



IFC ALA

on Intellectual freedom

Co-edited by JUDITH F. KRUG, *Director, ALA Office for Intellectual Freedom* and JAMES A. HARVEY, *Assistant Director, ALA Office for Intellectual Freedom*

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Advisory Statement To U.S. Libraries From the American Library Association

The American Library Association has been advised that the Internal Revenue Service of the Treasury Department has requested access to the circulation records of public libraries in Atlanta, Georgia and Milwaukee, Wisconsin, for the purpose of determining the identity of persons reading matter pertaining to the construction of explosive devices. The Association is further advised that such requests were not based on any process, order or subpoena authorized by federal, civil, criminal or administrative discovery procedures.

The Executive Board of the ALA believes that the efforts of the federal government to convert library circulation records into "suspect lists" constitute an unconscionable and unconstitutional invasion of the right of privacy of library patrons and, if permitted to continue, will do irreparable damage to the educational and social value of the libraries of this country.

Accordingly, the Executive Board of the ALA strongly recommends that the responsible officers of each U.S. library:

(1) Formally adopt a policy which specifically recognizes its circulation records to be confidential in nature.

(2) Advise all librarians and library employees that such records shall not be made available to any agency of state, federal, or local government except pursuant to such process, order, or subpoena as may be authorized under the authority of, and pursuant to, federal, state, or local law relating to civil, criminal, or administrative discovery procedures or legislative investigatory power.

(3) Resist the issuance or enforcement of any such process, order or subpoena until such time as a proper showing of good cause has been made in a court of competent jurisdiction.

David H. Clift, Executive Director
American Library Association
for the ALA Executive Board

CAUSE FOR CONCERN

In issuing the above Advisory Statement, the American Library Association is not advocating the production of bombs and other weapons by extremists or anyone else. Neither is the Association advocating militant nor subversive activities designed to overthrow the U.S. government. ALA's concern is for the freedom to read—without fear—whatever the individual

citizen chooses. If reading habits become subject to federal inspection, regardless of the purpose, the freedom to read in controversial or unpopular subject areas is necessarily impaired by the fear of government investigation or reprisals.

Public accounts of the scope, intent, methods and effectiveness of the Internal Revenue Service's attempts to determine users of library materials on explosives vary considerably. On July 10, a spokesman for the IRS stated that Atlanta, Milwaukee, and San Francisco were the only three areas being investigated. Yet, members of the audience at ALA's Intellectual Freedom Program in Detroit, June 29, reported undocumented incidents in Colorado, Wyoming, and Richmond, California. (The IRS has since confirmed that the Cleveland Public Library and the Richmond (Calif.) Public Library were also visited.) The Kansas City Public Library reported similar inquiries in April, in this case by local police and FBI agents.

In Georgia, the IRS inquiries went considerably beyond Atlanta and included DeKalb County and Cobb County. Raymond Hahn, assistant chief IRS investigator for the Atlanta area, told the Atlanta *Constitution* (prior to public disclosures) that inquiries were made at only three Atlanta area libraries before investigations were discontinued due to impracticality. Mrs. John Hale, in charge of DeKalb County's branch libraries, reported that at least five DeKalb County libraries had been approached. At least one branch, as well as the main Atlanta library, and the Cobb County-Marietta Public Library, twenty miles from Atlanta, were also visited. (At this writing, IRS has confirmed visiting 27 libraries in the Atlanta area.)

The intent of the investigations was sketchily outlined by Harold Serr, at that time director of the IRS Tobacco, Alcohol, and Firearms Division, who said his office had been asked by Senator McClellan's Senate Permanent Investigations Subcommittee "to collect certain information on explosives, the number of bombs, and so on." Philip Rothschild, acting IRS Information Director, described the project as "just a continual building of information . . . in line with the proliferation of bombings across the country." Denying that the check of book borrowers was prompted by any directive from IRS Headquarters, he said he assumed IRS field agents simply would check the names they come up with against suspect lists in field offices.

On July 10, the IRS disavowed any intention of compiling lists of citizens found reading public library books on explosives. It said field reports from agents "indicate that the library inquiries were made in the course of investigating specific suspects in bombings . . ." Miss Vivian Maddox, Assistant City Librarian of Milwaukee, said IRS agent Michael Geraty singled out about fifteen books on explosives. Miss Maddox said

agents poured over thousands of library call slips and evidently came up with ten to fifteen readers' names. Librarians in the Atlanta and DeKalb systems reported that some agents clearly confined their search to books about explosive devices, but others used the more general phrase, "militant and subversive materials." At the Brookhaven Branch of the DeKalb system, an agent, after checking the card catalog, sought and obtained from the librarian the names of borrowers of two specific books: *Guerilla Warfare* by Che Guevarra, and *The Age of the Guerilla*, by Francois Sully.

As to methods used by agents, Philip Rothschild said, "If it's a matter of public record, we look. If it isn't, we don't look." He stated also that he knew of "no pressure" on librarians to cooperate, and that court subpoenas would not be used. Miss Maddox said she distinctly recalled the threat of a subpoena, and that Mr. Geraty told her his agents would do the necessary searching if no subpoena were required. He said her staff would have to do the searching if a subpoena were necessary. Mrs. Tomlin E. Brown, librarian in charge of DeKalb County's Avis G. Williams Branch, said she was asked if she meant to allow people to walk into a library and read books with the purpose of overthrowing the government.

Regarding the effectiveness of IRS inquiries, results also vary. In one branch of the DeKalb system, agents found ready cooperation. At the Atlanta Public Library and other DeKalb branches, they found direct rejection. In some cases, the agents found that permissive responses were grounded in the knowledge that microfilm record-keeping systems impose a formidable obstacle to obtaining the information desired. In Milwaukee, Miss Maddox took the position that the library's circulation records are confidential, but was overruled by the Milwaukee City Attorney's office, apparently, she said, after a visit there by IRS agents.

Those who oppose the activities of the IRS are not without support from within the government. In a letter to David M. Kennedy, Secretary of the Treasury, on July 9, Senator Sam J. Ervin, Jr., Chairman of the Senate Subcommittee on Constitutional Rights, said, "I know that many members of Congress share my concern that practices so contrary to the Constitution of the United States and so inimical to intellectual freedom could be allowed or authorized by any federal department for any purpose. This is so because throughout history official surveillance of the reading habits of citizens has been a litmus test of tyranny."

Responding to Senator Ervin's inquiry about IRS activities, Secretary Kennedy said, "No agency of the Treasury Department is undertaking any general investigation of readers of books . . . However, by way of qualification of our statement of general policy, it is our judgment that checking such records in certain lim-

ited circumstances is an appropriate investigative technique—where, for example, an agent seeks corroborating information on a specific, identified suspect, suspected of having committed a crime within the investigative jurisdiction of Treasury.” (For the full text of Secretary Kennedy’s response, see the Intellectual Freedom Column, *American Libraries*, October 1970.)

Until all reports are gathered and documented, it will be impossible to determine the total scope and effectiveness of IRS investigations, or to predict future activities. In the meantime, the ALA Office for Intellectual Freedom has taken the position that “these incidents make it imperative that librarians and library boards act to protect the right of library users to read what they please—without intimidation or fear of re-
crimination. The ‘chilling effect’ of IRS investigation of circulation records stifles the freedom of inquiry and curtails free accessiblity.” The American Library Association issued the Advisory Statement (front page) as a guide for libraries to follow to establish a policy that will discourage federal (or private) ‘witch hunting’, and hopefully will preserve the privacy and rights of individual patrons.

POSTSCRIPT

The Advisory Statement was issued on July 21, 1970 with the approval of the ALA Executive Board. On August 5, David H. Clift, Executive Director of the American Library Association met with the Commissioner of Internal Revenue, Randolph W. Thrower, and staff members, to discuss both ALA and IRS concern over the inquiries by Internal Revenue Service investigators.

Following an exchange of views, it was agreed that efforts would begin “in a spirit of cooperation” toward the development of guidelines acceptable to the American Library Association and the Internal Revenue Service. Since to ALA, the matter involves future policy, the ALA participants are not authorized to act further than a discussion of alternatives. The decision to engage in an exchange of views, however, is a step toward helping the Association develop a policy that will provide legal guidance to libraries and establish the library’s relationship with its readers. The IRS has been requested to identify “justifiable situations” in which the Government would be granted access to specific library records. The Treasury Department, however, has stated that it is unequivocally against “fishing expeditions” as opposed to the investigation of a particular person or persons suspected of a criminal violation.

It is intended that the Association’s exchange of ideas with the Internal Revenue Service will be completed in time for consideration by the ALA Executive Board at its Fall Meeting in late October.

The statement issued by the Executive Board, July 21st, is an Advisory which stands until the Council at

Los Angeles, acting upon the Board’s recommendations at its Fall Meeting, determines the policy of the Association. JFK/JAH

FOOTNOTE

Samuel J. Archibald, who heads the Washington office of the University of Missouri Freedom of Information Center, says anyone who wants to make explosives can find out all he needs to know from a 40-cent government pamphlet.

He said he mentioned the publication to point up the “absurdity” of recent investigations of library users by the government.—*Chicago Daily News*, July 20

Letter to the Editor

Dear Sir:

It is rather disappointing to find in the *Newsletter on Intellectual Freedom* July issue a reprint of a Hawthorne ad quoting from “The Old Librarian’s Almanac,” a 1910 hoax perpetrated and written by Edmund Pearson.

1910 reviewers were quick to catch on, but unfortunately as with Mencken’s famous bathtub hoax the original and the exposé seldom keep company.

Mr. Pearson, a librarian himself, wrote the work only to show how gullible readers actually are. His point has been proved to the edge of absolute tedium. Perhaps it is time to retire the “Old Librarian.”

