titles now troublesome

Books

Periodicals

Films

cleaning up America

It required no wisdom of Solomon to predict, as the *Newsletter* did in September, that the U.S. Supreme Court's June 21 "interpretation" of the First Amendment would be followed not by the laissez faire attitude toward materials with sexual content that the Court said was permissible, but, on the contrary, by the legal and extra-legal attempts at suppression that the Court encouraged. When the Chief Justice of the Supreme Court can equate communicative materials with the garbage and other effluence that civilized societies control, a "clean up America" campaign can come as a surprise to no one.

Attacks on Libraries

Hennepin County Library Director Robert Rohlf reports a recent increase in complaints about unrestricted access to materials with sexual content. In response to a patron's complaint about "sexually oriented advertisements" in periodicals in the Edina Community Library, the Hennepin County Library Board moved the branch's *Berkeley Barb* collection to the major facility in the area at Southdale. Rohlf states that the action was taken at his suggestion, but he adds that neither he nor the board contemplates any change in the Hennepin County Library selection policy or access policy. All persons, Rohlf assures, will continue to have unrestricted access to all materials in the library collection.

Legislative Developments: A Sampling

A bill passed by the Pennsylvania House and submitted to the Senate in September (SB 737) predictably modifies Pennsylvania law by incorporating the *Miller* guidelines. Perhaps the most troublesome part of the bill provides that " 'community' for the purpose of applying the 'contemporary community standards' herein shall be considered to be the county." Because the provision assures a crazyquilt of standards in Pennsylvania, the "standards" section and other portions of the bill will be vigorously protested by the Pennsylvania Library Association.

In Oregon, where statutes previously regulated only the dissemination of materials to minors, a new law passed by the legislature and signed by the governor incorporates the *Miller* guidelines and regulates the dissemination of communicative materials to all persons. The Executive Board of the Multnomah County Democratice Central Committee has called for repeal of the law, and a group called People Against Censorship is circulating petitions to have the law referred to the people in November 1974.

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on freedom... between recurring evils

By P.L. ROTHENBERG, a frequent contributor to the review pages of the Newsletter.

Some forty-five years ago, I joined in a snicker by a score or more undergraduates in a political science class. The professor had offered a bit of bitter satire, then current, relative to a condition in the South: "What are the main provisions of the Magna Carta?" was the question, in the form of a *literacy test,* posed by the smug white supremacist. "I think," said the black sharecropper who had dared to claim his right to vote, "that the Magna Carta provides that no black man will ever vote in the state of Georgia."

The snicker was an echo of apathy, of the sighing resignation of those who truly cared, of the smugness of those who lived happily in an era of cynical inequality, so foreordained a half century earlier in the infamous Tilden-Hayes election, when an unconscionable deal resulted in a "go" signal to the South to carry on, without interference, in *ante bellum* style. The snicker followed, by less than a decade, a reign of terror: the shameless Palmer raids; Teapot dome; the Smoot-Hawley Act, a catastrophic protectionist measure which generously contributed toward the economic chaos soon to follow.

The snicker died, dear friends, when the undergraduates in that class, I among them, stepped into a world of no bread and no hope. Mr. Calvin Coolidge had blandly decreed that "the business of the United States is business," and when the ceiling came down, said Coolidge was back in his peaceful Vermont. Mr. Herbert Clark Hoover, a splendid engineer, was shooing away the evil spirits which persisted stubbornly in challenging the temporariness of the traditional dents in the economy, that is, the basic harmlessness —of which Mr. Hoover and his supporting oracles reminded a languishing nation repeatedly—inherent in the inevitable "business cycles."

The New Deal which followed can be assessed as the most exciting period in the writer's life. (In the face of a Nixon cultism, as disclosed in the Watergate affair, it is particularly judicious to abstain from hero worship. Simply, Franklin D. Roosevelt, quite like his predecessor, believed firmly in the effectiveness of a capitalistic economy; but, unlike his predecessor, he analyzed the unprecedented disaster as imperatively calling for unprecedented modifications.) The reaction of the reactionaries, once allowed to catch their renewed breath, was instant and furious. The cryingly needed social legislation was fought with foaming venom. A southern Congressman, powerfully ensconced by the absurd seniority system as the chairman of a key committee, openly counseled his constituents to disregard this or that "socialistic" law. (It is to be well noted that Watergate lawlessness is merely a *supreme* phenomenon; it finds its roots in historical miscreancy on a "high" level.)

"That man" were (and have been, to be sure) words spewed as an anathema in vicious denunciation of FDR. It was that man, however, who prevailed against all and sundry Liberty Leaguers whose fruits of glory in the first (1936) FDR re-election were Maine and Vermont. Freedoms and succor were gained by labor, by the economically depressed, by the helpless halt, lame and blind; and, gloriously, by persons in the arts—stage, literature—whose free expression would not have been possible without (unrestricted!) government subsidy (and that was destined, of course, to come to an end all too soon, since the Liberty Leaguers were not to be denied in the ceaseless campaign against *unwelcome* free expression).

It is hardly within the scope of this *feuilleton* to offer a comprehensive digest of the history of the United States in the past half century, to say nothing of the implication of a claim of qualifications to do so. Hence, we shall proceed eclectically to touch upon phases relating to the rise and fall of liberties.

The reaction of the people of the United States to post-World War II politics was reasonably predictable. Hungered for was a man on a white horse, able to usher in *normal* times (shades of Harding!). President Truman and his party were identified with the Roosevelt war years. (It took the foot-in-the-mouth genius of Thomas Dewey to lose to Truman in 1948.) Adlai Stevenson, among the most noble in the history of this land, was never destined to gain popular recognition. This superb man was simply unable to keep an *un*flaunted superiority from asserting itself, to the denial of the voter who found it so much more comfortable to identify with the dramatic prestige (and the fractured English) of General Eisenhower. Contrary to aching apprehensions, President Eisenhower turned out to be no jingoist. On the other hand, his indifference to liberty and human rights was manifest. "If one wants security, he can find it in jail," said this man who had been securely sustained by the public purse all his life. And it was, of course, understandable that he could not and would not utter one word in support of the monumental school integration decision, once he saw fit to declare his appointment of Earl Warren to the U.S. Supreme Court as "one of my worst mistakes." Moreover, General Eisenhower faced up to the (Joseph R.) McCarthy era with a thundering lack of enthusiasm. Yes, the McCarthy days of miserable darkness were upon us, featured by invasions of freedom and ultra-tragic

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a glancing blow for freedom

By JOHN P. LEGRY, a member of the Washington Library Association's Intellectual Freedom Committee.

For approximately six months, between June and December, 1972, the Fort Vancouver Regional Library District, located in Southwestern Washington, and its board of trustees and administrative staff faced the censor. The complaint was brought against the presence of *Playboy* in the headquarters periodical collection. *Playboy*'s graphics, both photographs and cartoons, formed the key issue, and, collaterally access by minors provided the focus of the charge. Thus, at the outset, the censor revealed his classic stance: (1) objection to part of a work without relation to the whole; and (2) protection of others from the harm they can "unwittingly" do to themselves.

The chairman of the board, Mr. Robert L. Avery, other board members, and Mrs. Ruth Hahnel Watson, regional library director, worked very closely together throughout the incident. The group met several times with the complainants prior to resolution of the dispute. During the course of these meetings, the role of the public library in contemporary American society was thoroughly discussed. The intent of both board and director in these discussions was to establish firmly the library as a passive agent for the transmission of informational, educational and recreational materials: "passive" in the sense that the library compels no one to accept a particular viewpoint or a particular source of recreation; "agent" in the sense that the library actively seeks to make as many alternatives available to its public as possible. The philosophical premise is, of course, that in a pluralistic society there are many standards and no norms.

The board and administrative staff did not defend *Playboy*. Throughout the incident, the district's argument centered on freedom of access and the constitutional guarantees implicit in the First Amendment. The director gathered sample selection policies from other libraries within Washington State and from ALA. Other librarians, both within the region and from nearby Portland, Oregon responded to a request for support. The Washington State Library Association Intellectual Freedom Committee was alerted. Citizen support was solicited and overwhelmingly received. The local press rendered accurate reportage of all proceedings and gave unqualified editorial support to the Library District's position.

At the climactic board meeting, the board was posed as the policy-making entity between the censors and library staff. Rigid parliamentary procedure was instituted. Questions put to staff were directed through the board. This approach greatly blunted any attempt to "fix the blame," or to make any staff member the victim of a personal assault. The tone of the final meeting, held according to *Robert's Rules of Order* and in an atmosphere which made it appear that the board was a tribunal hearing the case against the censor, was austere, correct, and quiet. For a major censorship hearing, the proceedings were remarkably courteous.

In the course of the last, lengthy public hearing, the censors raised most of the major arguments used so many times, in so many places before: misspent public tax dollars; God's Word ignored; children as hopelessly malleable objects; the public library as solely a place of cultural and moral uplift; the censor as sole judge and ultimate authority—the moral obligation of the censor to act as parent for parents who have abdicated their responsibilities; the decay of society; and, local community standards as transcendant over the individual and his personal freedom.

The board listened patiently to all testimony, including the director's guest (suggested by WLA/IFC), Dr. Nathaniel Wagner, psychologist and sexologist from the University of Washington. Action was taken at the end of the hearing. The bulk of the testimony, both pro and con, reinforced the board's decision to respond to the issue, not only in open meeting, but also upon conclusion of the most intense public discussion. Debate was ended by the acting chairperson, Miss Helen Raymond, who individually polled the board members. The board unanimously adopted the proposed Materials Selection Policy.

The policy states that the district is much more extensive than the location of its headquarters facility. The district's "community" is not characterized by the city where the complaint was made. Against the new backdrop of the

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statement of ownership and management

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box score on shield laws

The *Press Censorship Newsletter,* compiled and distributed by the Reporters Committee for Freedom of the Press, reports that fourteen states now provide in statutes currently in effect more or less absolute privilege against disclosure of newsmen's sources: Alabama (1949), Arizona (1960), California (1973), Indiana (1973), Kentucky (1955), Maryland (1957), Michigan (1954), Montana (1971), Nebraska (1973), Nevada (1971), New York (1970), Ohio (1953), Oregon (1973), and Pennsylvania (1961).

Qualified Privilege

Ten states now provide a qualified privilege for reporters: Alaska (1967): appellate court can compel disclosure if in "public interest"; Arkansas (1949): no privilege if article published in "bad faith, with malice and not in the interest of the public welfare"; Illinois (1971): no privilege in libel cases; disclosure can be compelled if there is "overriding public interest;"

Louisiana (1974): disclosure can be compelled if "essential to the public interest"; Minnesota (1973): disclosure when in "compelling and overriding public interest" and information cannot be obtained by other means; New Jersey (1962): privilege waived if information partially disclosed.

New Mexico (1973): no privilege where information is "essential to prevent injustice"; North Dakota (1973): both sources and information protected unless disclosure is necessary to prevent "miscarriage of justice"; Rhode Island (1971): privilege may be divested if disclosure is "necessary to permit a criminal prosecution for the commission of a specific felony or to prevent a threat to human life" and the information is unavailable from other sources; Tennessee (1973): appellate court can compel disclosure if there is an overriding public interest.

Court Decisions

The New York appellate courts, in two different cases, have in effect amended the New York absolute shield law by requiring reporters to testify about the source or content of confidentail information if they were witnesses or potential witnesses to a crime. The wording of the law does not appear to withstand the interpretation given by the New York courts. The law says that a newsman shall not be required to testify about any news "coming into his possession in the course of gathering or obtaining news for publication . . . or for broadcast."

