


newsletter
on
intellectual
freedom



IFC ALA

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**Intellectual
Freedom
and the
Stanford
University
Libraries**

The Libraries of Stanford University are central and vital to the processes of free inquiry on the university campus. Through their collections and services, the Libraries provide a wide range and representation of published and manuscript information to serve the purposes of this institution of higher education. Unrestricted access to this information in libraries stimulates learning and the growth of knowledge and understanding, without which the individual and society would be materially and culturally impoverished. Without this freedom to develop its resources and to remain an open sanctuary for individual inquiry, the University Libraries would be unable to fulfill their essential role in learning and research.

The concept of free inquiry and its relationship to the University Libraries is evident and should be unquestioned. However, it is possible these fundamental and vital concepts may be lost under momentary pressures. It is, therefore, useful to recognize and reaffirm the freedoms that are essential to the creation, functions, and uses of a university library.

A first essential is the freedom to select books and other materials according to the instructional and research needs of the university, recognizing the desirability of representing all major views including those currently unorthodox or unpopular. Judgment on what to acquire, or accept as a gift, should not be compromised by yielding to pressures on the part of individuals or groups, whether from inside or outside the University, when such pressure is not based on sound academic grounds. Selection both as to inclusion and exclusion, and display within the libraries, should be free of prejudice due to race or national origin, or to consideration of political, social, economic, philosophic, or religious persuasion. Similarly, the classification, deployment, and use of library resources must be determined on reasonable principles of free access, good management, and reasonable security of materials.

A second essential is the freedom of inquiry by the individual. Under no circumstances should a member of Stanford University, or persons otherwise given University privileges under University policy, be denied access to the Libraries, their facilities and their collections, or have any limitations on use imposed, by reason of race, nationality, organizational affiliation, or the political, social, economic, philosophic, or religious views held by the individual. Since investigation of circulation files or user registration files by persons other than the library staff could intimidate the process of free inquiry in the library, such library records must remain confidential.

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

Titles Now Troublesome

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The Inscrutable United Nations Or, How To Expunge 14,000,000 Chinese From The Record

At the insistence of Peking, the United Nations has agreed to drop any mention of Taiwan, the seat of the Chinese Nationalist Government, from its publications and documents. Missing from future editions of the *Statistical Yearbook* and other UN publications will be any text or table dealing with Taiwan's population, trade, or industry or any other data formerly provided by the Nationalists. Some 12,000 copies of the *Yearbook*, regarded as the most authoritative source of international statistics, go out to governments, libraries, and business concerns each year.

The deletion of Taiwan from United Nations' publications resulted from a request by Huang Hua, China's chief delegate. Reportedly, he first raised the question in January 1972. UN Undersecretary General Constantine Stavropoulos was understood to have said that complying with the request would have an important impact on the organization's undertakings, including the *Statistical Yearbook* and the demographic reports. He pointed out that there have been instances when the UN, under certain circumstances, listed parts of countries separately — West Irian separately from Indonesia, and Sarawak separately from Malaysia. He suggested distinguishing data from Taiwan in the same manner. Huang declined, reiterating Peking's position that Taiwan is "an inalienable part" of China and it would be a "violation" of the Assembly decision on the Chinese question to imply in any way that there are two Chinas.

[In a letter to the Executive Director of the American Library Association, Zoltan Kenessey, Acting Director of the UN Statistical Office, said, "All publications issued since June reflect this new policy, with exception of several yearbooks which were in press when the instruction was issued and where it was impossible to

eliminate the data for Taiwan without incurring additional costs (i.e., *Statistical Yearbook, 1971; Yearbook of National Accounts Statistics, 1970; The Growth of World Industry, 1970*). With respect to alternate sources for the data, I believe you can find the publications issued by the Directorate-General of Budgets, Accounts and Statistics, Taiwan, in major libraries. For any additional data or clarification, you may need to write directly to that agency (Executive Yuan, 1711 Chung Cheng Road, Taipei, Taiwan).] Reported in: *New York Times*, August 7.

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"Works of art which cannot be understood and need a set of instructions to justify their existence, and which find their way to neurotics receptive to such harmful rubbish, will no longer reach the public. Let us have no illusions; we have set out to rid the nation and our people of all those influences threatening its existence and character." — Adolph Hitler, commenting on two art exhibitions in Munich, in 1937, one of "approved" German art, and the other of so-called "degenerate" art. Reported in: *Free Speech*, May 1972.

Recall Without Just Cause: Government Documents and Depository Libraries

by Bernadine E. Hoduski

Mrs. Hoduski, Librarian at the Environmental Protection Agency Library, Kansas City, Mo., is the Coordinator of the recently founded Government Documents Round Table of the American Library Association and chairman of the ALA Social Responsibilities Round Table Task Force on Government Publications.

There is a growing concern among federal documents depository librarians about the issues of intellectual freedom, freedom of information and the rights of depository librarians and libraries.

Since the American Library Association (ALA) has never issued a statement concerning these issues as related to depositories, depository librarians are in doubt as to the proper course of action to follow when they feel that an act of possible censorship has occurred.

Depository librarians are concerned about possible problems now and in the future because of several recent incidents in particular. These incidents involve the recall of various publications whose subject matter is of a controversial nature. The stated reasons for recalling the documents have included: (1) it was issued by mistake and is administrative in nature¹; (2) the budget is not large enough to allow the agency to provide copies for both the agency's offices and depositories; and (3) no stated reason.

One of the documents recalled was the Defense Department Army Field Manual, number 5-31, entitled, *Boobytraps*, September 1965 (D 101.20:5-31). It was distributed to depositories in 1965 and was listed in the *Monthly Catalog of U. S. Government Publications* as for official use only. It was also noted as a depository item for the information of the public so that they would know that it was available in a depository library. It was not until five years later, in 1970, that it was recalled. This incident has already been brought to the attention of the ALA Intellectual Freedom Committee.

Two other documents have been recalled recently. They are:

(1) *Narcotics Identification Manual*, issued by the Customs Bureau of the Treasury Department (T 17.5/2: N16), sent out on October 2, 1970, and listed on the *Superintendent of Documents Shipping List #5704*. The document was recalled by the Superintendent of Documents at the request of the Customs Bureau by letter dated November 23, 1970. The letter stated that the manual had been prepared for administrative use only and that it was to be returned directly to the Customs

Bureau. A postage-paid label with the address of the Customs Bureau was enclosed.

This manual is similar to another drug identification manual issued by the Customs Bureau except it has color photos and extensive description of the contents of drugs. The manual with black and white photos was not recalled.

(2) *Customs Enforcement Manual*, issued by the Customs Bureau of the Treasury Department (T 17.5/2: En2), sent out on March 3, 1971, with *Superintendent of Documents Shipping List #5869*. This document was recalled in person by a Customs Bureau agent (April 1972 for one library, and May 1972 for another) bearing a letter from the Superintendent of Documents dated November 1971. The Customs agent said that the manual was needed by the Bureau and that the Bureau's budget was not large enough to furnish copies for both the Bureau's use and the depository libraries. He said further that the manual had been printed for administrative use and not for distribution. The Customs agent apologized for having to recall the manual and pointed out that the information is available through other sources. The agent also explained that the manual is a restricted-use publication and had been issued in error to the depository libraries.

When two of the librarians pointed out the expense of a personal visit by an agent as versus the customary letter, he agreed but said that he was just doing his job. One librarian said that the agent had traveled from the Chicago office to her library in Normal, Illinois.²

Both of these manuals are a part of a series entitled *Handbooks, Manuals and Guides*, which is regularly sent to depositories.

In the past, when a librarian was initially contacted by mail to return a publication, one of the following procedures was followed: (1) The librarian ignored the recall request; (2) The librarian xeroxed the publication, made a note of the recall letter and returned the publication; (3) The librarian made a note of publication title, purchased another copy in paper or microfilm if available, and then returned the document; or (4) The librarian returned the document. Possibly the recall notice could be missed completely, since it is often included on the shipping list as a note.

It is a different problem when the agency representative suddenly appears with a letter from the Superintendent of Documents and confiscates the document immediately. The librarian must decide quickly whether to return the book or not. What will happen to the librarian who refuses to return the document? Are there legal grounds upon which the librarian can base a refusal? Can a court injunction be filed against the Superintendent of Documents and the individual agency to prevent taking the publication until the matter has been settled in court? The library's rights have not been established in a court as yet, since the problem of confronting an agency's representative is a very recent development.

Will agencies continue to recall publications in this manner? Will agencies confine themselves to recalling documents mistakenly issued, or will they recall other documents, such as the bomb manual, which have been routinely distributed for years. Note that the *Customs Enforcement Manual* had been on the shelves for more than a year. Or, will they take the easier route and simply fail to "furnish the Superintendent of Documents a list of publications, except those required for official use only or those required for strictly administrative or operational purposes which have no public interest or educational value and publications classified for reasons of national security, which it issued during the previous month that were obtained from sources other than the Government Printing Office,"³ and simply send the publications that they wish to send. Some agencies, even now, do not provide a list; some provide only a partial list.

Documents librarians are also familiar with the frequent unnecessary designation of government documents as administrative, official, or classified when they are not any of these. This very problem, as covered by the *Freedom of Information Act* (5 USC 552), has been the topic of hearings being held by the Subcommittee on Foreign Operations and Government Information of the House Committee on Operations. Representative Moorhead, chairman of the subcommittee, said that the committee would build on testimony taken last summer in connection with the *Pentagon Papers*.⁴ He expressed concern over "the increasing dangers of erosion of public confidence in government because of restrictions of the executive on the free flow of information." These hearings will continue until the end of June. ALA's resolution adopted by the Council at the Dallas Conference, June 1970, endorsing a "full Congressional investigation of the policies of government relating to the classification and declassification of information,"⁵ was included in the hearings held from June 23 to 25 of 1971.

This insistence upon the agencies informing the Superintendent of Documents about their publications is also found in the *Printing Act of 1895* as stated in *Title 44* of the *U. S. Code*, sections 1710 and 1711. Section 1710 says, "The Superintendent of Documents at the close of each regular session of Congress shall prepare and publish a comprehensive index of public documents The head of each executive department, independent agency and establishment of the Government shall deliver to him a copy of every document issued or published by the department, bureau, or office not confidential in character." And, section 1711 says, "On the first day of each month the Superintendent of Documents shall prepare a catalog of Government publications which shall show the documents printed during the preceding month, where obtainable, and the price."

The recall of publications without just cause and the failure of agencies to provide a list of their publications to the Superintendent of Documents for the use of the

depositories seem to violate the intent of the *Depository Act of 1962*. The intent of the act is to provide the public with easy access to government publications. This is illustrated by these quotes from the *Depository Act*: "Government publications . . . shall be made available to depository libraries through the facilities of the Superintendent of Documents for publication information"⁶ and "Government publications which are furnished to depository libraries shall be made available for the free use of the general public."⁷ In fact, the failure of the depository library to be "maintained so as to be accessible to the public"⁸ is one of the reasons a depository can lose its status.