Sincerely yours,
Richard G. Elliott,
Librarian, Terteling Library,
The College of Idaho
Caldwell, Idaho

GOLDWATER PREDICTS

Senator Barry Goldwater has predicted final enactment soon of strong anti-pornography legislation by the 91st Congress. The Arizona Republican said he had received assurance from the representatives of both parties in the House and Senate that his anti-pornography amendment to the Postal Reform Bill will receive favorable action.

The Goldwater amendment will bar completely the use of the U.S. mails to send unsolicited and unwanted sexually degenerate advertisements to American householders. It would extend all postal obscenity laws to the manufacturers and printers who originate pornography and mark the first time any legislative attempt has been made to get at the source of printed obscene materials that move through the mails.

Senator Goldwater's amendment was passed by the Senate by a vote of 83 to 2 several days ago. Reported in: Tempe, Arizona News, July 13

Preview of Commission Report

Although the complete, official report of the Commission on Obscenity and Pornography will not be released until late August or early September, part of the first draft has been leaked to a House subcommittee that will attempt to set hearings to challenge the findings. The partial report was also obtained by the Associated Press.

AP reports that the major findings are: (1) There is no evidence to suggest that exposure of youngsters to pornography has a detrimental impact upon moral character, sexual orientation or attitudes. (2) Women as well as men are highly aroused by "stag" films and erotic pictures. (3) Political liberals are more easily aroused by pornography than conservatives. (4) Despite arousal, and in some cases increased sexual activity, during the 24 hours after viewing highly erotic material, basic attitudes and sexual patterns do not change. (5) In general, 90 per cent of couples aged 20 to 25 were aroused by erotic films in three studies while between 30 and 60 per cent of persons 40 to 50 years old were aroused by the same films. (6) There are no recorded instances of sexual aggression, homosexuality, lesbianism, exhibitionism or sexual abuse of children attributed to reading or viewing erotic stimuli among the several hundred participants in the 12 experiments reviewed. (7) Imprisoned sex offenders that were studied have histories of sexual repression as youngsters in strict families, suggesting that repression and not stimulation by pornography, is what leads individuals to commit sex crimes.

The full report still requires endorsement by the Commission members. Reportedly, the two major findings—that pornography neither causes sex crimes nor corrupts minors—were still in the report as of August 4, 1970.

BOOK BRIEF

Campus Publishers, 711 North University Avenue, Ann Arbor, Michigan 48108, recently announced the publication of the 2nd edition of Muller and Spahn's *From Radical Left to Extreme Right*. The 2nd edition greatly expands the coverage of the 1st (1967) on periodicals of protest, controversy or dissent. The book is primarily a bibliographic reference for librarians—a valuable key to the proliferation of sometimes ephemeral, polemic publications of our present time.

Hoax Report

OIF has been informed that in late August, the publishing firm of Stein & Day, New York, will issue a *Report on Obscenity*, intended to be a "humorous" parody of the Commission on Obscenity and Pornography's official report. The similarity in title and the close release dates (the official Commission report is due in late August or early September) may cause confusion for ordering the official report for libraries and for identifying "official" quotes from the "phony" ones. Beware. At \$6.00 per hardcover copy, it could be an expensive case of mistaken identity.

A New Look for the Newsletter

Mrs. Judith F. Krug and James A. Harvey, Director and Assistant Director, respectively, of the Office for Intellectual Freedom, were appointed Co-editors of the *Newsletter on Intellectual Freedom* by the ALA Intellectual Freedom Committee at the 1970 Annual Conference (Detroit).

The advent of the new editors is marked by a different look for the *Newsletter*. While the type of news stories contained remains essentially the same, a new design, to allow more comprehensive coverage and some original articles, has been established.

Beginning with this issue, the *Newsletter* includes four regular features entitled *Censorship Dateline*, *From the Bench*, *Is It Legal?* and *Success Stories*. Each of these features is headed by a map of the U.S., pinpointing the location of important news about intellectual freedom, censorship, legislation, court decisions, etc.

- *Censorship Dateline* includes the "who, what, where and when" of infringements upon intellectual freedom.

- *From the Bench* consists of brief reports of judicial decisions dealing with freedom of speech, freedom of the press, and the free accessibility of materials.

- *Is It Legal?* reports law suits in progress, legislation pending, new legislation, and unusual challenges to free expression through legal, illegal, and extra-legal methods.

- *Success Stories* cites varying degrees of victories over censorship attempts.

To evaluate the new format and help assess reader reaction, the editors invite comments and suggestions. Please address all letters to: Mrs. Judith F. Krug and/or James A. Harvey, Co-editor(s), *Newsletter on Intellectual Freedom*, 50 East Huron Street, Chicago, Illinois 60611.

Intellectual Freedom Committee Report To ALA Council, Detroit Conference, July 3

During the months since the Midwinter Conference the members of the Intellectual Freedom Committee, both individually and in subcommittees, have been involved, some of them at great length, in carrying out the work of the Committee.

The most time-consuming and one of the most important tasks was the work of the fact-finding subcommittee on Mrs. Joan Bodger's request for action. This subcommittee, under the skilled and experienced leadership of Alex Allain, with active assistance of Florence DeHart and Jim Harvey of the Office for Intellectual Freedom, broke new ground. The Bodger case exhibits many of the complications which often are found in an intellectual freedom case. The subcommittee's work shows how important it is to have a careful procedure so that comprehensive fact-finding can really be accomplished. There were at least five parties immediately involved, both individuals and institutions. Many people were interviewed and corresponded with. The work took some members of the subcommittee and staff of the Office for Intellectual Freedom to the State of Missouri.

Concluding this lengthy process, the Committee at this conference has made its recommendations to the Executive Board as provided for under the established procedure. These recommendations and Executive Board approval of them were reported to you by the President at the first Council meeting.

Another important task of the Intellectual Freedom Committee has been the development of a procedure on sanctions. Here a subcommittee under the chairmanship of Homer Fletcher, with Alex Allain, David Berninghausen, and Milton Byam, developed a definition of sanctions, determined those situations in which sanctions should be applied and formulated procedures for application, and worked out the method by which individuals and institutions can have sanctions withdrawn. This subcommittee, with the advice and assistance of Bill North, ALA legal counsel, Judy Krug, Director of the Office for Intellectual Freedom, and Jim Harvey, Assistant Director of that office, has provided means which, if accepted, the Committee hopes, will prevent some censorship cases from developing at all, in the face of probable penalties. And they have proposed a well-understood procedure for applying such penalties when appropriate.

The *Newsletter on Intellectual Freedom*, a publica-

tion of the Committee, because of the untimely death of LeRoy Merritt, our editor, must now have a new editor. The *Newsletter* will be prepared and edited in the Office for Intellectual Freedom.

A number of other projects of the Committee, including the statement prepared for the Activities Committee on New Directions for ALA, the Emergency Employment Network, and the testimony prepared and presented at the request of the Commission on Obscenity and Pornography has been reported by Judy Krug in her column in *American Libraries*. In addition, the chairman of the Intellectual Freedom Committee testified for the American Library Association as an expert witness on behalf of Mr. Ellis Hodgin when his civil suit against the Martinsville, Virginia, City Manager came to trial on March 24, 1970. The jury found against Mr. Hodgin and the Intellectual Freedom Committee, on behalf of ALA, has offered to aid in the appeal in whatever manner Mr. Hodgin's lawyer deems most appropriate.

Through the Office for Intellectual Freedom, the Committee is maintaining a close liaison with the National Education Association in regard to the suit filed on behalf of Mrs. Carrie Robinson. Action in this suit has been stayed pending the outcome of similar litigation being conducted by the U.S. Government.

It is especially important for all members of the Council to reflect upon the responsibilities of ALA which are carried out by the Intellectual Freedom Committee and the Office for Intellectual Freedom in the light of the report on the Bodger case which is to be printed in the next issue of *American Libraries*.

You all know there are ALA members who would simplify and streamline this procedure, or even abandon it. As you decide on the recommendations of the Committee on New Directions you may wish to ask yourself, if you were involved in an intellectual freedom case, as one bringing a charge or defending against it, would you want a procedure, such as has just been referred to, with provision for hearing all parties concerned, utilizing all available information? Or would you want an on-the-spot decision, with immediate meting out of whatever penalties were involved?

You must finally decide whether ALA should come to the instant assistance of any ALA member, or even of librarians who are not members, in any situation involving either their library work or their personal activities. What is a reasonable responsibility for ALA to assume? Do we defend a principle, intellectual freedom, and those who suffer or are threatened for defending it? Or do we open the way for ALA to involve itself in every conceivable instance in which librarians may find themselves at odds with their associates, their authorities, and their communities?

What the Council and the membership decide on these matters may very well be crucial for our Association.

The place of intellectual freedom in ALA is one of our most urgent problems. I want the Council to know what the Committee's views are on the recommendations of the Committee on New Directions. We agree that ALA's commitment to the defense of intellectual freedom should be increased and intensified. The Office for Intellectual Freedom should be beefed up. We think the record shows ALA's commitment has been increased and intensified. It is a fact the Office for Intellectual Freedom has been strengthened. More must be done. The Committee has serious doubts about moving away from clearly defined censorship and intellectual freedom cases to an open-ended involvement in any problem outside the librarian's professional responsibilities. We are the American *Library* Association, not the American Civil Liberties Union. The Committee on New Directions has mentioned the Intellectual Freedom Committee only once in its final report. This mention did not touch on the continuation of the Committee. The Council, and possibly the membership, will have to decide on this. The Committee itself in responding to the Committee on Organization request for evaluation said it should be continued. This is still our recommendation. It is true that simplicity and single responsibility are administratively desirable. However, we believe the Intellectual Freedom Committee during more than 30 years has justified its existence. A reading of Dave Berninghausen's article in the summer 1970 issue of *Library Trends*, "The Librarian's Commitment to the *Library Bill of Rights*," will assist members in appraising the Committee's work, its right to survival, and ALA's appropriate intellectual freedom role.