Shield Laws Rejected

For various reasons five states have rejected shield laws for reporters. In New Jersey, Governor William Cahill vetoed an absolute privilege bill passed by the legislature. In Connecticut, a legislative committee killed a shield law because of an inability to decide between the absolute and qualified approaches. Maine's House of Representatives rejected both qualified and absolute privilege bills. The New Hampshire House of Representatives overwhelmingly rejected a limited shield law. In Wisconsin, an unqualified bill was reported out of committee, but after it was subjected to several weakening amendments in the assembly the sponsors decided to table it for the session.

FBI monitors press

Former acting FBI Director L. Patrick Gray confirmed in his Senate Judiciary Committee confirmation hearing that the FBI, pursuant to a secret subpoena, had obtained all the long-distance home and office telephone records of columnist Jack Anderson for a previous six-month period. The FBI contended that it was using the toll records in an investigation of the occupation of the Bureau of Indian Affairs building, even though the toll records went back three months before the Indian take-over at the Bureau. The agency was able to trace the identity of ninety-six callers to Mr. Anderson and his associates by using the subpoenaed telephone records of his home and his office.

In April, U.S. District Court Judge John J. Sirica ordered the FBI to return all the telephone records and to expunge from the agency's records any information obtained from the toll records.

Acting FBI Director William Ruckelshaus revealed in May that the FBI had wiretapped the telephones of four reporters in 1969 as part of a program to pinpoint the source of news leaks concerning U.S. foreign policy. The newsmen involved were reportedly William Beecher and Hedrick Smith of the *New York Times,* Henry Brandon of the *Sunday Times of London,* and Marvin Kalb of *CBS News.* Subsequent revelations have indicated that the phones of *New York Times* reporters Neil Sheehan and Tad Szulc were also tapped in 1971 in connection with the Pentagon Papers case, as was the phone of Dr. Daniel Ellsberg. Reported in *Press Censorship Newsletter,* July-August 1973.

Fires in Chile

As this issue of the *Newsletter* goes to press we note with regret that Chile's new military junta has ordered raids on bookstores to halt the dissemination of Marxist works and to assure their commitment to the bonfire. At the same time the junta has announced that military officers will be put at the head of all universities to direct the extermination of Marxist thought from institutions of learning. RLF

let me say this about that

a column of reviews

The Supreme Court Obscenity Decisions. Greenleaf Classics [3511 Camino del Rio South, San Diego, California], 1973. 271 p. $2.25.

The heart of this book is the complete texts of the decisions and dissents of the five obscenity cases of June 21, 1973 and the petition for rehearing of one of the cases *(Kaplan* v. *California)* with briefs *amici curiae* in support of the petition from the American Library Association and the Association of American Publishers.

It should come as no surprise to those interested in this field that the most clearly stated and logical of the statements coming from the Court were those of Mr. Justice Douglas. In particular, I recommend his dissents in *Miller* v. *California* and *U.S.* v. *12 200 Ft. Reels of Film.*

The three documents involved in the petition for rehearing of *Kaplan* v. *California* serve to illuminate the problems for librarians and booksellers created by the Court in its decisions in *Kaplan, Miller,* and *Paris Adult Theater I* v. *Slaton.*

There is an introduction to the volume by Stanley Fleishman, who argued the *Kaplan* case before the court and authored the petition for rehearing.

Some of the book is hard reading–due to necessary citations of previous cases and legal language–but it is an important and useful volume for anyone wanting to understand what happened on June 21 and how it could affect the right to read.–*Reviewed by Lawrence Wolfe, Nashville, Tennessee.*

The Rights of Teachers: The Basic ACLU Guide to a Teacher's Constitutional Rights. David Rubin. Avon Books, 1972. 176 p. $.95.

Freedom to teach in the classroom is only one small, although extremely important, part of David Rubin's comprehensive guide to the rights of teachers. Within this up-to-date compilation of recent cases involving teachers' rights lies a wealth of information regarding the development of academic freedom.

Although the text is primarily directed toward elementary and secondary level instructors, its contents will be valuable to anyone who is engaged in the teaching profession. Many studies involving constitutional rights often require legal expertise, but the question and answer format of this work helps to reduce the burden on the reader without extensive legal knowledge.

As Rubin notes in the introduction to the work, teachers' rights and academic freedom have emerged from a combination of several sources, most notably the First Amendment to the U.S. Constitution and the due process and equal protection clauses of the Fourteenth Amendment. In addition, teachers' rights are also derived from a complicated system of principles, prodecures, and claims that vary depending on state laws, local rules, and contractual provisions. Since World War II the development of this interrelationship of elements that constitute the basis for asserting the rights of teachers has grown tremendously. However, many areas concerning teachers' rights are not yet fully developed. Although many cases covering all aspects of a teacher's rights are presented in this text, Rubin notes that every problem that arises is unique in its facts. For example, few cases consider the rights of individual faculty members in relation to the administration of their respective institutions.

The author indicates that the U.S. Constitution has become a significant source of teachers' rights, but he fails to state that the Supreme Court has never embarked on any path which would create an absolute right of academic freedom for teachers. This factor is important to keep in mind as a teacher attempts to ascertain an academic right he believes has been abridged. If he is to rely on the Constitution, he must find his defense within the rights already accorded him as a citizen, keeping in mind that there are a multitude of technicalities that must be dealt with.

Nevertheless, this work must be considered invaluable to all members of the teaching profession who have felt the yoke of censorship or experienced the abuse of a legitimate right. The ultimate protector of any type of freedom is knowledge. An informed, well-educated assemblage of teachers is necessary if academic freedom is to be preserved. This guidebook is a step in the right direction towards the realization of that objective.–*Reviewed by Lawrence Gould, North Adams, Massachusetts.*

False alarm

In a misleading, not to say false, story that appeared in the September 7 *Los Angeles Free Press,* under the banner "Library bans crime volume as violent," free-lancer Robert Brown alleged that a branch of the Los Angeles Public Library rejected Jay Robert Nash's *Bloodletters and Badmen* as "an immoral book that would corrupt young minds." The facts: (1) at the time the article was written the library system had just received a review copy of *Bloodletters* and no librarian in the system had yet examined it; (2) persons sent by the reporter to the branch to ask for *Bloodletters* were told that all of Nash's previous books were owned by the system and could be made available through the branch, and that inquiries would be made and as soon as *Bloodletters* was owned by any library in the system it could be made available by the branch.

censorship dateline

libraries

Boston, Massachusetts

City Councilman Albert L. O'Neil has notified the Boston Public Library that he is taking Eve Merriam's *The Inner City Mother Goose* from the library on permanent loan. In a letter to the Board of Trustees, O'Neil stated: "I will not return the book until the officials of the Boston Public Library take me to court. I have always been very cordial to the Trustees, request for monies to conduct good and decent education for all people, but I don't call that education when a book like that is subject to the reading of little boys and girls." Reported in: *News & Notes of the Harvard University Library,* August 30.

Frazee, Minnesota

A group of fifteen irate parents challenged the Frazee-Vergas School District Board of Directors to remove "pornographic, dirty and undesirable" books from the school library and requested that greater caution be taken in the selection of materials for the school library. They asked that a committee representative of the community be formed to recommend books for library purchase. This suggestion was unanimously approved by the board. In June the board voted to remove Paul Zindel's novel *My Darling, My Hamburger* after listening to complaints that it contained "offensive language." Mrs. Kay Furey, spokesman for the group of parents, commented, "When a book is in the school library pupils have a right to expect that it will be good reading material." Reported in: *Fargo* (N.D.) *Forum,* July 10.

Lincoln, Nebraska

William H. Hyde has given notice to the Lincoln City Library Board that he plans to protest the "obscenity" in the public library. Hyde was recently a jury member during an obscenity trial in Lincoln which found two books–*Four Play* and *Sex and Violence*–obscene. The defense attorneys in presenting their arguments used books from the public library as evidence that Lincoln's community standards have become more liberal. Said Hyde, "I think citizens should get up in arms over what's in the library." Reported in: *Omaha World-Herald,* September 5.

schools

Sacramento, California

In an emotional letter to Governor Ronald Reagan and Superintendent of Public Instruction Wilson Riles, California Assemblyman Floyd Wakefield made a last ditch effort to keep the sex education text *Human Sexuality* out of California junior high schools. Wakefield claimed that the book "would be harmful to our youth and would promote sexual stimulation rather than morality, . . . " To substantiate his claim Wakefield alleged that the text was found among the possessions of a Texas man whose murder uncovered a homosexual murder ring in Houston. Wakefield refused to divulge how he learned this. The sex education text has been a matter of great discussion in California and was placed on the approved list only after lengthy public hearings were held and changes were made by the publishers. Reported in: *Sacramento Bee,* August 23.

Granby, Connecticcut

The Board of Education banned Norman Mailer's *The Naked and the Dead* from Granby high schools. A member of the book banning board said, "I want these books they learn from to be in better language than what they hear in the lavatory." Reported in: *Chicago Tribune,* September 8.

Macon, Georgia

Macon Councilman Ed DeFore announced that he would like State School Superintendent Jack Nix to issue an order banning *Manchild in the Promised Land* and books "like it" from all state schools. "I'm scared this book might be all over the state of Georgia," said DeFore. Earlier this year DeFore received a complaint from Macon citizen Mrs. Gloria Catron charging that *Manchild* is vulgar. Mrs. Catron's daughter was assigned to give a book report on the title in her high school English class. As it now stands two committees of the Bibb County Board of Education have been asked to meet jointly to discuss the suitability of *Manchild* for eleventh grade classes and to decide on what is pornographic in the school libraries. Reported in: *Macon Telegraph,* July 14, 17.

Columbus, Ohio

When students from suburban Hilliard Junior High School learned that a book of poems they purchased through the school had four pages missing because two English teachers and a principal had found the pages offensive, the parents of student Batzin Kramer filed a class action suit on behalf of all students alleging that their First

Amendment rights were violated. U.S. District Court Judge Joseph P. Kinneary was told that Principal Harry P. Smith and two teachers, Regina Meyer and Kathleen Thyng, objected to four poems in Edgar Lee Masters' 1915 *Spoon River Anthology.* "They [the teachers] did not want to teach this," Smith told the court. "I agreed the pages could be removed." Masters' poems give his version of life in a small Illinois town. His book has had seventy-seven printings in nearly as many languages. Reported in *Philadelphia Inquirer,* September 26.

Austin, Texas

Complaints were received against 142 of 316 proposed school textbooks for use in Texas school districts, according to Texas Education Commissioner Dr. J.W. Edgar. Many of the complaints came from the Texas Society of the Daughters of the American Revolution, who alleged that several books are not patriotic enough. The Continuing Task Force on Education for Women filed objections to several books, and particularly cited an elementary school book containing the tale of Snow White. "This classic tale has oppressed young girls for countless generations," the written protest said. Mr. and Mrs. Mel Gabler, founders of Education Research Analysts, protested a high school physical science book. The Gablers said, "We demand realism about evolution, that the evolutionary theory be taught as a theory. Let's tell it like it is." Mrs. Fred J. Cramer of El Paso filed a protest against a junior high physiology book which bears the picture of a girl wearing a peace pendant on its cover. "Such a symbol is biased, detrimental and confusing in respect to the beliefs of each individual student," Mrs. Cramer said. "The picture and discussion of the peace sign depict a sanctioning by our public schools, and this endangers the harmony between child and parent." Reported in: *Houston Post,* September 16.

the press

Wounded Knee, South Dakota

Boston Globe reporter Thomas Oliphant was indicted in May for his personal coverage of a food drop over Wounded Knee. Oliphant, who accompanied the pilots on the resupply mission, was charged with traveling across state lines to promote a riot and with obstructing federal officials in the performance of their duties. Oliphant is challenging his indictment in a removal proceeding in federal court in Washington, D.C. on the grounds that the purpose of his prosecution is to harass the press rather than to secure a valid criminal conviction. He also contends that, contrary to the indictment, there was no riot nor any interference with the federal law enforcement function involved in the case. Additionally, the defense is alleging that the government made use of illegal wiretaps to get information. Over seventy reporters signed statements or affidavits asserting that Oliphant's prosecution would have a chilling effect on future news coverage of controversial events.

