newsletter on
intellectual freedom
IFC ALA

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Free Access to Libraries for Minors

An Interpretation of the **Library Bill of Rights**

Some library procedures and practices effectively deny minors access to certain services and materials available to adults. Such procedures and practices are not in accord with the *Library Bill of Rights* and are opposed by the American Library Association.

Restrictions take a variety of forms, including, among others, restricted reading rooms for adult use only, closed collections for adult use only, and inter-library loan service for adult use only.

All limitations in minors' access to library materials and services violate Article V of the *Library Bill of Rights,* which states that, "The rights of an individual to the use of a library should not be denied or abridged because of his age. . . . " Limiting access to some services and materials to only adults abridges the use of libraries for minors. "Use of the library" includes use of, and access to, all library materials and services.

Restrictions are often initiated under the assumption that certain materials are "harmful" to minors, or in an effort to avoid controversy with parents who might think so. The librarian who would restrict the access of minors to materials and services because of actual or suspected parental objection should bear in mind that he is not *in loco parentis* in his position as librarian. Individual intellectual levels and family backgrounds are significant factors not accommodated by a uniform policy based upon age.

In today's world, children are exposed to adult life much earlier than in the past. They read materials and view a variety of media on the adult level at home and elsewhere. Current emphasis upon early childhood education has also increased opportunities for young people to learn and to have access to materials, and has decreased the validity of using chronological age as an index to the use of libraries. The period of time during which children are interested in reading materials specifically designed for them grows steadily shorter, and librarians must recognize and adjust to this change if they wish to maintain the patronage of young people.

The American Library Association holds that it is the parent—and only the parent—who may restrict his children—and only *his* children—from access to library materials and services. The parent who would rather his child did not have access to certain materials should so advise the child.

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ALA Intellectual Freedom Committee, Chairman, Richard L. Darling
(Dean, School of Library Science, Columbia University)

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Freedom to Read Foundation: Chicago Meeting Highlights

The Board of Trustees of the Freedom to Read Foundation met for eight hours on June 23 in Chicago. Several matters now in progress were reported and the board explored some new areas for future action.

California Class Action

President Alex P. Allain gave a complete progress report on the status of a lawsuit filed on May 5, 1972, and totally funded by the Foundation. (See July *Newsletter*, p. 101.) The class action suit challenges the California Harmful Matter Statute as it applies to librarians and library employees. Mr. Allain explained that the defendants were granted a thirty-day extension to answer the complaint. [Upon request, a second extension has been granted, allowing the state Attorney General until July 31 to respond.] Mr. Allain expressed hope that the California suit will provide a basis for challenging similar legislation in other states. He stressed the need for continued and increased financial support from librarians and concerned citizens to allow the Foundation to pursue its plans. [Contributions are welcome and should be addressed to the Freedom to Read Foundation, 50 E. Huron St., Chicago, Ill. 60611.]

Down These Mean Streets Appeal

Executive Director Mrs. Judith F. Krug reported that the ban on Piri Thomas' *Down These Mean Streets* from Community School District #25 in Queens, N.Y., was upheld by the Circuit Court of Appeals. The banning had been challenged through the courts by the New York Civil Liberties Union. Originally, the Freedom to Read Foundation declined to support the suit because of the belief that the case, if ruled on favorably, would establish a legal precedent for the "right" of parents to determine curriculum and library materials, and — conversely — to decide which materials should *not* be used in schools. After Mrs. Krug's report, the board discussed filing an *amicus curiae* brief if the case is appealed to the U. S. Supreme Court. Because of the financial commitment to the California suit and because of doubt as to which issues will be appealed, the board decided to follow the progress of the suit but to reserve judgment on future action.

Beacon Press Controversy

The board reviewed the status of Beacon Press' challenge to federal agents seeking access to its financial records from the period surrounding its publication of the Senator Gravel version of the *Pentagon Papers*. At the time of the board's deliberations, the case was before the U. S. Supreme Court to determine the limits of Gravel's senatorial immunity. Consequently, the board authorized the Executive Committee to take any action it deems necessary, in light of future developments. [On Thursday, June 29, the Supreme Court ruled that immunity does not extend beyond Senator Gravel himself. Beacon Press has announced its intention to fight the case as far as possible on First Amendment grounds.]

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Censorship Dateline

LIBRARIES

Orlando, Fla.

Orange County school libraries were slated to undergo thorough examination over the summer for re-evaluation of "controversial books." School officials said questionable books will not be withdrawn before they are reviewed and evaluated by competent educators, although the same officials agree that libraries must not be depositories for obscenity, objectionable language, and low moral standards. Specific subjects under scrutiny are works on "human reproduction, social change, black power, black history, and other areas which might cause concern in the community." Reported in: *Orlando Sentinal,* July 16.

Cincinnati, Ohio

A coalition of right-wing citizens groups is waging a full-scale attack on the policies and motives of the Cincinnati and Hamilton County Public Library. A year ago, members of the Constitutional Heritage Club, the John Birch Society, and the self-styled Real Friends of the Public Library attended a regular monthly meeting of the library board and charged that the library's collection was too liberal. They complained that the library held too few conservative titles, that the collection on the United Nations was biased in favor of the organization, and that the branch libraries in black neighborhoods were filled with books that would inspire revolution and racist violence. Since then, the conservatives' attack, led by J. Julian Bowman, has focused on one issue—that the public library is violating Ohio law by lending obscene materials to persons under 18. It is this issue that has caused the most trouble for library director James R. Hunt. In the fall of 1971, Hunt raised the age at which a person may have an adult library card from sixteen to eighteen. Also, under Hunt's direction, the staff compiled a list of 609 titles that could not be lent to anyone under eighteen. This list was withdrawn after a few months because of staff dissatisfaction. But the library refuses to disclose which titles are marked with a "purple daisy"—thus identifying them as off-limits to patrons under eighteen. Bowman charges that the library is violating that section of the Ohio Revised Code that states "no person . . . shall knowingly send, lend, give, or furnish to a minor any material which is obscene or harmful to minors," despite the fact that it is a valid defense that the material was "distributed or presented for a bona fide . . . educational . . .purpose . . . by a librarian . . . or other proper person." Hunt has asked the Hamilton County Prosecutor, Simon L. Leis, Jr., to rule on whether libraries could be in violation of this statute. Leis has not yet made a decision. At the June 12th board meeting, Bowman threatened to sue the board over violations of the statute. Reported in: *Cincinnati Enquirer,* June 25.

By 1894, when the American Library Association met at Lake Placid, New York, eager but bewildered administrators took heed when Miss Lutie Stearns, of the Milwaukee Public Library, read a "Report on the Reading of the Young," *which declared for a policy of abolishing age limitations,* presented the necessity of providing special rooms for the young, staffed by attendants who "liked children" and were prepared to serve them with the same standards of excellence as obtained in libraries for adults. [Our emphasis:] — *Anne Carroll Moore; a Biography.* New York, 1972, p. ix, by Frances Clarke Sayers.

SCHOOLS — CURRICULA

Berkeley, Cal.

After a parent, Educardo Pavao, complained about the use of "offensive" films in a high school course on constitutional law, Superintendent of Schools Richard Foster ordered teacher David H. Eichorn to dicontinue use of the films. Eichorn said the potentially pornographic films were shown as part of a discussion of First Amendment freedoms, including obscenity laws. Berkeley High School Principal Clifford Wong affirmed the institution's right to "dramatize for students the difference between the individual's view of obscenity and the law's view of obscenity. This same point can be dealt with using more suitable materials. Therefore, such films will not be used at Berkeley High School in the future." School board member Louise Stole criticized Foster's action and said she disagrees with the superintendent's concepts of academic freedom and constitutional protection of free speech. She said she spoke with Eichorn, visited his class, and was convinced that an educational purpose was served through use of the films, as evidenced by the reports written by the students on the films. Eichorn invited parents to preview the films before deciding whether to allow their children to see them. Pavao, however, after viewing the films, called State Superintendent Wilson Riles and the Berkeley

Juvenile Bureau to protest. As a result of his complaints, the Berkeley Police Department now is conferring with the district attorney and the school in an investigation. Pavao is also writing to Governor Reagan and is seeking help—monetary and otherwise—from sympathizers to ban pornographic films everywhere. Reported in: *Berkeley Gazette,* June 7; *San Francisco Examiner,* June 7; *Vallejo Times-Herald,* June 9.

Vero Beach, Fla.

A group of parents, led by the Rev. Robert McEarchern, confronted Vero Beach High School Principal Gordon Popple with protests over the use of the film version of Shirley Jackson's *The Lottery* in an English class. Their complaints centered on violence in the film, "poking fun" at parents, and the idea that the film was something that "communists might show their children." Mrs. Nancy Edwards, chairwoman of the English department, fielded questions after a showing of the film to the group. She explained that the film was used to illustrate "man's inhumanity to man." Reported in: *Vero Beach Press-Journal,* May 28.

St. Charles, Mo.

A small group of parents, called the Concerned Citizens for St. Charles, objected to school board officials' use of a five-volume series entitled *Promise of America,* in eighth grade social studies classes. A spokesman claims the books teach "socialism and anti-Americanism." They also object to the books' definition of civil disobedience, its use of open-ended questions and "gutter language." Dr. W. D. Grigsby, Assistant Superintendent, refuted the irate citizens' claims, saying "For too many years we've been giving kids the answer and then asking the question. This is not developing their ability to think. It's not the way life is. In my opinion, the books teach democracy. They are not anti-American or socialistic but merely present situations at different times in American history." Reportedly, more "action" is planned by Concerned Citizens for St. Charles for the new school year. Reported in: *St. Louis (Mo.) Globe Democrat,* May 12; 29; *St. Louis Post-Dispatch,* May 12.

SCHOOLS — MISCELLANEOUS

Montgomery County, Md.

An issue of the Montgomery County Federation of Teachers' publication, *Montgomery County Teacher,* was banned from distribution through the school system's internal mail service because of a news story containing an endorsement of five school board candidates. A school system regulation says "no printed material or literature advocating the nomination or election of candidates for public office shall be distributed through the public schools of Montgomery County." Reported in: *Silver Springs Suburban Record,* May 19.

FILMS

Weymouth, Mass.

In response to complaints from individuals and church groups, the board of selectmen took action to block the showing of the movie *Oh! Calcutta!* at the Cameo Theater. The board sent a letter to the theater manager asking that the film not be shown. When manager Jack O'Sullivan decided to proceed with plans to show the film, the board threatened to file suit in Quincy District Court and was granted a hearing. O'Sullivan then decided to cancel the unrated movie, saying, "The film is not obscene, but litigation to prove that would be too expensive." Reported in: *Quincy Patroit Ledger,* May 23; *Boston Herald Traveler,* June 7; *Boston Globe,* June 7.

South Plainfield, N.J.

United Artists Theaters, Inc. ordered its member theaters to prohibit all persons under eighteen from all movies that contain semi-nudity or could possibly appeal to prurient interests, rather than risk violation of the strict township code adopted in July. The theater manager admitted that business would be seriously damaged, but a violation could bring a $500 fine and suspension. Reported in: *Newark Star Ledger,* July 13.

PERIODICALS

Birmingham, Ala.

On May 14, the *Birmingham News* announced it will no longer accept ads or publish reviews concerning X-rated or unrated films. Explaining the action, the editor wrote, "The *Birmingham News* is not setting itself up as a censor or as the voice of the community—or any individual's—conscience. We are simply saying that our own conscience compels us to say, 'enough is enough.' " Reported in: *Birmingham News,* May 14.