We believe that in a cordial partnership with the Office for Intellectual Freedom, buttressed by the state association committees, and in cooperation with the Freedom to Read Foundation, the Intellectual Freedom Committee provides at once a means for membership participation in one of our basic concerns, and a device for protection of intellectual freedom.

The Council resolution of January 23, 1970, on library service to educational institutions established to circumvent desegregation laws has led the Intellectual Freedom Committee to ask several other agencies to help establish the facts. Information has been requested from ALA Black Caucus members, NAACP, and USOE. The Director for the Education Program of the NAACP Special Contribution Fund has informed the OIF that her office has undertaken a survey to pinpoint any illegal help libraries may be supplying to racist institutions. She has agreed to supply the results of the survey to OIF, as soon as they are prepared. A

subcommittee has been appointed to establish facts and to recommend action. The USOE has indicated that upon request from the Committee, the general counsel of OE has the matter under study. Miss Krettek has been in touch with Senator Javitz in connection with the Emergency School Aid Act of 1970. While the facts are being determined, the censure by ALA stands, and a finger is appropriately pointed at any individuals and institutions in violation. When facts are determined, the machinery provided under the Program of Action and the recommended Sanctions Report can be implemented.

As I close my final report as chairman of the Intellectual Freedom Committee, I don't need to remind you that controversy is boiling in the ALA. One has only to look around and listen to observe that our controversies have aroused powerful emotions. Intellectual Freedom is one of the issues which most quickly generates heat.

But I believe the members of ALA are wise enough and strong and confident enough not to be stampeded. As librarians, we of all people should be able to read the record, sift the evidence, determine the validity of arguments, and make reasonable decisions. I am confident we will solve some of our problems and learn to live with the rest of them until our able successors can find solutions. In the meantime, the Intellectual Freedom Committee hopes to continue, in its area responsibility, as one of the problem-solving agencies of ALA. It is up to you, however, through debate, argument, and majority vote to make that decision.

Now, in behalf of the Intellectual Freedom Committee, I have the following proposals to offer to the Council for your approval.

Alex P. Allain
Milton S. Byam
David Cohen
Mrs. Mary Ann Hanna
Florence E. DeHart
Homer L. Fletcher
Mrs. Helen L. Kreigh
Eileen F. Noonan
Eli M. Oboler
E. Caswell Perry
Edwin Castagna, *Chairman*

[Ed Note: Mr. Castagna had three proposals to present to Council. Due to the time element, however, he presented neither the above report nor two of the three proposals. The one presented, the Policy on Sanctions, was adopted. It is reprinted, in full, below. In presenting this proposed policy statement, Mr. Castagna assured Council that the Intellectual Freedom Committee is working on procedures, including the removal of sanctions.]

Policy on Sanctions

(Adopted by the ALA Council, July 3, 1970)

The Intellectual Freedom Committee proposed to implement the *ALA Program of Action in Support of the Library Bill of Rights*, by the following procedures:

The IFC will take action on complaints of violations of the *Library Bill of Rights* made by ALA members or anyone else. If it is determined that the IFC has jurisdiction and responsibility, an impartial and objective investigation will be conducted. After the investigation, the IFC will recommend appropriate action to the Executive Board, based on the facts gathered.

The IFC views all sanctions as grave, but particularly number 4. Such a sanction should be applied judiciously and only under extreme circumstances. Sanctions should be applied to administrations as a whole, and rarely, if ever, to specific individuals.

Sanctions may be defined as the appropriate penalty or penalties incurred for violating ALA policies regarding intellectual freedom. When the facts gathered in a case warrant it, one or more of the following sanctions may be recommended:

1. Publication of the report of an investigating committee with no statement of censure.
2. Publication of a report that includes a statement of censure, indicating the strong disapproval of ALA because of a violation of the *Library Bill of Rights*.
3. Suspension or expulsion from membership in ALA.
4. Listing of institutions under censure in the Intellectual Freedom Column of *American Libraries* as a warning to persons considering employment in an institution under censure that its practices and policies are in conflict with ALA policies of intellectual freedom. On the same page with such listings of censored libraries shall appear the following statement:

"The fact that the name of an institution appears on the censored list of administrations does not establish a boycott of a library, nor does it visit censure on the staff. There is no obligation for ALA members to refrain from accepting appointment in censored libraries. The ALA advises only that librarians, before accepting appointments, seek information on present conditions of intellectual freedom from the Office for Intellectual Freedom at Headquarters."

The Farmingdale Cliffhanger

As we went to press with the July issue, Orrin Dow had just received the 1970 Robert B. Downs Intellectual Freedom Award at the Detroit Conference. At the same time, a library trustee, Carl E. Gorton, faced contempt-of-court charges for failing to withdraw his request that Mrs. Hortensia Stoyan, assistant library

director, be fired. Joseph Crocco had recently upset liberal trustee Albert Meyerstein by 113 votes in a light election turn-out to give the library board a conservative majority.

On July 7, the new Farmingdale Library Board of Trustees met in an unusual session dominated by Gorton who (1) payed a \$250 contempt-of-court fine to Nassau County sheriff's deputies at the library door to avoid being taken to jail on a two-year-old discrimination complaint from Mrs. Stoyan; (2) survived a residency challenge by liberal Board members who tried to unseat him because of the admitted sale of his home and moving of his family to Merritt Island, Fla.; (3) helped to elect his frequent ally, Warren Altman, as the Library Board's first conservative president, and also won the appointment of a new board attorney, Richard Anelli, an acknowledged member of the John Birch Society; (4) tried to abolish the job of his arch-enemy, Orrin Dow, and replace him with—ironically—Mrs. Stoyan; and (5) finally, in a 45-minute speech in which he was close to tears, denounced a worldwide socialist conspiracy, criticized prominent conservatives, and announced his resignation from the board.

Gone, but hardly forgotten, Gorton's shadow hung menacingly over the July 14 meeting of the Board of Trustees. The remaining four trustees could not agree if, or when, Gorton had legally ceased being a member of the Board. What they finally did agree on was to ask Gorton to settle the question by submitting a formal written resignation. Whether he will comply is not known.

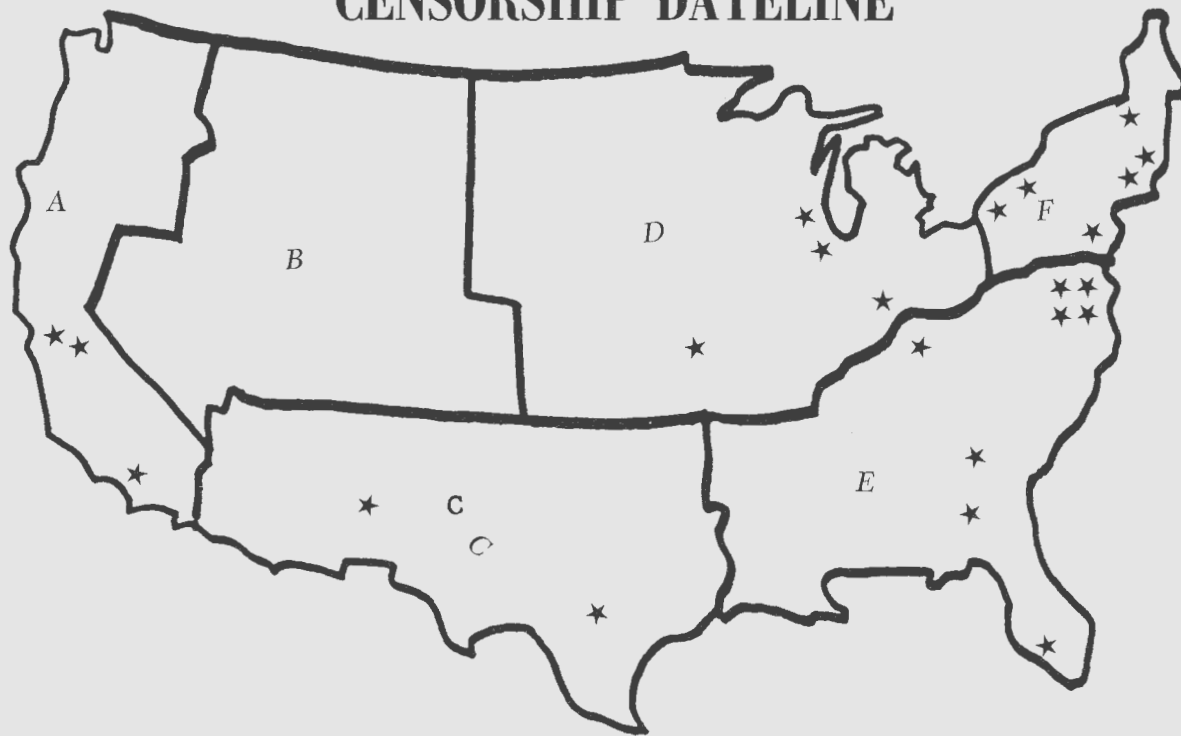
Liberal trustees Robert Callahan and Irwin Jacobsky attempted to have Gorton declared off the Board as of the July 7 organizational meeting on the grounds he had sold his home and moved to Florida. Thus, he did not have the legal right to act as a trustee at that session. The move, blocked by Altmann and Crocco, failed.

Altmann, on the advice of board attorney Anelli, ruled that if Gorton did not submit a written resignation, the Board would have to wait until three monthly meetings had passed without Gorton's appearance, before declaring his seat vacant.

In the meantime, the library continues to operate at its 1967 budget level of \$352,865. Library hours have been cut to 35 per week, at varying times daily to reach the widest possible patronage. The staff has been cut from 55 to 25. Mr. Dow reports that restrictions on purchase materials are now necessary due to lack of funds. The question now is what will the future hold for Farmingdale Public Library sans Gorton? The *Newsletter on Intellectual Freedom* will report any further developments.

