of his country, if not the salvation of mankind. Censorship that suppresses error can also suppress truth. It has done one just as often as the other in the past. That is why there really can be no such thing as a good censorship.

The Canadians will doubtless consider these and other points when they attempt to draw legislation after a series of public hearings. The aim will be to stop organized activity that promotes ill feeling between different ethnic, racial, and religious groups. The immediate cause of the action is right-wing propaganda from the United States against Jews and Negroes.

The viciousness of this type of propaganda makes one want to stamp it out. But no way has been found to do this without destroying freedoms that are more valuable than the quiet that is brought by censorship. The problem is basically one of education rather than legal action.

People with a feeling for the law know that legislation is not the way to stop bigotry, to promote good morals, to inculcate right political opinions, or religious beliefs. Much of the hate literature is the product of sick minds. But this sickness cannot be dealt with by passing law.—Santa Fe *New Mexican,* 23 December.

Colorado Concern

March 17, 1965

Rev. Lowell E. Burkhart, President
Concern, Inc.
701 Colorado Building
Denver 2, Colorado

Dear Rev. Burkhart:

Thank you for sending me information about *Concern*. As a member of the Intellectual Freedom Committee of the American Library Association, I try to keep informed on developments with respect to freedom of communications. Speaking for myself, I find techniques to suppress communications burdensome, although I concede that your anxiety about the safety of children is serious and responsible.

As a librarian, I in turn am anxious not to have private groups (as they often do) try to impose their tastes on libraries. I think you may find the June issue of the *ALA Bulletin* of importance to you, because there will appear reprints of addresses by men of authority who speak to the issues raised by you. It is by no means certain, as your information indicates, that obscene literature is harmful. There is no evidence I am aware of to lend substance to your fears. I would be pleased to know of any studies to the contrary.

Not being a Colorado resident, I do not feel that your activities impinge upon my areas of interest, but I can foresee serious clashes ahead in your program to put pressure on merchants to conform to your standards.

Thank you for taking the time to write to me.

Sincerely yours,
Ervin J. Gaines

Omnibus Crime Bill

The passage of the District Crime bill in the House can only be understood if it is regarded as a vote of confidence in the Senate. One cannot believe that the House members would have passed such a monstrosity if they had not been certain that the other chamber would rescue them from the consequences of their folly.

While this explains this particular lapse, it hardly commends it. This is a dangerous piece of business and one day the Senate might nod and let some such measure get into law. In this case, the Senate seems fully alerted and has planned hearings that the House did not hold in which the multiple weaknesses of the omnibus crime bill surely will be made apparent. Failure of the House to even hear the Administration witnesses who are supporting very different proposals is an act of discourtesy to the President that one might think Democratic members would have wished to avoid.

The provisions on the Mallory Rule and Durham Rule raised the most serious constitutional questions. The improvised obscenity sections would threaten the constitutional rights of all publications in the District and expose them to calamitous losses on mere suspicion and in advance of judicial determination of guilt. There is little likelihood that the crime bill would survive long in the courts, but it is to be hoped that it will be killed long before it gets there.—Washington *Post*, 24 March.

Extremist Groups

is the title of a six-page flyer published by the National Congress of Parents and Teachers which contains much useful information in capsule form on the nature of extremist groups both of the right and of the left, their tactics, and ways to combat undemocratic pressures on PTA's, Schools, and Libraries. Single copies fifteen cents, quantity rates from the Congress at 700 North Rush Street in Chicago.

Isle of Wight Ban

The libraries of Sandown and Shanklin in the Isle of Wight have removed J. P. Donleavy's novel *A Singular Man* from the shelves, because of a complaint from a Shanklin resident that the book was unsuitable for teenagers and young people. The librarian, Miss M. Wright, said that there had been a good demand for the book, mainly from the "young moderns"; there was a copy in each of the libraries, and only this one complaint had been received.

The vice-chairman wanted the book removed; in his view, it had no story and was purely a series of descriptions of sexual behaviour. The chairman thought this criticism a fair one, but that there were books which were "far worse" on the shelves. — *The Bookseller*, 6 February.

Magistrate and Library Board Differ In British Censorship Case

The Birmingham (England) city stipendiary magistrate John Milward, at the end of January, ordered the confiscation of *The Carpetbaggers, The Kama Sutra, The Perfumed Garden,* and *Tropic of Capricorn.* The bookseller from whom copies of these and 50 other books were taken was T. J. Windridge of K. A. Windridge & Sons. He was brought before the court under a section of the British Obscene Publications Act.

A few days later, the Birmingham Public Libraries Committee decided, by 15 votes to two, to keep the books in the city's public libraries, continuing the safeguards which prevent their being lent to juvenile borrowers. The chairman of the library board, Councilor George Jonas, stated: "We are prepared to take the risk, negligible though we believe it to be, of proceedings being brought against us. If they are, we will defend and seek to show that these books do not tend to deprave or corrupt, and that it is in the public interest that we should continue to issue them."

A more outspoken comment by a member of the library board, Mr. Anthony Beaumont-Dark, was quoted by the London *Times:* "If the police wish to prosecute us I will be delighted; in fact, I invite the chief constable to prosecute us. This case strikes me as confirmation of the classic assertion that the law is a ass." The "classic assertion" to which Mr. Beaumont-Dark referred was made by Mr. Bumble in *Oliver Twist.*—*LJ*, 1 April.