Berkeley, Cal.

The June *Ramparts* was withdrawn from newsstands in eastern states and not delivered to western dealers after the Pacific Telephone and Telegraph Company threatened to seek prosecution. The June issue contains an article giving information which allegedly violates a California law making it a misdemeanor to publish "plans or instructions" for making devices to be used to avoid legal phone charges. Mail subscribers will receive their copies, but the loss of dealers' issues will cost *Ramparts* $30,000-$50,000, including $7,000 worth of advertising revenues that will be uncollectable. An indirect result of the incident is that *Ramparts* is looking for another publisher because it is believed that the present publisher (W. A. Krug Printing Company of Milwaukee) tipped off the phone company after completing the $18,000 printing job. Reported in: *New York Times,* May 22.

New York, N.Y.

Members of the New York Printing Pressman's Union held up publication of the May 31 issue of the *New York Times* because of objections to a paid advertisement calling for the impeachment of President Nixon. Initially, the group said it would not operate the presses unless the ad was removed. The *Times* management refused to do that. The pressmen then asked that a statement of their views be printed with the ad. The group was persuaded, however, to let the presses roll with the ad as scheduled. The union chaiman issued a statement saying the pressmen do not agree with the content of the ad and worked under protest in printing it. Reported in: *New York Times,* June 1.

Cleveland, Ohio

An arbitrator assigned by the American Arbitration Association ruled that the *Cleveland Plain Dealer* had the right to fire its former employee, Joseph Eszterhas, for publishing an article highly critical of the newspaper in the *Evergreen Review.* The *Plain Dealer* said the article ("The Selling of the Mylai Massacre") was filled with inaccuracies and was an outright attack on the newspaper and some of its editorial executives. The arbitrator granted Eszterhas dismissal pay amounting to ten weeks' salary. Reported in: *New York Times,* May 28.

Milwaukee, Wis.

Reporting on the reversal by the U. S. Supreme Court of the conviction of former *Kaleidoscope* editor John R. Kois, the University of Wisconsin-Milwaukee publication, *The Post,* ran a poem and two pictures which had prompted obscenity charges against Kois. *The Post* also carried the text of the Supreme Court decision. Shortly afterward, UWM Dean of Student Affairs David W. Robinson wrote a letter to the editor of *The Post* saying, "Had I had the opportunity prior to publication, I would have advised at least a re-evaluation of presenting the subject as you did. . . That I consider this particular presentation of questionable journalistic taste is a modest understatement." Reported in: *Milwaukee Journal,* July 8.

TELEVISION AND RADIO

Washington, D.C.

Except for WDCA-TV, Washington, D.C. television stations have refused advertisements for the movie *Skyjacked.* One station manager said it is "probably not wise at this particular time" to show the commercials. Reported in: *Washington Post,* May 26.

Boston, Mass.

A group of Indians, represented by David W. Hare, charged that thirty-seven episodes of the *Daniel Boone* television series degrade Native Americans, depicting them as "savages, red-painted devils, to be feared, thieves." A complaint was filed with the Federal Communications Commission (FCC) to remove the programs from airing over WSBK-TV in Boston or to deny the station's license, but the FCC ruled in favor of the station. A New Bedford station, however, removed the thirty-seven episodes voluntarily. Reported in: *Jersey City (N. J.) Journal,* July 3.

New York, N.Y.

According to the Young & Rubicam advertising agency, producers of a commercial for the New York Telephone Company declaring, "New York City: It's still a hell of a town," WCBS-TV turned down the ad because of the "hell" in the tag line. Reported in: *New York Times,* June 5.

Nashville, Tenn.

Radio station WMAK program director Scott Shannon said he refuses to play recordings by David Cassidy (*The Partridge Family*) because of an article and photographs featuring Cassidy in *Rolling Stone.* Shannon said he found the article distasteful in content. Reported in: *Nashville Tennessean,* May 7.

IBY: Books to the People

"Books to the People" may sound like a cry from a harassed librarian or a beleaguered book lover, but actually it is the essence of the spirit behind the Internation Year of the Book—1972. The function of this UNESCO sponsored event is to stimulate awareness and action to make the knowledge contained in books available to everyone. We are now in the ninth month of International Book Year, far enough along so we can move beyond the platitudes and prepared statements and ask ourselves what all this has to do with us. The answer is very simple. Much of the spirit behind IBY is embodied in the peculiarly American notion that people have a right to express themselves freely on any subject and the right of access to the expressions of others. Part of our responsibility during this last part of IBY can be an active expression of a *world-wide* need for freedom of access and freedom of ideas, for argument and discussion, not suppression.

How you choose to celebrate International Book Year is only limited by your imagination. But a good way to start is to contact the U. S. IBY Secretariat (Miss Esther J. Walls, One Park Ave., New York, N. Y. 10016). This group acts as a clearinghouse for a variety of IBY activities and will gladly supply you with promotional materials and suggested activities.

With your participation, IBY can be an occasion for celebration and recommitment to the important part books play in the lives and affairs of individuals and society and a first step toward an international understanding of the necessity for free access to materials and free expression.—Eds.

U.S. Supreme Court Actions

Lloyd Shopping Center Case

In a 5-to-4 decision, the court refused to accept the thesis that privately-owned shopping centers are the legal equivalent of "company towns." The decision rejected a line of constitutional reasoning that has been followed since 1964 concerning privately owned property that is open to the public. The case arose when three people attempted to hand out anti-war pamphlets in Lloyd Center, a large shopping mall in Portland, Oregon. Security guards warned the pamphleteers that they might be arrested. In the court's opinion, Justice Lewis F. Powell said the pamphleteers could reach the public on public streets, unlike union organizers in earlier cases. He concluded that "it would be an unwarranted infringement of property rights to require them to yield to the exercise of First Amendment rights under circumstances where adequate alternative avenues of communication exist. Property doesn't lose its private character merely because the public is invited to use it for designated purposes." Reported in: *Wall Street Journal,* June 23.

Retail Clerks Union Case

Involving principles similar to those in the Lloyd Shopping Center case, this case was remanded to a lower court to determine if the National Labor Relations Act allows union organizers to solicit members in company parking lots. It arose when organizers of the Retail Clerks Union were ordered off parking lots owned by the Central Hardware Co. in Indianapolis, Indiana. Reported in: *Wall Street Journal,* June 23.

Connecticut Central States SDS Case

In a 9-to-0 decision, the court held that the constitution protects the rights of students in state colleges to organize on the campus even if they advocate violence. However, groups seeking campus recognition may be required to renounce in advance any intent to instigate actual violence or interference with the rights of others in the academic community. In the majority opinion, Justice Powell said, ". . . the precedents of this court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large." Connecticut Central State College officials had refused recognition, including the privilege of meeting on campus, on the grounds that the local SDS chapter had links with a violence-prone national organization. Reported in: *Washington Post,* June 27.

Kois/Kaleidescope Case

In an unsigned opinion, the court reversed the conviction of John R. Kois, former publisher of *Kaleidescope,* on two counts of publishing obscene material in the now defunct underground newspaper. The court held that the material in both charges was protected by the First Amendment. Reported in: *Milwaukee Journal,* June 26.

Mandel/Visa Denial Case

In a 6-to-3 ruling, the court upheld the Attorney General's denial of a visa to Belgian Marxist journalist, Ernest E. Mandell, who wished to participate in academic conferences in the U. S. The visa was denied under a section of the Immigration Act of 1952 that bars visas to aliens who "advocate the economic, international, and governmental doctrines of world Communism" and aliens "who write or publish any written or printed matter advocating or teaching the economic, international, and governmental doctrines of world Communism." In a dissenting opinion, Justice William O. Douglas said, "Congress never undertook to entrust the Attorney General with the discretion to pick and choose among the ideological offerings which alien lecturers tender from platforms, allowing those palatable to him and disallowing others." Reported in: *New York Times,* June 30.

Caldwell, Branzburg, and Pappas Cases

In 5-to-4 decisions, the court ruled that requiring newsmen to appear and testify before state or federal grand juries does not abridge freedoms of speech and press guaranteed by the First Amendment. The majority opinion by Justice Byron White said, "We do not question the significance of free speech, press, or assembly to the country's welfare. Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated. But this case involves no intrusions upon speech or assembly, no prior restraint or restriction on what the press may publish, and no express or implied command that the press publish what it prefers to withhold. . . . The sole issue before us is the obligation of reporters to respond to grand jury subpoenas as other citizens do and to answer questions relevant to an investigation into the commission of a crime. . . . On the records now before us, we perceive no basis for holding that the public interest in law enforcement and in ensuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on newsgathering which is said to result from insisting that reporters, like other citizens, respond to relevent questions put to them in the course of a valid grand jury investigation or criminal trial." Dissents were filed by Justices Stewart (concurred in by Justices Marshall and Brennan) and by Justice Douglas. Reported in: *New York Times,* June 30.

Let Me Say This About That

A Column of Reviews

Privacy and the Press — The Law, The Mass Media and The First Amendment. Don R. Pember. University of Washington Press, 1972. $8.95.

Privacy and the Press fills a special niche in the literature about the right to privacy and freedom of the press. Other works on the right to privacy, such as Packard's *Naked Society* and Miller's *Assault on Privacy,* usually deal with governmental and industrial attacks on privacy; books on freedom of the press stress the individual's right to speak his mind publicly without fear of persecution. *Privacy of the Press,* however, explains the relationship between the legal right to privacy and freedom of the press, as delineated by court cases through the years, making it a supplement to other books on related subjects.

It probably doesn't occur to readers (or TV viewers) who deplore sensational reports of personal tragedies or the kind of snooping that has kept Jackie Onassis in the public eye, that sober judges would rule that poor taste is preferable to restricting freedom of the press. This has been an important part of the legal history of the right of privacy, a right which did not even exist in 1890 when Samuel Warren and Louis Brandeis wrote *The Right to Privacy,* the first presentation of the idea that privacy is a value worthy of protection by law. Up to that time, plaintiffs who felt their privacy had been invaded by the press had to invoke the law of property to get their cases into court. Even after the writing of the Warren-Brandeis principle that private affairs should not be published, it has seldom been the basis for a successful suit. Courts and judges have made strenuous efforts to uphold the freedom of the press to publish personal matters, even when the stories were flagrantly objectionable. In general, privacy suits have been successful only when the plaintiff could prove that the published material was used for trade purposes, as in an advertisement without consent, or that the article was defamatory. Otherwise, the public's right to know the truth has been upheld, and any item of public interest is protected. Public figures, whether voluntarily or involuntarily thrust into the limelight, lose their right to privacy. Even when false information is published, the plaintiff must show it was done knowingly, according to a 1967 Supreme Court decision (*Time, Inc. vs. Hill.*)

So far, court decisions have made a careful compromise between freedom of the press and personal privacy. With the new mass media and more electronic snoopers available, future rulings may take a different direction.

Privacy and the Press is one of those rare and satisfying books that deals with one subject and deals with it well. Pember has pursued the tortuous progress of the right to privacy through all the important cases from 1890 to 1970, and evaluated the present situation. He concludes with a few predictions and some words of advice for reporters and editors. There are four appendices, listing important cases, the status of the law of privacy in each state, and the texts of existing statutes. I recommend this book for every library because it brings together information not found in any other single place. It is not exactly easy reading—the complexities of the many cases, often with contradictory judgments, make it hard to follow, even though Pember has tried to simplify and explain the legal terms. But, it is an invaluable reference on a subject which is increasingly important to all of us who value both privacy and freedom of expression. ***—Marthe Scholes, Bloomfield Township Public Library, Bloomfield Hills, Mich.***

Pornography: The Issues and the Law. Kenneth P. Norwick. Public Affairs Committee, Inc., New York, 1972. (Public Affairs Pamphlet No. 477. 25¢).