JAH/JFK

CENSORSHIP DATELINE



(A) PACIFIC COAST STATES

Los Angeles, Ca. The University of California Board of Regents voted not to reappoint professor Angela Davis, who is black and an admitted Communist, because of her "false" and "extreme" comments in speeches in and out of the classroom. Her lawyer is expected to challenge the action in court. UCLA faculty members voted to hire Miss Davis on their own. Gov. Reagan said the Regents would not allow Miss Davis to use campus facilities. Reported in: Washington, D.C. *Post*, June 20

Newark, Ca. City officials censored four nude drawings in a Newark Community Center art exhibit on May 19. "Not wanting to offend anyone," said Thomas I. Smith, Assistant City Manager, "the staff decided no nudity should be displayed at the Community Center." Reported in: Hayward, Ca. *Review*, May 20

Sacramento, Ca. During a speech to Rotarians, Lt. Governor Edward Reinecke asked that news media voluntarily agree to create news blackouts during tense periods on riot-torn campuses. In response to reactions about the request, Governor Reagan said neither he nor anyone in his administration is advocating censorship of the press. He said he believes, however, that the news media should voluntarily use more judgment in the handling of news of campus disorders. Reported in: Yuba City, Ca. *Independent-Herald*, June 17; San Francisco, Ca. *Chronicle*, June 17

(C) SOUTHWESTERN STATES

Deming, N.M. The City Council resolved that because certain publications distributed in Deming are "detrimental to the morals," it will support any citizen or group seeking "more wholesome literature" in local businesses. Reported in: Deming, N.M. *Graphic*, June 8

Dallas, Tex. On June 8, an obscenity complaint concerning an issue of *Notes from the Underground*, caused the Dallas city council to send City Attorney, Alex Brickley, searching for ways to prohibit sale of obscene literature on public property. A picture of a nude male prompted the original complaint. (See *From the Bench*, Dallas, Tex., for further developments.) Reported in: Dallas, Tex. *News*, June 9

(D) MIDWESTERN STATES

Chicago, Ill. Copies of the independent student newspaper, *Chicago Illini*, at the University of Chicago Circle Campus, were seized by school officials because the paper contained "objectionable material." Such materials included obscene words, a picture of the back of a girl as she stripped in the campus amphitheater, and a picture of a nude "swim-in." The seized papers were later returned to the *Illini's* editorial offices, but the staff was barred from using University facilities for free distribution of the papers. Reported in: Chicago *Sun-Times*, June 4

Indianapolis, Ind. Richard E. Hickman, grand master of Indiana Masons, declaring that "Freemasonry has long been known and respected for its emphasis on high moral standards, lofty patriotism and responsible citizenship," announced that the Indiana Masons will not permit production of the musical *Hair* at the Masons' Murat Theater. Reported in: *Indianapolis, Ind. News*, June 19

Lincoln, Neb. *Sylvester and the Magic Pebble*, 1969 Caldecott Award winner, was banned from Lincoln public school libraries because a picture on one page portrays policemen as pigs. Eighteen of twenty-two librarians in Lincoln protested the action in writing. Reported in: *Lincoln, Neb. Journal*, May 22

Milwaukee, Wis. Agents of the Internal Revenue Service requested circulation information about books on explosives from the Milwaukee Public Library. Assistant City Librarian, Vivian Maddox refused, at first, but on the advice of the City Attorney's office, the library later surrendered the information. (See p. 1-2 for more information.)

(E) SOUTHERN STATES

Washington, D.C. The House Internal Security Committee, successor to HUAC, sent letters to 179 colleges and universities asking them to list all their guest speakers for the last two years, how much each was paid, and by whom. A spokesman said the intent of the letters was to find whether public speaking is a source of finance for groups under investigation by the committee. Among the groups are the Black Panthers, SDS, and the New Mobe. Three members of the panel opposed the move. Rep. Louis Stokes (Dem.-Ohio) urged in a letter of his own to all members of the House that they write their local colleges asking them to ignore the committee's request. He said, "I consider this action both beyond the scope of professional mandate which delineates the committee's powers and a direct incursion on academic freedom." Reported in: *Washington, D.C. Post*, July 15; *Star*, July 15

Washington, D.C. Leo Miserendino, an Oakland University junior working as a "co-op" student in the USOE Office of Environmental Education, was fired for showing a controversial sound and slide show to 250 interns. "The show featured two slides that read: 'F— Nixon and F— Tricia'." Rep. William A. Scherle (Rep.-Iowa), member of the House Committee on Education and Labor said: "I told them (USOE officials) I wanted this guy out." Charging repression from his former employer, Miserendino said he presented the show to demonstrate the use of slides as an audio-visual medium. Reported in: *Washington, D.C. Post*, July 11

St. Petersburg, Fla. One thousand copies of the Lakewood High School student newspaper were impounded on June 3 by the school principal, Thomas Wooley, because the paper contained what he termed "false and detrimental" material. In an editorial, graduating senior Richard Burke criticized the school and individuals. Reported in: *St. Petersburg, Fla. Independent*, June 4

Atlanta, Ga. Agents of the Internal Revenue Service requested circulation information about books on explosives from the Atlanta Public Library, DeKalb County Library branches, and the Cobb-Marrietta County Library branch. (See p. 1-2 for more information.)

Berea, Ky. The Berea College Board fired Mike Sampson, associate editor of the *Berea Citizen*, because his editorials did not follow the editorial policy authorized by the *Citizen's* Board of Directors. Sampson's editorials criticized college policies, local police, and other sensitive subjects. Reported in: *Louisville, Ky. Courier-Journal*, May 31

College Park, Md. The University of Maryland cancelled distribution of its freshman handbook on the grounds it contained a camouflaged obscenity and "inaccuracies and distortions of fact." Written and edited by students, the handbook is financed by student activity fees and published by the university. Susan Ganen, editor, is suspended from her summer job of writing press releases for the University Public Relations Office, though her position as handbook editor was a student activity, not part of her job. Reported in: *Washington, D.C. Post*, June 24

Montgomery County, Md. Despite a State Board of Education ruling to the contrary, Montgomery County high school principals have been instructed to continue censoring publications by students. The State Board ruled in April that high school publications are no longer subject to prepublication review by school authorities. Reported in: *Montgomery County, Md. Sentinel*, May 21

Camden, S.C. J. D. Salinger's *Catcher in the Rye* is being removed from Kershaw County's list of acceptable books after Sheriff Hector Debruhl said some parts are obscene. J. C. Walton, county schools superintendent, said he had received other objections to language in the novel. He said it is being withdrawn from school reading lists and library shelves. Sheriff Debruhl said a 16-year-old girl brought him a copy which he found "not fit for a 16-year-old to read." Reported in: *Boston, Mass. Christian Science Monitor*, July 20

(F) NORTH ATLANTIC COAST STATES

Branford, Conn. The Board of Education voted 5-2 to "prohibit distribution of any outside information or literature which is not part of the established curriculum of approved student activities." The decision arose from complaints about *Z*, an underground student newspaper opposed to the war in Indo-China. The action requires a second vote to take effect as Board policy. Reported in: *Branford, Conn. Review*, June 4

Oyster River, N.H. Due to demands by Arthur Chase, a resident of Durham, N.H., and other angry citizens, *Free*, an underground student newspaper was banned from Oyster River High School by a unanimous vote of the school board. The board banned all "non-school" publications from school property, citing "inflammatory material" as proper cause for prohibition. Reported in: *Manchester, N.H. Union Leader*, June 5

Buffalo, N.Y. On May 14 the Starpoint Board of Education affirmed a prior vote banning from school libraries in the district Eldridge Cleaver's *Soul on Ice*. Reported in *Buffalo, N.Y.: News*, May 15

Port Washington, N.Y. Charging that "it is not necessary to teach communism," citizens of Port Washington asked the school board to remove copies of *Quotations From Chairman Mao Tse-Tung* as a textbook for a course in comparative government. Five residents walked out of the board meeting. Reported in: *Port Washington, N.Y. Weekly*, June 4

Williamsville, N.Y. Local citizens publicly censured school administrations for allowing Eldridge Cleaver's *Soul on Ice* to remain on the shelves of Williamsville High School libraries. Reported in: *Williamsville, N.Y. Amherst Bee*, May 6

Kingston, R.I. At the direction of Dr. Werner A. Baum, Dr. Frank L. Woods, dean of the University of Rhode Island summer school, announced cancellation of the course "Revolution in a Modern World." Woods said that the course and its lecturer, John B. Hermanson, advocate a second American revolution. Hermanson called the decision a violation of his academic freedom and the academic freedom of the 18 applicants for the course. Reported in: *New York Times*, June 21

Washington Free Press Cartoon Not 'Obscene'

The Maryland Court of Special Appeals ruled on July 16 that a political cartoon depicting a judge sitting naked on the bench in a suggestive posture (i.e., masturbating) is not obscene in a constitutional sense.

According to the decision of the Court, the cartoon, when considered in conjunction with related written material, fell short of the U.S. Supreme Court's definition of obscenity.

The decision reversed the conviction of J. Brinton Dillingham, who was arrested in March, 1968, while selling copies of the *Washington Free Press* issue in which the cartoon was published. The arrest occurred in front of the Montgomery County police station in Bethesda, Md. Dillingham was charged with distributing obscene matter. He was first convicted in Bethesda People's Court, and the conviction was later upheld in the county circuit court.

The controversial issue of the *Washington Free Press* included the political cartoon that depicted a man, apparently Judge James H. Pugh, of the Montgomery County Circuit Court, masturbating while sitting on a throne-like chair bearing a swastika emblem. Instruments of torture were depicted dangling from the bench. The same page contained written material discussing various actions by Judge Pugh, including his conduct of rape, burglary and trespassing cases.