Reporter Jeff Williams and members of a CBS camera crew were arrested for entering Wounded Knee without official permission and charged with interfering with federal marshalls in the performance of their duties in May. The charges were dropped the next day. Similar charges against a University of Massachusetts student reporter arrested in Iowa en route to Wounded Knee were also dropped. Wounded Knee was sealed off to the press on March 25 by the Justice Department. Reported in: *Press Censorship Newsletter,* July-August 1973.

Washington, D.C.

Notified that the Central Intelligence Agency intends to censor one fifth of his book, Victor L. Marchetti, one-time executive assistant to the CIA's deputy director, declared he might be willing to go to jail to get the facts before the American people. Marchetti has been informed that the CIA demands deletion of at least 100 of the 500 pages of his book about the inner workings of the agency. A federal appeals court has ruled that the CIA has the right to eliminate classified material from the book on the basis of a security agreement Marchetti signed upon joining the agency in 1955. A spokesman for the American Civil Liberties Union, which is defending Marchetti, said the ACLU will go to court again to ask a judge to determine whether the facts the CIA has classified as secret are genuine secrets. Reported in: *Chicago Sun-Times,* September 21.

Buffalo, New York

A New York state appeals court has ordered reporter Stewart Dan of WGR-TV in Buffalo and cameraman Roland Barnes, formerly of WGR-TV, to testify before a county grand jury investigating the 1971 Attica prison rebellion. Dan and Barnes were the only TV camera crew allowed in the prison areas controlled by the prisoners. They were invited in by the special request of inmates who had seen Dan's coverage of the events and trusted his fairness. Despite the language of the New York State newsmen's shield law, which protects reporters from disclosing any news obtained in the news-gathering process, the New York court held that reporters were required to testify about events they observed personally. Dan and Barnes say that they were admitted to the prison yard only in their capacities as newsmen and not as government agents. They argue that no news reporters will be permitted inside prisons during riots if they are forced to talk, and that the government is harassing them for their riot coverage because there were 1800 convenient witnesses inside D-Yard who could have been called for evidence instead of the two newsmen. Reported in: *Press Censorship Newsletter,* July-August 1973.

Buffalo, New York

Rarihokwats, an editor of the independent American Indian newspaper *Akwesasne Notes,* was jailed and sub-

jected to deportation proceedings last year after writing numerous articles critical of government policy toward native Americans. *Akwesasne Notes* is published eight times a year (last edition–48 pages) and sponsored by the State University of New York at Buffalo. The Immigration and Naturalization Service claimed that Rarihokwats, a Canadian citizen, could not remain in the United States as a visitor because his voluntary work for the newspaper constituted "employment." An INS hearing officer ruled earlier this year that Rarihokwats' work was more in the nature of a "fraternal, social or service activity" and thus he was qualified to remain in the country. The editors of *Akwesasne Notes* also claimed that Bureau of Indian Affairs influence may have been responsible for the revocation of the paper's second-class mailing privileges. The privileges were cancelled after the staff had deposited 400 mail bags of newspapers and $500 at the post office. It took over six weeks for them to obtain new educational sponsorship and release the newspapers for mailing. Reported in: *Press Censorship Newsletter,* July-August 1973.

"obscene" matter

Longwood, Florida

Longwood merchants have been told that anyone violating a ban on selling such magazines as *Playboy, Oui,* and *Penthouse* will be charged with a misdemeanor. Longwood Police Chief Wesley Dowell said that his men delivered orders to all merchants and informed them that the city's code on obscenity would be enforced. Dowell said, "I am here to uphold the standards of the community. As their police chief, the people of Longwood have entrusted me to decide what is obscene." He defined obscenity by saying that "anything obscene humanly speaking, is also obscene in a book." He explained his meaning: If the appearance of a woman in a state of undress is illegal, then any picture of a woman in a state of undress is obscene. Reported in: *Sanford* (Fla.) *Herald,* August 14.

Wichita, Kansas

An agreement reached between attorneys for the city of Wichita and Las Vegas Cinema, Inc. resulted in a cessation of all litigation arising from suits between the city and the theater chain. Two theaters of the chain will be padlocked for a maximum of two years and all films seized as evidence against the theater operators will be destroyed. The chain agreed to stipulate to the city's evidence against *Deep Throat* and *Love Story.* Reported in: *Wichita Eagle,* August 24.

Manchester, New Hampshire

In response to the Supreme Court's recent obscenity decisions New Hampshire Attorney General Warren Rudman declared that all "hard-core" pornography was to be off the shelves of New Hampshire bookstores and off the screens of New Hampshire movie theaters. Rudman put muscle into his campaign by calling a state-wide meeting of law enforcement officials to explain the guidelines for prosecuting purveyors of the "hard-core." To date no arrests have been made; however, a recent survey of Manchester adult bookstores revealed that the bookstore owners have taken the hint. Titles published by Grove Press and Venus have been removed and it is reported that in one well-known adult bookstore the sexual classics have been replaced by the literary classics. Reported in: *Christian Science Monitor,* August 11.

South Plainfield, New Jersey

New Jersey's Division of Alcoholic Beverage Control has threatened the license of the local Howard Johnson's Motor Lodge by charging the lodge with two violations of the ABC code, including possession and distribution of "obscene, indecent, lewd and lascivious" movies through closed-circuit television. An attorney for the lodge responded that the language of the ABC code is so broad that even R-rated movies could be considered banned. He added that no one under eighteen was permitted to see the X-rated movies in question. Reported in: *New Brunswick Home News,* August 11.

Johnston, Rhode Island

Responding to the June 21 holdings of the U.S. Supreme Court, the Johnston Town Council established the first movie and publication review board in Rhode Island. Formally known as the Board of Entertainment Standards and Review, the panel has the authority to inspect and pass upon "all entertainment and/or publications offered to the public by licensed establishments" in Johnston. The ordinance provides the board with authority to give notice to persons showing films or selling publications that their wares are not protected by the Constitution and to order businessmen to cease such operation. Failure to comply with such an order would be grounds for revocation of business licenses. At its first meeting the board decided that it will periodically allow nonmember citizens to participate in deciding whether films and publications are "obscene." One board member said that the decision represents an effort to sound out "the pulse of the people" in determining what can be offered in Johnston. Reported in: *Providence Journal,* August 21, 25.

colleges—universities

College Park, Maryland

University of Maryland officials canceled the showing of the movie *Pink Flamingo* after an inquiry by the Maryland Board of Censors indicated that the movie may be illegal. The inquiry came after the Board of Censors received a complaint about showings of Company Cinemateque, a group of faculty members and students who show weekly movies. Professor James McKenzie, head of the group, said that *Pink Flamingo,* filmed by John Waters of Baltimore, is

"very gross and deliberately outrageous," but he would not consider it pornographic. Reported in: *Baltimore Sun,* September 8.

Jamaica, New York

Officials at St. John's University confiscated 800 copies of the October issue of the college monthly *University Review* because it carried an advertisement for the recently published book, *Abortion—a Woman's Guide.* The *University Review* is circulated on 200 campuses and has been distributed without incident at other Catholic institutions. This now marks the second time within a year that a publication has been banned at St. John's by university fiat. Last May the intercampus magazine *Good Times* was restricted because it ran an ad for an abortion clinic. The banning was protested by the editor of St. John's campus newspaper. He was later warned by the Dean of the University that he would be excommunicated if such advertisements were to appear in the St. John's newspaper. Reported in: *New York Post,* September 13.

miscellany

Tacoma, Washington

The U.S. Army plans to court-martial two privates who distributed leaflets alleging poor health care at Fort Lewis' Madigan Hospital. The pair, who had gone door-to-door at the base with leaflets telling of poor care for minorities and enlisted men at the hospital, were charged with handing out literature without proper authority. Maximum penalty for the two men, both of whom are members of Vietnam Veterans Against the War, could be six months' confinement, a two-thirds cut in pay for six months, and a reduction to lowest grade. Reported in: *Washington Post,* September 4.

Seattle, Washington

Eight members of the Seattle Girl Scout Human Relations Committee protested the banning of a scout booklet, "Commitment! Community Action." The Totem Girl Scout Council Board voted to end support of the booklet and to destroy remaining supply copies. The seventy-nine page publication lists program ideas suggested by high school girl scouts, including programs on sex education, birth control, and women's liberation. In a letter to the board, dissenting committee members said that "the act of 'book burning' of material printed at council expense and authorized for distribution by the board . . . only four months ago . . . is not an act which manifests the democratic way of life. We strongly protest this action. A movement which cannot tolerate divergent opinions, which will not accept new ideas, which has no room for change, is not one which has the best interests of youth at heart." The committee members asked whether "the organization will be recreational in nature, primarily aimed at white middle-class, elementary-school-aged girls," or whether "it will move into the modern age with a broader philosophical base by serving all girls, by facing social issues, and by helping girls gain the knowledge necessary to make choices in their lives." Reported in: *Seattle Times,* July 24.

Washington, D.C.

After U.S. District Judge John J. Sirica forbade convicted Watergate figures James W. McCord, Jr. and Jeb Stuart Magruder from participating in discussions or interviews about the Watergate affair and from holding lecture tours, the American Civil Liberties Union issued a statement of protest. "It is just as illegal as an order forbidding Mr. Magruder and Mr. McCord from going to church or reading the newspaper as a condition for remaining free on bail until sentence is imposed," said a statement issued by Aryeh Neier, ACLU Executive Director. The statement notes that it is "irrelevant that Mr. Magruder and Mr. McCord obtain money for their public speaking," and adds that the order violates the rights of "all Americans who wish to be informed about the events in which these persons played a vital role." Reported in: *Washington Star-News,* September 13.

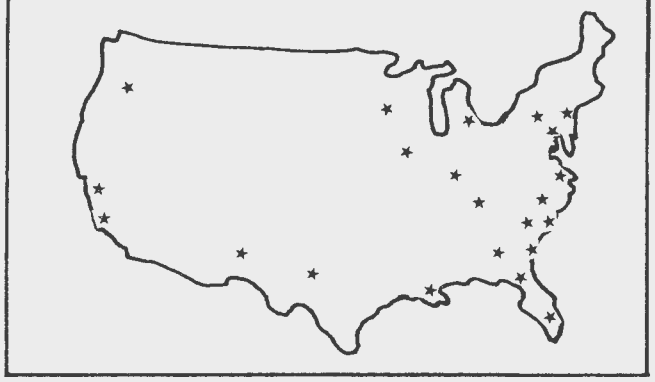
Binghamton, New York

The production director or WBNG-TV refused to broadcast a public service message sent to the station by the Legal Defense and Education Fund of the National Organization for Women. The thirty-second film, produced by CBS and approved by the Advertising Council, portrays a two-year old female child playing in a yard while the announcer says, "This healthy normal baby has a handicap. She was born female." "I refuse to run it," said Lawrence Hess, the director of production at WBNG-TV. "I don't like the use of the baby. People are conditioned to see a person handicapped physically. The word 'handicap' in the film has been misused." Responding to the charge of labeling an innocent baby as handicapped, Gail Goldberg, a spokeswoman for NOW, said, "That's the whole point." Reported in: *Binghamton Sun-Bulletin,* August 15.

