newsletter on
intellectual freedom
IFC ALA

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Supreme Court denies rehearing

Last summer, after the new constitutional test for obscenity was handed down by the U.S. Supreme Court, the Freedom to Read Foundation filed a petition for rehearing that raised a number of issues, including the question of the constitutionality of statutes that subject persons to criminal penalties for distributing works they cannot know are unprotected until a decision is made in the course of their criminal trials. The petition was filed in the name of the American Library Association, as *amicus curiae,* in support of the petition for rehearing filed by California bookseller Murray Kaplan. Kaplan's conviction for violating a California obscenity statute by selling an unillustrated book was upheld by the Court on June 21.

On October 9, early in its new term, the Court refused to reconsider its June 21 decisions. The order denying Kaplan's petition was unembellished by comment: "The motion of the Association of American Publishers, Inc., et al., for leave to file a brief, as *amici curiae,* in support of rehearing is granted. The motion of the American Library Association for leave to file a brief, as *amicus curiae,* in support of rehearing, is granted. The motion of the Authors League of America for leave to file a brief, as *amicus curiae,* in support of rehearing, is granted. The petition for rehearing is denied." The Court's order was regrettable but predictable. During the period from 1961 to 1967, only ten petitions for rehearing were granted of the nearly 1,000 requested.

However disappointing the denial of the petition was, the action of the Court two weeks later was genuinely distressing. The Court reviewed the *Zap Comix* case and dismissed the appeal of Charles Kirkpatrick and Peter Dargis "for want of a substantial federal question." Dargis and Kirkpatrick had challenged the constitutionality of a New York statute which creates a presumption that the disseminator of obscene material knows the character and content of what he disseminates. The five-to-four decision of the Court followed the pattern established in its previous term; Justices Brennan, Stewart, Marshall and Douglas dissented.

In other five-to-four actions in October, the Court sent back to lower courts eight cases involving convictions for possession or sale of obscene materials, cases to be reexamined in light of the guidelines established in *Miller* v. *California*; and affirmed a decision upholding a California search and seizure law as used in seizing obscene materials.

In dissent to one of the obscenity decisions, Justice William O. Douglas said, "Every author, every bookseller, every movie exhibitor and perhaps every librarian is now at the

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Published by the ALA Intellectual Freedom Committee, R. Kathleen Molz, Chairman

titles now troublesome

Books

Films

Periodicals

Television Shows

Plays

new intellectual freedom manual

In order to assist librarians and answer the many practical questions that confront them in applying the principles of intellectual freedom to library service, the ALA Office for Intellectual Freedom has prepared a basic reference work, *Intellectual Freedom Manual,* now available from the ALA.

If, for example, a librarian wants to know what the ALA can do to help him resist censorship of library materials, or how to handle complaints, or simply an appropriate kind of letter to send to legislators, he can find help in this new volume. If his problem is complex–for example, development of a materials selection program–practical guidelines on how to tackle the problem are provided.

The first part of the *Manual,* "The American Library Association and Intellectual Freedom," offers a different kind of help. It explains not only the meaning of intellectual freedom and library service, but also how today's broad concept of intellectual freedom evolved from opposition to censorship of books. The brief histories of the ALA's various policies on intellectual freedom also give concrete examples of the kinds of problems librarians can expect to encounter, problems that should be anticipated in formulating policy for their own institutions.

Published in a loose-leaf format, the work is designed to accommodate new policies and additional sections on such topics as recent developments in First Amendment law affecting libraries. Cost for the volume, including binder, is $00.00. Orders should be sent to: Order Department, American Library Association, 50 E. Huron St., Chicago, Illinois 60611.

in memoriam

David H. Clift
1907-1973

David Clift left a legacy to many areas of librarianship. Among those to which he was particularly devoted were international relations and library education. Yet, no area was more a part of David nor received greater support and devotion than intellectual freedom. And in the area of intellectual freedom, he made a lasting impact.

It is an impact all the stronger for his quiet, gentle ways. He never said "can't" but rather, "let's try it—and if it doesn't work, we'll try it another way." He never said "no," but probed and discussed, questioned and commented, always with perception, always seeking the higher level.

His kindness and concern for human beings is legendary. I remember receiving, in my very early days at ALA, a note which started, "I am impressed with the way you have organized and are following up on . . . " And who, but David, would have taken the time to send a memo to a secretary complementing her on the quality and appearance of her typing!

Because these traits and others were innate, David Clift was a natural devotee of intellectual freedom. He *wanted* to hear all sides of an issue; he *believed* every human being was entitled to speak his thoughts. It was logical then for him to champion the principles of intellectual freedom in libraries.

One of his earliest endeavors on behalf of intellectual freedom as ALA Executive Director concerned the 1953 Westchester Conference, which resulted in the initial Freedom to Read Statement. Ted Waller writes that "there are few developments in our complex world which can be traced to the initiative of a single man. The Westchester Conference and the Freedom to Read Statement are one such. Clift, and an intimate collaborator or two, but Clift, got the idea . . . and did much of the orchestrating. . . "

In the years that followed, it was David Clift who helped the Intellectual Freedom Committee carry its standard high. It was David's way that his support was strong, but behind the scenes. And this same strong support benefitted the Office for Intellectual Freedom. There was no question but that his wide experience and unusual perception were always available for tapping. At the end of one lengthy discussion about goals and directions after the establishment of OIF, David looked off into space and mused, "Education is the key to all problems." And if you're familiar with the OIF program, you know the impact of that statement!

A few years later, during the tumultuous period of the founding of the Freedom to Read Foundation, David offered that "at some big parties, guests arrive late!"

I saw David for the last time a few days before he left

for Germany. He commented that on each trip abroad he asked his interviewees how they felt about "intellectual freedom." On previous trips, most people responded that it was an "interesting" idea—but probably couldn't work!

And yet, it is working here—and will continue to work. David Clift believed intellectual freedom to be the foundation of American librarianship. By striving to make his belief a reality, we honor his memory and create a living legacy.—JFK

David H. Clift was Executive Director of the ALA from 1951 until his retirement in 1972. He died on October 12 while enroute home from Europe, where he had been in connection with his study supported by a Fellowship in Comparative Librarianship, awarded to him upon his retirement. He is survived by Mrs. Eleanore Clift, his wife. Mrs. Clift has requested that any memorials be made in the form of a contribution to the Freedom to Read Foundation.

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Fahrenheit 451 in North Dakota

The mid-November chills that come to Drake, N.D., foreshadow the winter gales that sweep across the northern plains. But the fire the school officials of the hamlet started was not to drive off the cold. It was to burn copies of Kurt Vonnegut's *Slaughterhouse-Five.*

If during November you were in Outer Mongolia or some remote region separated from the news, you will not be surprised to learn that the decision to commit Vonnegut's tale of the bombing of Dresden to the flames of an incinerator was made after the school board heard complaints that the work is profane–in the words of some ministers at the board's meeting, "a tool of the devil."

Similarly condemned–but apparently saved from burning by the outcry that arose in response to coverage by the national press–were James Dickey's *Deliverance* and an anthology of short stories by Hemingway, Faulkner, and Steinbeck.

Bruce Severy, who assigned the works, is the only teacher of English at Drake High School. He received calls from the wife of one school board member who told him he was "an old scumbag, a piece of garbage that flew into North Dakota, a perverter of our children's minds."

Severy responded to the charges against the works: "Most of the criticism focuses specifically on some four-letter words commonly referred to as slang. All I can say is the author is trying to tell his story like it is, using language as it is being used today out there in the real world."

Noting that none of the school board members had read any of the books they would readily destroy, Severy said: "I say no one can make a judgment about a book without reading the entire book. Anything less is academically dishonest, anti-intellectual, and irrational."

Of course, all copies of the books were duly removed from students' lockers, the school library, and classrooms. Columnist James J. Kilpatrick reactivated his Beadle Bumble Fund–founded several years ago when officials in a Virginia county attempted to ban *To Kill a Mockingbird*–and offered to any student in Severy's class a free copy of *Slaughterhouse-Five.* But, as Kilpatrick observed, given the publicity, most certainly every student in Drake who wanted a copy had one before the headlines cooled.

The lesson? In this story alone there is probably none. But the one fact that should have been pointed out by reporters for the media, the one fact that might have had a lesson but was missed, is simply that, flames this time or no, the removal of books from school classrooms and libraries is a commonplace event. A few four-letter words, then a threat from the Parents United for Decency in Schools, a quick huddle of the school board, and voila, instant clean education.

The Drake board members no doubt still think they were right. So also Mr. Severy. Those who agree with Mr. Severy, however, particularly teachers and school librarians, can and must continually resist the commonplace censor.–RLF

NDLA Reacts

It is the opinion of the North Dakota Library Association, as expressed by James Dertien, chairman of the NDLA Intellectual Freedom Committee, that the action of the Drake School Board to remove from the curriculum several pieces of contemporary literature is an attack on the rights of the students under guarantees of the Constitution and the Bill of Rights.

"While the Association deplores the distasteful and senseless act of burning the books," noted Dertien, "we are particularly concerned with those primary liberties in a student's life having to do with the processes of inquiry and learning. The world of today presents demands which only the literature of today can meet. If literature is to square with reality, honesty must be promoted and hyprocrisy avoided. One must not try to raise children in a vacuum. The intrusion of language which is commonly considered objectionable in our literature cannot be entirely avoided, nor can it be effectively censored. Boredom and literary bankruptcy are too high a price to pay for a 'purified' curriculum."

CBS head defends "mature" shows

Robert D. Wood, president of the Columbia Broadcasting System's television network, defended the presentation of potentially controversial programming in a speech to the New York Better Business Bureau. Wood said that CBS has a commitment to "participate in the present" and to raise television from the level of escapism that has earned the medium its reputation as the "vast wasteland." Among the examples cited by Wood was the two-part episode on abortion in the "Maude" series. When the "Maude" programs were first presented, they drew 7,000 letters of protest, and when repeated last summer, they drew 17,000 more. Wood said that the number is not necessarily significant, and that one should "keep in mind that these 24,000 letters represented the fruits of one of the most highly organized, all-out nationwide campaigns ever mounted against a particular program." Wood referred to the anti-abortion organizations led by the National Catholic Conference. Reported in: *New York Times,* October 16.

let me say this about that

a column of reviews

The Politics of Broadcasting: Fourth Annual duPont-Columbia University Survey of Broadcast Journalism, 1971-1972. Marvin Barrett, ed. Crowell, 1973. 247 p. $5.95.