One of 2 Responses*

To the Editor:

In reference to your inquiry in the March issue of the *Newsletter on Intellectual Freedom,* the decision in regard to "Johnny Goldfarb Please Come Home" was reversed by the Appellate Division of the New York Supreme Court on February 9th. This has not been officially reported as yet, but the decision is available in 144 USPQ 454. According to the story in the *New York Times,* the decision of this court is being appealed to the New York Court of Appeals (which is the highest court in New York.)

J. Myron Jacobstein
Law Librarian
JMJ:br Stanford University

*The other from Jack Ramsey, of the Wilson Company.

Langston Hughes in Oakland

A few weeks ago the Superintendent announced at a meeting of the Board of Education the recent acquisition of *A Pictorial History of the Negro in America* by Langston Hughes and Milton Meltzer (Crown, 1963) and of the current order for *The Negro Heritage Library* (Educational Heritage, 1964, 10 v.).

At the following week's meeting, on 16 March, several citizens, who are members of the Citizens Committee for Common Sense in the Schools, attacked the Superintendent and the Board for the selection of these books on two points: (a) Langston Hughes' early "atheistic" and "communistic" poetry and (b) the connection of Martin Luther King (whose story is described in one of the volumes of *The Negro Heritage Library*) with associates who have had alleged criminal records for "lewd vagrancy" and affiliations with communist front groups, e.g., Bayard, Rustin, Jack O'Dell.

The Superintendent immediately turned the case over to the Library Department — the customary procedure according to the book selection policy of the school district. Subsequently, I have called together a special review committee which will work on this project during the next few weeks. Copies of the book selection policy and the form for requesting reconsideration of books are enclosed.

The whole situation has political overtones because Sam Cook, husband of a woman who contested the Hughes book at two Board meetings, has filed to run for one of the Board of Education posts in the forthcoming election (April 20). Another person, Clyde Dalton, challenged the Superintendent and the Board to produce an answer from the special review committee "within 30 days". This deadline would have made the release of the committee's decision come *before* the Board election date. One Board member persuaded Mr. Dalton to reconsider the deadline ultimatum. Several weeks later, Mr. Cook pulled out of the election race, charging that "right-wing extremists and the John Birch Society" are disrupting the campaign.

At first these people did not fill out the official form for reconsideration of books; they preferred to stand on their other comments in (a) a telegram threatening the Superintendent with legal action and (b) a two-page complaint submitted several weeks ago. Of course, this failure to use the form would have put these people in a weak position because the committee would not have received specific objections on the contents of the books to which to react. Our book selection policy concerns itself only with the materials selected, not with the background of individual authors except as it indicates their status as authorities in subject areas. Subsequently, two people did at last submit complaints on the proper form.

Mrs. Helen W. Cyr
Coordinator of Library Services
Oakland Public Schools

6 April 1965

Albany Librarian Expresses Appreciation

A few months ago many of you responded to a request in this paper, "Albany Needs Another Library". You responded with books, supplies, and money, and we are yet receiving books from many of you. In the outset, we were able to keep up with our communications and thank you individually, but as time went, and more work was demanded to keep the project moving in one way or another, we were not able to keep up our "thank-you" communications and we are sure you felt rightfully neglected.

We would like to assure you it had not been an oversight on our part or a neglect of an important responsibility, but with a limited staff to work with and the end of each day coming much too soon, we have fallen behind. Let me therefore, if you will, take this opportunity to thank each of you individually for books and donations of all kinds, and to assure that as soon as time permits, I shall write each of you.

It may interest you to know that we have been busy trying to raise funds for one year's operation for the center. In order to secure a part of the needed funds we had to draw up a "Proposal for the Albany Community Center, Albany, Georgia", outlining activities, staff and budget. This took a lot of time and research in order to present a detailed report for I had not drawn one up before, but I enjoyed it. As a result, The United Presbyterian Committee on Race Relations is sending us $3,500.00 to help. With your help, and those of you that helped with the day care school (one part of the center), we have raised about $6,000.00, making a total of about $9,500.00. We shall yet be busy for the total minimum funds needed for one year's operation is $15,-229.23. One other part of the center is a recreation program, all made possible because you responded so well.

One of our main features of the library program is a tutoring class for school children. Help is being offered by the teachers in the community based on the individual's need or need of the group. We hope you will be able to visit us soon and again many sincere thanks to each.—Elza Jackson, P. O. Box 1641, Albany, Georgia.

Probation Officers as Censors

March 15, 1965

Senator Eugene G. Nisbet
Capitol Building
Sacramento 14, California

I am writing to call your attention to Assembly Bill No. 8 which is an Act to add Section 273i of the Penal Code relating to the dissemination of material deemed harmful to children. The Act makes probation officers the judges for material deemed harmful. In effect this makes probation officers censors for publications.

I personally am in opposition to making probation officers the censors because I feel this is too specialized a field for the probation officers. I do not feel that probation officers by their training are necessarily qualified to be censors for books or materials just as sheriffs or policemen are not qualified to be censors. If we are to have censorship and censors, the natural selection would be the librarians who work continuously with books and related materials.

It is my hope that the California Library Association, the Librarians in the state of California, the California Educational Association, and the newspapers throughout the state would likewise oppose this Bill.

James R. Housel
Librarian
Ontario City Library
Ontario, California

(As Jim Housel agrees, librarians are of course not qualified either, and do not want the job. Their position is that censorship is both undesirable and impossible. They and others concerned with problems of obscenity should be working on the improvement of taste — see page 37 — thus alleviating the tendencies toward censorship. — LCM.)