This concept of public access antedates the *Freedom of Information Act*, also designed to provide the public with access to government records, etc. In a sense, depository libraries are extensions of the government, since all depository items remain the property of the government. The *Freedom of Information Act* provides access to even more materials than does the *Depository Act*, since it includes "administrative" and "official use" material.

The intent of the depository law is also being destroyed in another manner. "So-called cooperative publications which must necessarily be sold in order to be self-sustaining"⁹ are not distributed free to depositories. This includes Library of Congress and National Technical Information Service (NTIS) publications. NTIS was set up "to provide for the dissemination of technological scientific and engineering information to American business and industry, and for other purposes."¹⁰ The narrow line between technological, etc., publications is becoming blurred, and NTIS is now publishing material which has traditionally been published by the Government Printing Office (GPO), such as census information. This material is no longer being sent to the depositories. Under the spirit of the *Depository Act*, this material should continue to be furnished to the depositories.

This change from GPO to NTIS is not intended by agencies to prevent depositories from getting material but to get their publications on microfiche and to get them into a computer information system. Even though these are laudable reasons, they necessarily limit the depositories' access to government publications.

The *Depository Act* was written before microforms became popular with government agencies, so most material was printed through the Government Printing Office. Therefore, in 1962, the phrase "government publications as used in this act and the amendments made by it means informational matter which is published as an individual document at Government expense, or as required by law,"¹¹ was sufficient to guarantee that depositories would get most of the material printed by GPO or by other sources for government agencies.

GPO will be launching a microform program itself, which will help save some of the publications from

NTIS, but it probably won't bring back any of the lost ones. As some suggest, a better solution would be to provide depositories with a certain amount of money to be spent buying crucial material from NTIS. Or, as I suggest, the GPO and NTIS systems could be combined, with a number of catalogs and services divided by areas of discipline, giving the depositories a certain amount of credit to obtain whatever publications are valuable to them and their public. Of course, this would necessitate thorough study and new legislation. The tradition of sending "official use only" and "administrative" designated publications to depositories would have to be continued to protect the rights of the public. Many series with these designations are presently being sent to the depositories.

Since a microprint edition of all the publications listed in the *Monthly Catalog* is being published by a commercial firm, these recalled publications (if they got listed in the *Monthly Catalog*, as *Boobytraps* was) would still be available to the public. If the depository has replaced its paper copy with microform, as allowed in the *Depository Act*, would it be required to cut the publication out of the microprint set to satisfy the recall request? It does not seem that the Superintendent of Documents could make this request, since the library purchased the microprint edition with its own money. Therefore, even though the library purchased the microprint edition to fulfill the depository law, which states that the depository "retain at least one copy of all government publications, either in printed or microfacsimile form,"¹² the microprint edition would not belong to the government. It is feasible that a library could replace all of its depository items with a commercial microprint edition.

Furthermore, under the *Freedom of Information Act* the library, as a citizen, could request that the agency allow it to xerox a copy of the recalled publication. The *Freedom of Information Act* makes more administrative-type material available to the citizen than does the *Depository Act*.

The rights of the depository library and the citizens, for whose use it was established, need to be clarified. If these rights are not guaranteed under the present act, the act should be revised.

I respectfully submit the following suggestions for action:

[Approved for implementation by the ALA Intellectual Freedom Committee, June 1972.]

1. Write a letter to the Commissioner of Customs with copies to the Secretary of the Treasury and the Superintendent of Documents requesting an explanation of the withdrawal of the two manuals, *Narcotics Identification Manual*, and the *Customs Enforcement Manual*, from the depository libraries. Several points ought to be emphasized: (a) the time-lapse between the issuing of

the *Customs Enforcement Manual* and its withdrawal; (b) the expensive method used to recall the *Manual*; and (c) the tradition of the Customs Bureau of issuing administrative handbooks and manuals on a regular basis to depositories for a number of years.

2. Request that the ALA's Legislative Committee appoint a subcommittee to review the following laws: *An act to revise the laws relating to government depository libraries*, the *Freedom of Information Act*, and the *Printing Act of 1895* to determine their relationship to each other, their effectiveness and possible revision, or even complete rewriting of one or more of them. Special emphasis should be placed upon bringing the *Depository Act* into harmony with the *Freedom of Information Act*. Specific safeguards for depository libraries and librarians must be written into the act.

3. Request that the ALA or the IFC consult legal counsel for examination of the present *Depository Act*, *Printing Act of 1895*, and *Freedom of Information Act* to determine if government agencies are presently violating the spirit of these acts or any specific portion of these acts, i.e.:

- (a) Are federal agencies actually violating the *Printing Act of 1895* by not listing their publications in *The Monthly Catalog of U. S. Government Publications*, as directed in section #1711, *Title 44, U. S. Code*: "On the first day of each month the Superintendent of Documents shall prepare a catalog of Government publications which shall show the documents printed during the preceding month, where obtainable, and the price." (Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1280) and section #1710, *Title 44, U. S. Code*: "The Superintendent of Documents, at the close of each regular session of Congress, shall prepare and publish a comprehensive index of public documents, upon a plan approved by the Joint Committee on Printing. The Public Printer shall, immediately upon its publication, deliver to him a copy of every document printed by the Government Printing Office. The head of each executive department, independent agency and establishment of the Government shall deliver to him a copy of every document issued or published by the department, bureau, or office not confidential in character." (Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1280.)

- (b) Are federal agencies in violation of the *Depository Act* for not "furnishing the Superintendent of Documents a list of publications, except those required for official use only or those required for strictly administrative or operational purposes which have no public interest or educational value and publications classified for reasons of national security, which it issued during the previous month that were obtained from sources other than the Government Printing Office"? It would be necessary to contact the Superintendent of Documents to find out how many agencies are actually complying with

the law and, of those complying with the law, how complete their lists are.

(c) Since many agencies have traditionally sent depository libraries material listed in the *Monthly Catalog of U. S. Government Publications*, as official or administrative and not available to the public through purchase from the GPO, haven't they, in essence, given the law a very liberal interpretation which may in turn keep them from going to a stricter interpretation?

(d) Is there any section of the *Depository Act* which could be interpreted as allowing an agency to change its mind about sending a publication to the depositories once it has made the distribution and allowed that publication to remain upon the shelves for weeks, months, or even years? (According to my interpretation, the act does not specifically mention recall of documents, although it does discuss the depository itself discarding publications as "authorized by the Superintendent of Documents.")

References

¹Government publications, except those determined by their issuing components to be required for official use only or for strictly administrative or operational purposes which have no public interest or educational value and publications classified for reasons of national security, shall be made available to depository libraries through the facilities of the Superintendent of Documents for public information. Each component of the Government shall furnish the Superintendent of Documents a list of such publications it issued during the

previous month that were obtained from sources other than the Government Printing Office. (Pub. L90-620, Oct. 22, 1968, 82 Stat. 1283.)

²Information furnished by: (1) Jack Lyle, Indiana State University, Cunningham Memorial Library, Terre Haute, Indiana 47809 (manual recalled week of May 22, 1972), (2) Marian Carroll, Milner Library, Illinois State University, Normal, Illinois 61761 (manual recalled April, 1972).

³*An act to revise the laws relating to depository libraries, Public Law 87-579, August 9, 1962.*

⁴*U. S. Government information policies and practices — The Pentagon Papers. Pt. 1-3 (Hearings before the Subcommittee of the Committee on Government Operations, House of Representatives. 92nd Congress, 1st session. June 23 to July 7, 1971.)*

⁵Ibid.

⁶*An act to revise the laws relating to depository libraries, Public Law 87-579, August 9, 1962.*

⁷Ibid.

⁸Ibid.

⁹Ibid.

¹⁰*An act to provide for the dissemination of technological, scientific, and engineering information to American business and industry, and for other purposes. (PL 81-776, Sept. 7, 1950.)*

¹¹*An act to revise the laws relating to depository libraries, Public Law 87-579, August 9, 1962.*

¹²Ibid.

Cutting "H" With The CIA

Alfred W. McCoy, a Ph.D. candidate in Southeast Asian history at Yale, spent eighteen months investigating narcotics operations in Southeast Asia. The result of his studies was a book, *The Politics of Heroin in Southeast Asia*, commissioned by Harper & Row. Before publication, Harper & Row's attorneys thoroughly examined McCoy's work. Yet, the U. S. Central Intelligence Agency (CIA) asked the publisher for permission to review the book *prior* to publication.

According to Seymour Hersh, of the *New York Times* Washington Bureau, the CIA's interest in McCoy's book is due to the author's allegations that "both CIA and State Department officials have provided political and military support for America's Indochinese allies actively engaged in the drug traffic, have consciously covered up evidence of such involvement, and have been actively involved themselves in the narcotics trade."

Hersh contends that McCoy was given the choice by

Harper & Row of agreeing to submitting the manuscript to the CIA or not having the book published by Harper & Row. B. Brooks Thomas, vice president and general counsel of Harper & Row, asserts, however, that an either-or situation did not develop. McCoy, himself, says, "Faced with the prospect of delaying the publication of my book past the November elections and thereby denying American voters information they might need for their electoral decisions, I consented to Harper & Row's decision though I disagreed with its philosophical basis."

McCoy says, "On July 20, a CIA agent arrived at Harper & Row, picked up a copy of the book, and spirited it off to the CIA campus in Virginia for review by 'more than one component of the Agency.' On July 28, another CIA agent delivered the Agency's written critique to Harper & Row. Neither Harper & Row nor I found the rather feeble arguments convincing enough to merit any changes in the book." Summarized from: "The CIA: Book Editing Division," by Nat Hentoff, *The Village Voice*, August 10; and "Commentary: The Author's Response," *Harper's Magazine*, October 1972.

Censorship Dateline



LIBRARIES

Midvale, Utah

Salt Lake County Libraries Director Guy Schuurman said that, despite a trend by the American Library Association to eliminate all censorship, he is against stocking sexually explicit material such as *Playboy* in county libraries. He added that he is against the ALA's attempt to "liberalize" school children. "We're trying to upgrade people, not downgrade them," he said. Library Commissioner Ralph McClure supported Schuurman's stand, saying, "They can buy that kind of material at the drug store. They don't have to get it at a public library." Mrs. Jean Taylor, another board member, said Utah residents are traditionally conservative in these matters and advocated a wait-and-see policy on buying explicit material. "We need to sit back and see what others do. If we don't want to see what happens when others go far afield, then we're doomed to live the mistakes ourselves," she said. In an editorial, the *Salt Lake Tribune* agreed that the library's limited funds should not be spent on "girlie" magazines, but cautioned that "the danger lies in the chance that the same reasoning will stand when current novels and reference books are being ordered. Some sexually explicit novels have received critical acclaim. Some recognized historical works contain sexually explicit passages, as do a number of contemporary social studies. Will the Salt Lake County Libraries reject them, too? Ideally a library is a repository of all kinds of information, sexual and otherwise. The choice of whether and to what purpose the material is used should be left to the library patron, not decided by the purchasing agent or director. Of course, the county librarian can't buy one of each of everything and must exercise judgment. But that judgment must always be based on obtaining the best representation of as many subjects as possible, not on excluding those subjects which would offend." Reported in: *Salt Lake Tribune*, July 26; 29.