New York, New York

New York's three major network television stations refused to accept commercials for a Watergate comedy album by well known television and nightclub comedian David Frye. In addition, the Woolworth chain of stores refused to stock the record because "some of our customers may be offended." As a result of these rejections Buddah records canceled a projected $75,000 TV campaign for the new comedy album. A spokesman for funny-man Frye commented, "You'd think they'd be more brave about it. Watergate deals with suppression and chicanery, and yet the reason these people aren't running the spots is that they're afraid of the government." Reported in: *New York Times,* August 31.

from the bench



freedom of information act

Reporter Carl Stern of NBC has filed suit in U.S. District Court in Washington, D.C. contesting the Justice Department's refusal to divulge information on its "Counter Intelligence Program–New Left," a plan allegedly designed to disrupt radical activities. The suit, based on the Freedom of Information Act, seeks revelation of the authorization of the program, the source of its funding, and its scope. The Justice Department, while admitting the existence of the program, refused to answer any of Stern's questions.

Mal Schechter of *Hospital Practice* magazine is appealing a decision by a U.S. District Court judge in Washington, D.C. denying him access to Medicare inspection reports of hospitals and laboratories. Schechter had won an earlier Freedom of Information Act case against the Social Security Administration which resulted in the release of inspection reports of eight nursing homes. When Schechter attempted to get the same information on other institutions, he was again rebuffed and had to file the suit which resulted in the decision he is now appealing. The government claims that the information is confidential under the Social Security Act; Schechter contends that the confidentiality provisions apply only to individual case records, not to administrative reports.

Douglas Campbell, an investigative reporter for the *Camden Courier Post,* won a Freedom of Information Act suit that also involved nursing home reports. The decision, which stressed the freedom of the press aspects of the case, ordered the Department of Health, Education and Welfare to make public its nursing home inspection records. The government's motion for a stay of the order pending appeal was denied by the court.

The *Nashville Tennessean* successfully sued the Federal Housing Administration on a Freedom of Information Act claim. The decision, by the U.S. Circuit Court of Appeals, ordered the FHA to surrender copies of home appraisals and names of the appraisers. The suit followed a series of articles in the *Tennessean* on excessive appraisals of dilapidated houses in the Nashville area.

A similar Freedom of Information suit was won by the *Philadelphia Inquirer* in a case against officials of the Department of Housing and Urban Development. A U.S. District judge ruled that HUD would have to disclose the names of appraisers of federally-assisted housing and rejected the government's contentions that the information fell within the intra-agency memorandum and investigatory files exceptions of the Freedom of Information Act. Reported in: *Press Censorship Newsletter,* July-August 1973.

In a case involving a university professor who sought to obtain Civil Service Commission reports evaluating the management of federal agencies, the U.S. Court of Appeals set the following guidelines which agencies must follow if they want to withhold information: a detailed analysis of reasons for refusal to disclose information must be given to the courts; agencies must establish an index system which divides documents into manageable files that are cross-referenced; and courts must be permitted to designate special examiners to survey documents and to evaluate an agency's desire for an exemption under the Freedom of Information Act. District Court Judge Frank Kaufman and Circuit Court Judges Spotswood W. Robinson III and Malcolm R. Wilkey said they hoped the ruling will "sharply stimulate what must be, in the last analysis, the simplest and most effective solution–for agencies voluntarily to disclose as much information as possible and to create internal procedures that will assure that disclosable information can be easily separated from that which is exempt." The decision came in a case involving Professor Robert Vaughn of American University, who sought unsuccessfully to obtain Civil Service Commission documents evaluating the efficiency of federal agencies. Reported in: *Editor and Publisher,* August 25.

obscenity

Springfield, Illinois

A mistrial was declared in a case against an adult theater operator and the theater's owner when a Sangamon County jury could not decide whether *Here They Come* possessed "literary, political, scientific, or artistic value." A jury of four women and eight men deliberated for more than six hours before reporting the impasse to Circuit Judge J. Waldo Ackerman. Assistant States Attorney Hugh Rowden said the case would be retried later. Reported in: *Springfield Register,* July 13.

Washington, D.C.

A federal jury found that *Distortions of Sexuality* is not an obscene film, thus acquitting its distributor, Arthur Morowitz, and his firm of felony charges for which he could have been jailed for as much as five years. The not-guilty verdict was apparently the first in the federal courts since the U.S. Supreme Court redefined obscenity standards on June 21. One member of the jury, which included ten

women who ranged in age from twenty-one to seventy, said she thought the movie "was educational." "It wasn't an easy decision," said another juror. "If we had not heard the experts [professors and researchers who testified for the defense], we would have thought it was obscene." The film depicts the activities of members of an encounter group led by a psychiatrist with false credentials. Reported in: *Washington Post,* September 22.

Norfolk, Virginia

After viewing *The Devil in Miss Jones,* General District Court Judge Llewellyn S. Richardson declared it obscene and fined two theater employees $5,000 each and sentenced them to one year in jail for showing it. Attorneys representing the theater and the producer of the film, who said they would appeal, argued that under recent Supreme Court rulings the judge does not have the power to declare the film obscene because the state law does not explicitly define sexual conduct that is considered offensive. Richardson dismissed their arguments. He said that the movie is "so rotten and filthy" that "if I had the power to subpoena the Supreme Court justices . . . I think they would vomit, which I almost did in the theater." After sentencing the defendents to jail, Richardson called them "two young men who are hirelings for people who produced this horrible, obscene, filthy picture." Reported in: *Norfolk Pilot,* August 24.

Los Angeles, California

In a unanimous opinion the California Second District Court of Appeal ruled that California obscenity laws are in line with the U.S. Supreme Court holdings of June 21 and remain enforceable. Ruling on appeal of a misdemeanor conviction for exhibiting an allegedly obscene movie, the court noted that the U.S. Supreme Court "nowhere holds that the 'utterly without redeeming social value' test itself is unconstitutional." The court also held that Municipal Court Judge Mary E. Waters, who presided at the original trial, did not err when she instructed the jury that it could disregard expert testimony on community standards if it found that the film in question was so patently offensive as to violate any conceivable community standards. Reported in: *Los Angeles Times,* August 11.

Jacksonville, Florida

A jury of five women and one man ruled that *Deep Throat* is not an obscene film. The jury, which returned its not-guilty verdict to County Court Judge Dawson A. McQuaig, took little more than three hours to reach the decision in favor of theater operator James Thomas. After the verdict was announced, defense attorney William J. Sheppard said, "The people of Jacksonville have spoken and they have said that consenting adults have the right to view adult entertainment if they so choose. We would hope that the prosecuting and law enforcement authorities have heard what the people of Jacksonville have said about adult entertainment." During the three-day trial the defendent testified that 12,000 Jacksonville residents paid $5.00 each to see the film. Reported in: *Jacksonville Times-Union,* September 22.

Macon, Georgia

Macon Municipal Court Judge James I. Wood bound the assistant manager of a drug store over to the State Court of Bibb County after ruling that *The Happy Hooker,* seized in the store, may fall into the category of "hard-core pornography." Conceding that he had not read the book thoroughly, Judge Wood said, "I think this does fall into the category of hard-core pornography as defined by the Supreme Court." An attorney for the manager argued that no case should have been made against his client since he had not ordered the book and did not sell it. The judge ruled that sale of a book to the arresting officer was not necessary, since it could be considered hard-core pornography and therefore contraband and subject to seizure. Reported in: *Macon Telegraph,* August 29.

Fort Wayne, Indiana

Fort Wayne's 1972 obscenity ordinance was declared unconstitutional by Allen County Superior Court Judge Robert L. Hines. Hines said that because the ordinance failed to spell out the explicit sexual conduct which is offensive and forbidden, the law must be held invalid according to the June 21 holdings of the U.S. Supreme Court. The ruling led to the dismissal of charges against the projectionist and manager of Cinema X, who had been charged with violating the ordinance by showing *Deep Throat.* City Councilman Sam Talarico said he would ask his fellow councilmen to draft a new ordinance. Reported in: *Fort Wayne News-Sentinel,* July 18.

Lexington, Kentucky

A Fayette Circuit Court jury determined that two magazines sold in a Lexington book store were obscene, but failed to agree on whether a book store employee was guilty of selling obscene material. The prosecuting attorney argued that the accused could not have failed to have knowledge of what he was selling because he kept the material in a separate section of the store and charged admission to that section. The defense argued that it would be unfair to expect the defendant to be able to define what is obscene when no one else can define it. Reported in: *Louisville Courier Journal,* August 22.

Detroit Michigan

Three judges of the Recorder's Court ruled that *Deep Throat* cannot be prosecuted in Detroit until the Michigan Supreme Court issues standards defining what is obscene in the state. Judges John R. Murphy and Robert J. Colombo said that "although the film *Deep Throat* is within the class

of material which may be legitimately regulated by the state, there is no state law which specifically defines the depictions of sexual conduct which the state may regulate or prohibit." In a separate opinion Judge George W. Crockett, Jr. adopted the position that there should be no censorship by the state. The effect of the ruling was to end temporarily all obscenity prosecutions in Detroit. Reported in: *Detroit Free Press,* September 13.

Minneapolis, Minnesota

For the second time within two months, a Hennepin County District Court judge declared Minneapolis's obscenity ordinance unconstitutional. Judge Crane Winton ruled that the city ordinance, identical in language to a state statute, is not specific enough; previously, a Hennepin County judge ruled that the state statute was vague until construed by the Minnesota Supreme Court on November 10, 1972. As a consequence of Judge Winton's ruling, more than one hundred cases now pending in Hennepin County courts will be dismissed. Reported in: *Minneapolis Tribune,* August 11.

Bronx, New York

The Devil in Miss Jones, found not to be obscene in Manhattan, was ordered seized as obscene by a judge in the Bronx, who thus established the kind of geographic difference of opinion that many have predicted will become epidemic under the U.S. Supreme Court's June 21 rulings on obscenity. As a result of the holding of Bronx Criminal Court Judge Joseph Mazur, managers of thirteen theaters where *Miss Jones* is playing in New York City were ordered to appear in State Supreme Court in Manhattan to show why they should not be enjoined from continuing to show the movie. Two weeks previously Manhattan Criminal Court Judge Ernst Rosenberger viewed the film and found that it was "not even arguably obscene" because of its "literary and artistic merit." Bronx District Attorney Mario Merola said that "obscenity is basically a person's opinion, anyway, and I assume that this will work its way through the courts, probably even to the [U.S.] Supreme Court." Reported in: *New York Times,* August 5.

Mineola, New York

A motion by the Village of Lynbrook for a temporary injunction to prevent the showing of *Last Tango in Paris* in the village was denied by State Supreme Court Justice Mario Pittoni. The injunction was sought after a village lawyer viewed the movie and reported to Mayor Francis X. Becker that it was obscene and was destroying "the high moral tone of the community." Justice Pittoni criticized the village for having failed to submit a memorandum of law in support of a three-page affirmation from the lawyer that the film was obscene. Pittoni pointed out that the U.S. Supreme Court had not set "clear guidelines for such determination by any one or two men." He added that "it would be two opinions against those of twenty movie critics . . . who concluded that the movie was not obscene. In fact, many of these critics concluded that rather than it being obscene, the movie was a work of art." Lawyers for United Artists, the distributors, pointed out that the film had passed United States Customs, that it had been approved by the Board of Censors of the State of Maryland, that a case against it had been thrown out in a federal court case in Albany because of insufficient evidence to prosecute, and that it had been seen by at least twenty movie critics, none of whom considered it obscene. Reported in: *New York Times,* August 28, 29.