Novelist and Publisher To Be Tried Under Finland's 1889 Blasphemy Law

The monologue of a young drunk, cursing God, and others, was sufficient for the Justice Minister of Finland to order charges of blasphemy brought against the author and the publisher of a best-selling Finnish novel, *Midsummer Night Dances,* according to a recent report to the New York *Times.*

Under a blasphemy section of the Finnish penal code dating from 1889, the Justice Minister ordered the Public Prosecutor to start proceedings against Hannu Salama, the author, and Otava, an important Finnish publishing house. The complaint arose from recent speeches in the Finnish Parliament by Conservative party members citing the indecency and blasphemy in recent publications, including *Midsummer Night Dances.*

Because no Finnish author had been prosecuted under the blasphemy law since 1927, many felt it had become obsolete, but the prosecutor's decision to revive the section of the code was based upon his belief that the indecency sections of the penal code were too vague. The maximum penalty for blasphemy is four years at hard labor. The minimum sentence, if the blasphemy was committed thoughtlessly or in "a moment of rashness," is a shorter jail term.

Martti Larni, Chairman of the Finnish Authors Association, called the decision to prosecute "incredible," and said it would be strongly opposed. — *LJ,* 15 February.

We Have Arrived!

"Censorship: The Profession's Response," by Jerome D. Simpson, first published in these pages last July, has been reprinted in the January *Oklahoma Librarian.* Permission was sought and granted, but other editors may wish to note that our posture against censorship includes a theoretical objection to copyright, at least for the *Newsletter on Intellectual Freedom.*

New Hampshire Librarians Oppose State Ban on Subversive Speakers

The Intellectual Freedom Committee of the New Hampshire Library Association, represented by Joseph G. Sakey, City Librarian of Nashua, registered its opposition to a bill before the New Hampshire legislature that would prohibit any representative of an organization defined as subversive from having access to a state platform. The bill has rekindled a controversy which reached its peak last year, over the policy of the University of New Hampshire regarding outside speakers.

In hearings before the House and Senate Education Committees of the legislature, Sakey stated the position of the NHLA Intellectual Freedom Committee: "We view with alarm any state action which would encourage misguided groups or individuals to continue their attacks on the free flow of information."

Sakey went on to point out: "Restricting the role of the officials and faculty of a major state university in controlling educational policy is ultimately to insist that the university be a second-class institution.

"Libraries are also educational institutions. The climate in which education is conducted permeates to the smallest public library. To see the largest educational institution of the state penalized is bound to have an adverse effect on libraries as forums of opinion and also, by their nature, as holders and disseminators of controversial materials."

The presidents of the state's three major educational institutions, Dartmouth College, St. Anselm's, and the University of New Hampshire, also voiced their opposition. In a surprise move, former New Hampshire Governor, Sherman Adams, coming out of political seclusion for the first time since his resignation from the Eisenhower administration in 1958, testified against the bill.

The bill was reported out of the committee with 22 legislators opposed and 3 in favor, but N. H. Governor John W. King still expresses optimism for its eventual enactment. — *LJ,* 1 April.

(Bill was killed — 205 to 176 — on 11 March. Ed.)

Action on Obscenity

In Columbus, Georgia, a group of citizens has taken a positive step against pornography — one we think might be taken as an example by other communities. It is not a move resting upon the dubious practice of censorship. As the Columbus *Ledger* notes: "Laws against obscenity rarely are effective because they require a definition that few people are able to give. What is obscenity? An obscenity law that could catch the material available to the mass audience would ensnare classic art and classic literature."

So in Columbus the Muscogee County Citizens Committee for the Study of Obscene and Pornographic Materials is taking a different approach. Its chairman has sent a letter to workers saying: "If public support can be obtained to encourage and patronize the good materials, then the undesirable will fall from lack of support." The group has sponsored "Good Publication and Entertainment Week," intended to encourage the growth of good literature and good entertainment.

Of course, neither this group nor any other can precisely define good literature and good entertainment; that, like obscenity, cannot be tied up in a package and labeled. But certainly these citizens have headed in the right direction and their message will get across. There is no way to eliminate all pornography without repressive censorship. But there are good ways and bad ways to limit it.

The Columbus approach, as indicated by what has happened so far at least, is the right way — resting upon voluntary action. The State Literature Commission way, involving censorship and the forcible removal of some books without even touching offending magazines and other materials, is not only the erratic way but also the wrong way. — Atlanta *Journal,* 28 March.

An Invitation to Bookburning

Fantastic is the only word to describe the textbook amendment approved Wednesday by the Senate Finance and Taxation Committee.

The establishment of what amounts to a legislative Watch and Ward Society, empowered to serve as an "appeals court" for any and all bookburners, completely negates the calm and deliberate selection of textbooks by throwing the whole matter open to imbecilic critics.

It is well known that a number of malcontents in this state — as in every state — want to ban just about everything. The amendment offered by Senator Ed Eddins and approved by the committee would give them the hunting license and the widest criteria, including what they believe to be "indecent, immoral, anti-religious, subversive, communistic and/or inaccurate according to the Constitution of the United States or known and proven historical fact."

All of which is designed to force any opponents of such ill-defined and vague standards as taking a stand against motherhood, God and country. Most reasonable people will not speak out in support of books so labeled; to do so, in the current climate, would brand them as indecent, immoral, subversive, etc.

But anyone in his right mind knows that with such deliberately fuzzy standards it is possible to suppress any book — repeat, ANY — not excluding the Bible. The Magna Carta, the Bill of Rights, any great works of Western man, and not just contemporary textbooks, could be banned by applying these gaseous standards.