Madison, Wis.

On August 10, with a majority of its members newly appointed by Mayor William Dyke, the Madison Public

Library Board voted six to one not to renew subscriptions for two local underground newspapers, *Madison Takeover* and *King Street Trolley* (offshoots of the defunct *Madison Kaleidoscope*). Bernard Schwab, library director, reminded the board that its main responsibility is policy-making, not actual administration. He said the newspapers were selected under a policy adopted unanimously in 1970, which affirmed the library's responsibility to serve the entire community rather than special interests, regardless of personal points of view. Board member Paul du Vair exclaimed that the board "doesn't like being pushed around. The board has the right to accept or reject anything that is put before it." He went on to state that he felt that the board has a responsibility for "taking care of the public" and that, if the board was too conservative, that is probably the mood of the community. He said, "What the librarians are telling me is that we should have every side of the political spectrum, and I agree. However, when you bring in literary trash to appease a political group, no thanks." The board proceeded to appoint a subcommittee to review the selection policy and become more involved in the selection process. Reported in: *The Listening Post*, August 18; *Wisconsin State Journal*, August 14.

SCHOOLS — CURRICULA

Pasadena, Cal.

Last February, Henry Marcheschi, a member of the board of education, questioned criteria by which the English Learning Materials Committee evaluated and recommended the novel *The Learning Tree*, by Gordon Parks, for curriculum use. Subsequently, in July, outgoing Superintendent Ralph Hornbeck ordered 150 copies of the book withdrawn from use as supplementary reading in the schools. Sam Sheats, the only black member of the board, charged at the board's August meeting that the banning is racial discrimination and a violation of the First Amendment. He said the book is a "story of black people struggling against tremendous odds, a powerful novel from life, a book of great literary worth." The board debated at length the question of sustaining the superintendent's ban on the book. Hornbeck read passages from the book and said, "I would rather be defending removing the book from school libraries than trying to defend why it is being offered." A motion to approve the superintendent's removal of the book failed to garner a necessary majority of three votes. However, the issue was not resolved. The meeting closed with a decision that the new superintendent, Ramon Cortines, confer with the English Learning Materials Committee about evaluation criteria and recommendations for the book and report to the board. Trustee Al Lowe said, "One thing is sure. We've made it the most popular book in town." A check of ten bookstores in Pasadena showed that the book was either sold out

or only a few copies were left on the shelves. Reported in: *Los Angeles Times (San Gabriel Valley)*, August 10; 21.

San Diego, Cal.

The State Board of Education heavily criticized proposed new science texts because the books do not give equal treatment to the Biblical version of the origin of the universe. In 1969, the board ordered that the "creation" theory be emphasized equally with the evolution theory. However, a state commission which selected the proposed series did not follow the board's mandate. Board member David Hubbard (also president of Fuller Theological Seminary) pushed for the evolution theory, saying, "Whenever we deal with the origins, it is more of a philosophical religious question than scientific." Another board member, John Ford, argued that scientific evidence behind evolution "will support equally well, if not more so, the hypothesis that these origins occurred by design with cause, purpose, and reason" of a creator. The question will apparently be settled when final editing of the series is done prior to publication. Reported in: *Los Angeles Times*, September 15.

St. Charles, Mo.

St. Charles parents objecting to the use of the textbook series "Promise of America" in junior high school history classes (see September *Newsletter*, p. 128) are continuing their efforts against the books. Their request that school officials set up alternate history classes was honored by the school board. Petitions asking that the books be removed are being circulated and have garnered more than 1,000 names. School officials argue that the series is used throughout the country and gives students a basis for discussion and an understanding of issues and values evolving in America. President of the school board, James H. Evans, said the petitions would be accepted, "But we don't operate a school system out of fear or threats or on the basis of petitions. We've spent a lot of time thinking about these books and have what we believe to be a good course of action in offering the alternative course." Reported in: *St. Louis Globe-Democrat*, August 30; September 21; *St. Louis Post-Dispatch*, August 31; September 7.

Enosburg Falls, Vt.

Substitute teacher Mark Siegel was barred from Enosburg High School after showing the film, *Making Out*, to tenth, eleventh, and twelfth grade classes. Produced by a New York women's liberation group, the film describes what a girl thinks about when out on a date. In his defense, Mr. Siegel said, "The film is very important for high school students because it begins to talk about the traditional roles we are all forced to play in our lives. There was a discussion after each showing of the film. Some discussions lasted the whole period, others were short. In a number of instances, the students

said they had a hard time talking about the film because they very rarely experience any films that are honest and relevant." The school board, after viewing the film in closed session, decided in the words of its chairman, Dr. John Reighley, "that it was disgusting" and that "nothing whatsoever" was gained by showing the film. Reported in: *Enosburg Standard*, June 15.

SCHOOLS — NEWSPAPERS

La Canada, Cal.

The school board denied approval of a procedure for administering policy on student publications on the motion of Jack D. Samuelsen who believed the policy would constitute censorship. The questioned portion required that principals review all material prior to distribution and "exercise administrative responsibility as required by the policy." Restrictions not disputed were on materials, buttons, badges, insignia, notices, or verbal presentations which are obscene, libelous, or slanderous, invite a dangerous or unlawful act, express racial, ethnic, or religious prejudice so as to incite dangerous or unlawful acts, and violate requirements of distribution, display, time, place, manner, or circulation. Reported in: *Glendale News-Press*, September 22.

Norwell, Mass.

Claiming administrative censorship of the present high school newspaper, two senior students appeared before the school committee to request that a new "above-ground" underground newspaper be established. They said they wished to remain free of the school's editorial control and yet agreed to maintain certain "responsible standards" in order to appeal to the student body. Superintendent Robert Bunnell said he was "delighted" at the student initiative and offered his support on the basis that the paper would provide "reasonable, acceptable journalism." He added, however, that the proposed publication would not be termed an underground newspaper and that, if it is to be sold on the school grounds, it would be subject to some school guidance. Chairman Samuel Ballerini, expressing concern that the school might lose control of a second newspaper, preferred to "revise the existing newspaper." The discussion ended at the urging of member Harold Sims, who asked to continue in executive session to consider the "scope of the project and the personalities." High school principal Anthony Bahros denied that censorship exists over the school paper, saying, "There is a feeling that they can't print what they want, but it is not necessarily true." Reported in: *Brockton Enterprise-Times*, August 15.

ART EXHIBITS

Indianapolis, Ind.

The Indiana Civil Liberties Union declared the removal of a prize-winning photograph from exhibit at the

Indiana State Fair "government censorship" and asked that the picture be rehung. The photograph, entered in the nonprofessional photography division, showed a Negro woman draped in an American flag. It was taken by George Bredewater of Indianapolis. After the photograph was criticized, the Indiana Fair Board removed it. In a prepared statement, the ICLU said, "We therefore urge the Fair Board to reconsider its decision and have the photograph rehung, not as an endorsement, but so the meaning of American freedom shall be preserved." Reported in: *Indianapolis Star*, August 24.

COLLEGE AND UNIVERSITY CAMPUSES

Gainesville, Fla.

University of Florida President Stephen C. O'Connell failed in efforts to gain complete editorial control over the campus newspaper, *The Florida Alligator*, but won a partial victory. O'Connell's efforts resulted from a controversy over the paper's publication of a list of abortion referral services in October 1971. The list violated a Florida law which was later declared unconstitutional. State Attorney General Robert Shevin ruled last April that a university president does not have authority to censor or control the editorial content of a campus newspaper. O'Connell contends, however, that the Board of Regents has made him, as delegated publisher, responsible for the contents of the paper and, if he is to be legally responsible, he should have full editorial control. On September 11, the Board of Regents rejected his proposal for an administration-appointed editor. Since then, the executive committee of the board of student publications approved a compromise measure which expands the paper's editorial board to include some O'Connell appointees along with representatives of other campus interest groups. *Alligator* staff members view the compromise as simply another means of imposing prior review of copy. Reported in: *New York Times*, August 22; *Orlando Sentinel*, September 21.

Salem, Ore.

Chemeketa Community College students protested to the Salem Youth Commission that school authorities are attempting to censor and control the student newspaper. The editor and associate editor, at a hearing before the commission, argued that the new student publications' guidelines suggested by Chemeketa President Paul Wilmeth would place editorial and policy control in the hands of administrators, faculty members, and the college board of directors. They believe that, since the paper is supported by student fees and edited by and for students, it should be controlled by students. Reported in: *Salem Statesman*, July 29.

FILMS

Hartford, Conn.

Two hundred angry moviegoers staged a protest walkout against the film *Last House on the Left* claiming that it was "disgusting" and "sick." Advertised as a horror film, the movie reportedly shows a teenage girl being abducted, disemboweled, and cut into pieces during the first fifteen minutes. Theater officials decided to edit out the violent scenes, and for the next scheduled showing, the cut version was exhibited. The film still elicited complaints, this time from persons who paid to see the uncut film and were disappointed at seeing an edited version. Reported in: *The Hartford Courant*, August 28; 29; September 3.

Chicago, Ill.

U. S. Attorney General James R. Thompson ordered a full-scale grand jury investigation of the adult entertainment business in Chicago. Announcing the investigation, Thompson said, "There seems to be no action by local authorities, so the federal government is stepping in." Subsequently, a dozen "hardcore pornographic" films were seized from Chicago movie theaters. They will be viewed by Judge Frank J. McGarr, and, if found obscene according to Supreme Court guidelines, will be held for a grand jury investigation. Thompson said the federal government will use a little-known federal statute that makes it a crime to transport obscene material across state lines. Since most pornographic films are produced in California, they would be affected by this regulation. Reported in: *Chicago Today*, July 25; *Chicago Daily News*, July 25; *Chicago Sun-Times*, July 25.

Brentwood, Mo.

Mrs. Billie Lasker, the "smut-fighting grandmother," was spokeswoman for a group of forty-five angry citizens protesting the showing of *Portnoy's Complaint* at a Brentwood movie theater. Of the protesters, only Mrs. Lasker had seen the movie, commenting "it made me ill for two days." Others said their opinions were developed from what they read or heard about the film. The group addressed the request to halt the showing of the film to Assistant Prosecuting Attorney Donald J. Weyerich, who explained that, because obscenity is measured in terms of community morals, a court might not consider the protesters to be representative of the entire community. He suggested that the citizens' protest take other forms, such as picketing the theater or asking lawmakers to rewrite obscenity laws. Mrs. Lasker, already active in the second area, headed a petition drive seeking federal laws to permit local courts to decide what is obscene. With 170,00 signatures gathered, she predicts a total of one million by the end of the year. Reported in: *St. Louis Globe-Democrat*, July 25.

New York, N.Y.