No book could be more timely. Reviewing and commenting on the recent national events, especially the Presidential campaign of 1972, as affecting and affected by the electronic media, numerous contributors have here given us several books in one. "The Year in Broadcast Journalism" discusses key media aspects of 1971-72; this is followed by several chapters: the financing of television and radio and ethical problems involved; the primaries; the national conventions; and the 1972 campaign. Only one page is allotted to the listing of recipients of the duPont-Columbia awards, and the programs or series meriting them. Three speeches of Clay Whitehead (White House aide for telecommunications policy) and one by President Nixon bring out the anti-media arguments as they were used until about a year ago.

Five essays are of special value: on the changing role of television, politics and journalism as drama, radio news, television sports, and television dramatic shows.

I found only one surprising inconsistency: after describing quite well the long series of angry confrontations between press and politicians, we find (p. 39) that "in the best of all possible worlds, there would be no conflict between government and broadcasting." Surely, if there is any one point to such a volume as this, it is that conflict between press and officialdom is inevitable. Any society without that conflict lacks the most basic requirement for calling itself a democracy.

The book can be recommended as a sourcebook for those who seek specific examples of media-government conflict, and as an eloquent presentation of the viewpoints of the electronic media. I can see it as serving both sides in a debate over whether the media "have gone too far" in reporting and exposing official mistakes and offenses, for while there is never any doubt the participants favor completely free reporting, the incidents covered would seem to be acceptably described for opponents to use, too. I have already used several parts as bases for discussion in my own classes.—*Reviewed by Rinehart S. Potts, Assistant Professor of Library Education, Glassboro State College, Glassboro, New Jersey.*

News From Nowhere: Television and the News. Edward Jay Epstein. Random House, 1973. 321 p. $7.95.

The handling of the news by the television networks has come under attack from almost all quarters, with the Nixon administration leading the way. In defense, the networks have proffered arguments ranging from the idea that television merely "mirrors" what occurs to the suggestion that it is the duty of the commentators to interpret what has occurred. Mr. Epstein's latest work offers a different, and in many ways a very convincing, approach to the question.

While Epstein tends to condemn, the idea that "certain consistent directions in selecting, covering and reformulating events over long time periods are clearly related to organizational needs" is worth listening to. These needs are multi-defined, including such things as editorial policy, governmental factors, etc., but the main argument is that the needs are economic.

A constant criticism of the news is that it all seems to emanate from a few cities. In studying the three networks, with the emphasis being placed on NBC, the author found that most news stories do come from either Los Angeles, Washington, New York, Chicago, or Detroit. But he explains this by stating that the cost of keeping stand-by crews in all of the places where news could occur would be financially prohibitive, and in some cases illogical.

The latter aspect is shown by the fact that in order for a Los Angeles story to be seen in New York on a six o'clock news broadcast, it must be in New York by three o'clock Los Angeles time. Given the need to film, process, edit, and ship the film across the nation (satelite communication being too expensive for anything less than a major story), the event would have had to occur by approximately noon. These and other factors all come into play in deciding just how much can be spent on covering any one particular event and produce part of the problem defined as economics. But they are merely the tip of the iceberg.

Below the surface lies the one all-consuming factor of television and its survival. Advertising revenues are for all intents and purposes the sole revenues that decide the fate of any television network. The rates that are charged are in direct proportion to the number of people who are watching any particular station at any particular time. In order to gain these rates programs are introduced and eliminated constantly, and everything is done to keep the viewer on one station. Into this jungle of lions comes the lamb called "news."

News programs exist because the Federal Communications Commission states that in order for a station to have use of "public airways," that station must serve the "public good," and news programs are considered part of the "good." From the viewpoint of the network, the news program is to be structured as a vehicle to hold the viewer until "prime time" and its rates have arrived.

According to the networks, the average news viewer does

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cleaning up America

a continuing saga

A Florida bookseller who was arrested seventeen times in three months was given twenty-four hours to leave Okaloosa County. The quick exit or one year in jail and a $5,000 fine were the alternatives imposed by Circuit Court Judge Erwin Fleet, who presided over the trial and conviction of the Fort Walton Beach purveryor of sexually explicit books.

Massachusetts Superior Court Judge James C. Roy sentenced a Boston theater operator to two years in prison and imposed a $5,000 fine for showing *The Devil in Miss Jones* in the city famed for banning. The conviction was the first in Boston since the U.S. Supreme Court said the "community standard" of the "average person" should determine what materials have First Amendment protection.

Reports of new obscenity convictions–reports coming to the *Newsletter* from Georgia, Iowa, Texas, Virginia, and nine other states during the months of October and November–seem to support the frequently voiced contention of public prosecutors that the Supreme Court has untied their hands. "If we can get this kind of sentencing from all the judges, then we'll soon run out of problems with so-called adult stores and theaters," a Detroit official said after a traffic court judge imposed the maximum sentence allowed by Detroit law–90 days in jail and a $500 fine–on a theater operator who exhibited a film which police officers called "pure, unadulterated filth."

Still high on the list of those films which some guardians of public decency would like to see receive "this kind of sentencing" are *Deep Throat, The Devil in Miss Jones,* and *Last Tango in Paris.*

Last of Tango?

Bonnevile County (Idaho) Prosecutor Robert J. Fanning ordered an Idaho Falls theater operator to close his showing of *Last Tango.* "I have given the exhibitor of the film notice that the film is below the standards of this community," Fanning told the *Boise Statesman.* Speaking before the Louisiana Supreme Court, Shreveport District Attorney John A. Richardson called *Last Tango* a slender thread to hang a gross obscenity.

Miss Jones Bedeviled

FBI agents in Memphis impounded *Miss Jones* after a federal judge authorized its seizure following the testimony of an agent who said he found it obscene. Richmond (Va.) Circuit Court Judge James M. Lumpkin called *Miss Jones* "common trash" and issued an order closing its showing. "If there are moral values in *Miss Jones,* then no movie could ever be obscene, no matter the sexual gymnastics, provided a 'moral message' were shown before or after the aforesaid gymnastics," the judge wrote. A Grand Rapids (Mich.) judge described the film as "one of the most disgusting, dirty, filthy films I have ever seen" and ordered it banned.

Throat Slashed

After U.S. District Court Judge Charles R. Scott ruled that *Deep Throat* is obscene, a Cocoa Beach (Fla.) theater owner pleaded guilty to using a common carrier–a commercial airline–to transport obscene materials. Judge Scott's decision followed by a few days a Florida jury's acquittal of a Jacksonville man charged with violating the state's obscenity law by showing *Deep Throat.* Characterizing the film as "exploitation for profit" not to be shown in Cincinnati, Hamilton County Common Pleas Court Judge Robert L. Black, Jr. issued a permanent injunction barring its exhibition.

What's Next?

Whether the campaigners to clean up America will be satisfied with their current successes, or whether they will turn their sights toward public and school librarians and demand the conviction of disseminators of library materials adjudged obscene by self-appointed guardians of morality, remains an unsettling problem. Certainly, no librarian should allow himself to be lulled into complacency by the comfortable notion that cleaning up America will end with the prosecution of commercial "exploiters of sex."–RLF

new standards for broadcasters

The House Communications Subcommittee has approved by a five-to-one vote a compromise broadcast licensing bill. The measure extends the current three-year Federal Communications Commission licensing period to four years and specifies that a broadcaster with ownership ties to other stations, newspapers or other similar interests will not be penalized in a hearing if his ownership does not violate FCC rules. The bill also includes a provision ordering the FCC to "prescribe procedures to encourage licensees of broadcasting stations and persons who are critical of the operations of such stations to conduct, during the term of their licenses, good faith negotiations to resolve the issues presented by such criticism." But it also provides that a broadcaster must show that during the past license period he has been "substantially attuned" to the needs and interests of his community. A fourth requirement leaves the door open for challenges to present license holders. It allows renewal only if "none of the competing applications offers proposals for broadcast operations and program service which are clearly superior to those of the renewal applicant and demonstrates that such proposals can and will be implemented." Reported in: *Variety,* October 17.

judges abstain in "harmful matter" suit

On September 17, a three-judge federal panel heard oral arguments on the question of abstention in the Freedom to Read Foundation's suit challenging California's "harmful matter" statute. In effect, the judges faced the problem of whether it is appropriate for a federal court to review a state statute before state courts have had an opportunity to consider its constitutionality.

The federal judges decided on November 30 that they should abstain but retain jurisdiction in the case. As this issue of the *Newsletter* goes to the printer, it appears that the issues raised in the suit will have to be pursued in the California courts. The doctrine of abstention is ordinarily invoked when a federal court believes that an issue of law is more appropriately raised at the state level. However, by retaining jurisdiction, the federal court reserves the right to review the findings of the state courts and to consider the issues anew if it disagrees with their action.

The class-action suit—filed on behalf of six individual plaintiffs, the California Library Association, the Los Angeles Public Library Staff Association, the American Library Association, and California librarians and library employees—charges that the California statute requires sub rosa censorship by librarians, a form of censorship that does not come under required judicial review. In recent years, the U.S. Supreme Court has held that any acts of censorship ostensibly required by law must be promptly reviewed by appropriate judicial authorities.

The suit also points out that legal minors are not a homogeneous group, and that matter "harmful" to a minor of five years may not be "harmful" to one who is sixteen. The 1969 law defines "harmful matter" as:

> Matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance for minors.

Defendant Evelle J. Younger, California's attorney general, maintains that such statutes were made permissible by a 1968 ruling of the U.S. Supreme Court, a ruling which upheld the constitutionality of a New York law that creates a dual standard, based on age, for judging obscenity.

NYLA, PLA protest obscenity measures

The presidents of the New York Library Association and the Pennsylvania Library Association made appearances in October before legislative committees in their respective states to testify against the adoption of new laws on obscenity.

PLA members were alarmed by Pennsylvania Senate Bill 737, a measure redefining obscenity in accordance with the latest rulings of the U.S. Supreme Court and establishing the county as the "community" in terms of which obscenity is determined. When the House Law and Justice Committee held hearings on the bill in Harrisburg, PLA President Joseph F. Falgione voiced that association's opposition to such restrictive legislation.

"In a free society each individual is free to determine for himself what he wishes to read, think or see, and he should not be restricted because other individuals or groups think certain material is not good for him," Falgione said. He stressed that under the provisions of the bill "librarians . . . would be compelled to examine their collections for materials with sexual content to weigh them for 'serious value' and to eliminate all borderline materials in order to avoid the possibility of criminal prosecution."

Author James Michener also appeared before the committee to protest censorship. "My life depends upon having a society free from censorship," Michener said after his appearance. But he added that he thought some sort of supervision of the "flood of offensive sexual sadism" was necessary. Bucknell University Librarian George M. Jenks told the committee that "the First Amendment protects the individual's freedom of speech and press without qualification."