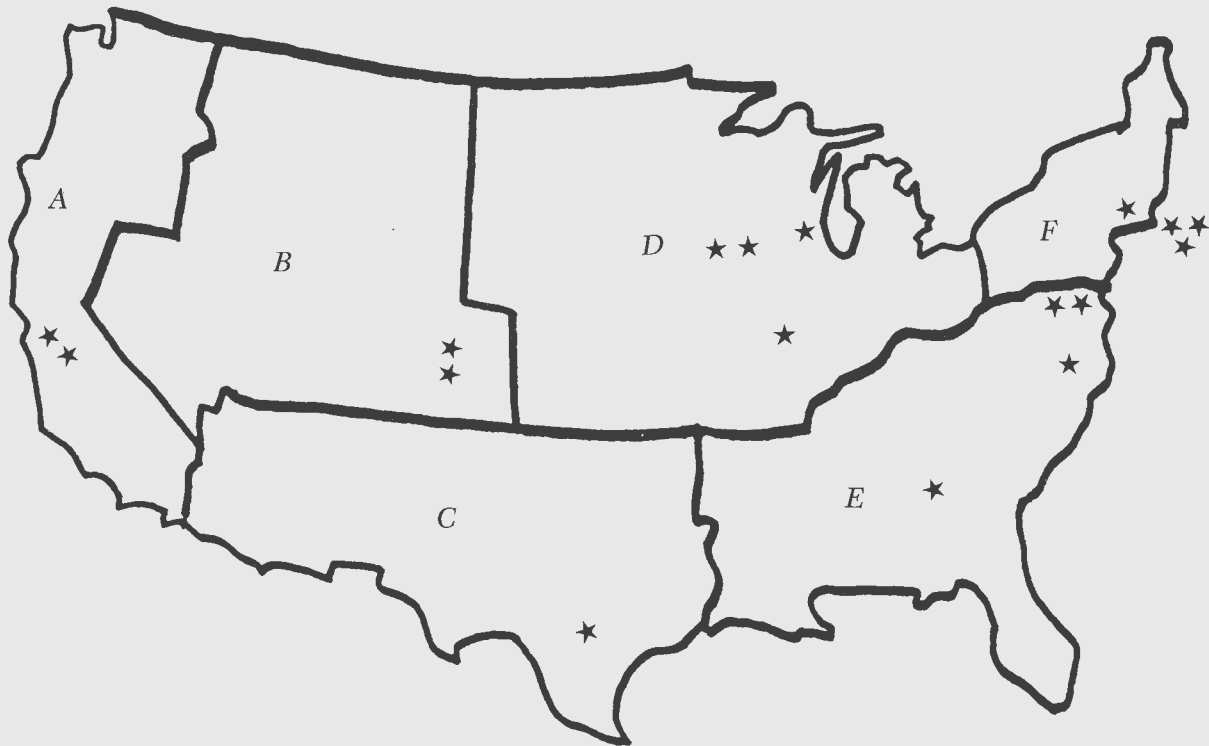
The Court of Special Appeals, unlike the lower courts, held that the cartoon and related materials must be considered as a whole. Writing for the Court, Judge C. Awdry Thompson said, "While we most emphatically disagree with the ideas expressed in this periodical, there is no suggestion that they were not sincerely held, or, more importantly, were inserted merely to provide a pseudo-intellectual background for the publication of this cartoon." The Court found that the cartoon, considered in relation to the text, is not utterly without redeeming social value.

Another issue of the *Washington Free Press* was responsible for the arrest and conviction of Marshall E. Woodruff, owner of the Joint Possession in College Park, Md. Woodruff was sentenced to six months in jail and a \$1000 fine by Prince George's County Circuit Court Judge Roscoe H. Parker on March 20, 1970, for selling the allegedly obscene underground newspaper. The conviction has been appealed.

In Prince George's County, the Library Board directed that the issue of the *Washington Free Press* be removed from the library collection. Subsequently, it was revealed that the library had never acquired the particular issue which had been banned by the Board and which had been adjudged obscene in Prince George's County.

The *Washington Free Press*, due to staff difficulties, the inability to hire printers willing to set the paper, and what the editors termed "harrassment—legal and extralegal," has since gone out of business. Reported in: *Washington, D.C. Post*, July 16; *Baltimore, Md. Sun*, July 16; *American Libraries*, May, 1970; *Newsletter on Intellectual Freedom*, July, 1970

FROM THE BENCH



(A) PACIFIC COAST STATES

Fremont, Ca. A three-judge appellate department of the Alameda County Superior Court ruled in the case of Paul Chapman, a bookstore owner charged with selling "obscene" materials, that the materials involved were indeed "obscene." The judges, however, would not allow the prosecution to use materials which had been seized under a search warrant without an adversary hearing to determine "obscenity." Instead, the judges considered five items which were purchased, rather than those seized. Reported in: *Hayward, Ca. Review*, July 7

San Francisco, Ca. Ruling on a petition presented by two San Quentin inmates, the State Supreme Court struck down state prison regulations forbidding inmates to possess legal documents pertinent to another inmate's case. Attorney for the Department of Corrections said the regulation is necessary to preserve peace and order. The Court ruled, however, that the law gives inmates the right to any written material except that which is obscene or poses a threat to prison discipline. Reported in: *San Francisco, Ca. Chronicle*, June 19 (See "Constitutional Victories Strengthen Inmates' Freedom to Read, p. 82.)

(B) ROCKY MOUNTAIN STATES

Colorado Springs, Colo. Judge Hunter D. Hardeman, 4th Judicial District Court, convicted Jerrold Berger, a magazine shop owner, on seven counts of promoting "obscene" material. The judge ruled against expert testimony that the magazines in question were no more obscene than works of Shakespeare, Joyce, Chaucer, Terry Southern, and Philip Roth. The prosecutor argued that the magazine's social value was nil and the photographs went beyond standards of decency and candor prevalent among the average adults in Colorado Springs. Reported in: *Colorado Springs, Colo. Sun*, May 29

Denver, Colo. Elmo Miller, a part-time bookstore employee, charged with promoting "obscene" material (a magazine called *Duo*), was acquitted because Judge Gilbert Alexander agreed with the defense attorney that the prosecution presented no evidence as to the community standards on obscenity. Reported in: *Denver, Colo. Post*, June 17

(C) SOUTHWESTERN STATES

Dallas, Tex. On June 12, District Judge Paul G. Peurifoy ruled that the Dallas publisher of *Notes from the Underground* is banned from selling the underground

newspaper to any person under 18 years of age. The judge said a controversial issue of *Notes . . .* is "one of the most unmitigated, arrogant pieces of filth I have ever seen printed in a so-called newspaper." Reported in: Dallas, Tex. *News*, June 13

(D) MIDWESTERN STATES

Des Moines, Ia. Blackhawk District Court Judge Blair Wood ruled on May 23 that Iowa's 97-year-old obscenity laws are unconstitutional. He advised the Iowa Legislature to update obscenity laws and distinguish between materials fit for children and those acceptable to adults. Reported in: Dubuque, Ia. *Telegraph-Herald*, May 24

Des Moines, Ia. The Iowa Supreme Court upheld indecent exposure convictions of eight Grinnell College students who disrobed to protest against the appearance of a *Playboy* magazine representative because they said the magazine exploits feminine nudity for commercial purposes. Reported in: Baltimore, Md. *Star*, June 24

Champaign, Ill. Champaign County Circuit Court Judge Birch E. Morgan found Harold J. Smith and Douglas B. Sanford innocent of violating state obscenity laws. Judge Morgan concluded that the U.S. Supreme Court has held that publications such as six purchased by Champaign police in two bookstores are not obscene and are protected by the constitutional right of free press. Reported in: Champaign, Ill. *News Gazette*, June 10

Milwaukee, Wis. Circuit Court Judge John L. Coffey found Max Schneider, former owner of a bookstore, guilty of possessing obscene matter for sale. In sentencing Schneider to four years in prison, Judge Coffey said, "Law enforcement officers throughout the U.S. are in agreement that there is a very definite relationship 'between sex crimes and pornography.'" Schneider's attorney has filed a notice of appeal. Reported in: Milwaukee, Wis. *Journal*, June 4

(E) SOUTHERN STATES

Birmingham, Ala. U.S. District Judge Frank H. McFadden, in a case involving seizure of the film *Starlet* from a local theater, ruled that the city ordinance on the seizure of obscene movies follows constitutionally correct procedures. The decision has been appealed to the U.S. Fifth Circuit Court of Appeals. Reported in: Birmingham, Ala. *News*, July 12

Washington, D.C. In a case involving *The Crusader* (distributed by Robert F. Wilson, Peking, China), a three-judge federal panel ruled that the Postmaster General cannot refuse to deliver foreign publications to subscribers in this country because he thinks the

material is objectionable. The Postmaster General banned the *Crusader* because it advocates violence by Negroes in American cities and sabotage by Negro soldiers in Vietnam, and incites to arson, murder or assassination in violation of law. Reported in: Washington, D.C. *Star*, June 23

Washington, D.C. U.S. District Court Judge John H. Pratt found Dennis R. Pryba, manager of a Washington publishing firm, guilty of possession with intent of distributing "hardcore pornographic" films. Pryba's attorney argued for dismissal on the grounds that the court had no proof of intention to distribute the films. Judge Pratt ruled against the motion for dismissal and called the films in question "overtly perverse and insulting to sex and the human spirit." Reported in: Washington, D.C. *Post*, June 18

Richmond, Va. U.S. District Judge Robert R. Merhige, Jr. ruled that staff members of the *Richmond Chronicle*, an underground newspaper, are entitled to press passes from the office of Public Safety Director, W. L. Groth. Reported in: Richmond, Va. *Times-Dispatch*, June 19 (See *Is It Legal*, Richmond, Va., p. 79 for details of case).