Helping Mayor John Lindsay keep his promise to clean up the Times Square area, city vice authorities launched a series of raids during the first week of August resulting in twenty arrests for obscenity and the closing of more than a dozen peep shows. The police action was prompted by continuing complaints from midtown businessmen, theater owners, and actors demanding that the area be improved if the Broadway theaters are to remain solvent. Later in the month, police raids concentrated on Times Square movie theaters and massage parlors, with police tearing down signs and advertisements outside theaters to use as evidence to prove that obscenity was promoted at those establishments. New York Civil Liberties Union Executive Director Ira Glasser denounced the police efforts as an "essentially dishonest publicity stunt" that is a "flagrant violation" of the constitution and an "outrageous waste of police and judicial resources." Reported in: *New York Times*, August 5; 30; September 7.

Fairfield, Ohio

Complaints from irate citizens caused police to cancel the second week showing of *Fritz the Cat*, an X-rated feature length cartoon at the Acme Drive-In Theater. Reported in: *Cincinnati Enquirer*, August 10.

FREEDOM OF SPEECH

Washington, D.C.

Olympic discus thrower Olga Connolly publicly protested Olympic regulations requiring an athlete not to meet with the press without special approval from the Olympic Committee and to submit all statements to the committee for review. Noting that her press conference at that moment was in violation of the rules, Ms. Connolly said, "I had nine years of censorship in Czechoslovakia and five years of the German Nazis. I don't want it anymore." Reported in: *Baltimore Sun*, August 19.

FREEDOM OF THE PRESS

Washington, D.C.

The National Conference of Catholic Bishops decided not to publish a controversial theological study of the priesthood because its administrative committee did not agree with some of the study's conclusions. The study, part of a general survey of priestly life in the ministry, emphasized the flexible nature of the ministry and found there were no theological barriers to the ordination of women or the marriage of priests. The group that produced the priesthood study was headed by Rev. Carl Armbruster, a Jesuit who recently announced that he intends to leave the priesthood. Reported in: *New York Times*, September 17.

Washington, D.C.

The State Department conducted an investigation aimed at blocking publication of a book by Eugene K. Bird, former director of Berlin's Spandau Prison. The sole remaining inmate of the prison, administered on a rotating basis by the U.S., U.S.S.R., Great Britain, and France, is Rudolf Hess, convicted Nazi war criminal. Bird apparently taped interviews with Hess, and the State Department fears inclusion of the interview material in Bird's book. A State Department spokesman said Mr. Bird was aware of regulations forbidding Spandau officials to take advantage of their positions for personal gain. Reported in: *New York Times*, September 27.

Boston, Mass.

Demonstrators picketed the offices of the *Boston Globe*, asking that the newspaper rehire columnist David Deitch, who was fired for what the newspaper called "insubordination" and violation of a contract provision regulating outside work. He had published an article in *The Real Paper*, a local weekly, defending the American Newspaper Guild's endorsement of Senator George S. McGovern and discussing the relationship between reporters and newspaper management. A spokesman for *The Globe* said a provision of its Employees Association Contract forbids outside work, related to an employee's work at the newspaper, without permission. Reported in: *Boston Globe*, August 25.

New York, N.Y.

After paying a \$25,000 advance for a book by Richard Clark on Attica prison, Random House reportedly decided at the last moment not to publish the work, out of fear of legal repercussions. Several copies of the book had already been sent out for review, and the Kirkus Review Service called it "a first-rate contribution." Sources familiar with the work suggested that Random House's decision may have been motivated by demands from attorneys for Attica inmates that the book say nothing that might be used against their clients; the author's insistence that certain names and descriptions be deleted; and apprehension by Random House that Clark's vivid, detailed, biting condemnation of prison life might be too controversial. Clark, a Black Muslim minister, became famous as "Brother Richard" during the Attica rebellion a year ago and was recognized as the leading and most articulate inmate spokesman. Reported in: *New York Post*, September 15.

PRISONS

Cedar Rapids, Iowa

Reportedly, a complaint was filed with the Cedar Rapids Human Rights Commission against Linn County Sheriff Walter Grant by the mother of a county jail

prisoner, charging that her son is not allowed to read books she sends him. Sheriff Grant said the inmate, Aaron Doolin, has not been permitted to receive books because a jail regulation, approved by a district court judge, allows books to be received by prisoners only if sent directly from a publisher. He added that books are made available to prisoners by special arrangement with the public library. Reported in: *Cedar Rapids Gazette*, August 21.

Norwalk, Ohio

A recent decision by Governor John T. Gilligan that there be no censorship of prisoners' mail provoked strong criticism from law enforcement officials throughout Ohio. In a letter to Gilligan, Huron County Sheriff John Borgia said, "I feel that your entire philosophy on inmate mail censoring is entirely wrong." Borgia believes censorship is necessary because the letters might contain information regarding a crime or planned jailbreak. Borgia admits that the decision has no direct effect on county jails but feels that pressure might be brought to force the sheriffs to halt their censorship tactics. Reported in: *Elyria Chronicle-Telegram*, July 27.

RADIO

Stamford, Conn.

Federal Communications Examiner Isadore A. Honig recommended that two Stamford radio stations be fined the maximum of \$10,000 for allegedly censoring political broadcasts three years ago. In the 1969 Stamford mayoral campaign, stations WSTC and WSTC-FM required all but the Republican nominee to submit their political scripts for review. A final decision will be made by the entire Federal Communications Commission and is subject to appeal. Reported in: *Washington Star*, August 6.

MISCELLANEOUS

Grand Forks, N.D.

One of the last official acts of former Mayor Hugo Magnusson was creation of a "committee on pornography," headed by Norman Pederson, civil defense coordinator in the University of North Dakota's Division of Continuing Education. The group is not a vigilante or censorship committee, said Pedersen. Its main tactic will be "friendly persuasion," not a battle in the courts. "Our aim is to control, not abolish. We want to convince area people of the necessity and benefits of self-control, of themselves setting their own standards and sticking to them." Reported in: *Grand Forks Herald*, July 26.

B.U.L.L.



Awards

Bent Upon Losing Liberty

November Award

To: *Guy Schuurman*, director of the Salt Lake County Libraries, and the library board, who have gone on record against stocking such "sexually explicit" material as *Playboy* in county libraries. According to one board member, Mrs. Jean Taylor, the county libraries "need to sit back and see what others do. If we don't want to see what happens when others go afield, then we're doomed to live the mistakes of others." Another opinion was offered by board member Ralph McClure who said, "They can buy that kind of material at the drugstore." Reported in: *Salt Lake Tribune*, June 26; 29.

On the Sex Education Front

Parents Who Care, a nine-member "citizens' group," asserted that the rape of a thirteen-year-old girl in a junior high school was abetted by the Montgomery County Schools' four-year-old sex education program. Spokesman for the group, Malcolm Lawrence, said the school system is "encouraging the children to experiment. They dwell on sexuality" in the sex education courses. The group also charged that films shown in the schools advocate explicit sexual acts. Early last year, the same group sought an injunction against the classes in County Circuit Court (see *May Newsletter*, p. 96), but the court ruled that the group must first exhaust administrative remedies through the school system. (Reported in: *Washington Post*, September 26.)

Report On The Report

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

Volume III: The Marketplace: The Industry (Technical Report of the Commission on Obscenity and Pornography) USGPO, Washington, D.C. \$1.75. Stock Number 5256-0004.

Reviewed by Sam G. Whitten

Mr. Whitten, Associate Professor, Graduate School of Library Science, University of Texas, Austin, is a member of the ALA Intellectual Freedom Committee.

This study of commercial traffic in sexually oriented materials in the United States, written by John J. Sampson, General Counsel to the Commission, is divided into four parts: motion pictures, books and magazines, mail order, and "under-the-counter" or "hardcore" pornography. While most of the study is based on material previously published in books and magazines, it also includes unpublished information compiled by the U. S. Post Office and Internal Revenue, as well as information gathered from interviews and correspondence. Literature cited is listed in footnotes; no formal bibliography is included. Well-documented, the study is by far the most complete ever printed on the subject.

Part I: Motion pictures

For the purposes of Sampson's study, motion pictures are classified in three categories: (1) general release, (2) art, and (3) exploitation films. [Films classed as "hardcore" pornography are covered in Part IV below.] General release films are defined as those usually made by large well-established movie companies, made for a mass audience, and shown in some 90 percent of U. S. movie houses. Most are rated in four categories by the Code and Rating Administration (CRA), a self-regulating body of the movie industry. Current ratings used are:

"G" — All ages admitted; general audience.

"PG" — All ages admitted; parental guidance suggested.

"R" — Restricted; under 17 requires accompanying parent or guardian.

"X" — No one under 17 admitted; limit may vary in certain areas.

In recent years there has been a steady decline in "G"-ratings and an increase in "GP" and "R"-ratings. Between November 1968 and May 1970, the CRA rated

*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*.

a total of 655 films: "G" ratings were given to 28.7 percent; "GP" ratings to 39.5 percent; "R" ratings to 26.1 percent; and 5.7 percent were rated "X."

The sexual content of general release films is increasing, with all but one major U. S. studio having produced an "X"-rated film. Although general release films have never been the most sexually explicit films available, they generate the majority of public criticism because of their universality.

Art films, an amorphous, hard-to-define group, are primarily foreign language films with subtitles. For aesthetic, intellectual, artistic, or other reasons, they appeal to a limited audience. American art films are generally low-budget, designed to appeal to the "art film audience." They are too "arty," "foreign," or controversial to appeal to the majority of motion picture exhibitors. A successful art film will be shown in only 500-800 theaters. Sometimes called "quality" films, art films are usually not submitted to CRA for a rating. During the 1950s and early 1960s, they consistently treated sexual matters in a manner impermissible under the production code. If submitted today, ironically, most would be rated "GP" or "R."

Films produced for the art film circuit are sometimes discovered to have mass audience appeal and subsequently exhibit widely. Art films of the 1970s are distinguishable only by limited audience appeal and not by sexual content or treatment.

In current trade parlance, exploitation films (also known as "sex-ploitation," "adults only," or "skin flicks") are low-budget films which concentrate on the erotic. As late as the latter 1960s, the distinction between exploitation and general release films was clearly drawn. However, as general release films become more sexually explicit, it is more difficult to make a clear distinction.

Today, primary differences between general release and exploitation films, as far as sexual themes and content are concerned, are emphasis and focus. Neither an "X"-rated general release film nor an exploitation film is likely to show male genitalia, but both will feature female nudity and simulated sexual intercourse. An exploitation film will, however, have such scenes on the screen a much larger percentage of the time.

Exploitation films are seldom reviewed by the traditional movie review sources, while "R" and "X"-rated films are likely to be. About 5 percent of U. S. theaters regularly show exploitation films; another 5 percent occasionally book them. Most such theaters are located in large cities. While there are more than 10 firms producing exploitation films, most of the 150 or so films produced each year are made by about 50 companies on budgets ranging from \$5,000 to \$100,000 per film.