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censorship dateline

libraries

Anchorage, Alaska

Elementary school children in Anchorage will still be able to read *Mom, the Wolf Man and Me* and *The Fog Comes on Little Pigs Feet.* In a five-to-one vote the school board agreed to a compromise measure that the titles will be kept on the reserved shelves to be checked out by students who have parental consent.

Mrs. Marroyce Hall asked the school board to remove the books because in her opinion they do not portray a "true to life" situation, and because "there's nothing a student could gain from reading" either book. Arguments to retain the books in the school library came from a variety of concerned townspeople. One woman, a divorcee and the mother of a young boy, explained to the board that she "found it a pleasure that there was at least one book *(Mom, the Wolf Man and Me)* that described a life style her son could relate to." Reported in: *Anchorage Times,* October 17.

Baltimore, Maryland

A three-to-two decision of Baltimore school officials banned *Manchild in the Promised Lane* from all public school libraries and classrooms. The vote came in response to the sustained efforts of one school board member to have *Manchild, Black Boy, Blues for Mr. Charlie,* and *Soul on Ice* removed from Baltimore schools. Since two members of the board were absent and unable to voice their opinions on the issue, which came before the officials without prior warning, there is a possibility that the banning order will be reversed.

Elizabethtown, Pennsylvania

Parents of several students at Elizabethtown Area High School have asked for the removal of *Flowers for Algernon* and other "immoral" books from the curriculum and the school library. One of the parents, James H. Kuntzelman, said the book was unfit even for adults: "The name of the Lord is taken in vain several times, and there's sex, an animal lust." In a letter to District Superintendent Phillip Daubert, Kuntzelman wrote, *"[Flowers for Algernon]* is not fit to be used in any class. The immorality in it is terrible . . . Please have this removed from the curriculum and check the others used and remove those that are not fit." After a closed meeting during which the district school board discussed the issue, Daubert said that he and other district administrators would evaluate the book and ask teachers and librarians to evaluate others in the library, as well as to consider the content of school plays and other programs. "We are not evaluating any one book," Daubert said, "because if you're calling one book inappropriate, then others could be inappropriate. You can't come up with any fast answers on this. You can't say you will eliminate this or censor that without a real thorough study." Reported in: *Lancaster* (Pa.) *New Era,* October 17.

Wells River, Vermont

The November 1973 issue of the *Newsletter* prematurely reported success in the Blue Mountain School case involving *Go Ask Alice.* Although the school board did vote to return the book to the library, as reported in the *Newsletter,* the board's motion directed that the book be placed on its special reserve shelf with the condition that students younger than eighteen years have access to the book only by written permission of their parents. School board member Kent Haskell defended the board's action at length and said that among the issues involved was the board's right to have final say over what books would be in the library and to remove those it found objectionable. Reported in: *St. Johnsbury Caledonian-Record,* October 18.

Richmond, Virginia

The Henrico County Public Library has removed five books from circulation until a twelve-member committee reviews the titles and rules on whether or not they should remain in the collection. The works withdrawn are *Catcher in the Rye, Deliverance, Summer of '42, A Clockwork Orange* and *Story Number Three.* The review was instigated by parental complaints. Roberta Miller, Henrico County Library Director, commented that the review procedure is at the heart of the "very principle" of library service. "This puts a librarian in a very challenging situation," Mrs. Miller said. Reported in: *Richmond Times-Dispatch,* October 1.

schools

Ferndale, Michigan

The Ferndale school board gave its routine okay to forty-one titles to be used in the high school English program; however, the board refused to approve use of an anthology of black writings, *Best Short Stories by Negro Authors.* Reported in: *Royal Oak Tribune,* October 2.

Stewart, Minnesota

Mary Vollmar was suspended from her teaching duties at Stewart High School after a parent complained to the school board about a book the teacher lent to a student. Ms. Vollmar let one of her eleventh grade English students borrow *Hell House,* which describes a house possessed by evil spirits and tells the stories of those who attempt to exorcise the demonic influences. The Minnesota Federation of Teachers has pledged its full support. In a telegram to Ms. Vollmar, the president of the MFT described the Stewart school board's action as "arbitrary, capricious, and totally in violation of educational principles of academic freedom and individual civil liberties." Reported in: *Minneapolis Tribune,* November 2, 4.

Dover, New Hampshire

A group of parents of junior high school students, led by William Purcell, object to the use of *The Pigman* in language arts courses. Speaking in defense of *The Pigman,* which tells the story of the relationship of two high school students to a lonely old widower, Principal Timothy Gormley said, "I feel it is intelligent and well thought through. It gives youngsters an opportunity to discuss in a classroom setting these very necessary human relations attitudes they need to develop at junior high age." Purcell disagreed: "I see no sense in the language they use. There are a lot of children who have never heard the word 'slut.' They do hear some language down here [at the junior high school] no doubt about it, but I don't expect the teachers to teach it." Reported in: *Dover Foster's Democrat,* October 29.

McBee, South Carolina

Gary Black, an English teacher at McBee High School, was required to post a $2,000 bond on a charge of distributing obscene material to a minor after assigning Kurt Vonnegut's *Slaughterhouse-Five* to a ninth grade class. The charges against Black were later dropped after the school board ruled that the book could not be used at the ninth-grade level. Theo Lane, county school superintendent, commented that Black had neglected to get the approval of school officials before purchasing the books. After the Board's decision was announced, Black commented that he did not feel the board had judged the book fairly. He said that he will attempt to get *Slaughterhouse-Five* placed in the school library. Reported in: *Charlotte Observer,* November 1; *New York Times,* October 30.

Austin, Texas

The Texas Board of Education rejected on technical grounds two high school textbooks on psychology and sociology which had been criticized for emphasis on sexual and racial materials. The twenty-six-member board voted unanimously to reject *Sociology for High School* and *Psychology for You,* both published by W.H. Sadlier, because Sadlier had failed to obtain the proper permit to sell books in Texas. The texts had been the objects of complaints from the Daughters of the Republic of Texas and Mrs. Mel Gabler of Longview (see *Newsletter,* Nov. 1973, p. 136). Reported in: *Dallas News,* November 11; *Dallas Times Herald,* November 11.

Mrs. Gabler earlier charged that a Prentice-Hall textbook on psychology, *Behind the Mask of Our Psychological World,* is "stupid" and "completely out of the realm of psychology." Mrs. Gabler charged that the text "seems to have a fix on wanting homosexuality elevated to respectability in complete disregard of the biblical warnings about this act." She also objected to sections of the book referring to evolution, saying that "if we wanted to truly induce completely creative thinking, we should teach children to question the Ten Commandments, patriotism, the two-party system, monogamy, and the laws against incest." A spokesman for Prentice-Hall replied that Mrs. Gabler's attack was so broad that it was in effect a protest against the study of psychology in high school. Reported in: *New Iberia* (La.) *Daily Iberian,* September 26.

colleges-universities

San Francisco, California

A story about sexual relations between professors and their students was withheld from the *Phoenix,* San Francisco State College's weekly paper. The space originally reserved for the story carried an apology to the university's academic community from journalism department chairman B.H. Liebes, titular publisher of the paper. Liebes said he ordered the story killed because inaccurate survey methods resulted in "data which can be considered to have no validity whatsoever." The author of the story, Judith Nielsen, said forty professors anonymously responded in questionnaires that they had had sexual relations with their students. After a student editor charged that the story was killed for "political reasons," Chancellor Glenn Dumke of the state university system revealed that he had talked to San Francisco State President Paul Romberg about the story and said, "He is as anxious as I to dispel any anonymous innuendo arising from this project... One of the most important academic principles is the maintainance of professional relations between faculty and students." Reported in: *San Francisco Examiner,* November 1.

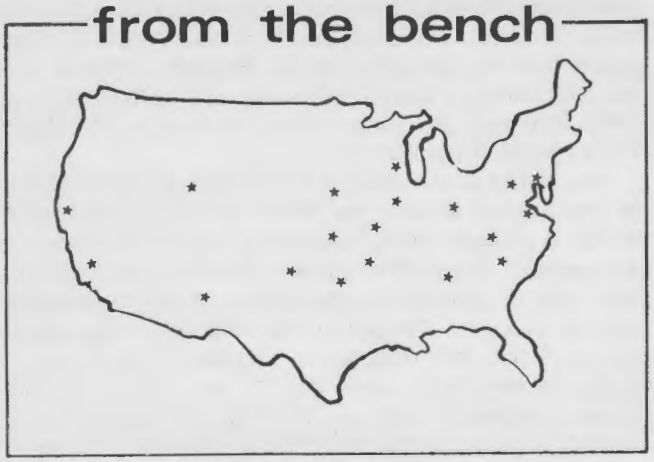
the press

Hailey, Idaho

All copies of a Ketchum weekly newspaper quickly disappeared from newsstands, apparently because of objections to an editorial highly critical of the city's officials. The editors of *Ketchum Tomorrow* opposed the reelection of Hailey officials who favored development of Wood River

(Continued on page 16)

from the bench



obscenity law

Kankakee, Illinois

Two obscenity cases stemming from raids at a Kankakee bookstore were dismissed by Associate Judge Louis K. Fontenot because the Illinois obscenity statute fails to "spell out what is and what is not obscene." Judge Fontenot ruled that the original application for a search warrant was defective because its description of the materials sought was "too broad, vague" and called for an "arbitrary exercise of discretion in the minds of the police officers." The judge also held that the Illinois statute's definition of obscenity "gives a broad philosophic and moral consideration [but] fails to set out in particularities standards that spell out what is and what is not obscene." Reported in: *Kankakee Daily Journal,* November 6.

Marion, Iowa

Linn District Judge William Eads refused to close a Marion theater despite his declaration that films shown there constitute a nuisance because of lewdness. Although an Iowa statute mandates that buildings used for such nuisances be closed for a year, the judge said that the "exercise of such duty must not conflict with the mandates of the U.S. Supreme Court." The judge explained that closing the theater would be tantamount to prior restraint and that the U.S. Supreme Court has ruled that there can be no censorship of films until after a full adversary proceeding in which the burden of proving that a film is unprotected expression rests on the censor. In seeking a solution to his dilemma, the judge proposed the creation of a film review board which would license movies or promptly initiate judicial proceedings for enjoining objectionable ones. Reported in: *Cedar Rapids Gazette,* October 30.