New York, New York

The state's civil statute on obscenity was ruled unconstitutional by Justice Abraham J. Gellinoff of the State Supreme Court in Manhattan. Ruling in a case that involved films that the justice said he believed were "obscene" and "patently offensive," Gellinoff held that the law was "overbroad in its provisions and therefore unconstituitonal as violative of the First and Fourteenth Amendments to the U.S. Constitution." The statute in question (CPLR 6330) bans the sale or distribution of any motion picture which is "obscene, lewd, lascivious, filthy, indecent, or disgusting, or which contains an article or instrument of indecent or immoral use or purports to be for indecent or immoral use or purpose." Justice Gellinoff said that the law was vague "on its face" and both "incomprehensible" and "ungrammatical." The effect of the ruling is to allow the sale, distribution, display, and exhibition of films, books, and pictures without interference from law enforcement agencies. Reported in: *New York Times,* August 15.

Raleigh, North Carolina

Wake County District Court Judge Edwin S. Preston found a bookstore employee innocent of selling obscene material and held that the North Carolina General Assembly will have to "rework" the state's obscenity law before bookstore operators can be successfully prosecuted. Preston said he was "very unhappy" about the decision he had to make, "particularly because children can get hold of this type of material," but he added that he could not overcome a stumbling block in the state statute, which provides that material must affront national standards as well as local. Reported in: *Raleigh Times,* August 16.

Tulsa, Oklahoma

The owner of a Tulsa adult bookstore was convicted of selling a magazine showing sexual intercourse and was sentenced by District Judge Robert Green to four years in prison and fined $15,000. The jury that returned the verdict was addressed by the prosecutor, District Attorney S.M. Fallis, Jr.: "I'll kill the first man or woman who exposes my children to this [magazine]." Referring to his "war" against what he calls smut, Fallis added: "I need an army. You people are that army . . . twelve people on a jury

to set the community standard. I need an army of reasonable, responsible, and above all moral people." Reported in: *Tulsa Tribune,* September 13.

Dallas, Texas

Five persons were sentenced to five years in prison and received a $5,000 fine for conspiring to exhibit obscene material–the film *Deep Throat.* The criminal court jury deliberated only forty-five minutes before returning the maximum punishment in the case. Earlier they deliberated sixteen minutes before finding the five guilty and finding the movie obscene. In addition to convicting the owner of the theater, the jury convicted two managers and two ticket sellers. In response to the defense contention that some of the defendents were just employees doing their job, Assistant District Attorney Norman Kinne told the jury, "The first time we heard that was at Nuremberg and I just lit the gas." Reported in: *Dallas News,* August 11.

Dallas, Texas

District Judge R.T. Scales declared a mistrial in the case of three men and two women charged with conspiring to exhibit obscene matter, *The Devil in Miss Jones,* when the jurors said they were unable to decide whether the film is obscene. After the jury was dismissed, the foreman said that the jurors had never discussed the question of conspiracy in the case, because they were unable to agree on the three tests of obscenity given in the court's charge. According to the charge, obscene material must be utterly without redeeming social value. One jury member said that they could not decide the issue of "utterly without social value." A new trial will begin on November 26. Reported in: *Dallas Morning News,* September 13.

Olympia, Washington

By a six-to-two vote the Washington Supreme Court upheld the constitutionality of the state's obscenity statute. In response to the holding of the U.S. Supreme Court in *Miller* v. *California,* the Washington court held that cities, towns, and counties do not have the right to set local obscenity standards; the majority held that community standards mean state standards. Reported in: *Seattle Times,* July 27.

students' rights

Miami, Florida

U.S. District Court Judge Joe Eaton ordered the new president of Florida Atlantic University to refrain from interference with the student newspaper: "Either you give this newspaper back to the kids, letting them write whatever they want to write without breaking the law, or you make it known your publication is a university publication and not a student publication." The court's edict was directed at Dr. Glenwood Creech, who inherited a dispute which arose when his predecessor, Dr. Kenneth Williams, ousted three editors of the campus newspaper, *The Atlantic Sun.* The student editors, Ed Schiff, Tom Vickers, and Carin Litman, were removed by Williams, who objected to the contents of the *Sun* and complained that the paper failed to exemplify the university standards for quality. Reported in: *Editor and Publisher,* August 11.

Richmond, Virginia

The U.S. Circuit Court of Appeals ruled that a "four letter vulgarity" printed in a campus newspaper is not sufficient grounds for the dismissal of the students responsible. This ruling grew from a case involving the efforts of East Carolina University to expell two students because of a letter printed in the campus newspaper which included a "vulgar" reference to ECU President Leo W. Jenkins. A federal district court held earlier that the dismissal of the two students was a clear violation of their constitutional right of free expression. The university appealed the decision. Reported in: *Washington Post,* August 8.

the press

Washington, D.C.

The U.S. Supreme Court denied review of a U.S. Court of Appeals ruling that a journalist, called as a witness in a civil trial, may refuse to disclose the identity of a confidential source. The Court of Appeals restricted the *Caldwell* decision to criminal cases and held that, in civil cases, the public's interest in non-disclosure of a reporter's confidential sources outweighs any corresponding interest in compelled testimony. The case involved Alfred Balk, formerly a writer for the *Saturday Evening Post* and now editor of the *Columbia Journalism Review.* Balk had written an investigative story about block busting in Chicago. Reported in: *Press Censorship Newsletter,* July-August 1973.

San Francisco, California

The U.S. Court of Appeals held that the warden of the McNeil Island Federal Penitentiary can ban individual press interviews with prison inmates without violating the First Amendment rights of prisoners or the First Amendment right of press access to the news. U.S. Judge Eugene Wright, writing for the court, noted that "the regulation in question is rationally related to the achievement of legitimate goals of prison administration." Wright said that the court does not suggest that news gathering does not qualify for First Amendment protection, but he added that the right to speak and publish does not carry with it "the unrestrained right to gather information." He concluded: "We again call attention to the [Bureau of Prisons] regulations giving news media extensive access to prison facilities and personnel, as well as the right to unlimited confidential correspondence with inmates. We are convinced that any hampering of the ability of the media to report occasioned by the interview ban is more than justified by the persuasive reasons given

for its formulation." Reported in: *Prison Law Reporter,* June 1973.

miscellany

Washington, D.C.

U.S. District Court Judge Barrington D. Parker declared unconstitutional an Air Force regulation prohibiting servicemen from collecting signatures on a protest petition without the permission of their commanding officer. Parker's ruling was in favor of three former servicemen who were stationed in South Vietnam and who sought to obtain signatures on a petition to Congress calling for cessation of American involvement in Vietnam. Parker ordered military authorities to expunge and destroy any records of their arrests and he barred them from distributing the arrest information to any civilian or military authority. Parker wrote that the servicemen "did not intend to hawk inflammatory retoric from the street corner, to advocate disruptive or unlawful conduct, nor did they seek to interrupt or in any way interfere with legitimate military operations and activities on base. Their aim was not to discredit the Vietnamese and one would be hard pressed to demonstrate that such could result from the petition." Parker held that the Air Force regulation represents "an impermissibly vague and standardless restraint upon the exercise of First Amendment rights." Reported in: *Washington Star-News,* August 24.

New Orleans, Louisiana

The Fifth U.S. Circuit Court of Appeals ruled that socialists and communists may be listed on official electoral ballots in Texas. The ruling upheld a decision of a U.S. District Court in Texas which struck down as unconstitutional a section of the Texas loyalty oath. Under Texas statutes, a candidate for office must file the loyalty affidavit before his name can be included on the official ballot. The court rejected a section of the oath which reads: "I believe in and approve of our present representative form of government, and, if elected, I will support and defend the present representative form of government and will resist any effort or movement from any source which seeks to subvert or destroy the same or any part thereof." The court said that "by this enactment Texas would proclaim that our freedom is too fragile to withstand the onslaught of new political ideologies. No state may condition the right to seek elective office on the willingness of candidates to foreswear their political beliefs and thoughts." Reported in: *Washington Post,* August 7.

Charlotte, North Carolina

In the summer of 1969, after returning to the Shelby Prison Camp, Minford Worley ordered by mail a copy of Eldridge Cleaver's *Soul on Ice.* The book was not delivered. In an interview with the captain in charge of Worley's unit, the captain displayed the book and said that it was Worley's book but that he was not letting Worley have it because "there are too many weak-minded people in this unit" for the book to be read there. Worley had never read the book, he said, just heard it was a good book. He knew that Cleaver was a Black Panther but did not know his philosophy. When the issue of the denial of privilege of reading the book came before U.S. District Court Judge James B. McMillan, McMillan said: "Certainly, the reason given to suppress the book, i.e., that 'there are too many weak-minded people in this unit,' will not pass muster, . . . First Amendment rights are not so easily diluted. Thousands of copies of *Soul on Ice* have been sold and read, apparently without causing violence. If . . . rehabilitation is a moral and intellectual process, prisoners such as the plaintiff should be given freedom to explore political and social philosophies (even unusual or unpopular philosophies), as long as there is no supervening superior state interest." Reported in: *Prison Law Reporter,* May 1973.

Charlotte, North Carolina

U.S. District Court Judge James B. McMillan issued an order enjoining the Secret Service from barring dissenters at public appearances of the President unless the President's personal safety is in jeopardy. Judge McMillan's ruling was the result of a suit brought by a group of persons who were excluded from a Billy Graham Day rally in 1971 by members of the Secret Service. President Nixon was a featured speaker and the Secret Service handled the security for the event. According to Judge McMillan, the young dissenters were "abused, manhandled and excluded . . . without apparent just cause" by the security officers in such a way that clearly showed that the security officers' main intent was the "suppression of dissent or prevention of any expression or demonstration of dissent, from reigning points of view." Reported in: *New York Times,* August 2.

LAA protests obscenity law

The Library Association of Australia has strenuously protested proposed obscenity legislation in Victoria. The LAA is trying to draw public attention to one provision of the proposed measure which stipulates that corporate bodies, such as municipal councils or municipal libraries, could be fined as much as $6,000 for possessing materials deemed obscene. A June 6 editorial in the influential newspaper *Age* came to the support of Australian librarians by pointing out that "the function of a librarian is to choose those books which he or she thinks borrowers should, or may want to, read. They should not be deterred from carrying out this task by fear of possible prosecution. . . . This is to institute a system of disguised censorship. It is to deny borrowers the right to choose themselves what they will and will not read. Such a system is neither necessary nor desirable." Reported in: *The Australian Library Journal,* July 1973.

obscenity

Danvers, Massachusetts

After Danvers selectmen granted a license to a theater with the condition that no adults-only or X-rated movies be shown, city counsel Daniel J. Donovan said, in a written opinion, that "a condition on the issuance of licenses that no 'adults only' movies be exhibited presents an extremely serious question as to its constitutionality under the First and Fourteenth Amendments of the U.S. Constitution and the Declaration of Rights of the Commonwealth of Massachusetts Constitution." The condition was disputed by legal counsel for the corporation owning the theater and was later dropped by the selectmen. Reported in: *Danvers Herald,* July 19; *Boston Morning Globe,* August 9.