This small, 28-page item provides an excellent introduction to the present "pornography problem." It covers, lightly, the history of pornography and the laws against it from Greek and Roman times to the post-*Stanley* decisions (you can possess it, but no one can send or give it to you) with special emphasis on the Commission on Obscenity and Pornography. It seems slightly slanted to the "pornography is all right" side—especially in the illustrations—but this may well be only because I'm greatly slanted that way.

At the same time my wife presented we with this reasonably objective study, she also gave me a stack of materials which are issued by MOTOREDE. Most of these were reprints of articles from *American Opinion,* and all showed an extreme lack of objectivity. Three of these ("Pornography—Mindless With Gazing," Medford Evans, *A.O.,* April 1969; "The Fall, from Decency to Degredation," George S. Schuyler, *A.O.,* January 1969; and "The War on Art," Alan Stang, *Review of the News,* February 5, 1969), were more-or-less on the subject of pornography. I'd always thought that, prior to the '60's, the major countries in the production of stag films were the United States, Great Britain, France and, for a time, Cuba. Imagine my surprise when I read that the Communists had taken over the field in 1954 with a big blast in Poland! Otherwise, the articles state facts—incomplete, misinterpreted, or needlessly worried-over facts—but then, nobody's perfect. ***—Lawrence E. Wolfe, Nashville, Tenn.***

Spiro Agnew's America. Theo Lippman, Jr. W. W. Norton and Co., Inc., New York. 1972.

In this political biography superimposed on county, state, and federal government political history, the author, who works for the *Baltimore Sun,* was able to

combine hometown familiarity and personal interviews to present an objective, well-organized study of a successful suburban politician who enjoys being Vice President.

Agnew grew as the theory and practice of city government and home rule grew, and the times made the man, as he went from Baltimore county politics to governor of Maryland and then Vice President. At first it appears to be an Horatio Alger tale, only to fizzle when it becomes evident that Horatio was more like a skyrocket in his ascent and Spiro more like a sparkler.

It is easy to empathize with the insecure child, the average student, and the not-quite-successful-lawyer. It was when Agnew began his political climb from Baltimore County politics in 1957 to the governorship in 1966 that the empathetic aura began to leave what Lippman calls an "East Coast version of Ronald Reagan."

"Spiro who?" has changed over the past four years to "Spiro what?" What does he stand for? What are *his* thoughts? What is the man like behind the image created for him by the Nixon team? A great deal of time has been spent refurbishing the Vice Presidential image to make him appear politically active and less insensitive, but it has been an uphill fight. He has become a household word, as predicted by Senator Mansfield, but not quite the word that was sought.

Agnew and Nixon had met in 1964, but it wasn't until 1968 that Nixon realized the liberal Republican governor of a Democratic state was potentially a key man in the coming election; only Nixon took Agnew seriously as a man and a politician. Subsequently, Agnew has emerged bigger than the well-known breadbox but smaller than the image the Nixon team has worked so hard to project.

Master of bad timing, fancy language, and the grand gaff, Agnew has taken on communism, the news media, students, and "radiclibs" in a declamatory and smug fashion. He gives the immediate impression of being a fearless crusader, an impression maintained by his speech writers, yet in retrospect he remains insecure and his smugness a cover-up.

His vendetta with the news media is not only personal, but he resents it as an estate with its own philosophy, rules, and interests—a popular Nixon administration view. He once expressed his opinion, in a few words, saying, "The press as a group seems to regard the First Amendment as its own private preserve."

His attacks on the academic community served to publicly isolate it from the mainstream, and he furthered this by taking on the "radiclibs," those individuals he felt were working behind the scenes and upholding the irresponsibles, the lawbreakers, on both street and campus.

Agnew once said that too often campaigns were based on ". . . the vilification of personalities, or in catch phrases that divert public attention from the very real problems of the community." This taut biography amply reveals that the man doesn't always pay attention to his own words. ***—Mrs. Marjorie R. Kohn, Supervisor, Reader's Services, Palo Alto City Library, Palo Alto, Cal.***

The Bill of Rights in Action: Freedom of Speech. Directed by Bernard Wilets. Produced and distributed by BFA Educational Media, 2211 Michigan Ave., Santa Monica, Cal. 90404. 1970. $300. 16mm sound film. Color. 21 min. (Jr./Sr. high, adult).

The Bill of Rights in Action: The Right to Privacy. Directed by Bernard Wilets. Produced and distributed by BFA Educational Media, 2211 Michigan Ave., Santa Monica, Cal. 90404. 1970. $300. 16mm sound film. Color. 23 min. (Jr./Sr. high, adult).

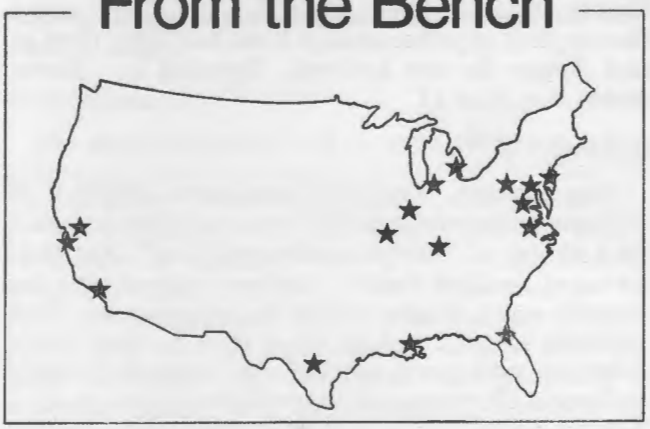
Freedom of Speech, and *The Right of Privacy* are similar films in format and presentation. Each attempts to describe the complexity of a particular constitutional issue by first presenting a model situation and then illustrating both sides of the issue in a courtroom scene. The conclusion is left open-ended, and the audience is asked to make up its own mind. This ending is particularly good for discussion purposes, and both films would contribute to an intellectual freedom program or would be suitable for classroom use.

Freedom of Speech explores the complex meaning of the constitutional right by asking, "Are there limits to this freedom or may an individual's speech be controlled when it threatens law and order?"

In the first scene, a neo-Nazi gives a speech outside a synagogue. An angry crowd soon gathers and a fight breaks out. The speaker is arrested and later tried and convicted on a charge of disturbing the peace. He appeals on the grounds that his constitutional right to free expression was violated. Speaking before the appellate court, the lawyers for the defense and prosecution effectively argue both sides of the issue. The defense insists that freedom of speech includes the freedom to voice unpopular opinions. The prosecution insists that there must be a balance struck between an individual's right to free expression and a community's need for law and order.

In *The Right to Privacy,* the question of what constitutes an unreasonable invasion of privacy by the police is realistically portrayed. In the first episode, police plant electronic surveillance devices to observe an alleged "bookmaking" operation in a nearby building. The surveillance activities result in the issuance of a search warrant. Evidence is seized and arrests are made. In a pre-trial hearing held on a motion to suppress the evidence, the defense lawyers argue that the police surveillance was a violation of their client's constitutional rights. Presentation of the issues is straightforward and unbiased, with final remarks by the judge further clarifying the issues involved. Final decisions are left to the viewer. ***—Patricia R. Harris, Assistant to the Director, Office for Intellectual Freedom.***

From the Bench



SCHOOLS

Los Angeles, Cal.

Superior Judge Robert A. Wenke, ruling in a case brought by seventeen-year-old James S. Weger, declared that school authorities have the "limited right" to regulate the use of "vulgar language" by students in *off-campus* publications. Weger was suspended last year because he distributed a letter headed "Vulgarity Resolution," protesting district rules about the use of obscenities. "The language employed here is probably not obscene," according to other decisions, Wenke noted, but the district has the right to regulate the scope of vulgarity. Reported in: *Los Angeles Times,* June 29.

Baltimore, Md.

U. S. District Court Judge Edward S. Northrop declared unconstitutional a Montgomery County school board policy prohibiting the distribution of student publications that advocate illegal actions or are "grossly insulting to any group or individual." Judge Northrop did uphold the right of school officials to review student publications and halt distribution of those believed to contain libelous or obscene language, but added that a principal's decisions in such matters be "expeditious" because they deal with free speech. "These children," he said, "must be allowed to say things right up to the point of actual disruption." Reported in: *Baltimore Sun,* June 8; *Washington Post,* June 9.

San Antonio, Tex.

The Federal Appeals Court ruled that five high school seniors were unlawfully suspended for distributing an off-campus underground newspaper, *The Awakening McArthur Free Press* (see May *Newsletter,* p. 91). The students' case was heard earlier by U. S. District Court Judge John H. Wood, Jr., who held their complaint was "wholly without merit." In its unanimous opinion, the Appeals Court severely criticized the school board's action, calling its policy a "constitutional fossil." The court concluded that there are situations when a school board may exercise authority over written materials students are allowed to hand out, but the *Free Press* had not been distributed during school hours nor on school property. The principal author of the opinion, Judge Irving L. Goldberg, concluded, "Perhaps it would be well if those entrusted with the teaching of American history and government to our students began their efforts by practicing the document on which that history and government are based." Reported in: *San Antonio Express,* June 10.

COLLEGE AND UNIVERSITY CAMPUSES

Bowling Green, Ky.

U. S. Judge Rhodes Bratcher dismissed a suit filed by the Western Kentucky University Associated Student Government to challenge the banning of the films *The Fly* and *Genesis Four* (see July *Newsletter,* p. 107). Judge Bratcher said that the university, in cancelling the films, "acted promptly, decisively, and reasonably . . . in utmost good faith and in an area where the school had a genuine and legitimate concern. . . . It is obvious that a college or university campus would be a convenient, exploitable outlet for a questionable film which is denied the normal community outlets by civilian law. However, no one has attempted to explain why the university officials should provide a testing place for such a film." Reported in: *Louisville Courier Journal,* June 3.

Columbia, Mo.

The U. S. Court of Appeals for the Eighth District ruled that University of Missouri officials did not violate the constitutional rights of Barbara Papish when they expelled her as a graduate student in 1969. Miss Papish was expelled because she worked for and distributed the *Free Press Underground,* which, in February 1969, published a drawing of a policeman with a club raping the Statue of Liberty and the Goddess of Justice. Articles in the issue also used language termed "indecent" by university officials. Miss Papish was given a hearing by the Student Conduct Committee which found she violated the general standard of student conduct and decreed her expulsion. The decision was appealed to and affirmed by the chancellor and board of curators. In affirming the expulsion, the Court of Appeals said, ". . . no provision of the Constitution requires the imposition of so high a value on freedom of expression that it can never be subordinated to other interests such as, for example, the conventions of decency in the use and display of language and pictures on a university campus." Judge Donald R. Ross dissented from the two-judge majority opinion, saying that the university had made no showing that it was preventing a disruption of its educational process in dismissing Miss Papish. He

said that, in the absence of such showing, the university violated her right of free expression. [The 1969 arrest of Miss Papish and three other students who distributed the *Free Press Underground* was the cause of a written protest by Mrs. Joan Bodger, then Children's Consultant for the State Library, who was ultimately fired for her stated position. Ed.] Reported in: *St. Louis Post-Dispatch,* June 22.