If free textbooks are to be subjected to this incredible inquisition — where denunciation by anyone is sufficient to brand a book as controversial and therefore taboo — they will not be free books. They may prove to be the most expensive books ever approved for children in any state — the exorbitant price being the deprivation of the best that is offered by the nation's publishers.

Education by intimidation equals no education. Whatever benefit may be derived from the Wallace Administration's laudable work in improving Alabama schools could be destroyed in a trice.

The legislature, subject to the pressures of the hard-eyed Comstocks — unrebutted by rational citizens, because of fear of guilt by association — would arrogate all the authority of the state textbook selection committee and local school boards which make their selections from state listings.

It has been said many times before but it bears repeating: There is either no beginning or there is no end to censorship by dimwitted pressure groups.

If this amendment is finally enacted, conscientious parents would be well-advised to open classes in their homes to supplement whatever innocuous drivel drips through the banners' fine filter system. — Montgomery, Alabama, *Journal,* 5 March.

No Don Quixote

Trustees of the Tustin, CALIFORNIA Board of Education on March 15 voted an administrative reprimand of the History Department of the Foothill High School for not following correct procedures in presenting a conservative film. A storm of protests over the classroom showing began on March 3 when twelve U. S. history classes were shown the film, *The Ultimate Weapon.* The reprimand was specifically addressed to the head of the History Department for "not previewing the film, not investigating the origin of the material and not following the showing with oriented discussion and instruction." The film, made available through Knott's Berry Farm, was narrated by actor Ronald Reagon.

Brentwood, PENNSYLVANIA, school superintendent, C. A. Sherman, ordered English teaching A. Michael Trench not to sell copies of Salinger's *Catcher in the Rye* to his classes as he had planned to do at a discount and not to use the book as part of any of his courses. Sherman told the Pittsburgh *Post Gazette* (12 February) he would permit some discussion of the book in class, but "not very much." His objection is that it is "risque, pretty sexy — and the question is whether a 15-year-old can take it." Trench said he would abide by the decision. "I don't agree with the decision, in fact I am against it 101 per cent, but I am not going to be a Don Quixote and fight windmills."

Resistance Organized

Kansas City, MISSOURI, boasts a new organization called Greater Kansas City Council for Responsible Dialogue whose purpose is, "To promote a sense of responsibility in publications and discussion concerning public affairs; to foster sound scholarly practice and evaluation of facts; to conduct research into matters concerning public affairs; and to sponsor dialogue and discussion concerning public issues." At an organizational meeting on 27 January, Mrs. Muriel Petruzzelli spoke of harassment by right-wing elements in Johnson County in opposition to conducting Great Decisions among Shawnee Mission high school district students. She also said that two persons from the Americanism committee of the Sertoma club in Johnson County attempted, without success, to have Great Decisions course reading material taken off the bookshelves at the Johnson County Library and to replace it with an Americanism shelf. And when they were asked what books they would want on this shelf, said Mrs. Petruzzelli, "all they could think of was J E. Hoover's *Masters of Deceit*."

The first organized effort to resist censorship in school libraries was made on 28 January when several Long Island, NEW YORK, educational and library groups — working through the new Long Island Intellectual Freedom Committee — decided to work on a resolution similar to one approved recently by the Nassau-Suffolk School Library Association. The NSSLA statement unequivocally endorsed the freedom to read, repudiated the censorship of library materials and called on all school districts to develop procedures for handling complaints. Chairman of the LIIFC is David Cohen, librarian of the Plainview-Old Bethpage Senior High School. Said Cohen, "The main function of the IFC would be to inform and assist school boards, librarians and teachers with censorship problems. The committee will remain basically an agent of its parent educational and library groups and would meet formally only to consider specific problems."

State Law on Obscenity Held Invalid in Film Case

Common Pleas Judge Earl Chudoff ruled on 19 March that Pennsylvania's obscenity law is unconstitutional. The law, he said, has made the district attorney the "censor for the public. And we ought not to allow any administrative agency, no matter how subtly or how admirably it performs its intentions, to become the censor of the Philadelphia citizenry," he added.

Judge Chudoff issued the ruling in a 15-page opinion in which he ordered the district attorney's office "to return forthwith" the film "Olga's House of Shame," which it seized last Nov. 23 in raids on the Spruce Theater and the Devon Art Theater. He also ordered indictments for possession of obscene films against the managers of the two theaters quashed.

STATEMENT OF THE WISCONSIN LIBRARY ASSOCIATION IN RELATION TO PROBLEMS POSED BY STATE OF WISCONSIN SENATE BILLS 26 AND 102

The Wisconsin Library Association recognizes that the purpose of Senate Bills 26 and 102 is to control crime and juvenile delinquency through preventing access to obscene printed materials by persons under 18 years of age. Certainly the growth of crime and delinquency presents a serious social problem, and the library profession shares with the Sponsors of these two Senate bills a concern that solutions shall be developed.

It is common assumption that repeated exposure to obscene materials may pervert an immature personality. While there is no absolute proof of direct causal relationship between exposure to obscene materials and delinquency, in the view of the library profession preoccupation with such materials by young people would seem to be a symptom of deep-seated personality problems if not actually a contributing cause. Librarians, then, have a common concern with other groups in identifying the appropriate answer to the problem.

While the Wisconsin Library Association sympathizes with the wishes of the sponsors of the bills to control the causes of crime and delinquency, we must raise some questions about the efficacy of the bills to achieve this purpose.