Exact statistics are unavailable, but it is estimated that exploitation films accounted for about 6 percent of total 1970 box office receipts. However, it is believed that some of these films were *extremely* profitable.

There is a small but growing market for 16mm films with totally sexual content. There are 200-300 adults-only theaters regularly showing such films and the number seems to be increasing steadily. By the late 1960s, these films reached a point where no sex act was taboo, and they began to replace 8mm stag films [discussed in Part IV.]

Part II: Books and magazines

Sex-oriented published material can be roughly divided into two categories: (1) "mass market" books and magazines, and (2) self-labeled adults-only material. In terms of sales, the mass market is far more important.

Most of the sex-oriented publications sold in this country on the mass market cannot be considered obscene under current legal standards. However, it is still important to discuss such material because: (1) a substantial portion of the public considers this material obscene, and (2) a significant number of our lawmakers at the local, state, and national levels disagree with current interpretations of obscenity laws.

Total U. S. book publishing industry receipts in 1968 were 2.57 billion dollars. Of this amount, no more than \$550,000 could possibly be conceived as resulting from the sale of sex-oriented material. Only a fraction is likely to be considered obscene by anyone.

Sampson's discussion of book distribution is inadequate. The author never thoroughly explains the difference between an ordinary wholesaler of books and a wholesaler of mass market paperbacks. No distinction is made between mass market and quality paperbacks, and the ordinary trade bookstore is hardly mentioned. Perhaps some of this can be excused because of the study's emphasis, but the discussion is, nonetheless, more confusing than enlightening.

Sampson dismisses most trade publishing as beyond the scope of the study. Admitting that a sizable percentage of current best-selling novels are sex-oriented, he rejects the idea that they could be considered obscene or pornographic. (Librarians please take note.)

He does point out that most retailers of mass market paperbacks (drugstores, supermarkets, variety stores, etc.) have no control over what titles are supplied by local distributors. He indicates that this practice results in distribution of some titles that might cause problems, but few books that could be considered legally obscene or pornographic are distributed in this fashion.

His discussion of mass market periodicals is more meaningful, including "confession" magazines, "barber shop" magazines, and the so-called "men's sophisticates." (A special section is devoted to *Playboy* which he declines to classify in any of the above categories.) This section emphasizes the secondary or adults-only market which includes paperback books and magazines, both distributed outside the normal mass market system. The adults-only market is dominated by 30-100 small publishers of whom 20-30 are important. Precise infor-

mation on sales is unavailable, but Sampson believes that a total sales of about \$70 million per year is probable. He puts this figure into perspective by pointing out that the combined sales of all adults-only magazines each year probably do not equal one month's sales of *Reader's Digest*.

Books in this market are almost entirely paperbacks, with a content half or more devoted to explicit descriptions of sex acts. Magazines, considerably more expensive, consist mostly of photographs of nude women photographed with genitalia exposed. Most adults-only material is distributed by wholesalers who handle nothing else, or from publisher to retailer by mail. It is sold in stores self-labeled as adults only and in regular bookstores where they are segregated into a section of the store labeled adults only.

Part III: Mail order

Sex-oriented items offered for sale by mail order include books and magazines, 8mm home movie films and photo sets, sexual devices and pseudomedical products, and a wide range of miscellaneous items. The success of direct mail selling depends on the mailing list used. Most such advertising goes to people who have previously ordered some kind of sex-oriented material.

In 1969, an estimated 45-50 million letters were mailed, advertising sex-oriented materials. Eighty-five per cent were mailed from Los Angeles and New York City. These resulted in \$12 to \$14 million in sales.

Most material sold by mail in the U. S. is not "hardcore pornography." Scandinavian producers sometimes advertise "hardcore pornography" in American magazines, but a large percentage of this material is confiscated by the U. S. Bureau of Customs.

Part IV: "Under-the-counter" or "Hardcore pornography"

Consisting primarily of drawings, photographs, or films showing the penis erect and sexual intercourse with actual penetration or oral-genital contact, materials in this category are considered illegal and are seldom displayed or sold openly.

Films in this category consist primarily of so-called stag movies, usually produced by amateurs, on 8mm film, and having a plot. Originally shown to "men only" smokers or at private parties, in the 1960s they moved into the back rooms of adults-only bookstores. Clandestine showings also occur in such places as bars, gas stations, junk yards, photography shops, and barber shops. Crudely made, these films are likely to be superseded by 16mm films now being shown openly in adults-only theaters. Most "hardcore" items other than stag films are kept under the counter in adults-only bookstores and also in such non-retail outlets as bars and barbershops.

Since sales of material in the "hardcore" category are clandestine, no exact figures are known. Sampson estimates sales at no more than 10 percent of the adults-only market — or about \$10 million annually.

He found that practically all "hardcore" sexual material, whether books, magazines, photographs, or films, is aimed at a male heterosexual market. While female homosexuality is quite commonly depicted in material produced for this male market, material depicting male homosexuality is produced almost exclusively for a male homosexual market and accounts for less than 10 percent of the total. An even smaller percentage is devoted to a market with fetishistic or sadomasochistic tastes. Publishers of pornography do not seem to consider women to be potential customers.

Conclusions

In all media for all audiences, the degree of sexual explicitness has increased greatly since 1960. By August 1970, the most explicit materials available above the counter were approximately equivalent to the most explicit material ever produced for covert sale.

While, in the proper perspective, the production of adults-only material is a relatively minor business in the total U. S. economy, producers are solidifying their economic position and expanding.

Films publicly shown in some theaters and published material sold openly are as explicit as any being sold in Denmark. The only significant difference is that, for so-called pornographic material to be sold openly in this country, it must include a significant amount of textual content. Laws still require that purely graphic material of a sexually explicit nature be sold under the counter. However, there is no difference in the 16mm stag films being shown openly in our theaters and the "pornographic sex films" exhibited in Denmark.

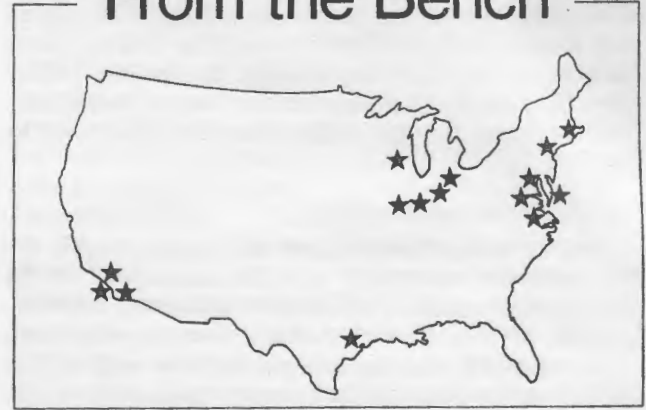
Sampson predicts that the degree of explicitness in the more widely distributed materials (mass market books and magazines, and general release motion pictures) will probably not change markedly in the near future. He does believe, however, that theaters showing films of the most explicit sexual material will increase in locations and in the volume of material exhibited.

Stanford Libraries . . . (from page 149)

These freedoms are in accord with a long-standing position taken by Stanford Libraries. They are also in accord with numerous statements on academic and intellectual freedom, including the American Library Association's *Library Bill of Rights* (1948 and 1967) and the *Freedom to Read Statement* (1953)* which is a joint statement by the American Library Association and the American Book Publishers' Council. [Endorsed by the University Library Council (January 11, 1972); Approved by the Academic Council Committee on Libraries (April 4, 1972); Academic Senate (April 27, 1972).]

*Revised, 1972.

From the Bench



SCHOOLS

Montgomery County, Md.

U. S. District Court Judge Edward S. Northrop ruled in a suit brought by the parents of six high school students that the school board policy prohibiting distribution of student publications in schools was "too broad under the prevailing notions of students' rights" and therefore unconstitutional. The school board modified the policy to read that a principal may stop distribution of a student publication "if it contains material which might reasonably lead him to forecast substantial disruption of, or material interference with school activities or endanger the health and safety of students. . . ." Reported in: *Washington Post*, August 15.

Ft. Bend, Tex.

Keith Sterzing, former high school civics teacher in the Ft. Bend Independent School District, was fired in February 1968 for "insubordination" after teaching a six-day unit on race relations and prejudice. Films used by Sterzing had been approved by the school district. He also used national magazine articles on the implications of racial prejudice for all people. Federal Court Judge Carl O. Bue, ruling on the case, awarded Sterzing \$20,000 in damages and \$5,000 in legal fees. Judge Bue said, "A responsible teacher must have the freedom to use the tools of his profession as he sees fit. Sterzing's objectives in his teaching [were] then proper to stimulate critical thinking, to create an awareness of our present political and social community, and to enliven the education process." He also pointed out that a "teacher's duty" is "to be exceptionally fair and objective in presenting his personally held opinions, to actively and persuasively present different views, in addition to open discussion." Judge Bue criticized the school board's use of "hearsay remarks of persons not in possession of the facts" in deciding to fire Sterzing. Reinstatement was not granted because Sterzing had been paid for the remainder of his 1967-68 contract and because reinstatement would "revive antagonisms." Reported in: *DuShane Fund Reports*, June 1, 1972.

Richmond, Va.

The National Socialists White Peoples Party (formerly the American Nazi Party) sought to reverse a court order upholding the Arlington County School Board's refusal to allow the group the use of school facilities. The organization wanted to use the school auditorium for a meeting to commemorate the birthday of Adolph Hitler. The board said that public facilities cannot be used by any group practicing racial or religious discrimination. Judge Oren R. Lewis agreed, finding the party "violently anti-Negro and anti-Jewish and its gatherings a threat to school property because of possible disorders that might ensue. In the brief challenging the board's action and Judge Lewis's dismissal, party attorneys claimed denial of equal protection of the law and freedoms of speech and expression. The lawyers said the party is nonviolent in its purposes and aims, the school board failed to show that any violence might occur, and the regulations were applied in a manner blatantly discriminatory against the party and its constitutionally protected rights. Reported in: *Richmond News Leader*, August 11.

BOOKS AND FILMS

Los Angeles, Cal.

After several weeks of "holding out," Van Nuys Superior Court Judge L. Tharton Hanson finally complied with a federal court order and returned 13,000 pornographic films to their distributors. Hanson ruled most of the films were obscene, but then a three-judge federal court panel said that the films were illegally seized. Judge Hanson described the federal court order as "unconstitutional" and said that it "seriously hampers the judicial processes of the states." Reported in: *Los Angeles Times*, August 8.

Newport Beach, Cal.

The state Supreme Court ruled that Metro-Goldwyn-Mayer must pay \$2,000, in addition to attorneys' fees and costs, for not announcing the rating of a preview film. The movie, *The Secret Garden of Stanley Sweetheart*, was rated "X" and was run with an "R"-rated film. The suit claimed viewers were subjected to emotional distress and moral outrage during the showing. Because of the suit, *Stanley Sweetheart* was heavily censored, rated "R" and then dropped by MGM as a failure. Reported in: *Washington Post*, August 1.

San Diego, Cal.