LICENSES

Windber, Pa.

Somerset County Judge Norman A. Shaulis ruled that a $25-a-day license fee on X-rated movies is not a violation of the U. S. Constitution. The Borough Council imposed the license fee on Cinema 56, the only local movie theater, because X-rated films attracted such large crowds that the council was forced to hire another full-time policeman. The theater management protested the tax as a violation of their First Amendment rights. Reported in: *Philadelphia Inquirer,* July 7.

LOYALTY OATHS

Washington, D.C.

U. S. District Court Judge Thomas A. Flannery ruled that the Oath of Allegiance required of all passport applicants is unconstitutional. Stating that the right to travel abroad is guaranteed by the Fifth Amendment, Judge Flannery said that "no serious national purpose" is served by denying passports to persons who refuse to subscribe to the oath. Reported in: *Washington Post,* June 27.

OBSCENITY — ACQUITTALS

Camden, N.J.

The state Supreme Court reversed the conviction of Edward Muldowney, charged with possessing obscene materials, because the search warrant used in the case was "constitutionally intolerable." In the court's opinion, "The warrant gave no guidelines to the officer as to what kind of items were to be seized . . . such a warrant is constitutionally intolerable because it strikes at the foundation of the Fourth Amendment's requirement that warrants describe the items to be seized with particularity." Reported in: *Camden Courier Post,* June 22.

Stockton, Cal.

After spending seventeen days on an obscenity trial and reaching a verdict of acquittal, Municipal Court Judge William Woodward seriously questioned whether such cases should be brought to trial. Judge Woodward estimated that this trial cost the taxpayer at least $20,000 and questioned whether the cost was justified. County District Attorney General Joseph Baker stated that he plans to prosecute such cases and bring them to trial despite the cost involved. Reported in: *Sacramento Bee,* June 11.

San Jose, Cal.

Pete Kuzinich, San Jose's best-known exhibitor of hardcore pornographic movies, was once more acquitted on a charge of "exhibiting obscene films." Kuzinich, owner of the Pink Poodle, has been charged with five separate counts of obscenity in the last two years. Two ended in acquittal and the other three in hung juries. After the most recent acquittal was announced, Judge R. Donald Chapman said this could be the last prosecution for adult films in that area. Kuzinich's attorney, Michael Kennedy, introduced a poll he had conducted by the Field Research Corporation showing that "most Californians couldn't care less about pornography and think there should be little or no regulation." Reported in: *San Francisco Chronicle,* June 23.

Jacksonville, Fla.

Circuit Court Judge Marion Gooding stopped prosecution of Earl Glott of the City News Center on charges of selling obscene magazines, when Florida's obscenity statute was rendered unenforceable. The law was ruled unconstitutional in 1970 by a three-judge panel, which enjoined officials from enforcing the law. However, U. S. Supreme Court Justice Hugo Black overturned the injunction allowing the state to continue to enforce the obscenity law, while on appeal to the Supreme Court. This temporary stay order was dissolved in June. Reported in: *Jacksonville Journal,* July 1.

Detroit, Mich.

A local anti-obscenity ordinance aimed at adult bookstores, X-rated movie theaters, and nude model services was ruled unconstitutional by U. S. District Court Judge Philip A. Pratt who said the three-month-old ordinance was "obviously overbroad and vague" and "constitutionally defective." Detroit Councilman David Eckerhard, a backer of the ordinance, described the ruling as "a typical example of what the courts are doing; we are having government by the courts, not by referenda or elected officials." Reported in: *Flint Journal,* June 21.

OBSCENITY — CONVICTIONS

Decatur, Ill.

Following complaints from the Citizens for Decency (a local antipornography group), F. Dufay Montgomery, owner of Morey's News Stand, was fined $200 for sale of pornographic material. The arrest was made under an Illinois Supreme Court ruling allowing police

to arrest immediately any person selling material defined obscene in prior court decisions. Reported in: *Decatur Review,* June 1.

New Orleans, La.

The state Supreme Court reversed two lower court actions and upheld two state laws used to seize allegedly obscene movies at Shreveport and New Orleans theaters. In the Shreveport case, the court found the state's "abatement of nuisances" statute to be constitutional. It was used to halt the showing of *The Stewardesses.* In the New Orleans case, the court overturned a lower court ruling that the search warrant used to seize the films was invalid. The films were confiscated after a policeman viewed them, filed an affidavit describing the films, and secured a search warrant. The trial court held that a prior adversary hearing to determine obscenity was required before seizure. That decision was overturned by the Supreme Court ruling. Reported in: *New Orleans Times-Picayune,* July 2.

Richmond, Va.

The state Supreme Court upheld a lower court ruling which found Danville theater owner Bobby A. Price guilty of showing obscene movies. The Richmond court reaffirmed the belief that *local* community standards determine when a movie or book is obscene. In the appeal to the Supreme Court, Price's lawyer argued that the lower court erred in ruling that the community standards applicable in the case were those of Danville, rather than those of the state or nation. Reported in: *Richmond News Leader,* June 12.

PRISONS

South Bend, Ind.

In a suit filed by attorneys for two legal service organizations on behalf of five inmates at the Indiana State Prison and as a class action for all other inmates, Federal Court Judge Robert A. Grant issued a temporary restraining order prohibiting Department of Correction officials from censoring or interfering in any way with mail between the prisoners and the attorneys. Reported in: *Indianapolis Star,* July 9.

Kunstler Cops Out

Attorney William Kunstler announced he will not file suit against Mt. Vernon High School for barring him and members of the Gay Activist Alliance from speaking at a student-run seminar. (See July *Newsletter,* p. 106.) The decision came after Kunstler failed to get local backing from pupils and their parents in the lawsuit. Reported in: *White Plains Reporter Dispatch,* May 6.

Report On The Report

A Series* of Reviews on the **Technical Reports** of the Commission on Obscenity and Pornography

Volume I: Preliminary Studies (Technical Report of the Commission on Obscenity and Pornography) USGPO, Washington, D.C. $1.75. Stock Number 5256-002.

by Annette Phinazee

Mrs. Phinazee is Dean of the School of Library Science, North Carolina Central University, Durham, and a member of the ALA Intellectual Freedom Committee.

This volumes describes research performed prior to and during the initial phase of the Commission's existence. Theoretical analysis as well as empirical observations are included, although the Commission decided to emphasize the latter.

Literature Reviews are presented in the first four papers:

A. Cairns, Robert B. and others. "Psychological Assumptions in Sex Censorship: An Evaluative Review of Recent Research (1961-1968)."

Most of the studies of "how psychosexual stimuli influence behavior and attitudes" have used "interview-survey procedures" to obtain "self reports of sexual arousal." However, there has been an increase, with promising results, in the use of "laboratory-experimental" procedures.

Reactions to materials and to certain experiences have been self-reported or observed. Researchers have attempted to induce changes in viewing behavior, to condition sexual responsiveness, and to "identify some of the consequences of sexual arousal."

The related areas of "aggression development and instigation" and "the ontogeny of sexual behaviors" were explored for their relationships to "the problems of sexual instigation and control." Also given are questions for research on the elicitation of sexual arousal and on the effects of pornography on attitudes and behavior.

Conclusions of Cairns and the other writers are that the experimental method, with samples consisting of varied characteristics, and including comparative analysis not restricted to criminal behavior, is the best procedure for research in this area; and certain experiments may be performed in the laboratory for basic research, but other "natural" experiments, where exposure to obscene materials is not controlled by the experimenter, are needed for applied research.

*This series results from the ALA Intellectual Freedom Committee's discussion of the *Report* of the Commission on Obscenity and Pornography. Each of the nine technical reports has been analyzed by members of the Committee and the nine individually-authored reviews will appear in the *Newsletter on Intellectual Freedom.*

B. Mann, Jay. "Experimental Induction of Human Sexual Arousal."

Studies were grouped in this review of the literature according to the "major classes of response measures employed":

1. Physiological measures of arousal include respiration rate and blood volume, galvanic skin response, phalloplethysmographic measurement, pupillary dilation, average evoked potential, acid phosphatase excretion, and direct measurement of sexual arousal. However, responses are influenced by environment, subject, and nature of the stimulus, and physiological data cannot be the sole basis for differentiating erotic stimuli.
2. Subjective ratings of sexual arousal are less frequently used by experimental researchers, but they can yield valid data if "appropriate experimental and statistical controls" are used. They should be combined with other measures.
3. Behavioral measures of sexual arousal should also be interpreted in relation to other factors.

Mann concluded that exposure to pictures or literary descriptions of nudes or sexual activity does evoke certain changes in subjects. "Direct observation of somatic changes in genital and other erogenous areas, augmented by subjective reports, yields the most comprehensive and straight-forward measures of arousal. . . . Human sexual arousal is a complex physiological and psychological process, comprising many response components and influenced by numerous individual stimuli and environmental variables."

C. Zuckerman, Marvin. "Physiological Measures of Sexual Arousal in the Human."

This paper is limited to a description of quantifiable physiological measures. It is possible to define arousability by a series of behavioral and verbal report measures of sexual arousal to standard stimulation. "Psychological or visual and auditory stimuli are more easily standardized and allow the researcher to sample a wider variety of subjects." The following observations were made:

1. Sexual arousal can be measured with tests involving the central nervous system, particularly the neocortex and the visual sense; cardiovascular changes (blood pressure seems to be one of the few variables that show a graded reaction); penile erection measures (the most sensitive index of arousal in the male); temperature only on or in the genitals; adrenalin and nonadrenalin increases in females; and urinary and phosphatase secretion in males.
2. Emotional specificity is difficult or not well defined for tests of the autonomic nervous system; hormones (no studies of humans were found); skin potential and skin resistance; scrotum and testes; vaginal blood flow; uterine contractions; and pupillary response.
3. Respiratory and evoked cortical response apparently will not be useful in assessing sexual arousal to visual stimuli measures.

Marvin's conclusions are that this is a relatively new area for which methods must be improved and developed. Much of the work is exploratory rather than hypothesis-testing; it lacks adequate controls, and the methodology is poor. Techniques are particularly needed for measuring female sexual arousal. Scales are needed for measuring the dimensions of stimuli. Auditory and other stimuli should be included in addition to visual stimuli. Verbal reports of other reactions should supplement physiological measurements. Failure to consider the human qualities of subjects can lead to faulty conclusions.

It is unlikely that the same peripheral autonomic indicator will be sensitive to sexual arousal in all persons. The same type of stimuli tends to diminish in intensity when presented repeatedly. Results may be radically different depending upon what kind of response or change measure is used.

D. Kupperstein, Lenore. "The Role of Pornography in the Etiology of Juvenile Delinquency."

Proof that pornography causes delinquency is not found in the comprehensive empirical investigations and 39 other books and articles reviewed in this article. Nor were recommendations made to investigate the relationship discovered. *However, the volume and traffic of erotic materials may have become influential since these studies were made, and continued search for a relationship was recommended.*

Theoretical Analyses in two papers "explore the applicability of theoretical systems developed in other contexts to understanding issues related to pornography":

A. Holland, Norman N. "Pornography and the Mechanisms of Defense."

The psychological processes of literary works and of readers are compared. Subjects were tested to identify their prevailing types of fantasy and patterns of defense. Two strikingly different subjects were chosen and their reactions to the same story were compared. The reader's own defenses were dominant.