Las Vegas, Nevada

A suit filed in U.S. District Court by fourteen book dealers and movie operators in Las Vegas asks the court to issue a permanent injunction against enforcement of four new city ordinances. The dealers contend that the new ordinances require them to admit that they have obscene material for sale and exhibition, which would be tantamount to a confession that they are actually engaging in criminal activities. The new ordinances incorporate the latest guidelines of the U.S. Supreme Court; provide for the sale of obscene items to be declared a nuisance and allow the city attorney to take whatever action necessary "for the abatement of such nuisances in any court of competent jurisdiction"; make it unlawful "to exhibit or to show or to aid or assist in the exhibition of any obscene motion picture, slide or exhibit in the city of Las Vegas." Businesses are further required to disclose the names of all persons who would profit from permits to operate theaters and bookstores. The laws were adopted after a city referendum determined that residents are opposed—by a margin of three-to-one—to the operation of adult bookstores and theaters within the city. Reported in: *Las Vegas Review-Journal,* August 16, September 21.

Chattanooga, Tennessee

After ruling that *Deep Throat* is obscene and prohibiting its exhibitors from showing it anywhere in the state of Tennessee, Chancellor Ray L. Brock, Jr. took under advisement a motion to rehear the case against the movie. Attorneys for the exhibitors argued that Tennessee's obscenity statute should be ruled unconstitutional for its vagueness in light of the U.S. Supreme Court's holdings in *Miller* v. *California.* Attorney General Ed Davis said that since the state's law is more lenient on pornography than the new ruling of the high court, the statute is competent for the prosecution of obscenity. The Tennessee statute in question does not describe specifically what sexual acts cannot be depicted or represented in books and other materials. Reported in: *Chattanooga Times,* September 18.

Charleston, South Carolina

Suits filed in U.S. District Court challenge the constitutionality of South Carolina's obscenity statute and a recently enacted obscenity statute of North Charleston. A suit filed by Atla Theaters of Charleston contends that the South Carolina statute is "unconstitutionally vague because it does not conform to standards set in the latest U.S. Supreme Court decisions." The suit also alleges that officials have created "a climate of fear causing this plaintiff to cease its theater and bookstore operation . . . in order to avoid the possibility of criminal prosecution, notwithstanding the present uncertainty as to the constitutionality and validity of the law in question." The suit against the North Charleston statute argues that the latest U.S. Supreme Court holdings require a specific state statute and that political subdivisions do not have the authority to enact their own obscenity laws. Reported in: *Charleston News and Courier,* September 5, 7, 18.

Montgomery, New Jersey

Two members of the Somerset County Chapter of the American Civil Liberties Union have filed suit in superior court challenging Montgomery's right to use its zoning code to prohibit X-rated movies. In question is a restriction in a variance granted to Stage Ten Theater Company, owner of a local theater. Carolyn Landis and Roger Thompson, the plaintiffs, contend that the condition which prohibits X-rated films is "an arbitrary prior restraint and limits accessibility to constitutionally protected matter." The theater company is not a party to the suit and a company spokesman declined to comment on the ACLU action. Reported in: *New Brunswick Home News,* August 21.

Clarkstown, New York

The Clarkstown Town Board voted to establish a nine person "civilian review board" to examine movies and "other public displays" and to pass on the possible obscenity of such productions. The board, which would review live shows in local bistros as well as movies, does not

have the power to ban an allegedly obscene production. The board originated out of a controversy that arose over an exhibition of *Last Tango in Paris.* One board member, John Lodico, said that the movie was "the most degrading movie I've ever seen in my life," but he voted against the board on constitutional grounds. Reported in: *Nyack Journal-News,* August 29.

Oklahoma City, Oklahoma

Three federal judges who voted in August not to rule on the constitutionality of Oklahoma's obscenity statute were appointed by Chief Judge David T. Lewis of the Tenth U.S. Circuit Court of Appeals to hear a suit filed by United Artists, distributors of *Last Tango in Paris.* United Artists asked the court for a restraining order against the Oklahoma County District Attorney prohibiting him from interfering with exhibitions of the film. Reported in: *Oklahoma City Journal,* August 31.

freedom of the press

Palo Alto, California

Palo Alto, California law enforcement officials are asking the U.S. Court of Appeals to rule that they have a right to search all files in a newspaper office if they obtain a search warrant authorizing a search for evidence that may be useful in criminal proceedings. They are appealing a U.S. District Court decision which held that a 1971 police search of the offices of the *Stanford Daily* was illegal. The police, armed with a warrant to seize only photographs of a student demonstration, searched the entire newspaper office, including confidential files. U.S. District Court Judge Robert Peckham held that, because of the important First and Fourth Amendment rights at stake, the police should pursue the less drastic action of subpoenaing specific materials before seeking a search warrant. Police officials claim that newspaper offices have no special First Amendment protection against dragnet searches based on warrants. Reported in: *Press Censorship Newsletter,* July-August 1973.

teachers' rights

Torrance, California

The ethics test that the International Rotary Club demands of its members cannot be constitutionally applied to a student newspaper, it was charged in a damage suit filed in U.S. District Court by a former Torrance teacher. The teacher, Don Patrick Nicholson, brought suit against the Torrance Unified School District from which he was fired as a journalism and English instructor in 1970. The suit alleges that Nicholson's First and Fourteenth Amendment rights were violated because Nicholson, student newspaper advisor, was required to submit articles written by students to the principal, who applied the four-way Rotary test to the articles. If the articles passed the test in the principal's judgment, they were published. The test is (1) "Is it the truth?" (2) "Is it fair to all concerned?" (3) "Will it build good will and better relationships?" (4) "Will it be beneficial to all concerned?" Because Nicholson did not submit several articles to the principal he was charged with insubordination. Nicholson's attorney notes that if the test had been applied to the Watergate, "news of the first story of the burglary would never have been published because it would have been unfair to the burglars." Reported in: *Dushane Fund Reports,* August 1.

Lake Zurich, Illinois

The National Education Association reports that it supports the law suit of an Illinois social studies teacher who lost his job because he permitted his high school students to express themselves through graffiti on his bulletin board. On May 21 Robert S. Berman filed suit in U.S. District Court against the Board of Education, Community Unit School District No. 95, Lake Zurich. Berman seeks immediate reinstatement and back salary, and alleges that his nonrenewal for 1972-73 school year was an infringement of his academic freedom, as well as his freedom of speech guaranteed by the First Amendment and his substantive and procedural due process rights guaranteed by the Fourteenth Amendment. Berman's method, suggested and endorsed in professional journals, consisted of applying sheets of paper on the walls of his classroom to improve communications with his students, to ascertain their criticisms, and to avoid defacement of desks and other facilities in the classroom. Berman was charged with permitting "a display of filthy, foul, pornographic language and pictures" on the walls of his classroom. Berman contends that writings were reviewed regularly and that he immediately removed any unacceptable language. Reported in: *Dushane Fund Reports,* August 1.

Elkins, West Virginia

A West Virginia school teacher whose contract was not renewed after she placed *The Little Red School Book* on an optional booklist for students in high school English classes has filed suit in U.S. District Court against the Berkeley Springs School Superintendent and Board of Education. Ms. Joan Rypkema, who taught for two years in Berkeley Springs, provided her eleventh grade English classes with a list of paperbacks for possible purchase, *The Little Red School Book* being among the nearly forty volumes included. She informed her students that the contents and language of *The Little Red School Book* might be considered controversial by some people and that the book was not required reading and would not be assigned or discussed in any class. Ms. Rypkema asserts that the nonrenewal of her contract for the 1973-74 school year violated her rights of free speech, academic freedom and due process guaranteed by the First and Fourteenth Amendments. Her com-

(Continued on page 147)

success stories

Burbank, California

A three-to-two vote of the Burbank City Council ended a long battle over a city ordinance which limited use of the Burbank Library auditorium to official Burbank organizations. The ordinance, which conflicted with Article VI of the *Library Bill of Rights,* resulted from a 1966 controversy over the American Civil Liberties Union's use of the facility and subsequent litigation arising out of an attempt to exclude the organization from it. The recent action of the council came at the request of the library board, which submitted a six-page report recommending rules and regulations for use of the auditorium. Jean Smith, a library trustee who has long been active on behalf of intellectual freedom in libraries, writes, "I am happy to tell you that our meeting room will be *open to all."* Reported in: *Valley News,* July 13, August 9; *Burbank Review,* August 8.

Montgomery County, Maryland

The Montgomery County Board of Education voted unanimously to eliminate censorship prior to publication of student newspapers and pamphlets. The vote came four months after the U.S. Circuit Court of Appeals ruled that any censorship had to come after distribution of such publications, rather than prior to publication. The court said: "While school authorities may ban obscenity and unprivileged libelous material, there is an intolerable danger, in the context of prior restraint, that under the guise of such vague labels, they may unconstitutionally choke off criticism, either of themselves, or of school policies." The board action and the court rulings stem from a dispute between the board and parents of six Winston Churchill High School students in Montgomery County. Reported in: *Washington Post,* September 20.

Buncombe, North Carolina

The Buncombe County Board of Education rejected a resolution introduced by board member Edna Roberts which would have, in effect, expunged "unsuitable" books from school libraries. Mrs. Roberts' resolution stipulated "that books which contain passages objectionable to parents as unsuitable reading material for their children, and which are at this time on the shelves of any county school, be summarily and without delay brought together in one place and collectively disposed of in whatever manner may be determined by this Board of Education." After rejecting Mrs. Roberts' recommendation the board reaffirmed its "Policies for Selection." This action brings to a close a campaign Mrs. Roberts spearheaded for over a year to remove such titles as *Catcher in the Rye, The Grapes of Wrath, Andersonville, Of Mice and Men, Soul on Ice,* and *The Learning Tree* from the Buncombe County schools. Mrs. Roberts' efforts were supported by the "Christian Action League" and "Answer For America," a local patriotic group.

Wells River, Vermont

On September 5 the school board of the Blue Mountain School accepted the recommendation of the media selection committee that *Go Ask Alice* be reinstated in the school library. Three months earlier the board banned the book after a parent objected to the words it used. During the summer representatives of the Vermont Civil Liberties Union and the Vermont Library Association Intellectual Freedom Committee met with the school board in an effort to convince them to reconsider their decision on *Go Ask Alice* and to make recommendations regarding a new materials selection policy for the school library. At the September 5 meeting the board also approved a new selection policy. Under this new policy a committee composed of the school superintendent, the principal, and the librarian are responsible for reviewing all requests that books be added or removed from the school library. However, final authority in all cases will rest with the school board. Reported in: *Barre Times-Argus,* August 14; *St. Johnsbury Caledonian-Record,* July 19, September 20.

Anchorage, Alaska

The Anchorage City Council rejected a proposed obscenity ordinance on its first reading by a five-to-four vote. Councilman Dave Rose, who voted against the ordinance, said, "The passage of this ordinance poses a strong and dangerous threat to our basic human rights. What we are asked to do this evening in first reading is to subscribe to one evil, censorship, in order to overcome another, obscenity." Rose added that obscenity could be overcome without resorting to a limitation of individual freedoms. If the community refuses to spend money in business establishments promulgating obscenity, he stated, they will wither and die. Bill Besser, another councilman who opposed the ordinance, stated that freedom of choice is guaranteed by the Bill of Rights. "I am increasingly aware of the efforts being made to erode the rights of the individual under our Constitution, and those efforts must be opposed at every opportunity. This ordinance is a case in point," Besser said. Reported in: *Anchorage News,* August 16.

(Is it legal? . . . from page 145)

plaint labels as "spurious, arbitrary, and capricious" charges of school authorities that she made *The Little Red School Book* available to students, wrote obscene or profane statements on the chalkboard, and displayed in her classroom a poster showing silhouetted male and female figures. The suit also charges that inflammatory remarks seriously maligning her character were made by local citizens at a meeting in the school cafeteria, that she received no notice of this meeting nor any indication she would be a topic of discussion, and that she was given no chance to speak in her own defense or to challenge charges against her. The brief concludes that action against her was based on uninvestigated complaints and unverified rumors, unsupported conclusions from inquiries into her character and unfounded fears of disturbance. Reported in: *Keyser* (W. Va.) *News-Tribune,* September 13.