Donald Joseph Wiener, owner of the 5th Avenue Arcade, Chuck's Book Stores, Aces Movies, and the Gaiety Theater, was arrested on a twenty-nine count indictment charging possession of obscene matter. Handing down the indictment, Superior Court Judge William A. Yale pointed out that Wiener has been arrested and

booked on obscenity charges 100 times, that five complaints have been filed against him, and that he has been convicted ten times. Because of these prior convictions, the possession charge — ordinarily a misdemeanor — was made a felony. One week after indictment, Wiener was called before the San Diego Municipal Court to answer for ten pending obscenity cases. A bargaining agreement resulted in Wiener pleading guilty in three cases and in two cases agreeing to withdraw the appeal. Five additional cases against Wiener were dismissed on the motion of the deputy city attorney. Wiener was sentenced to sixty days in County Jail, fined \$6,500, and placed on three years' probation. Reported in: *San Diego Tribune*, August 25; September 6.

Washington, D.C.

In 1971, Superior Court Judge Edward A. Beard found Thomas W. Parks and Nick Samponga guilty of selling obscene films. During the trial, the defendants' lawyers introduced three expert witnesses, including a former researcher from the Kinsey Institute and a psychiatrist who said that such films are commonly used to treat patients with sexual problems. Judge Beard said the experts constituted "an impressive group" and that their testimony was "persuasive" but still found both men guilty and ordered them to pay a fine and serve a jail term. On appeal to the D. C. Court of Appeals, it was decided that Judge Beard "misinterpreted" the law. Reversing the conviction, the court said that, once the defense presents testimony that materials do not violate national community standards, a judge cannot rule "obscenity per se." In effect, this decision means it will be more difficult for the government to prosecute and obtain convictions in obscenity cases. Reported in: *Washington Star-News*, September 11.

Decatur, Ill.

The Illinois Appellate Court reversed an earlier ruling of Macon County Circuit Court Judge Rodney A. Scott which had forced the closing of the Adult Book and Cinema Shop on the grounds that the store is a public nuisance. The appeals court ruled that the public nuisance law does not apply to bookstores. The store reopened shortly after the appeals court decision. Within a few hours, two clerks managing the store were arrested on obscenity charges. They were soon released on bail and the shop again reopened the following day. Despite threats from the Decatur police that more arrests are in the offing, business reportedly continues at a brisk pace. Reported in: *The Decatur Review*, August 26; 30; 31; September 5; 6; 8; 9; *Chicago Tribune*, August 31.

Marion, Ind.

Jacob Weinberg, proprietor of the Weinberg News Agency, filed the first of two suits to challenge a city ordinance making it unlawful "for any minor to enter upon the premises of a business establishment within the

city which sells or displays pornographic materials." In early July, city law enforcement officials threatened to prosecute retailers who refused to remove copies of ten different magazines, including *Playboy*, *Penthouse*, and *Sexology*, from their display shelves. After Weinberg successfully obtained a restraining order preventing the banning of magazines defined as "pornographic" by the city ordinance, a hearing was set to consider making the order a temporary injunction. City Attorney Pat Ryan said he will ask for a new judge for the second hearing. However, he will not ask for a change of venue for future hearings. "I want it to stay in the county," he stated. "That's where it belongs, right here where the children live." Subsequently, *Playboy* also filed suit in federal court challenging the pornography ordinance. *Playboy* attorney Lee Gottlieb said the suit is based strictly on constitutional grounds. No date has been set for the initial hearing. Reported in: *Elyria Chronicle-Telegram*, July 22.

Madison, Wis.

Federal Judge James Doyle declared unconstitutional for the second time a federal law banning the interstate shipment of obscene materials by common carrier. In this decision, Doyle ruled that the law was too broad in that it would prevent a traveler from carrying an obscene book for his own use on an interstate plane, train, or bus. Judge Doyle's initial ruling, based on other grounds, was reversed by the U. S. Supreme Court, and the case was returned to Doyle for reconsideration. Reported in: *Milwaukee Journal*, September 15.

FREEDOM OF SPEECH

Washington, D.C.

The U. S. Court of Appeals upheld the denial of a broadcasting license to Brandywine-Main Line Radio, Inc., owned by Faith Theological Seminary, of which the Rev. Carl McIntire (See "Bull Award," *March Newsletter*, p. 66) is chairman of the board of directors. The decision came in an appeal of a Federal Communications Commission (FCC) ruling denying the license. The FCC said the corporation refused to allow any opposition to its views to be aired and put on programs substantially different from those it had promised to schedule. In the opinion of the Court of Appeals, written by Judge Edward A. Tamm, McIntire himself is given to making "incantations" which amount to "childish prattle." The decision was concurred in by Judges J. Skelly Wright and David L. Bazelon. Reported in: *Washington Star-News*, September 26.

Providence, R.I.

U. S. District Court Judge Raymond J. Pettine, ruling in a suit brought by Dr. Benjamin Spock, upheld the U. S. Navy's right to prohibit open political activity within the closed Quonset and Davis bases. However, he struck down a Navy order extending the ban to five

Naval housing areas in North Kingston and the base across the road. Spock, presidential candidate of the People's Party, was joined in the suit by Linda Jenness, candidate of the Socialist Worker's Party. Reported in: *New York Times*, August 13.

FREEDOM OF THE PRESS

Fort Wayne, Ind.

U. S. District Court Judge Jesse Eschbach, ruling in a suit brought by America's Best Cinema Corp. against Fort Wayne Newspapers, Inc., upheld the newspapers' right to refuse advertising of X-rated and unrated movies. Judge Eschbach noted that it would be "a harsh and far-reaching decision" which mandated that a private newspaper was compelled by federal statute to publish advertising without control over its content. Reported in: *Fort Wayne Journal-Gazette*, August 30.

New York, N.Y.

The U. S. Court of Appeals for the Fourth Circuit upheld a lower court ruling restraining former Central Intelligence Agency (CIA) employee, Victor L. Marchetti, from publishing books or articles about his former employer without prior authorization from the CIA director or a designated representative. The government brought its action against Marchetti to block an article he submitted to *Esquire Magazine* last March. The government contended that the article contained classified information concerning intelligence sources, methods, and operations. Marchetti left the CIA in 1969 after fourteen years, including three years of service as Executive Assistant to the Deputy Director. Writing the court's opinion, Chief Judge Clement F. Haynesworth, Jr., said, "Marchetti, by accepting employment with the CIA and by signing a secrecy agreement, did not surrender his First Amendment rights of free speech. The agreement is enforceable only because it is not a violation of those rights." The court added that Marchetti could seek judicial review of any CIA disapproval of a manuscript for publication. Marchetti's attorney called the decision "an extraordinary burden to be imposed upon First Amendment rights and is in direct conflict with the Supreme Court's opinion in the *Pentagon Papers* case." He said the case would be taken to the Supreme Court immediately. Reported in: *New York Times*, September 18.

LOYALTY OATHS

Springfield, Ill.

The Secretary of State's office refused to accept nominating petitions for candidates of the Socialist Workers Party because the nominees would not sign the state's loyalty oath. The state electoral board upheld

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Let Me Say This About That

A Column of Reviews

The News Twisters. Edith Efron. Nash Publishing, Los Angeles, Calif. 1971. n.p.

Funded by a grant from The Historical Research Foundation, this serious research study belies its frivolous title. Edith Efron has studied and analyzed the 7:00-7:30 EST prime-time nationwide television news reports on ABC, CBS, and NBC for a period from September 16 to November 4, 1968, during the last presidential campaign.

Appendix C is devoted to a detailed outline of the methodology of the study and should be read first by the serious scholar of communication. If the reader accepts her methodology (a well-designed content analysis), if the reader accepts her definitions of what is liberal and what is conservative (and some might question her on this), then her conclusions must be accepted as valid. What she has established in this study is that an ideological monopoly in the most powerful political medium of communication in the United States does exist "in defiance of the full-fledged political spectrum in this country and which mocks the very concept of a free competitive market of ideas" (p. 218). The ideological monopoly is the Democratic-liberal-left axis of opinion.

The author suggests three solutions: (1) political labeling (she points out that *The New York Times* does not conceal its liberal identity, nor does *The Chicago Tribune* conceal its conservative identity); (2) spectrum hiring (the hiring of competent reporters from areas of the political spectrum other than liberal). She would like to see "in broadcasting the identical system that exists in all other media of communication in the United States" (p. 215). She describes this system thusly: "If one goes to a library and asks a trained librarian where one can find New Left opinion, liberal opinion, and conservative opinion, she will automatically turn, respectively, to New Left publications, liberal publications, and conservative publications" (p. 26). If this type of system cannot be achieved in television news broadcasting, the author declared that the Fairness Doctrine of 1949 "should be fought for militantly." This doctrine granted the broadcaster the right to express his views provided he also presented all sides of controversial issues.

Librarians, long interested in presenting materials on all sides of issues, should be aware of the results of this important research study.

The appendixes comprise approximately one-third of the book. Appendixes A and B present liberal and conservative reports of the same events from newspapers and news weeklies. Appendixes D through K present a condensation of the opinions from twenty-four of the twenty-six opinion files (the coded transcripts of the

news analyses during the period studied). One minor criticism is related to volume twelve of these files, which is labeled "Anti-Viet Cong." Since none of the networks reported any opinion in this category, this must be an empty volume. Appendixes L through O present other related data. Although the opinion files are available to the reader on payment of reproduction fees, the inclusion of one sample volume in this book would have been a valuable addition. Large universities should purchase these files as well as this book so that serious students of communication may have access to the primary data on which this study is based. —Reviewed by Doris Cruger Dale, Department of Instructional Materials, Southern Illinois University.

The Constitutionalist: Notes on the First Amendment. George Anastaplo. Southern Methodist University Press, Dallas, Texas. 1971. \$20.00.

With profound understanding, John Stuart Mill noted more than one hundred years ago that the worth of any nation is found in the individuals that compose it (*On Liberty*, 1859). When a nation limits the rights of expression and discussion of its citizens in order to produce a servile and easily manipulated constituency, it may find that these stunted men can generate only mediocrity in that nation's growth and composition. It is with this basic idea inherent in his writing that George Anastaplo sets down his brilliant study of the "freedom of speech and of the press" provision of the First Amendment.

From the very beginning of the work, as Anastaplo examines the role of the First Congress in the writing of the First Amendment, the reader is impressed by the contention that the restraint imposed on Congress by the provision with regard to *political speech* is absolute and without qualification. Interpretations such as Justice Holmes' "clear and present danger" test can substantially limit free speech during times of stress. "Thus," says Anastaplo, "when constitutional protection for unpopular discussion of vital public issues is most needed, the sovereign citizen body is told that it is not the time for talking." Even as he scrutinizes the activities of the Executive and the Judiciary, the author reiterates his position that the First Amendment freedoms of "speech and press" are primarily for the use of the governed, not the governors.