The author concluded that readers of pornography react similarly to readers of general fiction—choosing materials that concern them, and applying the text to their own defenses. He also stated that : (1) "there is *no* extant scientific evidence that any reading or other literary experience makes any permanent change in basic character structure . . . "; (2) there is "no way to isolate a pathology associated with a literary text alone . . . "; and (3) there is "no social or therapeutic basis for interfering with the freedom to read . . . . "

B. Brock, Timothy C. "Erotic Materials; a Commodity Theory Analysis of Availability and Desirability."

This article relates the probable reactions of individuals who desire information that is not freely available to the pornography control issue. "A "commodity theory," with illustrations and implications for the "control" of erotic material, is given to show that communication (erotic material) will increase in effectiveness as the number of recipients declines, as sources become scarce, as communicators are coerced and must conceal their activities, as the efforts of recipients must be increased to obtain or understand the material, and as materials are restricted.

Preliminary Empirical Observations were reported by the following authors:

A. Gilligan, Carol and others. "Moral Reasoning About Sexual Dilemmas: The Development of an Interview and Scoring System."

Kohlberg's six stages of moral reasoning were used to compare the reactions of 50 high school students to standard and sexual dilemmas. An issue rating method was used. The level of reasoning was higher on the standard dilemmas and among girls. The need for additional research and improved sex education was indicated.

B. Thornberry, Terrence P. and Silverman, Robert A. "Exposure to Pornography and Juvenile Delinquency; the Reationship as Indicated by Juvenile Court Records."

The files of 436 cases were examined in detail and recorded on coding sheets. Only four percent of the cases were sex-specific offenses. There was "absolutely no mention of pornography or erotica in any of the material." There was no evidence to support a relationship between use of pornography and sex crimes among juveniles.

C. White, David M. and Barnett, Lewis D. "College Students' Attitudes on Pornography; a Pilot Study."

Three hundred students from five universities were interviewed during the summer and they described their exposure to pornography as follows: They learned about it initially in childhood or adolescence from friends, but experienced no signficant effects. The number who voluntarily expose themselves frequently to pornography is small. A dominant response to pornography was not identified. "There is little agreement as to whether various verbally defined explicit sexual stimuli are pornographic." An age restriction on access to pornography was the one most frequently proposed.

D. Roach, William J. and Kreisberg, Louise. "Westchester College Students' Views on Pornography."

Responses on questionnaires completed by 625 students in eight colleges led to the following conclusions: They do not know exactly what pornography is; many subjects were initially exposed to pornography at home, through relatives, when they were children; their attitudes were not influenced significantly; pornography is seldom a moral issue; women are more conventional in their responses than the men; a majority favor control of or restriction of access to pornography by the young.

E. Schiller, Patricia. "Effects of Mass Media on the Sexual Behavior of Adolescent Females."

Black, pregnant, junior and senior high school girls were interviewed; white, junior college girls were given a questionnaire. The 487 subjects revealed that they had rarely been exposed to hardcore pornography—"it was not a casual or significant contributory factor" in their behavior. They were sexually aroused ("love" feelings and fantasies were awakened) by common forms of mass media. The younger girls responded most to recorded music and television programs; movies and books stimulated the college girls. *Candy* was the book mentioned the most often.

Effects of reading on children and youth that were mentioned in the various reports are:

1. Jakobovitz (from Cairns): 20 college-age males and females had similar responses and reported a cumulative effect in the reading of erotic materials. "Hard-core obscenity" aroused the females more than the males.
2. Walters and his collaborators (from *Cairns*): Sexually significant responses of undergraduate men were "disinhibited by observing the behavior of another individual." If the conclusions of this study prove to be correct, "it would follow that those who are likely to be influenced by the sexual behavior of models are the least stable in their own sexual patterns. Children are a primary example."
3. Martin (from Cairns): Situational effects such as settings and circumstances are important factors in the sexual arousal of college men.
4. Byrne and Sheffield (from *Cairns*): "Exposure to hardcore pornography is a stressful experience, even for 'sophisticated' normal young adults."
5. Beach (from *Zuckerman*): Sexual behavior is influenced by "conditions of rearing and early exposure. Mammals are not innately responsive to the sexual cues provided by other members of their species."
6. Holland: "At best, legal aids can, at times, stave off severely pathological reactions in children or childlike adults. . . . Their help is short-term, while their long-term effect may be weakening. . . . Pornography may develop the very strengths it is public policy to encourage, while censorship, to the extent it is effective, serves in the long run as a weakener of those strengths."

7. Brock: Restricting erotic materials makes them more desired and sought. Young adults are the group most affected by these controls.
8. White and Roach: A majority of college students in these two studies reported that they were initially exposed to pornography when they were children, through friends and relatives, and frequently at home. Although they reported that they were not significantly influenced by these, they did recommend that there be restrictions against the exposure of children to pornography.

SUMMARY

The determinants and effects of pornography have not been identified, but research to date indicates that significant progress has been made toward achieving this goal. Complicated psychological and physiological measures of the different erotic stimuli must be combined in various ways to obtain the most accurate conclusions. Recognition that there are cumulative effects from exposure to pornography suggests that intensive long-term studies of children are necessary.

Access . . . . *(from page 125)*

The word "age" was incorporated into Article V of the *Library Bill of Rights* as a direct result of a preconference entitled "Intellectual Freedom and the Teenager," held in San Francisco in June, 1967. One recommendation of the preconference participants was, "That free access to all books in a library collection be granted to young people." The preconference generally concluded that young people are entitled to the same access to libraries and to the materials in libraries as are adults and that materials selection should not be diluted on that account.

This does not mean, for instance, that issuing different types of borrowers' cards to minors and adults is, *per se,* contrary to the *Library Bill of Rights.* If such practices are used for purposes of gathering statistics, the various kinds of cards carry no implicit or explicit limitations on access to materials and services. Neither does it mean that maintaining separate children's collections is a violation of the *Library Bill of Rights,* provided that no patron is restricted to the use of only certain collections.

The Association's position does not preclude isolating certain materials for legitimate protection of irreplaceable or very costly works from careless use. Such "restricted-use" areas as rare book rooms are appropriate if the materials so classified are genuinely rare and not merely controversial.

Unrestrictive selection policies, developed with care for the principles of intellectual freedom and the *Library Bill of Rights,* should not be vitiated by administrative practices which restrict minors to the use of only part of a library's collections and services.

Approved by the ALA Council, June 30, 1972.

Highlights . . . . *(from page 126)*

Slaughterhouse Five Appeal

Mrs. Krug reported that, on June 12, the Michigan Court of Appeals reversed an earlier Oakland County Circuit Court decision barring the use of Kurt Vonnegut's *Slaughterhouse Five* in Rochester, Mich. public schools. [See *Newsletter,* November 1971, p. 121.] The Appeals Court ruled that the trial court overstepped its bounds when it ventured into the area of censorship. The court said, "The trial court . . . substituted its own judgment of what is 'right' and 'moral' for that of the students, the teacher, and the duly constituted school authority. Such action is resolutely forbidden by the Constitution." The Foundation contributed $1,000 in June, 1971, to a fund to appeal the lower court decision.

Ellis Hodgin Appeal

The board received word that the U. S. Supreme Court had not yet taken any action on the appeal of Ellis Hodgin, formerly librarian at the Martinsville, Va., Public Library, who was fired shortly after he joined with other parents to file a suit challenging a religious education course at the school his daughter attended. The Foundation granted Mr. Hodgin $550 in 1971 to perfect his appeal to the Supreme Court. [On June 29, the Supreme Court refused to hear Mr. Hodgin's appeal. At the same time, it reviewed the cases of Robert P. Sindermann and David Roth, which involved issues similar to those in Hodgin's. In a 5-to-3 decision on the *Roth* case, the court ruled that a state-employed teacher has a right to a hearing prior to non-renewal of a contract if he can show that non-renewal seriously damaged "his standing and association in his community." In the *Sindermann* case the court decided that such teachers have a right to a hearing if they were led to believe by local practice that they would be retained. For Mr. Hodgin, the decisions mean that all judicial recourse now is exhausted.]

New Trustees Seated

The trustees elected to the board during balloting from May 1 to June 1 were seated during the board's afternoon sesison. Elected to two-year terms were: Alex P. Allain, William C. Cunningham, Stanley Fleishman, Everett T. Moore, and Mrs. Carrie C. Robinson.

Officers For 1972-73

The following officers were unanimously elected:

President: Alex P. Allain
Vice President: Everett T. Moore
Treasurer: Richard L. Waters
Secretary: Mrs. Judith F. Krug

Executive Committee Elected

The board approved an Executive Committee for 1972-73 composed of Stanley Fleishman, Everett T. Moore, Richard L. Waters, Joslyn N. Williams, and Alex P. Allain, chairman.

Intellectual Freedom Committee Report To Council

June 30, 1972

(Edited for publication)

At the Midwinter Meeting, the Intellectual Freedom Committee (IFC) reported that it was considering several matters concerning the intellectual freedom of minors. On this occasion, having completed its deliberations, the Committee brings you an action item, *Free Access to Libraries for Minors,* An Interpretation of the *Library Bill of Rights,* for Council approval as a policy of the American Library Association. [See p. 125 for the text of the policy.]

In its Midwinter Report, the Committee stated its concern that the portion of Article V of the *Library Bill of Rights,* which reads, "The rights of an individual to the use of a library may not be denied or abridged because of his age. . . ," has not been observed by some libraries. *Free Access to Libraries for Minors* will, if approved, provide guidance to libraries to help them comply with ALA policy as stated in the *Library Bill of Rights.* The IFC has approved this interpretation and has presented it to the Executive Board.

At this time, therefore, I

> MOVE the approval of *Free Access to Libraries for Minors*—An Interpretation of the *Library Bill of Rights.* [The Council unanimously approved the document.]

The Committee also completed action on two other concerns reported to you at Midwinter—the possible misuse of weeding for veiled censorship of library collections and alleged sexism, racism, and other "isms" in library materials. We have unanimously approved two advisory statements which have been distributed to you. I merely call your attention to these two items, "Advisory Statement on Reevaluating Library Collections," and "Advisory Statement on Sexism, Racism and other 'isms' in Library Materials." The IFC has authorized the Office for Intellectual Freedom to distribute them. [Copies are available from the Office for Intellectual Freedom, 50 East Huron, Chicago, Ill. 60611.]

The Committee also considered several items requiring further information and study before it can recommend action to Council. These include the right of prisoners in penal institutions to have access to library materials, the problems of freedom of access to government documents, and the alleged suppression or attempted suppression of programs in public broadcasting. We received major reports on prison libraries [See p. 143] and government document distribution and have acted on the recommendations in them, which will lead to further Committee involvement in these important areas.

The Committee also considered an item brought to its attention by the Children's Book Council. The letters-to-the-editor section of *School Library Journal,* December 1971, contained the following letter:

> Maurice Sendak might faint but a staff member of Caldwell Parish Library, knowing that the patrons of the community might object to the illustrations in *In the Night Kitchen,* solved the problem by diapering the little boys with white tempera paint. Other libraries might wish to do the same.

The Intellectual Freedom Committee deplores such censorship which clearly violates the *Library Bill of Rights.* It will prepare an advisory statement at the earliest possible date reaffirming the principle that defacement and expurgation of library materials already selected and acquired by libraries clearly denies library patrons their right of access to the materials and infringes equally on the rights of authors, artists, and publishers.