Jefferson City, Missouri

The constitutionality of a Kansas City ordinance prohibiting the dissemination of obscene matter was upheld by the Missouri Supreme Court. The two-to-one decision sustained the convictions of two Kansas City men and rejected their contentions that the ordinance is unconstitutional because it fails to provide a prior adversary hearing for the determination of obscenity; that the ordinance is unconstitutionally vague and violates the privacy of consenting adults; and that the lower court erred by failing to suppress allegedly obscene films seized without warrants. The high court said that there is no absolute First or Fourteenth Amendment right to a prior adversary hearing in obscenity cases and that the seizure of the films did not constitute a prior restraint. In a dissenting opinion, Judge Robert E. Seiler said that unless there is a showing of harm to others, "the right of a consenting adult to see, read and hear what he pleases should be protected." Reported in: *Kansas City Star,* October 8.

Las Cruces, New Mexico

In the first judicial action in New Mexico since the U.S. Supreme Court's June 21 decisions on obscenity, District Court Judge Garnett Burkes ruled that an adult bookstore and film center cannot display or distribute to anyone "any movies or periodicals which portray homosexuality, including lesbianism, masochism, sadism, or which portray violent crimes without punishment therefor." The Judge's ruling followed an advisory jury's dismissal after it was unable to decide whether the materials presented to it were obscene. Burkes said, "I think the vote of the advisory jury reflects the fact that within the last several years the community has become increasingly more tolerant of artistic literary forms which portray heterosexual activity... But," the judge continued, "much of the material introduced in this case goes beyond the portrayal of mere heterosexual activity and impliedly condones homosexuality, sadism, and masochistic acts. I do not believe that any significant proportion of this community would condone such acts under any kind of circumstances..." Reported in: *Albuquerque Journal,* November 7.

New York, New York

A ruling of the Appellate Division of the New York Supreme Court held that four sexually explicit films, typical of those shown in Times Square movie houses, are obscene "by any standard" and may be suppressed. The decision of the court overturned a lower court ruling that the New York obscenity statute was unconstitutional. The court said: "The criminal court judges who viewed the films found probable cause to grant injunctions. They were correct. There can be no doubt, dealing as we are with palpably hard-core pornography, that the average person in New York State, city or county, would in all likelihood have concluded that these pictures appealed to prurient interest." The ruling continued, "Indeed, these films would have to be adjudged so by any standard the Legislature or the courts could have articulated." Reported in: *New York News,* November 28.

Little Rock, Arkansas

U.S. District Court Judge G. Thomas Eisele ruled, "albeit hesitantly," that a federal statute forbidding the interstate transportation of obscene matter is constitutional. The statute was challenged by operators of Arkansas bookstores who were indicted for transporting the material over state lines. They argued that the federal statute is not sufficiently specific in its definition of obscenity and thus does not warn potential offenders of what the statute forbids. Judge Eisele noted that Chief Justice Warren E. Burger had recently commented that a statute does not have to be impossibly precise about what it forbids; it must convey "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." Reported in: *Little Rock Gazette,* October 30.

Atlanta, Georgia

The Georgia Supreme Court unanimously ruled that Georgia's obscenity law as "authoritatively construed" meets new U.S. constitutional standards and that the state is to be considered the "community" in determining standards for communicative materials. The decision of the state court came in response to the order of the U.S. Supreme Court in *Paris Adult Theatre I* v. *Slaton,* decided on June 21. In *Paris Adult Theatre,* the federal court ordered the case "remanded to the Georgia Supreme Court for further proceedings not inconsistent with this opinion and *Miller* v. *California.*" Fulton County District Attorney Lewis Slaton declared, "The writing is on the wall. This is the ruling prosecutors have been waiting on." One week after "the writing on the wall," a U.S. District Court judge declined to take jurisdiction of District Attorney Slaton's suit to ban the showing of *The Devil in Miss Jones.* Reported in: *Atlanta Constitution,* November 12, 19.

Columbus, Ohio

The Ohio Supreme Court remains unchanged in its opinion of the motion picture *Vixen.* The state's high court upheld its 1971 decision confirming a Hamilton County Common Pleas Court ruling that the film should not be shown because it depicts acts of sexual intercourse. Ordered by the U.S. Supreme Court to review its earlier decision, the state court said that in light of the most recent rulings of the U.S. court *Vixen* is obscene because of exploitation of sexual intercourse for a commercial purpose and could therefore be enjoined. Reported in: *Cincinnati Enquirer,* September 26.

Columbus, Ohio

Convictions of three film exhibitors on charges of obscenity were overturned by the Ohio Supreme Court, acting on orders from the U.S. Supreme Court. In reversing the convictions, which were obtained after police had seized prints of films without obtaining search warrants, the court stated that the seizure of films without "the authority of a warrant was a prior restraint on expression and unreasonable." In another ruling, the state court agreed that the city of Columbus could order adult bookstores to stop selling "certain magazines and books on the ground that they were obscene." Reported in: *Variety,* October 17.

Oklahoma City, Oklahoma

The Court of Criminal Appeals reversed an obscenity conviction because of a U.S. Supreme Court decision with which the Appeals Court said it did not agree. The Appeals Court set aside its previous opinion upholding the conviction of Vernal C. Melton, a theater operator, on a charge of exhibiting an obscene movie. Melton was arrested by Oklahoma City police officers who seized the film in question without a warrant. The court said that a U.S. Supreme Court ruling requires that a magistrate "focus searchingly upon the question of obscenity" before any seizure of allegedly obscene material. The court said that it believes the procedural requirements of due process should be applied uniformly to all offenses. Reported in: *Oklahoma City Oklahoman,* October 25.

Martinsburg, West Virginia

A Berkeley County grand jury declined to indict Albert Minnich, a local newsstand operator, on charges of selling obscene literature. The warrant for Minnich's arrest alleged that he "did unlawfully . . . sell two magazines named *Love Partners* and *Probe* containing obscene language, print, pictures . . . manifestly tending to corrupt the morals of youth or tending to corrupt the public morals." While declining to indict, the eight male and eight female jurors nevertheless urged a local lobbying effort on behalf of a new state law on obscenity. Their statement said, in part, "We . . . recommend that the citizens of this county contact our state legislators and urge them to enact legislation effectively prohibiting the sale, exhibition, and distribution of obscene materials and pornography." Reported in: *Hagerstown* (Md.) *Herald,* October 18.

freedom of the press

Washington, D.C.

Consumers Union, publisher of *Consumer Reports,* won a favorable decision in a suit charging that the Periodical Correspondents' Association had violated its First Amendment rights. U.S. District Court Judge Gerhard A. Gesell ruled that the PCA, which controls issuance of credentials to magazine newsmen who cover Congress, had "undertaken to implement arbitrary and unnecessary regulations with a view to excluding from news sources representatives of publications whose ownership or ideas they consider objectionable." Judge Gesell added that "there must be an end to this self-regulation by indefinite standards and artificial distinctions developed to censor the ownership or ideas

of publications." Judge Gesell noted that writers for many specialist groups, including correspondents for *Modern Tire Dealer* and *Leather and Shoes Magazine,* were admitted to the periodical gallery. Reported in: *Washington Post,* October 12.

Washington, D.C.

A three-judge federal panel ruled that a section of the 1971 Federal Election Campaign Act is unconstitutional because it improperly limits political advertising in the communications media. The permanent injunction issued by the panel voids a provision that makes the media responsible for enforcing spending limitations of political candidates who place advertisements. The court said the provision places a "chilling effect" on the exercise of freedom of the press. The decision came in a suit filed by the American Civil Liberties Union after the *New York Times* refused to publish an ACLU ad in September 1972 attacking President Nixon's support of anti-busing legislation. The ACLU obtained a preliminary injunction allowing it to print the ad, and the action of the three-judge panel makes the injunction permanent. Reported in: *Washington Star-News,* November 15.

prisoners' rights

San Francisco, California

A suit filed in federal court by four prisoners at San Quentin State Penitentiary resulted in a three-judge panel's voiding a California Department of Corrections rule which provides that "press and other media interviews with specific individual inmates will not be permitted." The court held that the state failed to prove that a less restrictive measure would result in an administrative burden, a decrease in security, or indeed any of the elements the state cited as justifying the rule. The court accordingly ordered that the interviews the inmates sought with the editors of *Earth Magazine* be allowed "at the earliest practicable time under reasonable conditions and supervision." The court at the same time rejected the contention that newsmen differ from ordinary citizens in terms of their right to access to prisoners. "It is the conclusion of this court that the even broader access afforded prisoners by today's ruling sufficiently protects whatever rights the press may have with respect to interivews with inmates." Reported in: *Prison Law Reporter,* September 1973.

Danville, Illinois

Ruling in response to a complaint filed by Jessica Mitford and four inmates of the U.S. Penitentiary at Marion, Ill., U.S. District Judge James L. Foreman held that a prison regulation prohibiting personal interviews of inmates by the press is a matter within the internal affairs fo the prison and does not constitute a denial of the inmates' right of free speech guaranteed by the First Amendment. Ms. Mitford and the other complainants alleged that prison officials intercepted their correspondence and violated their First Amendment rights by prohibiting interviews which both the prisoners and Ms. Mitford requested in connection with the gathering of material for her book, *Kind and Usual Punishment.* The court stated that "it is noteworthy that here . . . the inmates are permitted wide use of the mail to correspond with the press. Under the present regulations, correspondence from a member of the news media to an inmate is inspected solely for contraband." Reported in: *Prison Law Reporter,* September 1973.

St. Louis, Missouri

A prisoner's federal rights are not unjustly abridged when prison officials refuse to allow him to mail to a newspaper a letter with remarks that disparage those officials and a member of the federal bench, according to the ruling of U.S. District Court Judge H. Kenneth Wangelin. "The court has examined the letter which the plaintiff alleges he was unable to send to the *[Columbia Tribune],* Judge Wagelin said. "This letter answered derogatorily the comments made by one of the defendant [prison officials] in this action and comments made by a judge of this court in the newspaper's interview with them regarding this action. Such a letter by its nature can adversely affect the penal institution's control and discipline of inmates were this publication to be made known within the institution." Reported in: *Prison Law Reporter,* August 1973.

Brooklyn, New York

A U.S. District Court judge has ordered Suffolk County jail authorities to permit prisoners free access to newspapers despite the county's assertion that it would have "disruptive effects" upon the inmates. Jail officials objected to free access to newspapers, "particularly when news events deal with crimes, police activities and accounts dealing and pertaining to the case of the inmate." In addition, the county sheriff and the warden contended that the accumulation of newspapers raised a serious problem of fire prevention and control. Judge Jack B. Weinstein ruled that denial of access to the news violated the prisoners' rights under the First Amendment. "The physical problems of fire control can be met by less restrictive means than total censorship," the judge said. "The incendiary nature of ideas and facts published in newspapers is sometimes bothersome to those in authority; under our Constitution, such inconvenience is unavoidable." The judge directed the jail authorities to make available those newspapers normally read by people residing in Suffolk County. Reported in: *New York Times,* November 9.