The latter half of the author's discussion of the "freedom of speech and press" provision is an extensive examination of the Constitution and its historical origins, and of the doctrine of "states' rights" and its evolution in relation to our present federal system. He asserts that the transformation of power from the states to the general government after the Civil War has had a direct bearing on which branch is responsible for "abridging" freedom of speech. Anastaplo contends further that the Founding Fathers intended only that states have the

power to "abridge" speech. The author points out that, during the evolution of the First Amendment, an attempt was made to restrain the states from having the power to "abridge" speech, but it was defeated. The sovereignty of state power to restrain was recognized then, but not today.

The end of the work restates the virtues of freedom and of republican government, serving to tie together the philosophical ideals of "freedom of speech and press" with the present political situation we find in representative government in the United States.

Anastaplo's exploratory effort to reconsider the intentions of the framers of the First Amendment is both complete and appropriate. At a period in the history of this great country when freedom of speech and freedom of the press are constantly being tested and analyzed, his work stands as a refreshing recapitulation of our Constitution as the great balancer between the ideals of philosophical man and the realities of pragmatic government. As our nation becomes so increasingly urbanized and its operation and administration so complex, we realize that the ultimate of participational democracy (which is apparent today in some of our neopopulist or grass-roots movements) must give way almost fully to representative democracy as exemplified in our general government. "But freedom of speech," Anastaplo states, "permits a people to believe that they are participating in the government, that it is in a sense their own."

George Anastaplo truly can be called a staunch defender of the rights and privileges of freedom of speech, and why not? He himself, as related in one of the appendixes to the book, was the object of an extraordinary proceeding that lasted for eleven years as he attempted to enter the bar in the State of Illinois. The unfolding of this story alone is a monument to the dedication of his belief in and love of freedom of speech and American principles of government.

The book is of value both for its subject matter and as a reference tool. Elaborate use of both ancient and modern works on freedom of speech and constant recourse to such authorities as Blackstone, Cooley, and Dicey make the volume an invaluable aid to readers of constitutional history and American government.

Yes, possibly the work can be criticized for alluding to the idea that freedom of speech will lead to the truth; and truth, we all know, is supposed to triumph over wrong and evil courses of action. But to all who believe in dissent and intellectual freedom as one of the truest tests of democracy, the thesis which George Anastaplo offers can readily be acknowledged as one of the finest protectors of individual liberty and freedom of expression ever devised. —Reviewed by Lawrence V. Gould, Jr., Eastern New Mexico University.

A Question of Judgment: The Fortas Case and the Struggle for the Supreme Court. Robert Shogan. Bobbs Merrill, Indianapolis, Ind. 1972. \$10.00.

Abe Fortas, a prominent Washington, D.C. attorney and advisor to at least three presidents, served as a Justice of the U. S. Supreme Court from October 4, 1965, to May 14, 1969. He resigned, under press and political pressure, because of his highly questionable financial relationship with a convicted stock swindler. The author of this book, a *Newsweek* writer, concludes that Fortas was the victim of "a case of non-criminal, non-judicial misbehavior," which the ethics committee of the American Bar Association found to be "clearly contrary to the canons of judicial ethics."

What should be of most interest to readers of the *Newsletter* is what Justice Fortas contributed (or did not contribute) to the continuing battle against censorship. During his nearly four years in office, Fortas was noted as a civil libertarian, nearly of the caliber and force of Justices Black and Douglas — but not quite.

The most famous difference between the Black-Douglas views of freedom of speech and that of Justice Fortas was on the Ralph Ginzburg case. According to Shogan, it was Fortas who "helped develop" the legal principle of "pandering" as a usable legal formula to attack distributors of "questionable" materials. In fact, says Shogan, Fortas "urged" this idea on Justice Brennan, over whose name the *Ginzburg* decision appeared.

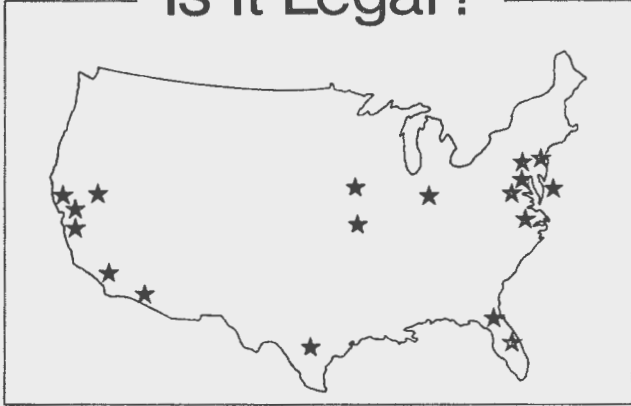
Shogan claims that Fortas's justification for this was that "unless the Court imposed some limits on obscenity . . . , public revulsion would be so great that Congress might eventually step in and perhaps even revise the First Amendment." For Fortas, "his approach offered the most realistic defense of free expression." The reasoning behind this view, we are told, was that, by stressing the "pandering" point, those distributors of potentially "questionable" material who wished to avoid prosecution simply would have to do their advertising and promotion in a more circumspect way than did Ralph Ginzburg, with his use of what Justice Brennan called "the leer of the sensualist" in his promotion of his publications.

Justices Black and Douglas, in their minority opinions, differed strongly. Black, in accord with his well-known beliefs on the absoluteness of the right of freedom of speech, wrote, "I believe the Federal government is without any power whatsoever under the Constitution to put any type of burden on speech and expression of ideas of any kind." Indeed, he stated, "sex at least as much as any other aspect of life is so much a part of our society that its discussion should not be made a crime." Justice Douglas wrote in his opinion on *Ginzburg* that "I do not think it permissible to draw lines between the 'good' and the 'bad' and to be true to the constitutional mandate to let all ideas alone."

Fortas' quite acerbic judgment on both Black and Douglas — with whom on many other civil liberties

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Is It Legal?



SCHOOLS

Novato, Cal.

The American Civil Liberties Union Federation of Northern California filed suit in Marin County Superior Court on behalf of two teachers, students, parents, and the Society for Individual Rights (SIR). The suit is aimed at forcing the Novato School Board to allow Robby Robillard to address two classes at San Marin High School on behalf of SIR, an organization seeking equal rights for homosexuals. The suit also asks that board-invoked reprimands be removed from the files of Kristina O'Donnell and Lawrence Siegel, two teachers who had invited Robillard to address minority studies classes last June. Attendance at the lectures was optional and required written permission from parents. Only two parents refused permission. School Principal Henry Moroski cancelled the speaker and was supported by Superintendent James Bunker. Reported in: *San Francisco Chronicle*, September 14.

Washington, D.C.

William F. Willoughby of Fairfax City, Va., filed suit in U. S. District Court asking for withdrawal from publication of the Biological Sciences Curriculum Study (BSCS) series of texts. The suit contends that the BSCS texts, published under a federal grant from the National Science Foundation, present the Darwinian theory as the only credible theory of man's origin. Willoughby also asked the court to order the National Science Foundation to spend an amount of money equal to that spent on the BSCS series for "the promulgation of the creation theory of the origin of man." The BSCS series is currently being used by an estimated 45 percent of high school students in the U. S. Reported in: *Washington Star*, August 9.

ABORTION AND BIRTH CONTROL INFORMATION

Riverside, Cal.

A group of University of California (Riverside) students, prevented from sending a birth control booklet

through the mail, filed suit against the Postal Service. According to Postal Service Counsel O. R. Stites, Jr., the booklet and a single-page flier violated laws prohibiting the mailing of abortion information and unsolicited advertisements for contraceptives. The students are represented by the Center for Law in the Public Interest, Los Angeles public law firm. Attorney Mary Nichols said the center accepted the case because "we intend to attack it on constitutional grounds, including freedom of speech." The booklet, originally prepared by McGill University (Montreal) students, is strictly clinical, presenting a detailed explanation of human anatomy, the menstrual cycle, hormones, sexual intercourse, birth control, and abortion. Ms. Nichols said, "The only information about [abortion] referral is extremely general." Since the book was written in Canada, no addresses or telephone numbers are given. The names of oral contraceptives are mentioned in a description of various types of pills. "How can a mention of brand names in a handbook like this be construed as advertising?" asked Ms. Nichols. Planned Parenthood of Los Angeles, prevented from advertising its services because of the same law, will file an *amicus* brief. Reported in: *Los Angeles Times*, July 26.

Newark, N.J.

The New Jersey Civil Liberties Union filed suit in U. S. District Court seeking an injunction against the enforcement of a federal statute prohibiting the mailing of abortion information. The Stevens Institute of Technology (Hoboken, N.J.) student newspaper was threatened with loss of second-class mailing privileges and criminal prosecution if it continues to mail issues containing advertisements for abortion referral services. The suit contends the federal statute interferes with the First Amendment guarantee of freedom of the press. Reported in: *New York Times*, August 4.

FREEDOM OF THE PRESS

Sacramento, Cal.

The McKeon Construction Company filed suit against writers for the Sacramento State University paper, *The Hornet*, charging they had "conspired together and maliciously and willfully entered into a scheme to unlawfully deprive" the company from using a 5,380 acre ranch "for lawful real estate development purposes." Student Bruce J. McNitt and others had written articles in *The Hornet* opposing the development and stressing the area's wildlife and the alleged ecological damage the proposal would cause. The Sacramento Newspaper Guild filed an *amicus* brief on behalf of the students, calling the \$80,000,000 lawsuit a "blatant attack on the very purpose to be served by freedom of the press." Reported in: *Sacramento Union*, August 30.

Washington, D.C.

As reported last issue, the U.S. Supreme Court ruled five to four against Earl Caldwell, deciding that the First Amendment does not automatically protect a reporter from being forced to disclose confidential information or sources to a grand jury. Caldwell, a *New York Times* correspondent, invoked reporter's privilege when asked to testify on what he had learned about the Black Panthers while covering them for the *Times*. Responding to the decision, a Joint Media Committee, composed of representatives from various publishers' associations, developed a draft bill which will be presented to Congress. In essence, it states "that a person connected with or employed by the news media . . . shall not be required by a court . . . to disclose . . . any information procured for publication or broadcast." Reported in: *Washington Newsletter (AAP)*, July 31; *Editor & Publisher*, August 19.

Washington, D.C.

Minnesota Senator Walter F. Mondale introduced legislation to protect reporters against having to disclose their sources of information. Under his proposal, reporters would be required to answer questions about their sources only if the information sought was relevant to a specific violation of the law, only if the information could not be obtained by other means, and only if the information was of overriding national interest. Reported in: *New York Post*, August 18.

Reno, Nev.

The *Reno Evening Gazette* and the *Nevada State Journal* requested the U. S. District Court to issue an injunction prohibiting Wascho District Judge Grant Bowen from "imposing any prior judicial restraints upon the First Amendment freedoms unless it can be clearly established upon the record at a hearing, with sufficient specific findings, that the prohibited expression or conduct constitutes a clear and pertinent danger or serious and imminent threat to the administration of justice." The suit followed an order by Judge Bowen banning news coverage of jurors' names in a penalty hearing for Thomas Lee Bean, convicted of a 1963 slaying. Reported in *Reno Gazette*, August 19.