The major portion of IFC meeting time was devoted to a discussion of the events surrounding the jailing of Mrs. Zoia Horn for contempt of court for her refusal to testify in federal court in the so-called Harrisburg 7 trial. The Committee met with Mrs. Horn and invited her to help clarify the issues. To complete action on this matter, two extra meetings not listed in the printed agenda were held. Because of problems in finding a meeting place, the Committee's meeting room was not publicized. Unfortunately, this was misinterpreted by some to mean that the Committee was holding a secret session.

After its lengthy discussions, the IFC prepared and unanimously approved the following statement:

> The American Library Association recognized factual grounds for Mrs. Horn's actions which were a protest against infringement of academic and intellectual freedoms.
>
> The *Library Bill of Rights,* Article IV, explicitly encourages librarians to actively support and cooperate with those individuals and groups who are engaged in resisting censorship and the abridgements of the freedom of expression and of access to information.
>
> It is obvious from Mrs. Horn's published statement, which she had attempted to present to the court at the time of her refusal to testify, that the above principles were the basis for her actions in protest.
>
> Therefore, the American Library Association commends Mrs. Horn's commitment and courage in defense of the principles of intellectual freedom.

Mrs. Horn indicated her approval of the statement.

The Executive Board has approved this statement and has authorized its substitution for the Board Action taken on March 18, 1972.

At this time, therefore,

I MOVE the approval of this statement. [The Council approved the statement regarding Zoia Horn.]

The Executive Board requested the IFC to study the "Resolution on Governmental Intimidation," adopted by the Council at Dallas, June 1971. The Committee has studied the "Resolution on Governmental Intimidation" and agrees with its intent but finds it inadequate in its present form due to its narrow focus. Gevernmental intimidation is such an important and pervasive problem that the ALA policy on this issue must be clarified. The present resolution ties ALA policy to a specific statute and its use is thereby limited. The Committee believes that heavy-handed enforcement of laws can inhibit intellectual freedom. The misuse or improper use of laws or administrative procedures against those expressing unpopular opinions is also at issue.

The IFC therefore proposes to develop a statement against governmental intimidation to be presented no later than Midwinter 1973, and at that time will recommend its substitution for the present ALA "Resolution on Governmental Intimidation." The Executive Board approved this recommendation.

The Executive Board also referred to the IFC the question of Raiza Palatnik and Amaliat Trachtenberg, librarians imprisoned in the USSR. At the direction of the Executive Board, President Doms wrote to William Rogers, the Honorable Secretary of State, calling the matter to the attention of the U. S. State Department and requesting that the Association be furnished the facts relating to these two individuals. On June 4, 1972, the State Department replied, reporting the scant information it had been able to secure—that Ms. Palatnik was tried in June 1971 for allegedly "slandering the Soviet political and social system," had pleaded not guilty, was convicted and sentenced to three years' imprisonment in a labor camp and Ms. Trachtenberg was sentenced to three years' imprisonment. The State Department was unable to secure firm information concerning the charges brought against Ms. Trachtenberg.

The State Department assured President Doms of its sympathy for the plight of Soviet Jews and others who are denied the right to emigrate.

On the basis of this letter and the activities it reports, the Intellectual Freedom Committee offers the following resolution:

> *Whereas,* The concerns of librarians throughout the free world have been addressed to the case of librarian Raiza Palatnik, currently imprisoned in the Soviet Union, and
>
> *Whereas,* The President of the American Library Association addressed to the U. S. Department of State a letter, dated May 11, 1972, concerning the plight of Raiza Palatnik and her colleague, Amaliat Trachtenberg, who is also imprisoned, and
>
> *Whereas,* The U. S. Department of State replied on June 14, 1972, expressing the policies of the U. S. Government, as follows:
>
> > U. S. government spokesmen have repeatedly called upon the Soviet government—in public statements here, in representations in Moscow, at the United Nations, in the Inter-Governmental Committee for European Migration, and before other international bodies—to allow Soviet citizens to exercise the rights due them under the Universal Declaration of Human Rights and the Soviet Constitution itself.
>
> *Therefore, Be It Resolved,* That the American Library Association express its appreciation to Secretary of State William P. Rogers and his staff for their interest in the case of Raiza Palatnik and Amaliat Trachtenberg, and
>
> *Further,* That the American Library Association express its full support of the U. S. Government in its pursuit of the rights of all citizens due them under the Universal Declaration of Human Rights, and
>
> *Further,* That a copy of this resolution be submitted to the Secretary of State in support of U. S. policy and to the Secretary General of UNESCO.

I MOVE the adoption of this resolution. [The resolution regarding Raiza Palatnik was revised by the Council. In revision, the first and second "resolved" paragraphs, including an expression of appreciation to Secretary of State Rogers and a reference to the Universal Declaration of Human Rights, were deleted and replaced by the following "resolved" paragraphs:

> *Therefore, Be It Resolved,* That the American Library Association vigorously condemns the harrassment of Raiza Palatnik and Amaliat Trachtenberg, both Russian librarians and Jews, by the Soviet Government as reported in the October and December 1971 issues of the *Assistant Librarian;* and
>
> *Further,* That the American Library Association urges the United States Government to intensify its efforts to protect the rights of Raiza Palatnik and Amaliat Trachtenberg and the rights of all citizens under the Universal Declaration of Human Rights; and

The final "resolved" paragraph remained as submitted by the IFC. The resolution, with revisions, was approved by the Council.]

The Committee also studied a censorship case referred to it by the New Jersey Library Association Intellectual Freedom Committee. Mr. Victor L. Marchetti, a former employee of the Central Intelligence Agency (CIA), has a contract with Knopf to write a book about his CIA experiences. The federal government has sought to have the writing of the book enjoined on grounds that it would "result in grave and irreparable injury to the interests of the United States." Since the book has not been written or published, this appears to be a clear-cut case of prior restraint. For ALA to take a strong stand on this attempted violation of the First Amendment is clearly consistent with its previous positions on the *New York Times* and the Beacon Press. The Intellectual Freedom Committee, therefore, has prepared the following resolution for Council approval:

Whereas, The action of the U. S. Government against Victor L. Marchetti, former employee of the Central Intelligence Agency, has drawn into serious question the issue of prior restraint, which is in violation of the basic constitutional rights of an individual, and

Whereas, The rights of freedom of the press are guaranteed by the U. S. Constitution, and

Whereas, The American Library Association strongly supports the right of the public to hear what is spoken and to read what is written, and

Whereas, The American Library Association restates its belief that it is a gross abuse of the purpose and intent of security classifications of information to suppress disclosures which do not directly and immediately endanger national security, and

Whereas, The American Library Association does not believe an individual can sign away his constitutional rights,

Now, Therefore, Be It Resolved, That the American Library Association, in accordance with its declared policies on intellectual freedom, upholds the principles of freedom of the press and freedom of of the individual to express himself without prior restraint as guaranteed under the U. S. Constitution, and

Be It Further Resolved, That the American Library Association endorses Mr. Marchetti's stand in his current battle to preserve his right to freedom of expression and to exercise his full responsibility to keep the American people informed of the actions of its government, and

Now, Therefore, Be It Further Resolved, That the American Library Association urges further Congressional investigation of the policies of government relating to the classification and declassification of information and the use of federal loyalty oaths or anti-divulgence of information statements to enforce prior restraint of the individual's right to free expression, and

Further, That this be communicated to the President of the United States, the Attorney-General of the United States, the U. S. Congress, and the news media.

I MOVE the adoption of this resolution. [The Council unanimously approved the resolution.]

The Committee also discussed the problem regarding the relationship of the International Federation of Library Associations (IFLA) to UNESCO. However, it learned that the withdrawal of the Library Association of the Union of South Africa from IFLA had removed the only impediment to IFLA's good standing with UNESCO. Therefore, no action was taken.

The Committe has continued to study the technical reports of the U. S. Commission on Obscenity and Pornography. The *Newsletter on Intellectual Freedom* will provide further information, reviews, and summaries of the reports from time to time. [See p. 135.]

The U. S. Supreme Court handed down its decision yesterday [June 29] concerning the extent of Senator Gravel's immunity as it relates to his release of the Pentagon Papers. The court specifically denied extension of his immunity to Beacon Press, publisher of the Senator Gravel edition of the *Pentagon Papers.* Beacon Press announced that it will fight on First Amendment grounds the Federal court case brought against it. Alerted by a resolution prepared by the IFC, the American Library Association was the first organization to support Beacon Press. The Committee will follow this case closely in order to provide Beacon Press appropriate support as needed. We have also alerted the Freedom to Read Foundation.

We wish to bring one other matter to your attention. *American Libraries* has experienced a large budget cut for the new fiscal year, forcing the editor to eliminate the "Intellectual Freedom Column" after the June, 1972 issue. The Committee is alarmed that it will have no vehicle to bring intellectual freedom matters to *all* members of ALA despite the establishment of intellectual freedom as a high priority of the Association.

Respectfully submitted,

Alex P. Allain
Edwin Castagna
Paul B. Cors
Homer B. Fletcher
Mrs. Elizabeth Mann
R. Kathleen Molz
Mrs. Annette L. Phinazee
Jean-Anne South
John Veblen
Sam G. Whitten
Richard L. Darling, Chairman

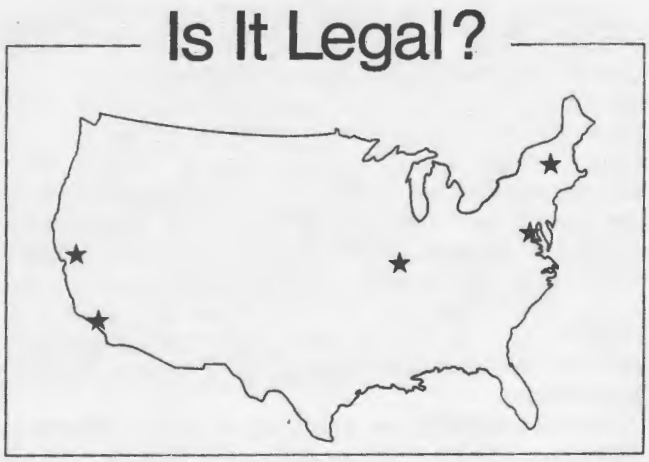
Intellectual Freedom Committee

CDL Investigated in Minnesota

The Minnesota Attorney General's office said that Citizens for Decent Literature (CDL) is under investigation to determine if it complies with state charities and consumer fraud statutes. An assistant attorney general told a *Dispatch and Pioneer* reporter that it appears CDL is spending the bulk of the money it received *for fund raising* and very little is used for its purported purpose of fighting pornography. Reported in: "Action Line," *St. Paul Dispatch and Pioneer Post,* June 19.

Call Mike

Michael Jack Azcuedo received unexpected results from his March classified ad in the *Sacramento Bee*—120 days in jail for selling obscene materials. His ad read: "Adult entertainment. Movies, nighttime readers, and novelties in your home or party. Call Mike." Police and district attorney's investigators called Mike and arrested him shortly after renting three 8mm films. Reported in: *Sacramento Union,* May 19.



LEGISLATION

Los Angeles, Cal.

City Councilman Robert J. Stevenson introduced a resolution asking the Federal Communications Commission to impose a two-year moratorium on reruns of television shows. He said, "Reruns started as early as March 15 this year, and that's earlier than any previous year. Television networks have shown a callous disregard for the entertainment of the viewing public." Reported in: *Washington Post,* May 25.