While both bills attempt to define precisely the nature of obscene materials, the inevitable confusion between the "obscene" and the "offensive" in particular instances risks an unduly restrictive application of these laws. As reported in one study prepared for the city of Kalamazoo, Michigan, the interpretation of what is "lewd, obscene or indecent" will have wide variation among those who may present complaints, depending upon the sex, age, background, or environment of the complainant. The problem of enforcement of what is essentially undefinable constitutes only one part of our concern. Allegations of obscenity against a great range of materials and the ensuing climate of construction and fear tend to limit freedom of expression on serious social problems.

This, very briefly, is our concern. Since there are already numerous state laws for the control of distribution of obscene literature, the Wisconsin Library Association suggests that further study should precede any enactment of addition laws. The seriousness of the problem and the impossibility of a simple legal solution warrants a thorough technical study by a committee comprised of highly competent specialists from the many professions whose work bears on the problem, as well as members of the general public.

The Wisconsin Library Association, therefore, wishes to record its opposition to the passage of Senate Bills 26 and 102.

Presented on 25 February by
Intellectual Freedom Committee,
Wisconsin Library Association

Perspective Supplied

A History of Pornography. By H. Montgomery Hyde. New York: Farrar, Strauss & Giroux, 1964. 246 pp. $4.50.

An English literary critic has observed of pornography: "All we can say with confidence is that it has always existed and always will, so long as men and women have sexual fantasies they cannot realize, for whatever reasons, in actual life." What this book principally attempts to do, and with considerable success, is to trace the roots of pornographic literature deep into antiquity. The thoroughness of the chronicle, and the author's objectivity, make it difficult for the reader to condemn, or for that matter to approve, what has happened in the development of this medium of expression. The reader is made an observer, and even a participant, in a fascinating aspect of literary history. It is for putting a highly controversial and much misunderstood subject in better perspective that this book must be chiefly appreciated.

There is no escaping the fact that pornography has always been with us, even if the forms and the standards may have changed over the centuries. Materials that excited and aroused the Greek and the Roman in the privacy of his den are strikingly similar to what is thought to arouse the prurient interest of the modern American reader. More important, much of what must be considered "pornographic" in ancient times was designed only in part, or not at all, to stimulate or arouse an erotic response. There is much, for example, in the Bible that may be classed as pornography if one is so inclined. Among the less sublime of ancient literature, there is pornography in Euripedes, Sophocles and Ovid — particularly in the works of that notable Roman poet. Yet the presence of pornographic passages, of varying lengths, in such works as these does not deny them their well-deserved place in literary annals.

What was true in antiquity of the central role of pornography in respectable literature is even more true in recent times. It is not just the Decameron and the works of Rabelais, for example, that are capable of arousing the erotic interests of readers and the wrath of the censor. Even Shakespeare was responsible for some passages that might be called pornographic, and so were many others among his contemporaries and successors. Even Gilbert and Sullivan were not above composing at least one quite largely pornographic work, although we tend to recognize their talents in less controversial fare.

There has, however, been a somewhat less respectable side of the history of pornography. That is the treatment of various forms of sexual perversion, which have been prominently featured and vividly described through many centuries. One cannot fully understand the importance or the impact of literature of this kind, for example, without some study of the Marquis de Sade and Leopold von Sacher-Masoch, whose very names have been immortalized in psychological labels. Some account has to be taken, of course, of the vast literature of homosexuality and lesbianism, not to mention sodomy and other forms of perversion. All this has been done tastefully and skilfully by Mr. Hyde in a rather short compass.

Although this is a book for laymen rather than lawyers, it would be incomplete without some consideration of the unceasing attempts to suppress pornography. It is important to note, as the author does, that these attempts have been as much extra-legal as legal; that private groups, religious, civic, fraternal and the like, have often been far more effective in chilling the circulation of offensive literature than have the more formal threats of the prosecutor. Unofficial censorship, moreover, has swept with broader strokes and less discrimination, unchecked as it has been by the strictures of the First Amendment (in the United States, at least) which bind the police and the prosecutors.

A certain futility characterizes the history of censorship. There is no doubt any longer—and Hyde demonstrates there never was much doubt — that the best way to promote the sale of a questionable book or magazine is to have it banned somewhere. This is partly because of the way human nature responds to the forbidden and the illicit. It is partly, also, because of the way the great publishers of pornographic material operate. This book provides a fascinating insight into the workings of several such houses, and of the ways in which they are usually able to keep at least one step ahead of the censor. Finally, there is a certain unreality about the attempts of the law to deal with the problem of pornography. Official censorship was premised for a time on the supposed connection between erotic arousal and crime, a connection that has never been scientifically established to the satisfaction of anyone but the censors themselves. For various reasons the legal test of pornography has always lagged behind both in the tastes and the knowledge of society about such materials, and this lag adds to the difficulty that the law has experienced in dealing with the problem.

Thus the author would rely upon non-legal means of combatting the evils of bad pornography, of which he concedes there is a certain amount: "With a rational system of sex hygiene and education, which is coming to be more and more generally accepted, the worthless and unasthetic pornographic product, which can only be productive of a sense of nausea and disgust, must disappear through lack of public demand, leaving only what is well written and aesthetically satisfying." (p. 207) The only difficulty with this approach, and it seems a substantial one, is that the market place may well not share Mr. Hyde's criterion for differentiating good and bad pornography.

In many respects this book makes a profoundly useful and important contribution to the study of pornography and the problems in legal regulation of literature. But in a few matters it is milding disappointing. There is rather little attempt, for example, to probe the psychological meaning of pornography, except where it involves perversion of some form. Perhaps the answer for the reader of pornography is obvious; but that does not fully explain the motivation of the writer. To some extent the writer's motives are no doubt commercial. But the really important pornography, that which is also great literature, must have an inspiration much more literary and aesthetic than commercial. It is the relationship between pornography and the central purpose of the great writer that somehow never receives a full enough treatment.