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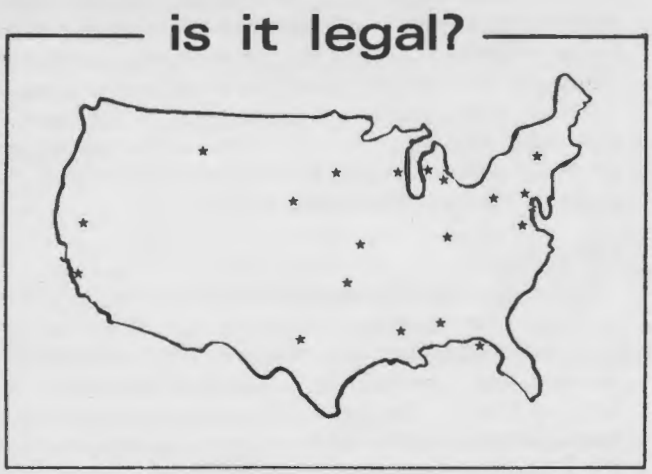


obscenity law

Hollywood, California

The Adult Film Association of America has filed suit against federal attorneys in order to stop further criminal prosecution of producers of sexually explicit films. The suit, filed by Attorney Stanley Fleishman, asks the U.S. District Court to stop prosecutions until civil proceedings have determined whether challenged films are obscene under federal statutes. The suit charges that current federal statutes are "so vague, ambiguous, and overbroad" that they are "a trap for the innocent." Reported in: *Variety,* October 17.

Coeur D'Alene, Idaho

Operators of Coeur D'Alene drug and grocery stores were warned by Prosecuting Attorney Romer Brown that action would be taken against them if they refused to remove matter harmful to minors from their shelves. Brown said a person is guilty of disseminating materials harmful to minors when "he knowingly gives or makes available to a minor any picture, photograph, drawing, sculpture or motion picture film, representing an image of a person or portion of the human body which depicts nudity or sexual conduct." Brown added that the stores may sell to adults materials considered harmful to minors, but they may not display them in locations where legal minors can view them. Reported in: *Coeur D'Alene Press,* October 19.

Fort Wayne, Indiana

In response to a request from an Adams County theater operator, U.S. District Court Judge Jesse E. Eschbach ordered that a three-judge panel be convened to rule on the constitutionality of Indiana's public nuisance law. Clyde Nihiser, operator of a drive-in theater, alleges that the public nuisance law has a "chilling and inhibiting effect" on the exercise of federal and state rights of citizens and is invalid because it is vague, too broad, and permits censorship and suppression. The challenged statute, enacted in April 1973, defines a nuisance in part as a place where obscene films are exhibited. The law does not define "obscene." In 1973, a state court held the state obscenity statute unconstitutional because it is not specific enough. Reported in: *Fort Wayne Journal Gazette,* October 20.

Iowa City, Iowa

State Representative Charles Grassley called on Attorney General Richard Turner to investigate a presentation of erotic films at the University of Iowa. Grassley said he was appalled that films from "The Best of the Second Annual New York Erotic Film Festival" were shown at the university. Kenneth Bader, a representative of the student group which put on the show, said that no one under eighteen was allowed to see the films, and that an announcement was made at the beginning of each showing to inform the audience that the show contained "erotic sequences" so that anyone who might be offended could leave. Grassley said showing the films on state property "gives the impression that the state of Iowa lends credence to the showing of erotic films." Reported in: *Iowa City Iowan,* October 25.

Lake Charles, Louisiana

The Lake Charles City Council unanimously adopted an obscenity ordinance, despite a Louisiana statute that limits the authority to adopt such laws to the state. District Attorney Frank Salter, who supported the ordinance, said the preemptive state statute was "unenforceable." One member of the audience that crowded the council's chambers castigated an absent councilman for "ducking the issue." Another person challenged a clause ostensibly designed to protect teachers and librarians from prosecution. Mrs. John Scott said she wanted guarantees against pornography being brought into the schools. Reported in: *Lake Charles American Press,* October 4.

Meridian Township, Michigan

Meridian Township officials attempted to close legal loopholes in a local obscenity ordinance by amending it to include knowledge *(scienter)* and by clarifying the question of public display. The ordinance was challenged in Ingham County Circuit Court by a bookseller who alleged that the ordinance is unconstitutional because of the failure to include *scienter* and the vagueness of "public display." The bookseller also contended that the ordinance is in conflict with state law and is illegal because the township does not have authority to pass such an ordinance. Reported in: *Lansing Journal,* November 8.

New Baltimore, Michigan

A New Baltimore obscenity ordinance designed to suppress *Playboy, Penthouse,* and *Oui* may result in the censorship of magazines carrying baby powder advertisements.

The new law prohibits, among other things, sale of any magazine showing naked buttocks. The maximum penalty for selling offensive materials is a jail term of 90 days and a fine of $500. Reported in: *Detroit Free Press,* November 6.

St. Paul, Minnesota

The Minnesota Supreme Court faces the task of deciding whether its year-old definition of obscenity is constitutional according to the new guidelines established by the U.S. Supreme Court. In 1972 the Minnesota Court defined obscenity as materials "with no pretense of artistic value, graphically depicting acts of sexual intercourse, including various acts of sodomy and sadism, and sometimes involving several participants in scenes of orgy-like character." In oral arguments before the court Attorney Robert Milavetz, representing a Minneapolis bookstore clerk, told the court it cannot interpret the law and that the legislature must write a new statute. Assistant City Attorney Edward Vavreck contended that the 1972 definition meets the federal court's new requirement that obscenity laws must specify what activities are obscene. When it was pointed out that the November decision of the Minnesota court had been sent back by the U.S. Supreme Court with directions that it be reconsidered in light of the federal court's new standards, Justice James Otis asked why the federal court would send the decision back for reconsideration instead of upholding it if it met the new federal requirements. Justice C. Donald Peterson raised the possibility of the state court's interpreting the present law in a way that would render it constitutional. Reported in: *Minneapolis Tribune,* October 26.

Fargo, North Dakota

Attorneys for the Fargo Adult Bookstore have asked a three-judge panel to rule on the constitutionality of state procedures for licensing coin-operated amusement machines as well as the constitutionality of state obscenity statutes. The action stems from attempts to seize the bookstore's coin-operated movie machines, which the state alleges are used to show obscene films. Assistant Attorney General Robert Brady said that, in light of the recent U.S. Supreme Court rulings on community standards for judging obscenity, it is unlikely that the federal court will view the issue as a crucial federal question to be reviewed by it before it is considered in the state courts. "However," Brady added, "if they decide not to abstain, and rule the state's laws are unconstitutional, then there will be no law on obscenity in North Dakota. Then the cities will have to come up with their own laws." Reported in: *Bismarck Tribune,* November 3.

Upper Merion Township, Pennsylvania

Chief of Police John J. Dunlevy closed a self-styled adult gift store after a panel of twenty citizens reviewed magazines, films, and a record purchased by the police. Dunlevy said the panel was selected to comply with the U.S. Supreme Court's June 21 rulings which hold that obscenity is to be defined in terms of "contemporary community standards." He said the group was selected to represent what was in his opinion a cross-section of the community. A warrant was issued for the arrest of the person who signed use and occupancy permits to operate the store. Reported in: *Philadelphia Inquirer,* October 17.

Lufkin, Texas

The Lufkin City Commission passed on first reading an ordinance that prohibits the display of obscene or pornographic publications and materials. The ordinance was proposed and supported by a coalition formed by the Angelina County Ministerial Alliance, the Unity Baptist Association, and the Assembly of God. Jim Salles, chairman of a committee appointed by the Alliance, explained that the ordinance was designed to protect minors from public display of magazines and books which feature photographs of nude females. Salles said that such magazines as *Penthouse, Rogue,* and *Nugget* would have to go "under the cover." Reported in: *Diboll* (Tex.) *Free Press,* September 6.

Milwaukee, Wisconsin

A three-judge federal court denied a request by District Attorney E. Michael McCann that the panel lift its order temporarily barring him from enforcing the Wisconsin obscenity law against the Parkway Theater. McCann argued that the new guidelines of the Supreme Court—issued after the date of the restraining order—clearly made the state law constitutional. Speaking for the panel, U.S. District Court Judge John W. Reynolds said that the new guidelines "are likely to sound the death knell for the Wisconsin obscenity statute." He noted that a work could not be declared obscene unless it depicted sexual conduct specifically defined by state law, and added that the Wisconsin law is too vague. The panel will refrain from ruling on the merits of the case until the state courts do so. Reported in: *Milwaukee Journal,* October 23.

freedom of the press

Montgomery, Alabama

A new Alabama statute requiring all reporters operating within the state to file a detailed statement of economic interests with the Alabama Ethics Commission has been challenged in federal court. Acting on a suit filed by a small Birmingham weekly, U.S. District Judge Robert Barner ordered that a three-judge court be appointed to determine the constitutionality of the law. It is alleged that the law abridges the First Amendment rights of newsmen. Failure to file a statement of economic interests is a felony punishable by a fine of $10,000 and ten years in jail. Reported in: *Christian Science Monitor,* October 20.

Santa Monica, California

Opposition from the editor of the *Santa Monica Outlook* led to a delay in the Santa Monica City Council's consideration of an ordinance ostensibly designed to control the sale of sexually oriented newspapers from sidewalk vending machines. Robert Fumke, editor of the *Outlook,* said his paper objected to the ordinance because it was far too broad. He said that the requirement that the paper seek approval from the police chief before publishing anything "questionable" was prior restraint of the press. Fumke added, "The law prohibits exhibiting the lower quadrant of a woman's breast, which could affect us, for example, if we ran a picture of a painting in an art column. The ordinance also prohibits describing a sex act. So if our movie critic says, 'The hero engaged in fornication four times on the floor,' it would be impermissible." However, Fumke said he objected only to the wording of the ordinance and favored its aim of "protecting young children." Reported in: *Editor & Publisher,* October 27.

Washington, D.C.

Publishers of the *Daily Rag* have filed suit in U.S. District Court charging that the U.S. Postal Service damaged them through unlawful censorship and intimidation that constitute an abridgment of rights guaranteed under the First and Fifth Amendments. In addition, it is charged that postal service employees violated the normal procedures of the post office concerning opinions given to the public and to the *Washington Post,* the withholding of mail, and denial of the plaintiffs' rights to notice and hearing on the matter. The suit asks for an injunction prohibiting harassment of subscribers, public comment about items sent through the mail, solicitation of complaints for alleged violation of U.S. obscenity laws, and instituting such investigations solely upon complaints from postal service employees. In 1972 postal service employees asked subscribers whether they wished to refuse a *Rag* issue with a cartoon showing a woman wearing a button that says, "Fuck the Food Tax" (see *Newsletter,* March 1973, p. 38). Reported in: *Alternative Press Revue,* September-October 1973.