(F) NORTH ATLANTIC COAST STATES

New Haven, Conn. The U.S. District Court in Connecticut ruled that students of Rippowam High School in Stamford may publish independent newspapers (particularly the *Stamford Free Press*) without prior review by school officials. Monroe Silverman, CLU attorney, said, "Such rights of free expression have previously been established by our courts on the university level, but this decision in favor of Rippowam High School students is a precedent throughout the country in secondary education." Reported in: *New York Times*, July 12

Boston, Mass. Chief Judge Bailey Aldrich ruled in the U.S. Court of Appeals that photographs of nude women, "no matter how posed, if no sexual activity is being engaged in," do not—by themselves—constitute obscenity. The decision overturned convictions that had sent two Boston bookstore workers to jail for three months and fined them \$3,000 for possession and intent to sell "obscene" materials. Reported in: Boston, Mass. *Herald Traveler*, June 20

Boston, Mass. Chief Justice Elijah Adlow, Boston Municipal Court, sentenced Anthony Viglione, a bookstore employee, to three months in jail for selling a magazine featuring photographs of nude men and women. Justice Adlow said, "I refuse to live by rules made by men who have lost their heads by being ele-

vated too high," in reference to U.S. Supreme Court decisions which have found similar materials not to be obscene. He also said, "I don't care if the Supreme Court puts an endorsement on this filth. We will still entertain a little decency in this city." An editorial in the *Enterprise & Times*, July 9, commented on Adlow's statements: "(He) can and must be faulted for openly declaring defiance of the very law he is sworn to uphold. He need not agree with Supreme Court decisions, any more than any other man is required to believe that which his intellect or conscience refuses to accept." Reported in: Boston, Mass. *Herald Traveler*, July 2; *Enterprise & Times*, July 9

Boston, Mass. The State Supreme Judicial Court ruled unconstitutional a state law prohibiting sale to children of magazines and books about perversion. The court invalidated the law because of a provision making defendants criminally liable even though they were unaware of the contents of a work. The ruling does not affect the state law barring sale of obscene materials to minors. Reported in: Boston, Mass. *Herald Traveler*, June 26

"Do It" Does It in Bergen County, N.J.

The Ramapo-Indian Hills Board of Education in Bergen County, N.J., has fired a non-tenured English teacher, reprimanded a tenured teacher and threatened to demote the English department chairman in a reaction to community protests about Jerry Rubin's *Do It*. Stephan Sacco was fired, and Audrey Besaw and John Ianacone were reprimanded in an incident which arose in a humanities course offered by Indian Hills High School, Oakland, to seniors.

According to the New Jersey Education Association, students who had read *Do It* insisted that it be placed on a list of "Suggested Ideas and Areas" for a senior essay project. Dr. Frederick L. Hipp, NJEA executive secretary said, "Some of the protesting adults erroneously thought that every student had to read *Do It*. . . . Others apparently felt the school should have prevented every student from reading it. . . . Understandable as it may be for many people to disagree with Rubin's ideas, the question is larger than the book. The principle involves academic freedom."

The NJEA has pledged legal support for the three teachers. Dr. Hipp explained, "The school board has made a serious mistake by allowing vocal protests to stampede them into a rash and unjustified action." He further charged that the board ignored its own rules

governing citizen protest over controversial issues and violated its policies governing classroom decisions. He stated that the NJEA will ask the Board of Education to justify in a court of law its claim that the suggested reading list violated school policies.

The vote of the Board to dismiss Mr. Sacco was in the context of a statement by the Board president that the incident would be investigated further. Because Sacco would have earned tenure status by the time the Board investigates the matter, the president felt the board would have no power to dismiss him if the situation merited it. The Board's action enables it to vote again, without inconsistency, to renew Sacco's contract if the investigation shows he should be reinstated.

Syd Salt, Superintendent of Schools, has submitted testimony on behalf of Sacco and has recommended his reinstatement. He has further recommended that the Board express its regret to all three teachers for what has been a misunderstanding, and that it say the incident might better have been resolved by private conference between the citizen complainant and the teachers.

Mr. Sacco's suggested reading list also included the *Bible*, and writings of Tom Dooley, Thomas Merton, Albert Schweitzer, Somerset Maugham, and Herman Melville.

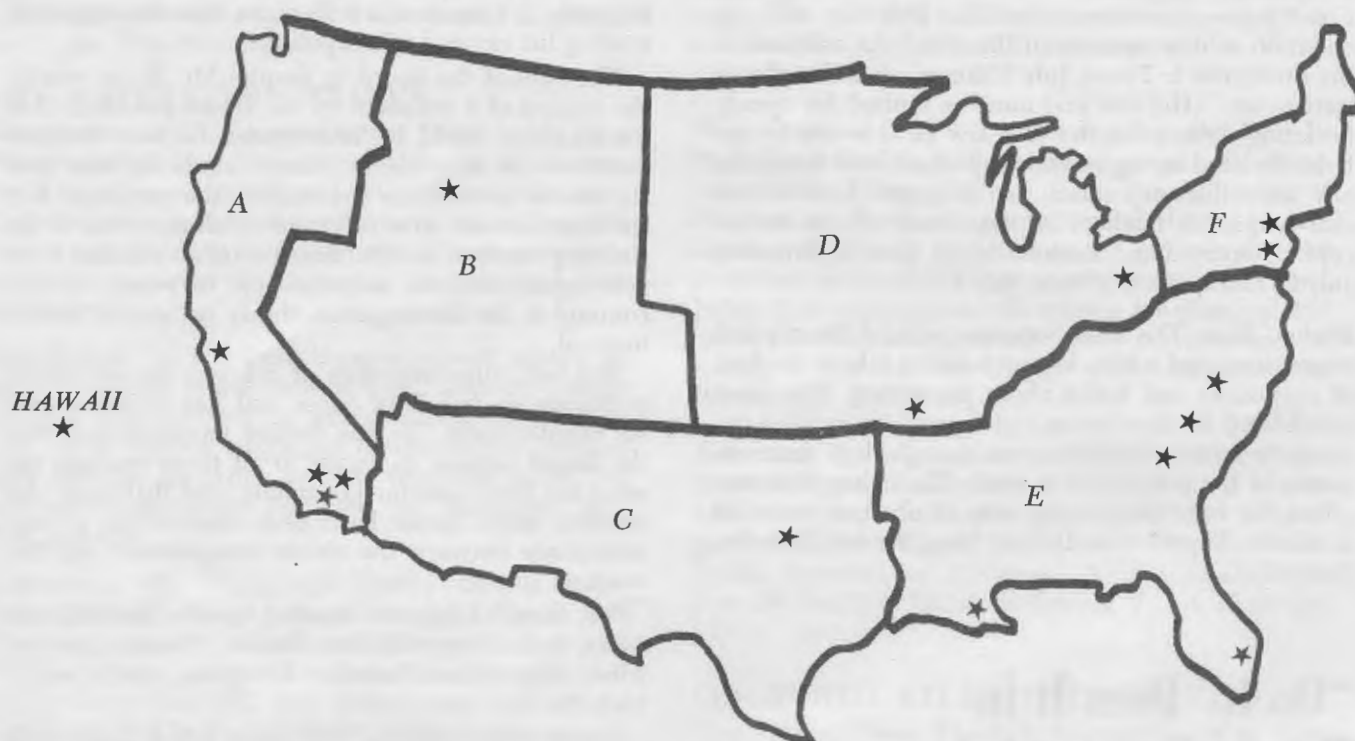
Reported in: Paterson, N.J. *News*, July 8; Lakewood, N.J. *Ocean County Times*, July 10; Hackensack, N.J. *Record-Call*, July 12; Newton, N.J. *Herald*, July 15

Micky Mantle? Say It Isn't So

Jim Bouton, pitcher for the Houston Astros, has written a book about baseball, *Ball Four*, that is no literary masterpiece, but does manage to make the sport interesting by stripping away its super-clean image and rubbing it into the dirt. It says, for instance, that Mickey Mantle would "push little kids aside when they wanted his autograph," and that one time Mantle showed up for work so hung over "he could hardly see." Such revelations will startle only those who believe all baseball players are great guys who spend their hours off the diamond eating Wheaties, doing chinups and campaigning for crippled children's funds.

In a ham handed effort to preserve this image, Baseball Commissioner Bowie Kuhn has warned Bouton "against future writings of this character." The warning is unnecessary. Anyone who feels he was libeled by *Ball Four* has ample recourse in the courts. No one, not even the American Baseball Hero, needs a house censor. — Dayton, O. *News*, June 3

IS IT LEGAL?



(A) PACIFIC COAST STATES

Los Angeles, Ca. Art Kunklin, owner and editor of the *Los Angeles Free Press*, and Jerome Applebaum, a former reporter for the underground publication, went on trial the week of June 25th for "receiving stolen property." The "stolen property" was a xerox copy of an Attorney General's inter-office memorandum and a booklet containing the names, addresses and phone numbers of state narcotics bureau employees. The memorandum served as the basis for *Free Press* articles on misbehavior of campus police at UCLA. The booklet was used to publicize information about narcotics agents, many who work undercover. Kunklin's attorney contends he is being prosecuted not for receiving the actual pieces of paper, but for publishing their contents. Reported in: *Los Angeles, Ca. Herald-Dispatch*, June 25

Los Angeles, Ca. John Travis Parker, editor-in-chief of the *UCLA Daily Bruin*, was arrested June 9 for distributing obscene materials and distributing or exhibiting matter harmful to minors. Three Los Angeles judges ruled in Municipal Court that a photograph published in the May 27 issue depicts a sex act and is offensive and in violation of state law. Chancellor Charles Young ordered immediate suspension of publication of "Intro,"

the *Bruin* supplement section which contained the photo. Reported in: *Los Angeles, Ca. Herald-Examiner*, June 9 (See "California College Publications May Be On Their Own," p. 83.)