The battle between pornography and the censor in the United States has now come full circle. The very first prosecution for the sale of an allegedly obscene book in this country, filed in 1819, concerned *Fanny Hill.* Today the censors have rediscovered *Fanny Hill,* because commercial publishers have rediscovered it. The current controversy differs rather little from the controversy of nearly a century and a half ago. The difference lies in the way the courts approach the question today. It does seem that we have learned, albeit slowly and sometimes painfully, some of the lessons that Mr. Hyde would urge upon us from his thorough study of the history of pornography.

Robert M. O'Neil
University of California
(Berkeley)

New Mexico Stays Pure

By killing an anti-obscenity bill on 15 March, the NEW MEXICO Senate assured the state's continuing status as the only state in the union without an anti-obscenity statute. Some measure of credit for the defeat goes to the New Mexico Library Association, whose IFC chairman, Helen Ketola, appeared before the House public affairs committee to oppose the bill. The Committee and the House passed it, but the testimony of Miss Ketola, Los Alamos Junior High School Librarian, and Albuquerque Public Librarian Elsa Smith Thompson before the Senate Judiciary Committee helped kill it there.

Improvement in Taste

A Man's Reach: The Philosophy of Judge Jerome Frank; edited by Barbara Frank Kristein. New York: Macmillan, 1965. 450 pp., $10.00.

A Man's Reach consists of Frank's essays, extracts from his books and many of the significant opinions rendered in the course of his career as Justice of the U. S. Court of Appeals for the Second Circuit. Mrs. Kristein is well qualified to present her late father's philosophy as she collaborated with him in producing *Not Guilty.* A good part of the book is concerned with problems discussed by Frank's *Law and the Modern Mind.* Readers will enjoy "Holding Lincoln's Hat", an essay linking Titus Oates to the late Senator McCarthy of Wisconsin. "The Speech of Judges" takes on the late Justice Benjamin Nathan Cardozo. Among his opinions selected for inclusion are the Gardella case, Rosenberg, the bail issue in Dennis v. U. S.

Of primary interest to readers of this publication is the chapter on *Censorship: The First Amendment* which abstracts his opinion in United States v. Roth, a landmark outline of the issues in obscenity litigation.

Samuel Roth was convicted in New York in June 1956 under a federal statute, 18 U. S. C. §1461, of sending obscene literature through the mails. On appeal, Jerome Frank concurred with Judge Charles E. Clark, 237 Fed.2d 796, in holding that "the test [of obscenity as stated in U. S. v. Levine, 83 F.2d 156] is not whether it would arouse sexual desires or sexually impure thoughts in those comprising a particular segment of the community, the young, the immature or the highly prudish. . . . In other words, you must determine its impact upon the average person in the community." He thought the jury could reasonably have found, beyond a reasonable doubt, that many of the books, periodicals, pamphlets and pictures which defendant mailed were obscene. But in doing so he stated his difficulty in reconciling the validity of the statute with opinions of the United States Supreme Court relative to the First Amendment of the United States Constitution.

"The troublesome aspect of the federal obscenity statute," he said, "is that (a) no one can now show that, with any reasonable probability obscene publications tend to have any effects on the behavior of normal, average adults, and (b) that under that statute, so judicially interpreted, punishment is apparently inflicted for provoking, in such adults, undesirable sexual thoughts, feelings, or desires — not overt dangerous or antisocial conduct, either actual or probable."

The United States Supreme Court affirmed Roth's conviction, 254 U. S. 476.

In his discussion of the obscenity statute Judge Frank emphasized factors which some segments of the public are at times prone to forget:

1) That many of the publications mailed by defendants such as Roth may offend a judge's personal taste and that a judge would not walk across the street to obtain them for nothing, and that, while a defendant's motives may be considered obnoxious, the judge has a duty to protect his constitutional rights.

2) "That it is most doubtful whether anyone can now demonstrate that children's reading or looking at obscene matter has a probable causal relation to the children's antisocial conduct."

3) "Congress undoubtedly has wide power to protect public morals. But the First Amendment severely limits that power in the area of free speech and free press."

4) "The First Amendment, of course, does not prevent any private body or group (including any Church) from instructing, or seeking to persuade, its adherents or others not to read or distribute obscene (or other) publications. That Constitutional provision — safeguarding a principle indispensable in a true democracy — leaves unhampered all non-governmental means of molding public opinion about not reading literature which some think undesirable; and, in that respect, experience teaches that democratically exercised censorship by public opinion has far more potency, and is far less easily evaded, than censorship by government."

5) "Governmental censorship of writings, merely because they may stimulate, in the reader sexual thoughts the legislature deems undesirable, has more serious implications than appear at first glance: We have been warned by eminent thinkers of the easy path from any apparently mild governmental control of what adult citizens may read to governmental control of adults' political and religious reading. John Milton, Thomas Jefferson, James Madison, J. S. Millard, Tocqueville have pointed out that any paternalistic guardianship by government of the thoughts of grown up citizens enervates their spirit, keeps them immature, all too ready to adopt toward government officers the attitude that, in general, 'Papa knows best'."

6) "That the desirability of a statute does not render it constitutional."

Librarians faced with censorship or suppression pressures will find Frank's comments on the law and literary classics entertaining and illuminating. Fortunately, for those who wish to probe more deeply his full opinion with notes of authority is available in the reports, 237 F.2d 796. His quotation there of John Milton should bring solace to all book lovers: "Evil manners are as perfectly learnt, without books, a thousand other ways that cannot be stopped."