Tallahassee, Florida

After the Florida Supreme Court upheld a 1913 Florida statute requiring newspapers to print replies of political candidates whom they criticize (see *Newsletter,* Sept. 1973, p. 113), the *Miami Herald* filed a petition with the court for a rehearing. After the court denied the petition on October 11, the *Herald* announced it would take the case to the U.S. Supreme Court. Reported in: *Editor & Publisher,* October 27.

St. Paul, Minnesota

Lee Clausen, the publisher of a small, "political" newspaper was ejected by police from the Minnesota State Fairgrounds for selling his paper, *Common Sense,* "without a permit." Clausen had sought permission to distribute his paper from the highest ranking officials of the state fair and was refused. He then attempted to sell his paper in front of a grandstand where daily newspapers are sold in order to set the stage for a test of the fair's rules. The pertinent regulation prohibits distribution of "any advertising material or matter of any kind, nature or description, including specifically, but not exclusively, political campaign cards, dodgers, flyers, political 'newspapers,' handbills, buttons, pins . . . or any and all other forms of media or political advertising of any political party or group. . ." The attorney for the state fair admitted to Clausen that the state fairgrounds are a public property and should be open to the sale of any newspaper. Reported in: *North Country Anvil,* October-November 1973.

Concord, New Hampshire

Republican State Senator Alf Jacobson urged the New Hampshire Legislature to pass a law requiring newspapers to correct errors of fact in news stories and editorials. "We need to have regulation in the area of newspapers, principally in the area of requiring them to correct errors of fact," Jacobson told a joint rules committee. "I want to make clear I have no objection to a newspaper editorial expressing a point of view, except where there are misstatements of fact," said Jacobson. He added that newspapers should be required to stick to the facts. Reported in: *Boston Morning Globe,* November 16.

Trenton, New Jersey

The National Broadcasting Company has filed suit in U.S. District Court against the New Jersey Supreme Court demanding that the state court show cause why its rule which forbids artists from making sketches in courtrooms should not be declared unconstitutional. NBC filed the suit after a professional artist employed by NBC News had had her sketches of one trial confiscated and was denied permission to cover a murder trial in New Brunswick. Reported in: *Baltimore News American,* October 30.

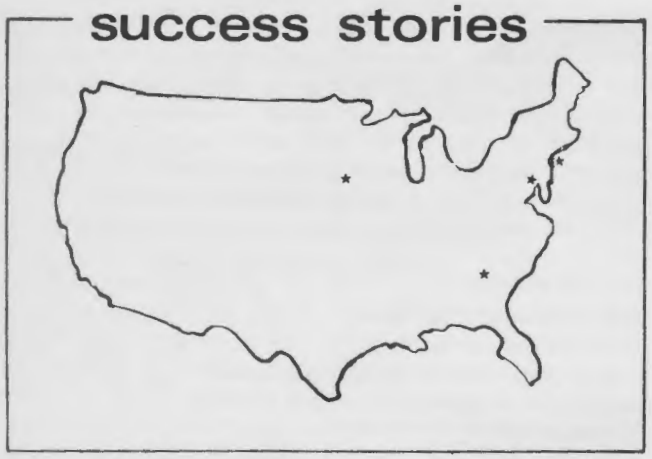
teachers' rights

Wentzville, Missouri

The suspension of a Wentzville teacher in response to a furor over a sex education speaker in her classes was illegal, according to an opinion issued by the school district's legal counsel. Cindy Bernsen was suspended by the Wentzville Board of Education after some parents complained that literature distributed by a counselor from the Urban League of St. Louis was pornographic. The counselor, Roberta Payne, lectured to over 100 junior high school students and distributed *Zing Comics–Ten Heavy Facts About Sex.* The district's attorney said the board acted improperly because it did not observe state laws requiring a hearing to discuss the problem with the teacher before sus-

(Continued on page 18)

success stories



As the following stories show, success often comes by small steps and in highly qualified form.

Washington, D.C.

A Labor Department official has rebuked the management of the Social Security Administration's New York Program Center for attempting to censor a union newsletter. Benjamin B. Naumoff, Labor's regional administrator, rejected the contention of the Bureau of Retirement and Survivors Insurance that it had control over dissemination of literature by American Federation of Government Employees Local 1760. BRSI management had specifically objected last February to an article in the union newspaper, *Spirit of 1760.* The article said, in part: "In a gutterlike attempt to retaliate against the union for defending the interests of the workers in the Claims Branch, management has placed [union official Irwin Berger's work] on a full 100 percent review. Al Brown is the assistant manager responsible for this action . . . but we know he is a flunky for his bosses in management." BRSI alleged that the union had violated the labor-management contract by criticizing a program center manager. Naumoff supported the "paramount importance of untrammeled right of a union to communicate with its members." Reported in: *Federal Times,* October 17.

Boston, Massachusetts

The Massachusetts Senate sustained Governor Francis W. Sargent's veto of a bill that would have required newspapers to charge equal rates for political and nonpolitical advertisements. The veto, previously overridden by the House without debate, was briefly discussed in the Senate. Senator William L. Saltonstall charged that the bill represented "one small step that will start you on a long slide . . . into regulation of the press." In his veto message, Sargent found the legislation "an unwise advance by the state in regulating one of the truly free institutions in our nation and one which is also a dangerous precedent." The original version of the bill included a section requiring newspapers to run every advertisement submitted to them. The Supreme Judicial Court, however, found the provision unconstitutional and it was stricken from the bill. Reported in: *Boston Morning Globe,* October 30.

Fargo, North Dakota

After a Champaign (Ill.) attorney successfully defeated attempts to convict a Fargo bookseller on charges of obscenity, the Fargo City Council adopted an ordinance which permits "willing adults" to view or read anything they please. The ordinance prohibits dissemination of obscene or pornographic materials to persons under eighteen years of age, and makes illegal public display or advertisement of such materials. City Commissioner Jacque Stockman said, "Anybody of the age of majority has a constitutional right to read what he chooses." Local ministers disagreed. "We are living in a changing age, but some things don't change. Sin doesn't change," Rev. George Danielson said. Rev. Richard Hess told the council that "you are opening the door to a greater influx of filth into the community. I would indict this council for malfeasance." Reported in: *Champaign-Urbana News-Gazette,* November 1.

Macon, Georgia

After Macon Mayor Ronnie Tobson ordered Bibb County schools to purge library shelves of objectionable literature (see *Newsletter,* Sept. 1973, p. 98), school board officials demanded a prompt meeting with the mayor and asked for specific complaints and documentation of the dissemination of unacceptable works. The editors of *Wilson Library Bulletin* (Nov. 1973) report that their inquiries revealed that the only "objectionable" book had been obtained by a child from a source which was not a library.

(Dateline . . . from page 9)

Valley. The paper's editorial asked "whether the government of Hailey will be permitted to continue to abuse the will of the citizens in a spirit of arrogance and usurpation." One woman told the *Boise Statesman* that she saw a council candidate take all copies of *Ketchum Tomorrow* from the stand in a department store. One store operator who saw the councilman's son remove all papers from her store was told that "it was all right because they're free." The owner was told that the copies would be destroyed. Reported in: *Boise Statesman,* November 3.

television

Los Angeles, California

Such television shows as "Batman" and "Superman" will no longer be seen by viewers of station KTTV in Los Angeles. An agreement reached between executives of the station and the National Association for Better Broadcast-

ing requires removal of the shows as well as warnings to be displayed before eighty-one other programs. The pact is the result of a two-year challenge by the Association to the operating license of the station, owned by Metromedia, Inc. Frank Orme, a vice-president of the National Association for Better Broadcasting, said the agreement would be used as a pattern in attempting to get other television stations to adopt "responsible policies in the presentation of programs used by children and youth." The agreement, filed with the Federal Communications Commission, calls for forty-two television shows to be banned. Reported in: *New York Times,* October 2.

Southern California

Commenting on a fairly recent phenomena in television, censorship by citizens' groups, *New York Times* reporter Les Brown states that "the external pressure on stations seems most acute in Southern California, where Mexican-American, Japanese-American, and black activist organizations have first requested and then demanded that certain movies be banned" from television. Brown's November 28 *Times* article reports that the Japanese-American Citizen League has listed as off-limits such films as *Across the Pacific, Purple Heart,* and *Behind the Rising Sun.* Justicia, a Mexican-American rights organization, wants banned such titles as *The Return of the Magnificent Seven, Butch Cassidy and the Sundance Kid,* and *Rio Lobo.* Brown adds that John Huston's *Treasure of the Sierra Madre* plays in many communities without significant protest, but is frequently kept off the air in areas with large communities of Mexican-Americans.

Salem, Indiana

The American Broadcasting Company bowed to a ruling by an Indiana county judge and agreed to cut a controversial section of a television documentary on flammable materials. The program, "Closeup on Fire," included a film segment showing how a plastic crib burned quickly when ignited with a match. The crib manufacturer asked the court to enjoin ABC from showing the film on the grounds that it distorted the facts and was prejudicial to the concern's reputation. A spokesman for ABC said the network would carry the case to the U.S. Supreme Court if necessary. Reported in: *New York Times,* November 27.

miscellany

Florissant, Missouri

Florissant Mayor James L. Eagan has announced that he will personally censor all plays to be produced at the municipally owned civic center. Plays will be submitted to Eagan, who explained that his censorship will be based on ratings given to works if they have been made into movies. Plays whose movie versions have been X-rated or R-rated will be banned. Eagan said his action was taken in response to complaints about a production of *Boys in the Band.* "That kind of play is just not needed," Eagan commented. When questioned about the reaction of members of the police department who attended an opening night performance, Eagan said that "they found nothing offensive in the play." But he added that he felt the public must be protected from X or R-rated entertainment. "Face it," he said "Florissant is a conservative community." Reported in: *St. Louis Post-Dispatch,* November 18.

(From the bench . . . from page 12)

freedom of expression

Denver, Colorado

The Colorado Supreme Court ruled that a young man arrested for wearing a part of the U.S. flag on the seat of his pants was exercising his right of free speech and that the state statute under which he was arrested is unconstitutional. The action reverses the conviction of David P. Vaughan, whose conduct the court found to be "closely akin to pure speech" protected by the First Amendment. The opinion written by Justice Donald E. Kelley said that the statute "limits the expression of ideas about the flag to patriotic expression acceptable to those charged with enforcement of the criminal law" and that it tries "to impress a symbolic orthodoxy upon the people of Colorado." The court added that "the First Amendment is not the exclusive property of the educated and politically sophisticated segment of our population; it is not limited to ideas capable of precise explanation." Reported in: *Denver Post,* October 1.