Sacramento, Cal.

The state senate voted 23-10 to pass an antipornography bill which would preclude minors (under eighteen) from purchasing *Playboy* and seeing movies such as *Patton, Diary of a Mad Housewife, Five Easy Pieces,* and *The Last Picture Show.* Violations would be punishable by a fine of not more than $2,000 and up to six months in jail. The bill goes next to the Assembly Criminal Justice Committee. Reported in: *Los Angeles Times,* June 14.

Albany, N.Y.

Governor Nelson Rockefeller carried on the crusade against pornography by signing legislation intended to curb the showing of "offensive" sex films at drive-in theaters where the screen is visible from a public thoroughfare. He also signed a companion measure that empowers the state Supreme Court to issue injunctions to law enforcement officials to prohibit the sale, distribution, or display of obscene movies. Reported in: *New York News,* June 9.

Washington, D.C.

The Chesapeake & Potomac Telephone Company asked for an amendment to the still pending D. C. Law Enforcement and Criminal Justice Act to prevent distribution of any material explaining how to circumvent telephone billing procedures with false credit card numbers or with electronic devices. The action was prompted by several articles published in the D. C. underground newspaper, *Quicksilver Times,* that describe ways of thwarting the telephone company. Reported in: *Washington Post,* June 8.

CASES PENDING

St. Louis, Mo.

Suit was filed in Circuit Court to ban the sale of the book, *The Happy Hooker,* the autobiography of Xaviera Hollander, a prostitute. Prosecuting Attorney Gene McNary alleges that the book is obscene under Missouri law. An "equity suit" rather than a criminal action was filed in order to obtain a court ruling on the question of obscenity. Named as defendents were the F. W. Woolworth Co. and a local Woolworth manager. Reported in: *St. Louis Post-Dispatch,* May 18.

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Burning Yourself Out: The Prisoner's Right To Read

R. Kathleen Molz*

Miss Molz, Chief, Planning Staff, Bureau of Libraries and Educational Technology, U. S. Office of Education, Washington, D. C., is a former editor of Wilson Library Bulletin, a current member of the ALA Intellectual Freedom Committee, and an elected trustee of the Freedom to Read Foundation.

"Asked how he survived at Holman, one inmate said: 'One, you shoot dope. Two, you find yourself a boy and make out sexually. Three, you burn yourself out reading. Four, you just sleep.' "

—Ben H. Bagdikian, journalist, in the *Washington Post,* Feb. 1, 1972.

BACKGROUND

On an average day, the average American gets up, brushes his teeth and draws on his clothes, goes to work, lunches, comes home in the evening, plays with the kids, watches the late TV show, and goes to bed. But for 1,300,000 Americans, an "average" day is spent in any one of the multiple number of correctional institutions in the United States. In addition to the approximately 460 state and federal institutions for offenders sentenced to long terms,[1] there are over 4,000 locally administered jails which have the authority to retain adult persons for 48 hours or longer. Among all jails, over half the inmates (52 percent) fall into the "not convicted" category, that is, persons who are pretrial detainees or those not yet arraigned or being held for other authorities. Of the 3,319 jails, which are county operated or municipally operated in communities of over 23,000, nearly 90 percent are without any educational facility.[2]

Supplying library service to this diverse universe of federal, state, and local prisons is an herculean task, one that was not even significantly addressed until the twentieth century. Prison libraries, if they existed at all during the nineteenth century, were chiefly the benefactions of humane chaplains who passed out religious and spiritual works to the inmates. At the turn of the century, the American Library Association (ALA) proved itself active through its committees on Libraries in Federal Prisons and on Hospital Institution Libraries (the latter committee is the forerunner of the present Association of Hospital and Institution Libraries). The 1930s, however, proved to be a period of more marked activity, as professionally trained librarians accepted positions in some of the larger penal institutions, the American Prison Association (APA) formed its Committee on Institution Libraries, and the first *Prison Library Handbook* was published under the joint auspices of the ALA and APA.[3]

During the following decade, *Objectives and Standards for Libraries in Adult Prisons and Reformatories* were approved by both the ALA and the APA. These were further revised in 1962, and again in 1964, when they appeared as a chapter in the *Manual of Correctional Standards* issued by the American Correctional Association (the former APA). These standards are currently available in reprint form from ALA/AHIL. The entire *Manual* is, at present, being revised.

Exemplary current data on the actual conditions of correctional institutional libraries are practically nonexistent. In 1959, Eleanor Phinney, former Executive Secretary of AHIL, conducted a survey under the auspices of the American Correctional Association (ACA.) Again, in 1964-65, the ACA and AHIL participated in a jointly sponsored inventory of library resources in correctional institutions for the ALA publication, *National Inventory of Library Needs.* Since only about one half of the universe of penal institutions (the survey was limited to federal and state-supported correctional institutions for those 16 years and over) responded, the data must be considered scanty and uneven.

In an effort to yield a clearer perception of present-day prison library service, the U. S. Office of Education made a grant in the spring of 1972 to the Institute of Library Research (University of California, Berkeley) to support a survey of library and information problems of prison populations. Sampling techniques involving both federal and state-supported penal institutions will be employed in selected states, and the researchers propose to develop a handbook of current practices regarding prison informational services as a guide to prison administrators and others interested in this area of service.

ISSUES INVOLVING INTELLECTUAL FREEDOM CONCERNING THE AMERICAN INMATE AND HIS RIGHTS TO FREE EXPRESSION AND ACCESS TO MATERIALS

Several significant issues have been brought to public attention in recent months regarding the rights of prisoners in the area of intellectual freedom:

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*Having neither the competencies of an attorney nor the experience of working with the institutionalized, I wish to acknowledge the generous support of the following persons who contributed their own knowledge and expertise to this topic:

Miss Margaret C. Hannigan, Division of Library Programs, U.S. Office of Education

Miss Dorothy Kittel, Division of Library Programs, U.S. Office of Education

Mr. Melvin T. Axilbund, Commission on Correctional Facilities and Services, American Bar Association

Mrs. Julia S. Willson, Bureau of Prisons, U.S. Department of Justice

Mr. W. Donald Pointer, Associate General Secretary, American Correctional Association.

A special note of appreciation is due Mrs. Carol T. Dingledein, my colleague in the Planning Office, whose patience and persistence proved themselves invaluable. RKM

(1) the right of a prisoner to have access to materials without prior screening or censorship. Court cases are pending or decisions have been handed down dealing with this right in relation to the prisoner's receipt of personal correspondence as well as the right to read available published literature; (2) the right of a prisoner to publish his own writings or speeches without restraint or levy on his profits and royalties; (3) the right of a prisoner to correspond with or be interviewed by the public press; (4) the right of a prisoner to have access to legal research materials.

Since it is not possible within the confines of this paper to touch upon every variable in a prisoner's solicitation of his rights, these four categories are presented only to reveal the range of complex issues affecting the intellectual freedom of offenders or pretrial detainees. Under the rubric of the first three items, little activity involving professional librarianship has been either solicited or invoked. Several recent court cases, however, may prove of interest to *Newsletter on Intellectual Freedom* readers. These cases are presented only as examples of the present-day situation, not as definitive legal landmarks.[4]

I. THE RIGHT OF A PRISONER TO READ

In *Payne v. Whitmore* (U.S. D.C. N.D. Cal. 6/21/71), The Federal Court ruled that county jail officials (San Mateo, Cal.) could not use rules, regulations, or practices to bar inmates from the receipt of and the reading of newspapers and magazines. It was the contention of the defendants that the inmates would use such material to start fires, plug toilet or drains, or would quarrel over the possession of the material. In *Sostre v. Otis* (U.S. D.C. S.D. N.Y. 7/28/71), the New York Federal Court held that due process procedures must be followed in screening literature from inmates. The court reasoned that if adequate administrative procedures were afforded, the court might be relieved of some of the *pro se* petitions from inmates. The court, however, accepted the two premises that: (1) some literature presenting a danger to the security of a prison should be censored; and (2) violence can be fomented by the printed word in a prison more easily than in the world outside.

In *Seale v. Manson* (U.S. Dist. Ct. Conn. 326 F. 1375 5/5/71), in a suit brought by Black Panther defendants Bobby Seale and Ericka Huggins, the Federal Court protected the detainees' rights to receive literature (although literature may be examined for contraband and excluded if a clear and present danger to prison morale, discipline, or security is shown), but ruled that unfettered mail and visiting privileges would hamper discipline.

On behalf of prisoners in the penitentiaries at Auburn, Stormville, and Attica, lawyers of the American Civil Liberties Union filed a brief in the U. S. District Court for the Western District of New York contending that the censorship of prisoners' reading had been "arbitrary, discriminatory, based solely on whim and caprice, as well as deliberately repressive." This case is still pending.

II. RIGHT OF THE PRISONER TO PUBLISH AND TO PUBLISH WITHOUT LEVY

In re Eli, Criminal No. 14939, *In re Van Geldern,* Criminal No. 14871 (Cal. Supreme Ct.), the California Supreme Court overruled the decision of the California Appellate Court which upheld the 25 percent levy on revenues derived from the manuscripts of inmates and subsequently deposited in the Inmate Welfare Fund. The higher court ruled that existing rules of the Department of Corrections protected not only ownership of manuscripts as an inmate's civil right but also his right to convey property. "These rights mean little if inmates must relinquish, in the absence of necessity or furtherance of penal objectives, one-fourth the value of their creative efforts."

In *Berrigan v. Norton* [U.S. Ct. App. 2nd Cir., 45] F 2d 790 (11/26/71)], the appellants, the Reverends Philip and Daniel Berrigan, had drafted a sermon for delivery but instead of seeking formal permission from the warden to deliver or publish it, they approached their case workers instead. Because, in effect, Warden Norton was never in a position formally to deny the appellants' right to publish their sermons, the Appeals Court ruled that the priests made "an insufficient showing of any infringement of First Amendment rights," and the judgment denying preliminary injunction was affirmed.

III. THE RIGHT OF A PRISONER TO CORRESPOND WITH OR BE INTERVIEWED BY THE PRESS

In *Seattle-Tacoma Newspaper Guild, et al., v. Parker,* No. 9557 (U.S. Dist. Ct., West. Dist. Wash), the issue centered on the Federal Bureau of Prisons Policy Statement 1220.1 (4d) (10/11/66), which denied permission for members of the press to interview inmates. Prisoners in the McNeil Island Federal Prison asserted that this ban was unconstitutional under the First Amendment. In an affidavit made March 15, 1972, Norman A. Carlson, director, Bureau of Prisons, U. S. Department of Justice, stated that the Bureau's policy would be revised, permitting liberalized correspondence between inmate and newsmen but refusing still to allow personal interviews on the grounds that they "will cause an undue strain upon the facilities of most federal institutions."

IV. RIGHT OF THE PRISONER TO HAVE ACCESS TO LEGAL RESEARCH MATERALS

In *Younger v· Gilmore* (U. S. Supreme Court, no. 70-5, Nov. 8, 1971), the Supreme Court affirmed a lower court finding [*Gilmore v. Lynch,* 319 F. Supp. 105 (1970)] that California regulations relevant to legal reference materials for inmates unconstitutionally limit the inmates' access to the courts.