Laramie, Wyoming

Ms. Martha Sweeney, a former Laramie high school teacher, brought suit against the Albany County School District 1 Board of Trustees over nonrenewal of her teaching contract. Ms. Sweeney was apparently dismissed because of her teaching methods. Students testifying at the trial reported that Ms. Sweeney had opened her English and geometry classroom to discussion of such topics as the Vietnam war, racial prejudice, and the high school's dress code. Reported in: *Cheyenne Tribune,* August 16.

miscellany

Philadelphia, Pennsylvania

A member of Jehovah's Witnesses filed suit in U.S. District Court seeking to be readmitted to the Philadelphia Fire Training College from which he was dismissed after he refused to participate in flag-raising ceremonies. In a suit against the city, Larry Foster maintains that his termination violated his freedoms of speech, religion, and expression. Foster maintains that his religion prohibits him from participating in any ceremony honoring a symbol like the flag. Reported in: *Philadelphia Inquirer,* August 1.

Virginia Beach, Virginia

A resolution passed by the Virginia Beach City Council will require newsstand and bookstore dealers to remove from open display magazines and other products depicting nudity. The measure forbids display of any product featuring nudity in an establishment "frequented by juveniles or where juveniles are or may be invited as a part of the general public." Officials report that such magazines as *Playboy* and *Penthouse* could be forced under the counter. Reported in: *Washington Star-News,* August 28.

(On freedom . . . from page 131)

attempted destructions of liberty. How few are now aware of the aborted Mundt-Nixon bill (sponsored by *the* Richard M. Nixon) which provided for the establishment of concentration camps in the United States.

The precious "1,000 days" of Kennedy followed and the wonderful civil liberty enactments during the Johnson years. This richly earned recognition is painfully marred by an overriding tragedy, the Vietnam disaster, chargeable to Johnson especially, but to Kennedy as well. And we are brought to the gates of Watergate, with repression, social retrogression, onslaught on free expression begetting a mockery and an undermining of freedom in the years of the reign of President Richard M. Nixon.

I ask: To what extent have the so-called "progressive" forces in the United States not only failed to stem the Nixon tide (and like trends of the recent past) but actually stimulated its advancement? The answer lies in a traditional, bitter irony: Forever bent on suicide, by irresistibly creating a Babel of schisms and confusions, are the social democrats—the generic designation for all progressives who are *ostensibly* on the side of freedom. Obsessive is the untaintable "intellectual honesty" of the progressives, calling for an *over*measure of fairness to the avowed enemies of freedom (or for an irrational stand, as will be shown, taken by too many professing to be on the side of freedom in the 1968 presidential election). This, I stress, hardly implies that libertarians can ever entertain the denial of a hearing to those who oppose them. I submit that it is the *gratuitous* fairness which has been the downfall. In 1936, as noted, Franklin Roosevelt carried forty-six of forty-eight states. Mr. J. David Stern, then the publisher of the progressive *New York Post,* at once captioned a screaming editorial: "Wanted: New Party." A mere ten years later, Richard Nixon and Joseph McCarthy, among other luminaries of their ilk, were elected to Congress. It never dawned on Mr. Stern that reactionaries are forever united and never asleep. They *know,* without Mr. Stern's help, how to weather the lean years.

In 1968, many progressives (the *ultra,* especially) decided that Johnson and his supporters must be taught a lesson. They advocated frenetically that the prospective victims of the Nixon era sit on their hands, or vote for a "symbolic" candidate doomed to defeat, or actually vote for Mr. Nixon (and, of course, for a realization of Mr. Nixon's "secret plan" to end the Vietnam war). Among these masochistic thinkers in 1968 was no less a person than the (ordinarily) truly brilliant Joseph Heller. How can freedom win? Forgotten were the political histories of Richard Nixon and Hubert Humphrey, the latter pilloried by Heller and his profound cothinkers as a Johnsonian stooge. Forgotten was the supreme hour of glory of Mr. Humphrey, at the 1948 Democratic convention, when he

consigned to hell the Dixiecrats and the extremists at the other end of the political spectrum, boldly took the brunt of widespread attacks for "splitting" the party, and soon later joined Mr. Truman in an election victory. Relentlessly, Humphrey's role in the Vietnam war was exaggerated, and it was Humphrey who was declared *the* enemy–as against Nixon. Imagine!

Whether or not some choose to conclude that no presidential election took place in 1972 is of no particular significance. The re-election of Mr. Nixon, in the face of the Watergate revelations, is in any case a supremely tragic *fait accompli.* Note, however, the "support" received by Mr. McGovern from his "friends." I cite not an atypical example. *The Washington Monthly,* a progressive, *pro*-McGovern periodical, gave many of its pages to a typical social democratic intellectual who (while insisting that "I am for McGovern") ripped the man apart. I often wonder why the Nixonites spent money to tout the virtues of their idol. Everything they needed was free in the enemy camp.

Can we draw conclusions? Possibly.

First, the freedom forces must never allow themselves to become intoxicated by a refreshing breeze of liberty. That has been the precious freedom between recurring evils. Second, to believe, under any circumstances, that the reactionaries are in a limbo is to be hopelessly naive. It was the highly energetic Richard Nixon who ran for President in 1964, not Barry Goldwater. Nixon, who slaved throughout that campaign while fully aware of Goldwater's next to zero prospects, endeared himself to the rightists, and he did have a solid nucleus of support in 1968, didn't he? And note how the schisms *a la* Heller brought the balance needed for election.

Third, pro-freedom forces need not entertain a fear of being accused of encouraging class cleavages by resolutely supporting unity in *their* ranks. To reactionaries, all progressives, from casually luke warm to ardent, are "those people," in the ugly tradition of the maniacal hatred of Franklin Roosevelt. I choose to maintain a painful awareness of the contempt directed at me (symbolically speaking), as one who dares to oppose the policies of this administration, by Mr. Nixon's idolators. We should resolve to fight for *our* rights and, indeed, to accord rights to the "plastic gnomes"–Dame Rebecca West's designation for the tainted choir boys whom we have seen on parade at the Watergate hearings.

(Cleaning up . . . from page 130)

When legislators in Kansas and Illinois next assemble they will encounter bills that would change their state laws in accordance with the guidelines set forth in *Miller.*

Guidelines for the Arts

The National Council of the Arts has decided to promulgate a policy statement–not yet made public–to make certain that valid artistic and creative freedoms are not restricted or curtailed by the June 21 rulings of the U.S. Supreme Court on obscenity. The step was the latest in a series which began in Denver in late July, when the Council unanimously passed a resolution requesting that "the endowment prepare a draft statement which in part encourages artists and art organizations to take an active role in any response to this decision at the local level to make certain that valid artistic and creative freedom are not restricted or curtailed." The council, more than a third of whose members were appointed by President Nixon, acts as advisor to the National Endowment for the Arts, established in 1965 to encourage and assist the nation's cultural resources. Reported in: *Chicago Sun-Times,* September 17.

In a letter to the editors of the *New York Times,* actor Steve Karp charges that the Supreme Court decisions of June 21 are especially odious because they unleash "the tyranny of censorship on free thinking in individuals, retarding the essence of creativity–freedom of expression. Karp, a cast member of *The Changing Room,* reports that the play has been "forestalled from appearing in Philadelphia, Boston, Detroit, San Francisco and Los Angeles–not any Podunk Village, U.S.A. but some of the most important, sizable and liberal (if you will) cities in the country." Karp added that because of frontal nudity in *The Changing Room* "the theaters in question will not chance a shutdown of the play once it arrives." *The Changing Room* was chosen best play of the 1972-73 season by the New York Drama Critics Circle. *New York Times,* September 9.

A Little Help, Please

The ALA Office for Intellectual Freedom attempts to keep an accurate record of all bills introduced in the state legislatures that would affect First Amendment rights. If you have information on bills that are about to be or have been introduced in your state legislature, please write to the Office for Intellectual Freedom, American Library Association, 50 East Huron St., Chicago, Ill. 60611. If you have need for information about legislative developments in your state or require assistance in dealing with potential legislative problems, the OIF will attempt in turn to assist you in any way it can.

Banned in Atlanta

"Second 'Throat' Film Seized; Third Goes On"
"Slaton Hurls Counterpunch Aimed at Closing 'Throat' "
" 'Deep Throat' Halt Ordered by Judge"
"Brando Can't Tango Here"

These headlines from the *Atlanta Constitution* tell the story of the climate in Georgia's leading city. Film promoters refused to submit *Last Tango in Paris* to the Atlanta International Film Festival because of a threatened obscenity raid by Fulton County Solicitor General Hinson McAuliffe. When contacted by reporters from the *Constitution,* McAuliffe said that if the picture is shown in Atlanta he will "very probably" raid it.

CLA, NYLA support rehearing petition

In a statement prepared by the Intellectual Freedom Committee of the Colorado Library Association and unanimously approved by the CLA Executive Board, CLA expressed its concern over "the potential threat to First Amendment freedoms, and thus to libraries and their patrons, of the June 21, 1973 decisions of the Supreme Court of the United States." CLA said:

> We believe in the historic right of all Americans to a freedom to read—a free enterprise in ideas, expressions, and tastes.
>
> Therefore we urge that each Colorado library publicly assert, or reassert, its commitment to the *Library Bill of Rights.*
>
> We further urge that the Colorado Library Association and all Colorado libraries, as appropriate, associate themselves in the petition of the American Library Association for a rehearing of the Supreme Court decisions of June 21, 1973.
>
> Colorado libraries, locally and state-wide, should be alert to any infringement on First Amendment freedoms of the right to read in the prospective legislation mandated by the Supreme Court decisions. This alertness should include seeking to hold libraries, public and private, safe from extremist restrictive provisions dictating what they may not possess and circulate, and, at minimum, should insist that any work first be placed on trial to determine its individual illegality before criminal action against a library for including the work in its collection may be taken.

Through its president, Stanley A. Ransom, the New York Library Association has voiced similar support for the ALA petition to the U.S. Supreme Court:

> The 4,000 members of the New York Library Association wish to express their concern on the five decisions handed down on June 21, 1973, involving the First Amendment and obscenity. We object to a jury deciding the standards of the community in regard to literary works and without appeal. A small minority thus would censor for the rest of the adult community. We foresee a devastating effect upon public library service and the right to read. We urge a rehearing on these five decisions and recommend that further advice from experts be obtained.

Youth liberation materials

For the past three years Youth Liberation of Ann Arbor, publishers of FPS-Youth Liberation News Service, has distributed pamphlets and other materials to students in U.S. schools. This year Youth Liberation again offers its materials to students, teachers, librarians, and others interested in the student movement. Requests for further information and orders for the following materials should be sent to: Youth Liberation, 2007 Washtenaw Avenue, Ann Arbor, Michigan 48104.