Richmond, Virginia

The Virginia Supreme Court upheld the state's "curse and abuse" law and affirmed the conviction of a Richmond man who was charged with violating the law during a 1971 confrontation between blacks and police at a playground in South Richmond. In response to the convicted man's contention that the law violated his right of free speech, the court said that it had over the years upheld the constitutional power of the state to punish "fighting words" and that the challenged law serves a "valid and proper purpose" since it aims at preventing language likely to provoke violence. Reported in: *Richmond News Leader,* October 8.

freedom of information

Washington, D.C.

A request by Representative Les Aspin (D.-Wis.) for public release of the Peers Commission Report on the My Lai massacre was denied by the U.S. Court of Appeals. The federal panel upheld a lower court ruling that the entire commission was exempt from provisions of the Freedom of Information Act. Aspin contended that the report should

be released because court martial proceedings involving alleged atrocities in March 1968 were now completed. He also argued that the study was not "an investigation for law enforcement purposes" as required to gain an exemption under the information act. The court ruled that release of the report would cause difficulties in future probes because informants would fear later release of their confidential remarks. The study, directed by Lieutenant General William R. Peers, investigated a possible cover-up of the massacre and was submitted to the Secretary of the Army and the Army Chief of Staff. Reported in: *Washington Star-News,* November 27.

teachers' rights

Los Angeles, California

According to a ruling of Superior Judge David A. Thomas, an elementary school teacher's use of obscene language and gestures among adult coworkers does not mean he should be fired. After considering the case of a teacher who complained in his school business office that money had been deducted from his check for the California Teachers Association when he was a member and president of the American Federation of Teachers, the judge said, "Although [the teacher] is found to have made an obscene gesture in the business office and to have used vulgar language, it did not relate to the welfare of pupils, and the discharge was not proper." The judge continued, "Assuming [the teacher] used the words 'bastard' and 'son of a bitch,' to kick him out of his professional career because some woman was shocked is extreme." Reported in: *Los Angeles Times,* September 21.

miscellany

Montgomery, New Jersey

Somerset County Judge Paul E. Feiring upheld a municipal restriction on showing X-rated movies at the Montgomery Center Theater. The right of the municipality to use its zoning powers to regulate what kinds of films may be shown was challenged by the American Civil Liberties Union on behalf of two members who live in Montgomery (see *Newsletter,* Nov. 1973, p. 144). Feiring dismissed the motion to invalidate the restriction on the grounds that the owner should have been a party to the suit. Feiring said that in asking for the variance the landowner said no X-rated movies would be shown. "I can visualize the theater owner," Feiring said, "as wanting this type of condition as a point of advertising and attracting parents to send their children to the movie." Reported in: *New Brunswick Home News,* October 20.

Milwaukee, Wisconsin

U.S. District Court Judge Myron L. Gordon declared a Milwaukee ordinance that regulates the use of coin-operated movie machines unconstitutional and ordered city police and the city attorney's office to stop enforcing it. The court's permanent injunction was issued in response to a suit filed by Annex Enterprises, operator of an adult bookstore. The voided ordinance defines an amusement arcade as "a place where amusement is furnished for profit through or by one or more automatic or manually operated picture devices." It further denies licenses for such arcades to persons who are "habitual petty law offenders." Prior to the issuance of the injunction an attorney for the city conceded that he "cannot present to the court an arguably meritorious legal position with respect to the ordinance in question." Reported in: *Milwaukee Journal,* October 24.

(Is it legal?. . . from page 15)

pending her. Reported in: *St. Louis Globe-Democrat,* November 17-18.

students' rights

Cleveland, Ohio

Responding to a suit filed by the American Civil Liberties Union, lawyers for the Strongsville Board of Education told the U.S. District Court that only a school board has the right to determine what books are to be used in schools and any attempt to abridge that right would be unconstitutional. The ACLU asked the court to rule unconstitutional the board's ban of *Catch-22, Cat's Cradle,* and *God Bless You, Mr. Rosewater.* The ACLU said the ban is a violation of students' rights. Attorneys for the board said the body is elected to represent the people who pay for education and choosing books is their responsibility alone. Reported in: *Cleveland Plain Dealer,* November 4.

miscellany

Washington, D.C.

The U.S. Supreme Court has agreed to rule on the constitutionality of a two-centuries-old provision of military law used to convict two servicemen for Vietnam war protests. Two lower courts had ruled that the language in Article 134 of the Uniform Code of Military Justice is so vague that a person may have no way of knowing whether he is violating it. The two military men were prosecuted under a provision that forbids "all disorders and neglects to the prejudice of good order and discipline in the armed forces" and "all conduct of a nature to bring discredit upon the armed forces." Reported in: *Chicago Sun-Times,* October 10.

Washington, D.C.

The U.S. Supreme Court has agreed to decide whether a city government has a constitutional duty to accept paid political advertising on municipally owned buses when it accepts commercial advertising for the same vehicles. The

federal court will review later this term a decision of the Ohio Supreme Court holding that the Shaker Heights Transit Authority need not sell advertising space to political candidates. The government claimed the right to spare its captive audience of transit riders the bother of campaign material. In its last term, the high court denied a right of access to broadcast media individuals with a political message (see *Newsletter,* Sept. 1973, p. 112), but most lower courts have ruled in favor of would-be political advertisers in cases involving government owned facilities. Harry J. Lehman, a successful candidate for the Ohio Legislature, said the city was discriminating in favor of commerce and against ideas, inverting the values of the First Amendment. Reported in: *Washington Post,* November 13.

(Let me say this . . . from page 5)

not have a college education and is for the most part interested in the weather and/or the latest sports results. He is not interested in an in-depth approach to an event, and he desires to have conflicting sides in any argument easily recognizable. Consideration for the average viewer produces news programs that are heavy on "action" and light on "talking," in which the sides involved fall into known stereotypes, such as police/rioters, students/military, etc. In order to keep confusion for the viewer at a minimum, each story must have a beginning, a center, a climax, and an ending. This is to occur even if the story being covered did not have such a sequence. In short, the news is to be made as palatable as a situation comedy, with little to move the mind of those watching it. For, as the networks see the problem, altering the quality of the news will not increase the quantity of viewers, and quantity is the ruling criterion.

Viewing the situation from this angle, one can condemn or condone the handling of television news, but one will be forced to look at the possibility that Mr. Epstein might be right.

While the arguments offered are interesting, the book itself suffers from an overabundance of "probablies" and "may have occurreds" for a work trying to prove a particular point. A large number of unattributed quotes also detracts from the work. When these factors are combined with a tendency to hammer again and again at particular points, the result is not a book that can be read easily, or for that matter for enjoyment. But Epstein's book should be read by everyone who is interested in a provocative approach to a still relevant problem.–*Reviewed by Michael T. Fletcher, Librarian, Grantsmanship Center Library, Los Angeles, California.*

Classified Files: The Yellowing Pages, A Report on Scholars' Access To Government Documents. Carol M. Barker and Matthew H. Fox. The Twentieth Century Fund, 1972. 115 p.

One of Webster's definitions of security is "measures taken to guard against espionage or sabotage." The type of security discussed in this report comes in three sizes: "Top Secret," "Secret," and "Confidential." In their study of the regulations governing the use of classified files Barker and Fox present a rather discouraging picture of the bureaucratic stumbling blocks that are placed before scholars in their attempts to report the background of major historical events.

According to the authors of this report, the major stumbling block, executive privilege, was first used by George Washington when he refused to allow Congress to see "documents relating to General St. Clair's ill-fated expedition against the Indians." Executive privilege, although not specifically defined, is a power assumed by the President to withhold documents and information which might endanger the national security. Because this privilege has been exercised rather frequently and indiscriminately by various Presidents, Congress has since 1789 tried unsuccessfully to limit the executive privilege of a President through three pieces of legislation–the Housekeeping Act of 1789, the Administrative Procedure Act of 1946, and the Freedom of Information Act of 1966. Although these acts make it clear that the records of the various governmental departments are public information and should not be withheld, the ultimate decision for disclosure of information is left up to the individual departments.

Since World War II, Presidents Truman, Eisenhower, and Nixon have each tried to come to grips with the problem of classifying government documents by issuing executive orders which in essence were attempts to define the various levels of classification. It was Eisenhower who first instituted the present tri-level system of "Top Secret," "Secret," and "Confidential." However, the description of each of these levels by both Eisenhower and Nixon in their executive orders is, at best, extremely vague. Nixon's executive order, issued on March 8, 1972, attempts to set up guidelines for declassifying information, but the cost of declassifying the 300 million pages of classified documents from the period 1946 to 1954 is estimated at 6 million dollars, and the annual costs of administering the total security classification program itself is estimated at between 60 and 80 million dollars a year.

The greater part of this report deals with a description of the procedures used by the various governmental agencies in classifying documents. Each agency presents a different problem for a scholar searching for historical facts. The Atomic Energy Commission has the least stringent declassification system. Only about ten to twenty percent of its records are listed as "restricted data" and therefore are never declassified, but scholars may have access to the rest of the documents fifteen years after they were originated. However, in the case of the State Department, the Department of Defense, and the Central Intelligence Agency, there is a veritable maze of rules and regulations which must be

adhered to. Many of these rules and regulations seem to contradict the ones prior to them. For example, each of these departments has a security check before any outsider is allowed to look at its documents. This can take as long as two months to accomplish. Once a researcher has been given a security clearance, he then has limitations placed upon the number and kinds of notes he may take in doing his research. Once his research is completed, the notes are then subject to censorship by the agency responsible for the documents. It is conceivable, therefore, that a scholar could spend as much as six months of his time researching particular historical documents, only to find that his notes have been totally confiscated, with the result that he has nothing more than when he started. An interesting note here in regard to the Central Intelligence Agency is that its materials are so sensitive that its classification manuals are also classified. The Nixon executive order of March 1972 makes it mandatory that all documents classified by these agencies as top secret shall be totally declassified at the end of ten years. However, there are certain documents considered vital to the national security which still come under a thirty-year classification system which was in existence prior to the Nixon order.

In spite of all of the regulations limiting access to government documents, there are a certain privileged few who can gain access to these documents, under certain circumstances. For example, the State Department will not allow private researchers into its files during the closed period, but former senior officials who wish to write their memoirs do have access to these files. Government "officials may leak information to enhance their reputations, to explain policy decisions, to seek public support in intragovernmental disputes, to try out ideas without prematurely accepting credit or responsibility for them, or to sabotage policies to which they are opposed." Also, the various governmental agencies are not above playing outright favorites. While some scholars are denied access to materials, others are given a free hand, and "the government thus simultaneously violates its own security restrictions." Some scholars may be given classified materials under the condition that "the research is based on unidentified records, not in the public domain." Access to the same materials may be denied to other scholars.