Richmond, Va.

In April 1971, a student's letter in the East Carolina University newspaper criticized President Leo W. Jenkin's decision not to grant parietal visiting hours. An unspecified four-letter word was used in reference to Jenkins. Claiming the student and the editor used "abusive and obscene language," the university suspended both. A federal court judge in North Carolina, finding the letter protected by the First Amendment, ordered the disciplinary actions lifted and expunged from the students' records. University officials have appealed that decision to the 4th U. S. Circuit Court of

Appeals, saying the disciplinary action was not an attempt to block criticism, and "a university may reasonably restrict criticism where criticism is expressed in a profane or vulgar manner." Attorneys for the students described the actions as "a frontal attack on a free press," and concluded, "The First Amendment is indeed powerful medicine and, if its side effects include the bruised ego of the president of East Carolina University, it is a price far cheaper than the suppression of freedom itself." Reported in: *Richmond Times-Dispatch*, August 5.

OBSCENITY LEGISLATION

Yuma, Ariz.

County Attorney Mike Smith charged the Owl Bookstore and the Adult Bookstore with selling, renting, or distributing obscene items. In response to this charge, attorneys representing the booksellers filed two motions to suppress evidence, two motions to quash the case, two motions for a change of venue, and a special action. The motion to suppress is most significant because it challenges Arizona's 1970 obscenity statute as unconstitutional. In the Arizona statute, "guilty knowledge" requires that a person know the material is obscene. The motion contends that, to meet the law, a book dealer would have to read every item in his shop. This would take so much time it would unconstitutionally abridge free speech. Reported in: *Yuma Sentinel*, August 9.

Orlando, Fla.

Orange County, Florida, took advantage of its self-rule status by approving a local obscenity ordinance prohibiting "offensive exhibition of lewd material." The County Commissioners unanimously adopted an "anti-display" ordinance which makes it illegal for store owners or movie theaters, including outdoor theaters, to display obscene materials where they might be openly visible. The County Commission is considering approval of another measure, similar to Georgia's obscenity law, that will forbid distribution of obscene books or films and will ban obscene materials except in one's own home. There has been much support for local obscenity ordinances in Florida since the state obscenity statute was declared unconstitutional earlier this year because of vagueness, leaving Florida without any anti-obscenity law. Reported in: *Orlando Sentinel*, August 2.

Des Moines, Iowa

The Iowa Criminal Code Review Study Committee approved a new pornography statute which would prohibit sale of pornographic material to persons sixteen years old or younger. It also would prohibit the display of pornographic material to unwilling observers, such as people who live near drive-in movies. The proposal would, in effect, allow persons seventeen and older to view anything they choose. Reported in: *New York Times*, August 29.

Kansas City, Mo.

Police arrested operators of sixteen adult movie theaters and arcade peepshows, and two exotic dancers in a large-scale crackdown on pornography. The raid, which took 1,000 hours and over two months to plan, was made in compliance with Kansas City's anti-pornography ordinance. The constitutionality of the ordinance is being tested in a case now before the Missouri Supreme Court. Reported in: *Kansas City Star*, August 22.

Harrisburg, Pa.

State Representative Pat Gleason introduced legislation that would prohibit the display of obscene literature in any area of any store to which minors have access. Pennsylvania law already forbids the sale of obscene literature to minors. The House of Representatives promised early action on the bill. Reported in: *Barnesboro Star*, June 8.

PRISONS

San Jose, Cal.

The ACLU plans to challenge the authority of California juvenile detention center officials to censor incoming and outgoing mail. Robert Baines, ACLU attorney, said, "Even in federal and state prisons, prisoners have a right to have all of their outgoing mail delivered to the postal authorities without inspection in any manner, and all incoming mail can be opened only to be inspected for contraband or other illegal articles." Acting Chief Juvenile Probation Officer Richard Bothman said the mail is read, but only to intercept contraband, such as narcotics, and to watch for possible escape attempts. Baines contends, however, that censorship tactics violate the minor's free speech, free association, right to petition the government, right to counsel, right to privacy, and freedom from illegal search and seizure. Reported in: *San Jose News*, July 19.

Jacksonville, Fla.

Two Florida State Prison inmates challenged prison censorship policies on grounds that they infringe on constitutional rights of free speech and press, due process and equal protection. The prisoners' attorney, Frank X. Friedman, Jr., arguing before U. S. District Court Judge Charles R. Scott, said, "They have a right to read controversial literature even though it doesn't meet the approval of state officials. It's as simple as that." The security coordinator for the prison system, speaking for the state, explained that the prisoners' mail is searched for contraband and any written matter that might cause trouble. Friedman attacked the censorship policy as too broad, too vague, and leaving too much discretion to individual prison superintendents. Judge Scott took the case under advisement. Final written pleadings were

set for October. Reported in: *Jacksonville Times-Union*, August 10; 11.

Indianapolis, Ind.

Legal Services Organization attorneys requested approval to represent Indiana State Reformatory inmates in a class action suit in Federal Court to seek an order limiting censorship of inmate mail. The suit awaits approval as a "pauper" suit, free of court costs. The complaint asks for an end to censorship of ingoing and outgoing mail unless escape plans or obscenity are included. It also requests a prohibition against the saving of intercepted mail to be used as an obstacle to parole approval. Reported in: *Indianapolis Star*, September 20.

SEIZURE OF BOOKS AND FILMS

San Antonio, Tex.

Vice officers raided ten adult movie theaters, confiscating seven projectors and twenty-five reels of film, and arrested seven theater owners, charging them with possession of lewd material and intent to exhibit it. In response to police action, operators of three adult theaters filed suit in federal court, claiming they are the object of a "scheme to effect total censorship of any material dealing frankly in sexual matters." They contend that the showing of films falls under the protection of the First Amendment and that they have the right to exhibit materials to consenting adults. They are asking that the equipment, films, and books confiscated in the raid be returned and that they be awarded \$180,000 in damages. They are also seeking an injunction preventing additional raids in the future. Reported in: *San Antonio News*, August 25; *San Antonio Express*, August 25; 30.

"Nonetheless, everybody who takes a position brings his past with him, and to the extent that the church has influenced me as an individual, it will undoubtedly influence what I do as a member of the court. You bring your whole being into the judging process." — William Rehnquist, in an interview in the April 19 issue of *The Lutheran*.

The Agitator: A Collection of Diverse Opinions from America's Not-So-Popular Press (A Schism Anthology), edited by Donald L. Rice, is a collection by "pamphleteers," those who write to persuade their fellow men. This provocative anthology presents the full range of political stances. Right, left, or center, you'll find something to raise your hackles. Available from ALA's Order Department, 50 East Huron, Chicago, Illinois 60611, for \$3.95.

Success Stories



Avon, Conn.

After long debate, the board of education denied a request from Mrs. Dawn Muenchow to ban from curriculum use the books *The Electric Kool-Aid Acid Test* and *One Flew Over the Cuckoo's Nest*. She had called the books obscene and pornographic. English department chairman Martin Bush defended the books, concluding, "To combat evil and whatever of degeneration we may see in our society, varying visions of truth are our only viable weapons." Making the motion to deny Mrs. Muenchow's request, Dr. Alvin Liftig said, "If we, as a board, believe in freedom of education and agree that the books in question show life from all sides, it is incumbent on us to stand up for that freedom." Reported in: *Hartford Courant*, July 27.

St. Louis, Mo.

After receiving complaints and conducting a full-scale review, St. Louis County Prosecuting Attorney Donald J. Weyerich concluded that the Black Muslim newspaper, *Muhammed Speaks*, the *Black Panther*, and *St. Louis Outlaw* are not obscene. The conclusions, published in a 1971 annual report, contend that the *Black Panther* and *Muhammed Speaks* are strictly "political in nature" and "have little to do with obscenity." "Only the *St. Louis Outlaw*," the report continued, "could be considered to be a publication which uses obscenity, and suppression of this newspaper, with its rather innocuous content, would be illegal under recent Supreme Court decisions as violative of the First Amendment." Reported in: *St. Louis Globe-Democrat*, August 2.

South Plainfield, N.J.

After theater owners and citizens protested that the definition of obscenity in a recently approved ordinance was so broad that young people would be admitted to only G-rated films, Mayor John George and theater owners agreed on a new amendment. Under the amendment, the movie rating system regulations will be adhered to, allowing minors to see movies considered

"obscene" if accompanied by a parent or legal guardian. Reported in: *New Brunswick Home News*, July 7; August 8.

Providence, R.I.

After reviewing the cases of three Cranston High School teachers reprimanded for allowing a prostitute to address a class of students, the American Arbitration Association ordered that all evidence of the censure be removed from the records of the three teachers involved, George T. O'Neil, James S. D'Ambra, and Walter J. Campbell. (See May Newsletter, p. 74.) Reported in: *Washington Post*, September 12.

Bench . . . (from page 164)

the refusal. Under the decision, all of the candidates would have been barred from the Illinois ballot in November. Patricia Grogan, the party's gubernatorial aspirant, described the oath as "a barbaric relic left over from the McCarthy period" and said that it "is used purely to intimidate radicals." The decision was subsequently appealed to the U. S. District Court, which ruled that the loyalty oath is unconstitutional. It had required candidates to swear they were "not affiliated directly or indirectly with any communist organization . . ." which advocates the overthrow, or any change of form of government, by force or by unlawful means. The court ordered the Communist Party candidates placed on the November ballot. Reported in: *New York Times*, August 4; *Chicago Sun-Times*, September 22.

Let Me Say This . . . (from page 166)

issues he generally agreed — was that they were "whoring after principle" (which Shogan calls a "pungent phrase," but which I would characterize as more excessively rhetorical than "pungent").

Shogan's blow-by-blow description of the rather sad story of Fortas, his overweening ambition, and his poor judgment will probably be of more interest to political scientists than to librarians and library trustees. Actually, only two pages of this 313-page volume are directly concerned with obscenity-pornography-censorship. The minutiae of Fortas's rather unusual life-history and personality, as chronicled herein, may be of some interest to those who have a psychological bent. —Reviewed by Eli M. Oboler, *University Librarian, Idaho State University, Pocatello*.



Richard L. Darling, center, chairman of the ALA Intellectual Freedom Committee, receives check for \$14,000 from William T. Branham, left, president of Field Enterprises Educational Corporation, on behalf of the committee that was the principal winner of the 1972 J. Morris Jones-World Book Encyclopedia-ALA Goals Award. David H. Clift, retired executive director of ALA, is at right. The money will be used for the planning, development, and implementation of a Prototype Workshop on Intellectual Freedom. The award is given each year by Field Enterprises Educational Corporation to the American Library Association to forward the goals of ALA. (This year, the remainder of the award was given to the ALA Committee on Accreditation's project — a Seminar to Prepare Evaluators of Graduate Study Programs of Library Education Under the New Standards for Accreditation. As is customary, \$1,000 is used for administrative and overhead costs.)

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