Milpitas, Ca. Doreen Garcia, 18-year-old student at Samuel Ayer High School, is suing the school district for suspending her for passing out leaflets two days in May. The leaflets referred to the need for a Chicano history class, talked about racism, and called for a walk-out to protest the dismissal of Martin Neva, a Chicano teacher. Miss Garcia asks \$15,000 damages. Reported in: *Milpitas, Ca. Post*, June 3

San Bernardino, Ca. Citations were issued by the Riverside District Attorney's office against three University of California, Riverside, students, charging them with the publication and distribution of obscene material. The citations stemmed from an allegedly obscene picture run in the *UCR Highlander*. The picture (originally run in the *UCLA Daily Bruin*) depicts a couple simulating intercourse on a grave. The students must appear in court to set a trial date. No arrests were made. Maximum penalty upon conviction is \$500 fine and six months in jail. Reported in: *San Bernardino, Ca. Sun*, June 23 (See "California College Publications May Be On Their Own," p. 83.)

Honolulu, Ha. Honolulu Mayor Frank F. Fasi proposed to the City Council a bill to curb the sale of pornography. The Council unanimously passed the bill on its first two readings. Before a third vote which would have passed the ordinance, the bill was redrafted to remove sections on court seizure of materials, right to jury trial, and wording of a verdict by the jury. The bill, which applies to movies, magazines, newspapers, and live theatrical productions, defines obscenity as anything in which the predominant appeal is to a "shameful interest in nudity, sex, or excretion which goes substantially beyond customary limits of candor and is without redeeming social value." The bill drew mixed reactions from Honolulu residents. Reported in: Honolulu, Ha. *Advertiser*, June 3; *Star-Bulletin*, June 24

(B) ROCKY MOUNTAIN STATES

Helena, Mont. Associate Justice Wesley Castles, Montana Supreme Court, announced that Montana's Criminal Law Commission will ask the 1971 Legislature to enact a new anti-obscenity law which conforms to recent decisions of the U.S. Supreme Court. Montana codes do not now define the crime of obscenity in any way which can be enforced. The Commission's draft says, "A thing is obscene if, considered as a whole, its predominant appeal is to prurient interest, that is, a morbid interest in violence, nudity, sex, or excretion." Reported in: Helena, Mont. *Independent Record*, May 20

(C) SOUTHWESTERN STATES

Dallas, Tex. A panel of three Federal Judges ruled that the recent Texas obscenity law is constitutional, thus making it illegal to distribute obscenity by film or word. The panel ruled that offensive materials may be seized by law enforcement officers without a hearing to determine the question of obscenity. Reported in: Lubbock, Tex. *Avalanche-Journal*, June 6

(D) MIDWESTERN STATES

St. Louis, Mo. Suit was filed May 18 in St. Louis County Circuit Court charging that Jerry Rubin's book *Do It* is obscene. The suit asks that the book be banned from sale in the county. Reported in: St. Louis, Mo. *Post-Dispatch*, May 19

Columbus, Ohio. Gov. James A. Rhodes signed into effect a bill that defines some materials and performances as obscene and/or harmful to minors. Maximum penalty is 4-7 years in prison and \$10,000 fine for obscenity; one year and \$5,000 fine if harmful to minors but not obscene. Reported in: Cleveland, Ohio *Catholic Universe Bulletin*, June 26

(E) SOUTHERN STATES

Cocoa, Fla. In a "novel" approach, County Solicitor

David M. Porter arrested thirty books and magazines (including *Portnoy's Complaint*) and charged them with being obscene. Presumably, the books must defend themselves or be judged obscene in Magistrate Court, thus becoming illegal for sale in county book stores. Reported in: Cocoa, Fla. *Today*, June 15

New Orleans, La. The City Council passed an ordinance requiring "adult" bookstores to have annual permits. The annual permit fee is \$10,000. The City Council vote was 5-2 in favor. Reported in: New Orleans, La. *States Item*, July 16

Chapel Hill, N.C. School Board Attorney Emory Denny told the Board it has the right to regulate selling of publications (such as *The Radish*, an unauthorized student newspaper) on school grounds and that the selling of newspapers is not a constitutionally protected right under the First Amendment. Reported in: Chapel Hill, N.C. *Weekly*, May 6

Columbia, S.C. Judges Clement Haynsworth, Charles E. Simons, Jr., and Donald S. Russell were selected to consider the case of an Aiken outdoor movie operator and projectionist charged with exhibiting an obscene movie. The defendants claim the X-rated film, *Cherry, Hazel, and Raquel* is "not obscene in a constitutional sense," and that the method of seizing the film denied them due process. Reported in: Columbia, S.C. *Record*, July 14

Richmond, Va. Hilton L. Brooks, editor and publisher of the *Richmond Chronicle*, an underground newspaper, filed suit against Public Safety Director, W. L. Groth, in U.S. District Court charging that Groth denied *Chronicle* staff members constitutional rights when he failed to issue them press passes. Seymour Dubow is ACLU counsel for Brooks. Groth is quoted in the suit as having said, "Our press passes are issued as a privilege to news media which come up to a recognized standard of decency and which show proper respect for the United States and the high ideals for which it stands." U.S. District Judge Robert R. Merhige, Jr., ruled that the *Chronicle* is entitled to press passes. Merhige said that no matter how much the contents of the *Chronicle* might be disliked in some circles, his decision was based "on the law of the land." Reported in: Richmond, Va. *News Leader*, June 16; *Times-Dispatch*, June 19

(F) NORTH ATLANTIC COAST STATES

Bayonne, N.J. A day after the passage of a Jersey City ordinance establishing a film review board to screen out "obscene" movies, the Bayonne Law Department began studying the ordinance to determine its legality and effectiveness as a model for Bayonne to follow. Reported in: Bayonne, N.J. *Facts*, June 10

New York City. The City Council is studying a proposal making it unlawful to show X-rated picture previews or trailers with a G-, GP-, or R-rated film. Reported in: Hartford, Conn. *Courant*, June 25

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SUCCESS STORIES



(A) PACIFIC COAST STATES

La Verne, Ca. Reverend Doctor Vernand Eller, a Church of the Brethren theologian and scholar, has written *The Mad Morality* (Abingdon Press, 1970) in which he proves that *Mad* magazine (a popular tabloid, self advertised as "cheap" and "trash") is unabashed morality. Reported in: San Bernardino, Ca. *Sun*, June 8

(C) SOUTHWESTERN STATES

San Antonio, Tex. Speaking to a lawyer's group in San Antonio, Attorney General John Mitchell urged public officials to encourage, not merely tolerate, youths who want to stage protest demonstrations. He said, as Attorney General, he will do everything within his power to see that rights of free speech and free assembly flourish. Reported in: Washington, D.C. *Star*, July 3

(D) MIDWESTERN STATES

Evanston, Ill. Evanston Township High School District Board removed a policy of "prior review" of student publications (particularly *The Gadfly*, an underground publication) to be distributed on school property. However, the review will be re-established if any of fifteen limitations are violated. These include use of obscenities or sexual themes, use of false statements, and several others. Reported in: Chicago, Ill. *Sun-Times*, July 1

Detroit, Mich. James Lacey, assistant Wayne County prosecutor, says *Hair* may run indefinitely in Detroit because "in light of recent court decisions, I would think the performance espouses social relevancy, and consequently, is protected under the First Amendment." A Detroit police officer viewed the play and commented, "the music's great but the dialogue stinks." Reported in: Detroit, Mich. *News*, June 17

(E) SOUTHERN STATES

Atlanta, Ga. Gov. Lester Maddox called off his month-long war against Atlanta newspapers and said the papers could return their vending machines to state property. He said the papers "treated my controversy about the boxes (vending machines) as fair as anything I've ever seen." Reported in: Atlanta, Ga. *Constitution*, June 27

Louisville, Ky. William T. Reynolds, principal of Jeffersontown High School, reviewed the senior edition of the school paper, *Imprint*, and was disturbed by an article which poked fun at him and a teacher. Reynolds and a faculty steering committee decided to withhold distribution of the papers. Later, Reynolds reconsidered and approved distribution if the page with the objectionable article were removed. Still later the same day, Reynolds did a complete about-face and decided the paper was not *that* offensive and that students

should be allowed to make up their own mind. The *Imprint* was distributed unexpunged. Reported in: Louisville, Ky. *Jefferson Reporter*, May 28.

Baltimore, Md. George L. Russell, Jr., City Solicitor, announced that city parks officials do not have the right to review written materials before giving permission for sale or distribution in the park. The Solicitor's opinion said the rule represents "prior restraint" on the constitutional guarantees of freedoms of speech and press. Reported in: Baltimore, Md. *Sun*, July 21

Baltimore, Md. The *Red Brick*, an underground newspaper on the University of Maryland County Campus, is being investigated by the Baltimore County States Attorney. Dr. Albin Kuhn, chancellor of UMBC, defended the *Red Brick* and said that, since the paper is not supported by university funds, the students will be given free exercise of their constitutional rights to print the paper. Reported in: Baltimore, Md. *News American*, June 18

Constitutional Victories Strengthen Inmates' Freedom to Read

In October, 1966, Marshall Krause, staff counsel of ACLU of Northern California, protested to the Department of Corrections a new regulation that would reduce prison law libraries to a very few "approved" legal volumes and would, in addition, prohibit prisoners from possessing any books not appearing on such an "approved" list. Subsequently, a group of San Quentin inmates brought a federal law suit challenging this regulation and others which impeded their access to legal materials. While a court order prohibiting the removal of "disapproved" books was obtained, the Attorney General moved to dismiss the case (*Gilmore v. Lynch*). Three-and-a-half years of legal delays, motions, decisions, and appeals followed, during which, in 1968, a three-judge panel was formed to consider the case. The panel convened in 1969, and in June, 1970, Judges Woltenberg, Zirpoli, and Duniway ruled in the prisoners' favor.