Youth Liberation—News, Politics and Survival Information

A 64-page paperback book about youth liberation. Written by Ann Arbor Youth Liberation and published by Times Change Press . . . . . $ 1.35

Pamphlets

Student and Youth Organizing (92 pages) . . . . $ .50
Major Court Decisions Regarding the Rights of Students and Youth . . . . . $ .50
Teaching Rebellion at Union Springs (26 pages) $ .25
How to Start a High School Underground Paper $ .25
White House Conference on Youth . . . . . $ .50
The Rights and Responsibilities of Public School Students in Michigan . . . . . $ .50

Sample Packet

of ten high school underground papers . . . . . $ 1.00

Buttons

"Youth Liberation" (three colors) . . . . . $ .25
"Power to Young People" (three colors . . . . . $ .25

Subscription

One year subscriptions to FPS—the youth liberation news service. Thirteen issues.

for movement groups and youth . . . . . $ 5.00
for other people . . . . . $ 8.00
for library YA collections . . . . . $ 8.00
for institutions $12.00
sample copies of FPS . . . . . $ .25

(A glancing blow . . . from page 132)

June 1973 U.S. Supreme Court decisions, "community" has acquired a peculiar formlessness. But, consistent with the Fort Vancouver board's constant policy position and the legal status of the three-county, eight-city library district, the district's definition of community appears as viable as any other. While not unassailable, the Regional Library's definition is much harder to assault than would be the case for an independent public library serving a single city population. Secondarily, the Regional Library is an autonomous taxing district and, as such, its trustees are answerable to state law, not to local political jurisdictions, insofar as anyone is immune from immediate peer pressure and practical need.

The policy adopts the *Library Bill of Rights,* the *Freedom to Read Statement* of 1972, the Washington Library Association Statement of Policy on Intellectual Freedom in Libraries, and the ALA 1972 interpretation of the *Library Bill of Rights,* Free Access to Libraries for Minors. In addition, the concluding paragraph of the Fort Vancouver Regional Library Materials Selection Policy drew attention from ALA/OIF and from WLA/IFC (the latter group recommended the Fort Vancouver Board for the Annual Washington Library Association Trustee Citation). For its "landmark" statement the 1972 Fort Vancouver Board received the 1973 Trustees' Award from their peers in Washington State. The policy concludes: "The Library Board will not consider a complaint as to a specific item of material which is nationally distributed and locally available within the community."

As seen through the recently occluded glasses of the U.S. Supreme Court, the landmark quality of the final Fort Vancouver policy statement may appear blunted. (Yes, Jimmy, by the year 2,000, the Washington Monument will have sunk completely out of sight and the Jefferson Memorial will have fallen into the Potomac.) However, the Washington State Supreme Court, hard on the heels of the U.S. Supreme Court decision, upheld state obscenity laws and established the State of Washington as the "local community." The state court further enjoined all other political subdivisions from enacting their own local regulations, and reaffirmed in the process the legislative exemption for all libraries in the state from compliance with or culpability under extant statutory controls on pornography and obscenity.

Regretfully, while momentarily secure on home ground, the Fort Vancouver Regional Library District cannot but share the insecurity of libraries nation-wide over the untenable and chaos-producing pronouncements of June 21. Given the repeated stress on the library's role as Great Provider of alternatives in thought and diversion, the blatant threat of local ban on nationally distributed materials looms as an ugly and confining neo-isolationism; it is a *Future Shock*-bred retrenchment.

Granted the right and the responsibility to obtain and distribute alternative-message materials, the Regional Library board and staff fear that economic/regional sanctions may destroy these alternatives altogether. The vitality of the presentation of diverse ideas patently depends, in most instances, upon nation-wide distribution, upon the size and variety of the target population and of the potential market. The Regional Library's ability to acquire such material is reasonably unimpaired, indeed strengthened under its new policy, but, with a visibly darkened national library and publishing picture, what could be construed as a major success becomes instead a minor affair.

Victory, however heady, seems in retrospect damnably fleeting in the battle against the censor. In the Fort Vancouver incident, as in incidents across the country, the knockout punch was simply one more glancing blow struck for freedom against the censor. The censor, elusive, remains on his feet. Optimistically, however, libraries are also still standing. If, in hindsight, the Fort Vancouver experience was only marginally conclusive, it does help along with other successful cases to illustrate an effective fighting stance. *Playboy* remains on the shelf, and board and staff stand together.

LC subject heads

A memorandum from Sanford Berman, author of *Prejudices and Antipathies: A Tract on the LC Subject Heads Concerning People* (Scarecrow Press, 1971), includes the following notice:

"United States. Library of Congress. Subject Cataloging Division: *Subject headings used in the dictionary of catalogs of the Library of Congress. Supplement to the 7th ed.: January-December 1972.* (Washington, D.C.: LC Card Division, 1973.) 371 p. HCL call-number: URM (Cataloging Section). A 'mixed bag,' featuring the most welcome replacement of ART, IMMORAL with EROTIC ART (p. 114), although LITERATURE, IMMORAL—a parallel head—has apparently not been replaced, . . . "

Case law on prison libraries

"Because every aspect of a library operation in a correctional institution can touch upon controversial issues of censorship, inmate rights, access to courts, etc., librarians and administrators responsible for developing library policy should be aware of the guarantees and the constraints which have been established by case law."

So begins Marjorie Le Donne's "Summary of Court Decisions Relating to the Provision of Library Services in Correctional Institutions," which summarizes case by case the law governing intellectual freedom in prisons. Nearly one hundred cases are discussed under various headings, including "suspension of library privileges," "restrictions on

soft bound materials," "personal ownership of reading materials," and "access to legal reference materials."

Originally published in the Winter/Spring issue of the *AHIL Quarterly,* the article is available in reprint form from the Order Department, American Library Association, 50 East Huron St., Chicago, Ill. 60611. The price, which includes the cost of postage and handling, is: 1 copy–$.45; 10 copies–$3.50; 25 copies–$6.25; 50 copies–$7.50.

Question for the day

When Philadelphia Councilman Joseph L. Zazyczny introduced a bill that would permit each community of the city to decide what kinds of sexual materials it will tolerate, the *Philadelphia Inquirer* responded with the following editorial comment:

"The councilman does have one interesting point. He thinks the 'community' ought not necessarily be the city of Philadelphia but the neighborhoods, such as Mayfair or Oakland. Why not go one step further and make it the people on every block? Why not go the next, sensible step and let every individual decide for himself?"

Because of adverse reaction to the bill among members of the council, it appears that it will be allowed to die quietly. *Philadelphia Inquirer,* September 27.

Broadcasters asked to resist censorship

The nation's television broadcasters and advertisers have been called upon to exert counter-pressures against the censorship of television dramatizations. The American Civil Liberties Union, the National Council of Churches, the Union of American Hebrew Congregations, the Young Women's Christian Association, and the Freedom to Read Committee of the Association of American Publishers issued a joint statement condemning censorship because of recent controversies surrounding the airing of two episodes of "Maude" dealing with abortion and of the anti-war play *Sticks and Bones.* Referring to pressures from anti-abortion groups and others, the organizations expressed their regret that "some thirty-nine of the CBS-affiliated stations apparently bowed to this pressure, as did seven major U.S. corporations who withdrew their sponsorship." Their statement added that "creative artists . . . need to be assured the freedom to express their own interpretations of such subjects. This is the vital principle at stake in the current controversy. . . . " Reported in: *New York Times,* August 30.

Czech libraries purged

The purge of Czechoslovakia's libraries unfortunately continues (see *Newsletter,* July 1973, p. 69). In July the Czech Ministry of Culture appointed a committee of the National Library to prepare a list of titles which are to be withdrawn from Czech libraries and to identify those authors who are not to be represented in Czech library collections. The final list contained the names of 143 writers and listed over 150 books. Included are all books by and about Tomas Masaryk, Edvard Benes, Andre Gide, and Alexander Solzhenitsyn. All Czechoslovakian writers now in exile are blacklisted, as are those writers who have not been permitted to join the Writers Union. Czech libraries were directed to remove the proscribed titles along with the catalog cards and store them in sealed boxes for further disposal. It was reported that in cases where the librarian could not be trusted to carry out the state's directive with proper zeal, a special commission was enlisted to do the job. Reported in: *Times Literary Supplement,* August 31.

intellectual freedom bibliography

Compiled by PATRICIA R. HARRIS, Assistant to the Director, Office for Intellectual Freedom.

"ABAA Takes a Stand," *AB Bookman's Weekly,* July 23, 1973, p. 242.

"ALA Petitions Court for Obscenity Rehearing," *School Library Journal,* v. 98 (September 1973), p. 9-10.

Cousins, Norman. "Secret Police and Security," *Saturday Review/World,* September 25, 1973, p. 6.

England, Claire. "The Librarian as Censor," *IPLO Quarterly,* v. 15 (July 1973), p. 5-11.

Fortin, Jacques. "Criminal Law Project: Obscenity," *IPLO Quarterly,* v. 15 (July 1973), p. 17-20.

Gans, Herbert J. "Deep Throat: The Pornographic Film Goes Public," *Social Policy,* v. 4 (July/August 1973), p. 119-20.

Haugh, Maxine L. "Censorship: Where Will You Be When it Hits the Fan?" *Michigan Librarian,* v. 39 (Summer 1973), p. 5-7.

"Industry Brief Sees Chaos Following High Court Obscenity Ruling," *Publishers Weekly,* July 23, 1973, p. 48.

"Intellectual Freedom and the Right to Read," *Ohio Libraries Newsletter,* v. 3 (August 1973), p. 4-5.

"Intellectual Freedom—At Stake," *ASLA Newsletter,* August 1973, p. 4.
"Intellectual Freedom Statement," *Texas Library Journal,* v. 49 (July 1973), p. 110-11.
Klempner, I.M. "The Concept of 'National Security' and Its Effect on Information Transfer," *Special Libraries,* v. 64 (July 1973), p. 263-69.
Levy, Alan D. "The Freedom to Read Committee," *IPLO Quarterly* v. 15 (July 1973), p. 25-31.
McCormack, Thelma. "Obscenity, a Critique," *IPLO Quarterly* v. 15 (July 1973), p. 21-24
Mehler, Mark. "Newspapers Blast Florida Ruling as Serious Threat," *Editor & Publisher,* July 28, 1973, p. 9.
"More Action From Groups Opposing Obscenity Decisions," *Library Journal,* v. 98 (September 15, 1973), p. 2495.
"Publishers Ask Supreme Court to Clarify Obscenity Rulings," *School Library Journal,* v. 98 (September 1973), p. 10.
Ruggles, Wilma Corder. "Unlocking Government Files," *Folio,* v. 2 (July August 1973), p. 49-50.
Sheed, Wilfred. "The Good Word: Dirty Business," *New York Times Book Review,* August 5, 1973, p. 2.
Sievert, William A. "Human Rights Vs. Research Stirs Berkeley," *The Chronicle,* v. 8 (September 24, 1973), p. 1.
Stanbury, Robert. "The Government as Censor," *IPLO Quarterly,* v. 15 (July 1973), p. 12-16.
Stevens, Jean. "Exclusivity in Action," *Freedom of Information Center Report,* no. 304, June 1973.
Stevens, Jean. "Exclusivity: Pros and Cons," *Freedom of Information Center Report,* no. 305, June 1973.
"Supreme Court Decisions," Rhode Island State Department of Education *Newsletter,* no. 2, August 17, 1973, p. 3.
"Texas Intellectual Freedom News," *Texas Library Journal* v. 49 (May 1973), p. 81.
Wagner, Susan. "Government Funds Support Project To Aid Obscenity Prosecutors," *Publishers Weekly,* September 10, 1973, p. 30.
Wagner, Susan. "More Problems for Booksellers," *Publishers Weekly,* July 23, 1973, p. 48-49.
Wagner, Susan. "Obscenity: A Soothing Word from the Justice Department," *Publishers Weekly,* August 6, 1973. p. 29-30.
Williams, Patrick and Pearce, J.T. "Common Sense and Censorship: A Call for Revision," *Library Journal,* v. 98 (September 1, 1973), p. 2399-2400.

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