And is it not strange that under Roth, Benjamin Franklin, "Father of the Post Office," might be found guilty by a jury if he were here to mail his own published books?

With Frank's guidelines at hand the Supreme Court of the United States may retrogress sufficiently past the standards of the Victorian age to those which characterized the lively and thoughtful days of our Founding Fathers when James Madison wrote, "A man has property in his opinions and free communication of them."

Both censors and censored will find much to ponder in reading the thoughts of this thinking judge. If an unbiased person for a moment imagines himself on the judge's bench to draw a just and enforceable line against obscenity in book form he would likely consider his task virtually impossible in the light of the factors Frank offers for consideration on the merits.

Improvement in taste, not prohibition, is what society cries for in an age when the mass media aim their output quantitatively toward the lowest common denominator of the American public. The constructive approach is to make our citizens safe for ideas through better education. This involves exposure and building a sense of discrimination. Filth will then largely be ignored or rejected in the market place and not thrust by prohibition attempts into the best-seller lists. Let responsible parents and churches be the guides of their own in avoiding that which they consider unfit. Frank has vividly outlined the issues. His faith in high American principles and ideals is manifest and not to be underestimated for quite likely he is the prognosticator of legal principles which will govern this area of vital and controversial concern.

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The Vestal Virgins of New York State

In Vestal, New York, the head of the board of education, hoping to keep the towns' high school students pure of mind and spirit, has declared they shouldn't be allowed to read some of the books by J. D. Salinger, Ernest Hemingway or James Baldwin. Salinger's *Catcher in the Rye*, for example, he said, is dirty and shouldn't be allowed in the doors of any secondary school in this country." Books by all three authors are on high school library shelves, as they are all over the nation, since they are recommended for reading by the Standard Catalog for High School Reading.

Alas, board President Harold May is too late. The knowledge of sin he would keep from Vestal teenagers came permanently to man when Eve bit the apple. And keeping students from eating apples or reading books will never bring back the innocent days of Eden. Of course if Mr. May really wants to keep teenage minds untouched by the language and thought of modern America — represented in lively fashion by these three distinguished authors — then he can always do what the Romans did: Start secluding the Vestals when they're six years old.

Not only could this be done for Vestal girls, whom the Romans kept disciplined and secluded until they were 30 years old or so, but Mr. May also appears to want it done for Vestal boys. If they read nothing except approved books and spoke to no non-Vestals for 30 years, or at least until they're out of high school, they might well have virgin minds. Their Roman predecessors needed little knowledge of the world as all they did was tend a sacred fire, fetch sacred water and prepare sacred foods. And New York Vestals would be about as well prepared to deal with the complexities and sophistication of modern life. Mr. May's book censorship suggestion is a foolish one, as are most censorship suggestions. And he should remember that while he may momentarily be popular with some New York Vestals, the favorite animal of the Romal vestals was a donkey. — Hartford, Conn. *Courant*, 16 March.

ALA (cont.)

The work of this conference would seem to have a bearing on the interest continually shown by the Congress and the House Committee on Post Office and Civil Service in regulation of material circulated in the U. S. mails and so, if the Committee wishes, I would be glad to provide a copy of the papers presented at the January conference, as soon as they are published. An initial report of the conference may be found in the *Library Journal* for March 1, 1965.

H. R. 980, introduced by Mr. Cunningham on January 4, 1965, to deal with the question of offensive matter in the mail, apparently is similar to legislation introduced in, but not enacted by the 88th Congress. This legislation was disapproved or unfavorably commented upon not only by witnesses for numerous private organizations interested in the preservation of freedom of speech and press, but also by the U. S. Post Office Department itself and the United States Attorney General. I am advised that both of these arms of the Executive Branch have already gone on record with equally strong reservations concerning the wisdom and constitutionality of H. R. 980.

As I understand the legislation, as previously proposed it would have authorized a person to return to the Postmaster General any mail which was "morally offensive," in his opinion, and which was addressed to and received by him or a child of his. The person would have been authorized also to request the Postmaster General to notify the sender to refrain from sending all unsolicited mail to him or his child. The Postmaster General would be required to give the sender notice of the request and to direct that, effective on the 30th day after the date of the notice, the sender, and persons acting on his behalf, shall not send any mail to the person named in the notice. If the Postmaster General believed that a sender or anyone acting on his behalf violated the notice to refrain from sending mail, the Postmaster

General would be required to serve upon the violators a complaint requiring that any response be filed in writing within 15 days. If the Postmaster General then considered that the notice had been violated, he would be authorized to request the Attorney General to apply to any district court within whose jurisdiction the mail has been sent or received, for an order directing compliance with the notice. Failure to obey the court's order would be punishable as contempt.