The Court held the restricted list of "approved" law books not only "would offer meager fare to a criminal lawyer," but also unconstitutionally inhibited the prisoners' right of access to the courts. It held further that the state has a positive duty to provide indigent prisoners with adequate means to bring their legal grievances to the attention of courts. Authorities were

granted until September 1, 1970, to submit new regulations that will promote prisoner access to the courts.

A few weeks after the *Gilmore* decision, the California Supreme Court, in the case of *In re Harrell*, considered a regulation which prohibited San Quentin prisoners from possessing legal materials which did not "pertain" to their own cases. Justice Sullivan, speaking for a unanimous Supreme Court, said:

"We think it manifest that the particular rule here in question, which prohibits one inmate from possessing the legal papers of another, has a severe effect upon the liability of an illiterate or uneducated prisoner to gain assistance from a more gifted one . . ."

The Supreme Court held the regulation to be unconstitutional.

The *Harrell* decision was considered along with the case of Howard Ingram. The *Ingram* case raised different issues concerning the prisoners' right to read and receive literature in general. Ingram's claim was based on a 1968 amendment to the Penal Code providing that inmates have the right:

"To purchase, receive, and read any or all newspapers, periodicals, and books accepted for distribution by the United States Post Office . . . prison authorities shall have the authority to exclude obscene publications . . . and any matter . . . tending to incite murder, arson, riot, violent racism, or any other form of violence; and any matter concerning gambling or a lottery."

Ingram had been denied access to books dealing with drugs (because authorities said they "glorified crime") and to the magazines *The Realist* and *Avant Garde*. The magazines were on a list of "disapproved" periodicals that included *The Black Scholar* and the *Berkeley Barb*. Ingram's attorney contended that "glorification of crime" and "advocacy of crime" were not, under the *Penal Code*, justifiable grounds for censoring books and magazines. The Court agreed. Justice Sullivan said:

". . . the strong language chosen by the Legislature to state the basic right indicates an intention that any limitation on that right beyond those specifically set forth is to be viewed with circumspection . . . Free access to all printed materials which are accepted for distribution by the United States Post Office—excepting those which are obscene or which tend to incite activities posing a threat to prison discipline—is more in accord with legitimate penal objectives than limited access according to the views of particular prison authorities on the rehabilitative effect of such materials . . . (E)ven persons who have committed antisocial acts warranting their imprisonment may derive greater rehabilitative benefits from relatively free access

to the thoughts of all mankind as reflected in the published word than they would derive from a strictly intellectual diet."

The Court proceeded to hold the *Index* of disapproved periodicals unlawful ruling that, when prison authorities disapprove a publication, (1) they must give the reason for disapproval; (2) the only valid reasons are those contained in the *Penal Code*; and (3) the decision of the authorities is reviewable in the courts by means of *habeas corpus*. (Summarized from *ACLU News*, July, 1970)

California College Publications May Be on Their Own

Climaxing a controversy that has been running for the last few years, John E. Canaday, member of the University of California Board of Regents, proposed on June 17 that the university withdraw financial support from student newspapers on the nine university campuses. Canaday, a retired vice president of Lockheed Aircraft Corporation and a long-time regent, claims that student fees should not be used to support publications which are "fraught with these obscenities" and follow the "New Left political line."

Canaday asks that student papers be financed independently in the future, be printed off campus, and sold on campus "in accordance with the rules that govern the sale of commercial newspapers." He would also like to prohibit such newspapers from using traditional names as the *UCLA Daily Bruin* or the *UC Berkeley Daily Californian*, but he foresees "legal complications" in such a prohibition.

A year-and-a-half ago, Canaday complained about the content of the papers and prompted an investigation by a "blue ribbon" panel of national editors who found that the publications were no worse than most campus papers around the country. Canaday claims that the investigation was "very shallow and superficial," and that "they justified a type of journalism for campus papers that they would not tolerate in their own publications."

Although the Canaday proposal does not refer to any specific campus publications, the San Francisco *Examiner* speculates that recent situations involving the *UCLA Daily Bruin* and *UCR Highlander* may have renewed Canaday's efforts to alter campus publications. Two editors of the *UCLA Daily Bruin* (see *Is It Legal*, p. 78) were charged with distribution of obscene matter by the Los Angeles Police Department. The charge arose when an issue of "Intro," a *Daily Bruin* supplement, carried a picture of a couple simulating a sexual act. The same picture was also responsible for the con-

fiscation of an issue of the *UCR Highlander* (see *Is It Legal?*, p. 78), which carried the picture in relation to an article about the *Daily Bruin* incident. Three members of the *Highlander* staff were cited and must appear in court to set a trial date.

University of California officials told the Los Angeles *Times* that, if Canaday's proposal passes, most UC newspapers will be forced out of business. They said the *Daily Bruin*, the *Daily Californian*, and possibly the Santa Barbara *El Gaucho*, might survive, but papers on the smaller campuses would perish. These include Davis's *California Aggie*, Irvine City's *New University*, Santa Cruz's *City on a Hill Press*, San Francisco's *Synapse*, San Diego's *Triton Times*, and Riverside's *Highlander*.

In related action, the Fresno *Bee* reports that Acting President of Fresno State College, Karl L. Falk, is withholding funds for that school's *Daily Collegian*, "until it becomes more responsible." Falk claims the paper has failed to meet journalistic standards established by the State College Board of Trustees last year. Failures, according to Falk, included editorializing in news content, using unacceptable language, and biasing news coverage. Falk said further that the *Daily Collegian* represents only a small group of students and is all political, with no attempt to cover campus events.

Burton Swope, fall editor of the *Daily Collegian*, says, "In my opinion the *Daily Collegian* has been critical of the administration in the past and this is a form of intimidation or censorship." A spokesman for Falk said, "Until the students get their affairs in order, the paper will not have enough money to publish." Reported in: San Bernardino *Sun*, June 16; Los Angeles *Times*, June 17; San Francisco *Examiner*, June 17; and Fresno *Bee*, July 4.

First Amendment Freedoms Act

A bill entitled the *First Amendment Freedoms Act* was proposed June 16 by the four Congressional members of the Eisenhower Commission on the Causes and Prevention of Violence in America. Sponsoring the bill are Sen. Philip A. Hart (D.-Mich.), Sen. Roman L. Hruska (R.-Neb.), Rep. William M. McCulloch (R.-Ohio), ranking Republican on the House Judiciary Committee, and Rep. Hale Boggs (D.-La.), House Democratic Whip. The four Congressmen represent a broad spectrum of political ideology.

The *First Amendment Freedoms Act* would "confer jurisdiction upon the United States District Courts to grant injunctions, upon the request of the Attorney General or private persons, against the threatened or actual interference by any person, whether or not under color of state or federal law, with rights of individuals or groups to freedom of speech, freedom

of the press, peaceful assembly and petition for redress of grievances."

The Congressmen said that, with all the federal laws on the books, they were surprised to find only one, century-old statute dealing "in a limited and inadequate way" with official denials of First Amendment rights. "And," they add, "there is no statute whatsoever dealing with private denials of those rights." In addition to federal injunctions, the new bill would allow follow-up damage suits against attempts to deny any citizen his rights. On the question as to why the ordinary state laws against trespass and disorderly conduct are not adequate, the Violence Commission gave this rationale: "State remedies against private misconduct involving infringement of First Freedom rights are usually based not on the First Amendment but on trespass statutes or disorderly conduct ordinances. Such laws were not written to deal with acts of physical obstruction, particularly those committed for demonstrative purposes and are not always effective in handling such conduct. Moreover, where acts of violence or obstruction are committed in the name of righting fundamental grievances, those engaging in such conduct may find it harder to justify disobedience of court orders issued to uphold the First Amendment than would be true of orders based upon the laws against trespass and disorderly conduct."

Sen. Hart said, "Unless we protect the First Amendment rights of all citizens, whatever their viewpoint, we kid ourselves if we think our free society can survive. We must act now to preserve the vigorous and peaceful exercise of those precious rights, so that the violent confrontations of the 1960's will not be recorded as a mere warmup for even more tragic turbulence in the coming decade."

Rep. McCulloch told reporters he felt the bill could have prevented the deaths of the four students killed at Kent State University in May, but Sen. Hart said it should not be viewed as a cure-all for campus violence. Sen. Hruska said, "It is unfortunate indeed that too often peaceful protest degenerates into needless violence and destruction. This cannot and must not be tolerated." He added, "When a picketer or heck-

ler tries to disrupt a public speech by an official of the government, does not the speaker have a right to be heard? . . . Does not the audience have a right to gather and participate in the exchange of ideas? . . . The Constitution is designed for all our citizens, not just the disenfranchised."

The proposed *First Amendment Freedoms Act* has received mixed reactions in the press. The *New York News* said, "It once was generally accepted by Americans that the privilege of exercising freedom went hand in hand with the duty of according others the same right. We find it hard to believe that many Americans need to be coerced by law into observing the precedent." The *New York Times*, in an editorial by James Reston, said, "This may be going a long way . . . but the present guerilla warfare against free speech has gone a bit far." The *Washington Post* said, "The experience of this country with labor injunctions does not warrant a wholly carefree attitude toward the device. The proposed legislation needs careful scrutiny." The *Brockton, Mass. Enterprise & Times* observed, "As Vice President Agnew says, 'It's my First Amendment, too.' Those who find the vice president objectionable should remember this, and its implications." (Condensed from *New York Times*, June 17; *Philadelphia Inquirer*, June 21; *Washington, D.C. Post*, June 24; and, *Omaha World Herald*, June 18.)

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