It is perhaps significant to note that the Supreme Court, in affirming the decision of the lower Federal Court, did not write its own opinion, so that national applicability of the *Younger v. Gilmore* decision must be based primarily on the somewhat limited guidance inherent in a

decision dealing solely with the practices of California correctional institutions. "Therefore, it becomes necessary," as Julia S. Willson, an attorney for the Bureau of Prisons, points out, "for each correctional system to review its own practices and conform them, as much as possible, to the limited guidelines outlined in the California case."

Contrary to many peoples' understanding of the case, the Supreme Court's ruling does not necessarily mandate a legal library in every prison. What it does protect is the access of indigent inmates to the courts. In situations where a public defender service or the members or faculty of a local bar association or law school make their resources and assistance available to prisoners, no additional aid need be considered.

If such programs are not available (and they are often not), then the correctional system must provide sufficient access to legal research materials so that the inmate or his jailhouse lawyer (the so-called "writ writer") is able to prepare the petition. "While the primary responsibility to provide such must probably remain with the state correctional department," Mrs. Wilson comments, "there is nothing to preclude the delegation of this responsibility to the state law library, state law school, or other such function with greater familiarity in dealing with legal materials."

In response to the national concern for prisoners' rights, the American Association of Law Libraries formed a Special Committee on Law Library Service to Prisoners during its 1971 annual convention. Mrs. Elizabeth H. Poe, law librarian of the State Library of Pennsylvania, was appointed chairman. The Special Committee has directed its efforts toward two specific goals: the first, a directory of law libraries which offer service to prisoners, and the second, a compilation of masterlists of recommended materials for prison law libraries. These lists are compiled not only for the requisite federal materials but also for individual state materials.

It was the hope of the Special Committee that, in response to their inquiries, at least one major law library in each state affording access to legal materials for inmates would appear in the directory. As of May 1, 1972, a total of 116 libraries in 46 states and the District of Columbia had responded. No law libraries affording service to inmates were identified as of that date in Hawaii, Kansas, Mississippi, and North Dakota, but revisions are being made of the directory, and no doubt the listing will eventually be totally representative of the United States.

Of the 116 respondent law libraries, 109 offer photocopying service. Reference service is afforded by 58 libraries (20 indicate only limited service); and 32 libraries of the total limit their services to in-state or in-county clienteles. Almost half of the respondent libraries are located in universities, the remaining institutions being divided among state, county, State Supreme Court, and other libraries.

Questionnaries of a different order were submitted in the spring of this year by the Subcommittee on Legal Research Materials of the American Correctional Association's Committee on Institution Libraries. Instead of the law libraries, inquiries were made of the correctional institutions themselves. Responses were received from 91 institutions in 39 states, indicating that 75 institutions had law collections for the use of inmates. The majority of institutions revealed, however, that inmates were required to use the materials only in the library facility itself and that relatively few copying services were available for the prisoners. (Parenthetically, it should be observed that prisoners' access to legal materials through the practice of photocopying may be rendered difficult in the future because of the 1972 Report of the Commission of the United States Court of Claims in the case of *Williams & Wilkins Company v. The United States.* *See* William D. North, "Williams & Wilkins: The Great Leap Backward" in *American Libraries,* May 1972.)

At present, the ACA Subcommittee on Legal Reference Materials is charged with the preparation of guidelines and recommendations for the provision of legal research materials for prisoners. Some of the questions before the Committee or any other body concerned with this problem are:

1. effective staffing of the prison law library, a question involving the proper use of the law librarian, correctional officer, and/or inmate;
2. the possible extension of the Supreme Court's ruling to parolees and to pretrial detainees; the California ruling was limited to sentenced prisoners, but further litigation may involve the extension of the Court's provisions to persons accused but not convicted of crime;
3. the extension of the Supreme Court's ruling to youthful offenders, since the rights of juveniles, especially those over 16 years of age but under 21, have not been dealt with in the present opinion;
4. a more precise analysis of accessibility versus availability. Questions of "subterranean censorship" will continue to plague prisoners who wish legitimate access to legal materials; the current practice within prison libraries of "special passes" allowing inmates access to law books unquestionably defeats the rights of access to the courts; holders of "special passes" are often identified as potential troublemakers and are bypassed by parole boards, who consider that such inmates are able to remit their long-term sentences through legal appeal; and
5. an examination of possible alternatives, for example, a nationwide network of legal informational services, to the provision of individual law collections within each federal or state correctional institution.

In conclusion, the prisoner's right to legal research materials is a question that, in principle, is already decided by the U. S. Supreme Court. The Court has ruled that indigent inmates have a right, not a privilege, to such materials as may enable them or their inmate lawyers to proceed on the writing of petitions or appeals. Debatable at this point are only the means by which this access should be achieved: individual institutional law libraries? Access to a county or state collection? More ample provision of public defenders' services or assistance? Or a combination of all three?

The American Association of Law Libraries, the American Correctional Association, the American Bar Association, the American Civil Liberties Union, the Legal Aid Society, the American Justice Institute, the American Library Association through its Association of Hospital and Institution Libraries, and the Office of General Counsel and Review of the U. S. Bureau of Prisons have all been involved in these fundamental questions. Each in its own way contributes to the cause of penal reform and to the right of each prisoner to plead cause in his own behalf.

RECOMMENDATIONS (Approved for implementation by the Intellectual Freedom Committee, June 1972):

1. that the Intellectual Freedom Committee of ALA endorse the work of legal, correctional, and library associations in their current efforts to further the access of prisoners to legal research materials and maintain a close liaison with the Special Committee on Law Library Service to Prisoners of AALL (Mrs. Elizabeth H. Poe, chairman) and the Subcommittee on Legal Research Materials of ACA (Mrs. Majorie LeDonne, chairman;)

2. that the Intellectual Freedom Committee of ALA be kept appraised, either through the ALA Legislation Committee or the ALA Washington Office of the Congressional developments involving such bills as:

   S.3049, "National Correctional Standards Act," introduced by Javits (R.-N.Y.) which mandates national standards in the reform of federal, state, and local criminal justice systems. Library services are specifically mentioned, as are other prisoners' rights regarding the receipt of mail and the freedom to publish.

   S.3492, "Omnibus Criminal Justice Reform Amendments of 1972," introduced by Mathias (R.-Md.) which covers the entire range of the criminal justice system and calls for minimum standards to protect the human rights of prisoners (communication, mail, voting, etc.)

   H.R. 12757 introduced by Rangel (D.-N.Y.) which would establish minimum standards for the treatment of prisoners and mandate an agency to hear complaints if these standards are not met with. The bill would mandate a library in every prison;

3. that the Intellectual Freedom Committee pursue a vigorous policy of protecting the prisoners' freedom to read.

In this writer's opinion, the issue of prisoners' access to legal research materials has already been defined and addressed by a number of qualified professional bodies. But, the broader issue of the prisoners' right to read about subjects or topics of his own choosing has not been significantly addressed by partisans of the *Library Bill of Rights.* The proscription of such authors as Oscar Lewis, Arthur Koestler, Marshall McLuhan, or Charles Silberman in the prisons of New York occasioned lawyers for the ACLU to submit a brief on behalf of the prisoners. As the brief observed: ". . . such denials . . . have tended to increase recidivism by further isolating and alienating the criminal offender from the community and by interfering with his efforts to educate himself, thereby imposing unnecessarily harsh and cruel conditions of confinement."

Specialists in this particular area are Professor of Law Herman Schwartz, State University of New York at Buffalo, the principal author of the ACLU brief, and Mrs. Barbara Shapiro, one of eight lawyers employed full time on prisoners' rights litigation, with the support of a Federal grant made to the Criminal Appeals Bureau of the Legal Aid Society in New York City. Either or both of these persons might be invited to address the Intellectual Freedom Committee. Their counsels could prove helpful in directing future action by the Committee.

Further action, steps, or recommendations should be made a matter for the agenda at the June 1972 meeting in Chicago.

REFERENCES

1. Chamber of Commerce of the United States. *Marshaling Citizen Power to Modernize Corrections.* Chamber of Commerce of the United States of America, 1972, p. 2.

2. U. S. Department of Justice. Law Enforcement Assistance Administration. *1970 National Jail Census.* Washington, D. C., GPO, 1971, passim.

3. Austin H. MacCormick. *A Brief History of Libraries in American Correctional Institutions.* A mimeographed paper delivered at the American Correctional Association's Centennial Congress of Correction. Cincinnati, Ohio, Oct. 12, 1970, pp. 4,5, and 17.

4. Material for this section of the paper was drawn from summaries published in the *Prison Law Reporter,* issued by the Administration of Criminal Justice and Prison Reform Committee of the Young Lawyers Section of the American Bar Association.

Success Stories

SUCCESS STORIES

Roselle, N.J.

On June 14, the board of education prepared to approve a list of more than 520 books to be purchased as library reference materials from a $23,000 federal grant for a new humanities program. Prior to approval, however, board president John Everett deleted four titles from the list: *The Affluent Society,* by John Kenneth Galbraith; *The Age of Keynes,* by Robert Lekachman; *The Struggle for Peace,* by Leonard Beaton; and *Today's Ism's: Communism, Fascism, Socialism and Capitalism,* by William Ebenstein. Everett's deletions were upheld by a 4-3 vote of the board. "I will not apologize for being a bookbanner," said Everett. "I will do anything I can to thwart permissive liberalism and I'm quite proud of it." Board member Brother John Tevlin, commenting on the action, said, "This entire action supported by the board majority is nothing more than the whim of one board member. It is the most blatant example of repression that I have ever seen in an educational system. Mr. Everett, board president, in deleting the book *The Struggle for Peace* by Beaton, said he objected not so much to the contents of the book, but to its author, Cecil Beaton, who Mr. Everett described as a 'kook.' " After looking at the book, Brother Tevlin found that the author was not Cecil Beaton, but Leonard Beaton, a reporter for the *London Times*! Summing up, Brother Tevlin called the banning "something out of the McCarthy era." Everett, on the other hand, had support from board member Judith Solwjich, who voted to ban the books because "they didn't agree with my political philosophy." Two of the book-banners admitted they had read none of the books. In spite of the board's action, Robert F. X. Van Wagner, superintendent of schools, announced in early July that he read all the books, found them unobjectionable, placed rush orders for them, and will put them in the library, "balanced by volumes with a more conservative orientation." Reported in: *Roselle Star-Ledger,* June 15; *New York Post,* June 15; *Newark News,* June 16; *New York Times,* June 18; July 7; *Elizabeth Journal,* June 21.

Corry, Pa.

The *Corry Evening Journal* defied a contempt-of-court threat from Erie County Judge Fred P. Anthony over publication of an article about a juvenile court case. Judge Anthony had dismissed a case against a high school student who allegedly gave another student a piece of gum containing LSD. The *Journal* printed an account of the dismissal and received an order from Judge Anthony stating that the paper ". . . shall refrain from publishing any and all information pertaining to juvenile matters heard by this court without first obtaining a release of such information from the juvenile court judge." Publisher George Sample called the order an attempt to censor the news and announced his intent to continue to fulfill "the vital need for a community to be informed . . . about those things which are good and those things which are bad. Drugs are bad." Reported in: *Philadelphia Inquirer,* June 9.

B.U.L.L.

Awards

Bent Upon Losing Liberty

September Award

To: *John Everett,* president of the Roselle, N. J., Board of Education, who attempted to ban four so-called "liberal" books because they disagreed with his personal political philosophy. Everett said, "I will not apologize for being a book banner. I will do anything I can to thwart permissive liberalism and I'm quite proud of it." Reported in: *New York Times,* June 18.

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