H. R. 980 differs from the legislation proposed, but not enacted in the 88th Congress, in at least three main respects. First, it characterizes the objectionable mail matter as "obscene, lewd, lascivious, indecent, filthy, or vile" rather than "morally offensive." Although such a narrowing of the ambit of this law would be otherwise commendable, it seems only fair to observe that even the Courts of the United States have encountered great difficulty in identifying "obscene" material as distinguished from other material, dealing with sex, which is not obscene and whose circulation is constitutionally protected by the First Amendment, as interpreted by the United States Supreme Court in recent cases like *Manual Enterprises v. Day,* (1961); *Bantam Books v. Sullivan,* (1963); *a Quantity of Books v. Kansas,* (1964); and most recently, *Freedman v. Maryland,* decided March 1, 1965. Yet H. R. 980 makes very little attempt to conform to the requirements and tests laid down by the U. S. Supreme Court in such cases, for the legitimate regulation by government of so-called obscenity. In fact, H. R. 980, like its predecessor in the 88th Congress, and like some other bills introduced during the present session of this Congress, seems to aggravate the Constitutional problems inherent in even the best-motivated governmental attempts to regulate the circulation of so-called obscenity, by its permitting the subjective opinions and tastes of individuals unconnected with the government to determine whether some material may pass through the mails and the senders of such mail may be punished for thus using the mails. It would be difficult to improve upon the criticism directed at this aspect of H. R. 980 by Postmaster General Gronouski when he observed that it would empower persons "to set in motion a series of governmental actions which could seriously impede the dissemination of material to the general public despite the fact that the matter itself may not be obscene by judicial standards." We are all, today, very much aware that any legislation or other regulation exerting restraints upon the circulation of printed materials must strictly comply with judicial standards lest one precious freedom of expression and freedom to read be eroded. Yet the proposed legislation almost invites persons to take advantage of the opportunity afforded to translate his own subjective feelings about certain subjects into consecutive orders of the Post Office Department, the Department of Justice, and the Federal Court system, designed to bring about the punishment of, or disruption of business of some group, company or concern using the mails to offer information or views on subjects which the recipient may personally dislike, including even religious and political views.

For almost anything can be called "obscene" or "indecent" by someone. Surely Congress would want to consider carefully before adding contempt proceedings. What is obscene to one may be the laughter of genius to another; it is to be hoped that the Congress will not require the Post Office Department to go back beyond the days when it considered Aristophanes "obscene" by "appointing" scores, perhaps hundreds or even thousands of amateur censors to exercise their subjective judgments on what is or is not obscene passing through the U. S. mails.

H. R. 980 embodies a provision barring subsequent mailings of additional "such" mail rather than *all* mail, but this change seems to present no cure for the original defects pointed out during the course of the hearings on the bills in the 88th Congress; it would seem merely to place upon the Postmaster General the truly impossible duty of deciding which additional mail originating with the same sender might be considered "obscene" in terms of the subjective meaning evidently placed upon that term by the individual objecting recipient. Must not a ludicrous result be foreseen whereby the Postmaster General would be duty bound to censor mail according not to his own official opinion of what constitutes obscenity, but according to the unarticulated, unformulated differing notions of scores, or hundreds, or thousands of persons. I am not surprised that Postmaster General Gronouski recently advised this Committee that this bill, if enacted, would "impose a tremendous burden on the Post Office Department which it would be incapable of handling under currently restricted budgeting requirements."

The new bill would provide for an "appropriate hearing," if requested by the sender, to aid the Postmaster General determination of whether *a notice* to the sender not to send additional "such" mail — mail which would be considered "obscene" by the objecting recipient — had been violated. This provision for a hearing seems designed to overcome the strong objections made to the failure of the legislation proposed during the last Congress to provide any hearing whatsoever to a person, group or concern accused of having continued, despite notice, to send morally offensive material through the mail. On the other hand, it seems quite clear that the "appropriate" hearing now intended to be provided is not a "due process" hearing at all since it expressly need not conform to the requirements for hearings under the Administrative Procedure Act. I am advised that in failing to need so to conform, the procedure proposed would almost certainly be constitutionally defective.

The bill also appears to ignore the possibility that a "violator" might *unknowingly* or *inadvertently* have violated the notice not to send additional "such" mail to the objecting recipient. Such inadvertent or unknowing sending could be expected, it seems to me, to occur quite normally and in good faith whenever a sender is unable to appreciate fully exactly what kind of expression or material the objecting recipient considers "obscene, lewd, lascivious, indecent, filthy or vile." In other words, the proposed legislation would seem to cast the burden of becoming mind-readers upon senders of mail. It is hard to believe this Congress would want deliberately to enact so troublesome a law, for the attempted regulation of obscenity in the mails. This problem was present also in the legislation introduced in the 88th Congress, where Attorney General Katzenbach pointed out the inherent constitutional infirmity.

In summary, however meritorious the intention of the proponents of such legislation undoubtedly is, H. R. 980 threatens to violate constitutional standards for due

process of law, freedom of speech and freedom to read. Mindful as we all are of the quantity of uninvited, sometimes welcome and sometimes unwelcome, material received by us all, almost daily through the mails, we are also mindful that each of us possesses the power for ourselves or our children, physical and legal, to return or discard any such material we may find personally unwelcomed — whether on sexual, political, religious or other grounds, including even good taste. It does not, however, seem any proper function of our government to perform for us this job and I find it praiseworthy that those arms of our government who would inevitably be charged with carrying out such a function also feel that to do so would be unwelcome, improper and unconstitutional.

The sanctity and right of privacy of the home is indeed an important sanctity and right, one which the Congress ideally should work to uphold. But it does not seem to me that the right and sanctity is invaded by the delivery of mail which can be rejected and discarded, even left unopened. On the other hand, since the proposed legislation seems to threaten to restrain rights of free expression and due process for both senders and recipients of all kinds of mail — and perhaps to deny equal protection of the law to senders of certain kinds of mail matter — it should not be enacted by the Congress. I would like, therefore, on behalf of the American Library Association, to recommend against enactment of H. R. 980 and the similar bills on this subject introduced in this Congress, including H. R. 4302, H. R. 4794 and H. R. 4241.

Sincerely yours,
Edwin Castagna
President
American Library Association

(H.R. 980 was passed by House — 360 to 21 — on 5 April. Ed.)

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