One interesting point brought out by this report is the fact that "records of a President are not government property despite the fact that they were generated while he held public office." Thus, we have the proliferation of Presidential libraries containing the papers of such Presidents as Roosevelt, Truman, Eisenhower, Kennedy, and Johnson. The authors further note that Lyndon Johnson took "31 million papers from the White House, 5.5 million pages on microfilm, 500,000 photographs, 2,010,420 feet of film, and 3,025 sound recordings."

The authors suggest three steps for changing the system. These steps are condensations of various changes suggested by scholars, members of the press, and members of the Congress. The first suggests the formation of a "central historical office in the Executive Office of the President. . . " In other words, an official department of history under government contract. The second suggestion is to declassify all documents automatically. The only criterion would be the age of the document. The third and final step is to set up stricter definitions and controls on classifications, and to set up realistic, enforceable procedures for declassification.

The four appendices of the book contain (1) the Freedom of Information Act, (2) President Nixon's Executive Order on Security Classification, (3) Letter from former Secretary of State Dean Acheson, and (4) Letter from former Secretary of State Dean Rusk. There is also a very substantial bibliography of books, articles, and official and unpublished sources.–*Reviewed by James F. Symula, Department of English, State University College of New York at Fredonia.*

The Case Against Pornography. David Holbrook, ed. The Library Press, 1973. 294 p. $8.95.

> Research to date does not indicate that a casual relationship exists between exposure to erotica and the various social ills to which the research has been addressed.–*The Report of the Commission on Obscenity and Pornography.*
>
> The Marquis de Sade was the major hero: they had been puting some of his ideas into practice, as the digging police were to find out with their spades.–*On Iniquity; Some Personal Reflections Arising Out of the Moors Murder Trial* by Pamela Hansford Johnson.

The lines have been drawn concerning the effect of pornography and the price society may have to pay if it wants to exercise without restraint its right of free access to ideas in every form. Attitudes are firmly expressed and earnestly believed, but in fact, intelligent individuals on both sides of the controversy admit that they lack evidence to support their contentions. What is pornography? Why are people interested in it? Does its existence provide some therapeutic benefit to disordered minds? Is it essential to allow pornographic display in the interest of freedom despite evidence that it does no good and may do harm? Must pornography be repressed to protect the good character of our citizenry? Each of these questions lacks a definitive answer. We do know that few people have attempted to build a case in favor of pornography as a positive virtue. Many have been concerned with the problem of whether pornographers should be subjected to legal censorship or to the varieties of harassment that constitute extralegal censorship. Some have objected strenuously to its continued existence in any form.

Whatever the viewpoint of an individual interested in the problem, that person will find much to provoke thought in the collection of essays that presents *The Case Against Por-*

nography. Editor Holbrook, writer-in-residence at the English public school Dartington Hall and author of several books on the psychology of culture, has mustered an impressive inventory of works by psychiatrists and psychotherapists, academicians, novelists, critics and journalists to argue the threat of pornography to our personal and societal value systems. Organized within six categories, the discussion moves from the general and theoretical to the specific and practical. The first two sections, "Sex and Love" and "Psychological Aspects of the Misuse of Sexuality," provide the psychiatric view that pornography is symbolic of a state of alienation between mind and body, emotion and reason, so that the act of love has been supplanted by a mechanical process in the service of neurotic behavior patterns. The theme that interest and indulgence in pornography is a sign of poor mental health and a commentary on the level of anxiety and estrangement in our society may well be true. True or not, the thesis can be accepted with some equanimity by most civil libertarians because the emphasis is on pornography as a symptom rather than as a cause of social disintegration. There is little advocacy of censorship as a "cure."

The remaining sections, "Social Aspects of Pornography," "Cultural Aspects of Pornography," "Sex Education," and "Political Questions," concentrate on pornography as a casual agency with respect to certain of society's problems. Considerable attention is paid to the antisocial character, and especially to the hostility and violence that is inherent in pornography, and the case for censorship is offered in varying guises as essential to the preservation of civil order. As the capacity to identify pornography is crucial to the idea of censorship, several essayists attempt to deal with the problem. They do not attain a thoroughly successful resolution.

The concluding sections of the work are weak. The essays on sex education seem to have little relevance to the central issue and may have been included in anticipation of utilizing for purposes of argument the emotional impact associated with the idea of the "corruption" of children's minds. "Political Questions" is largely composed of simplistic proposals for government censorship as a reasonable and easily effected cure for the ills of society. The final essay is entitled "Beyond the Garbage Pale, or Democracy, Censorship and the Arts." The author, Walter Berns, professor of political science at the University of Toronto, attacks directly and virulently the "liberal faith [that] people are mature enough to pick and choose, to recognize trash when they see it. . . " He laments the fact that literary merit has been recognized as a value that transcends obscenity, because that opens the floodgates to a tide of "trash" like *Tropic of Cancer* and *Fanny Hill.* "The pornographers know intuitively what liberals have forgotten, namely, that there is indeed a 'causal relationship . . . between word and picture and human behavior.' " When Justice Douglas says that "however plebeian my tastes may be, who am I to say that others' tastes must be so limited," Berns interprets the remark to mean that "nothing prevents a dog from enjoying sexual intercourse in the marketplace and it is unnatural to deprive men of the same pleasure." Not only will censorship preserve the body politic from corruption, but we are solemnly assured that it will be the salvation of our culture by "lending support to the distinction between art and trash."

It is unfortunate that this hysterical polemic has been selected to conclude the presentation, because it leaves the liberal minded reader so incensed that the capacity of the other essays to make a lasting impression is diminished. The overall effect of the work nevertheless retains sufficient vigor to stimulate in the reader a critical reexamination of his attitudes toward pornography, suggesting, for example, that one may oppose the irrational and tyrannical character of government censorship and still agree that true pornography is essentially anti-life and a symptom of human alienation. One may affirm the responsibility of the public library to serve all segments of the community without denying that the library ought to select materials which promote personal growth and which testify to the spiritual element in humanity. One may tolerate pornography as a commodity of no proven harmfulness only so long as it is recognized that it has not been proven benign either. One must admit that to brand pornography as without effect is to open oneself to the countercharge that other works have no greater effect.

The principle of freedom may be celebrated properly only in conjunction with the recognition that freedom demands responsible exercise. It is the chosen role of the civil libertarian to fight repression, even when that fight, as in the defense of pornography, may be personally distasteful. At the same time it should be acknowledged that many of those who uphold a contrary position are equally sincere, dedicated and humane individuals who believe thoroughly in the righteousness of their cause. The social stability of a free political order relies on the tension created by the countervailing pressures generated by groups of differing persuasions. If the forces for complete freedom were to vanquish completely their foes, it could well be as disastrous for the society as if the forces for repression were to be victorious. From this point of view, *The Case Against Pornography* is a welcome addition to the dialogue concerning personal liberties, serving as a respectable tool for testing and for honing to a fighting edge the sword of intellectual freedom. *–Reviewed by Jerold Nelson, School of Librarianship, University of Washington.*

(Supreme Court . . . from page 1)

mercy of the local police force's conception of what appeals to 'prurient interest' or is 'patently offensive.' "

"The standards can vary from town to town and day to day in unpredictable fashion," Douglas continued. "How can an author or bookseller or librarian know whether the community deems his books acceptable until after the jury

renders its verdict?"

"If the magazines in question were truly 'patently offensive' to the local community," Douglas added, "there would be no need to ban them through the exercise of police power; they would be banned by the marketplace which provided no buyers for them."

Freedom of Speech

In the area of free speech, the Court refused to set aside a lower court ruling in a case involving the dismissal of a Nevada school teacher because of his personal views on education. The teacher, Alvin R. Mineholdt, was dismissed from his job because, among other things, he had told his own children, at home, that he did not believe in compulsory schooling. Justices Douglas and Marshall dissented. Douglas asked whether a teacher must "keep his views secret from his children, lest they adopt them."

In another ruling the Court let stand a lower court holding that the Federal Communications Commission can require broadcasters to ascertain the meaning of song lyrics and judge their suitability for broadcast. The case arose when the FCC issued a directive ordering stations to censor songs with lyrics "tending to promote or glorify the use of illegal drugs." The challenge to the ruling was filed by a group of broadcasters led by the Yale Broadcasting Company, operator of Yale University's FM station.

Justice Douglas, again dissenting, said that "under our system the government is not to decide what messages, spoken or in music, are of the proper 'social value' to reach the people."

Freedom of the Press

In a case involving freedom of the press, the Court refused to review contempt citations against two Louisiana newsmen who printed court testimony in violation of a federal judge's order. Reporters Larry Dickinson of the *Baton Rouge State-Times* and Gibbs Adams of the *Baton Rouge Morning Advocate* were forbidden by U.S. District Judge W. Gordon West to publish any testimony given in an open court hearing held in November 1971. The U.S. Court of Appeals upheld the citations, and said that in disobeying the judge's admittedly unconstitutional order, the reporters must suffer the consequences.

The then U.S. Solicitor General, Robert H. Bork, contended before the Supreme Court that the lower court's order was not frivolous and that it was not unreasonable to conclude that newspaper accounts of a trial might cause irreversible prejudice to the rights of the accused and the public to have an impartial jury trial at the place where the crime was allegedly committed. In response, attorneys for Dickinson and Adams said, "Newspaper coverage of the hearing did not pose a threat to anyone's right to a fair trial. If the heavy burden which must be borne by the government to support any prior restraint can be met merely by the assertion of the possibility of a theoretical conflict arising in the future between constitutional rights, then the freedom of the press as we know it would be held hostage to the fertile imagination of judges."

In sum, the Supreme Court's seeming lack of concern and apparent reluctance to review cases extends across the entire range of activities ostensibly protected by the First Amendment. However, the Court's attitude at this point—particularly with regard to the question of obscenity—clearly does not mean that it can escape indefinitely the basic issues raised in some of the challenges turned down during October.

"Alternatives In Print"

The third annual edition of *Alternatives In Print* covering 1973-74 is now available from Glide Publications. This project of the ALA's Social Responsibilities Round Table has grown to become a valuable supplement to traditional reference resources. Offering minimal overlap with *Books In Print* and the *Small Press Record of Books,* the *AIP* is an international buyer's guide to social change publications. The 388-page comprehensive listing covers over 800 publishers and lists over 20,000 publications.

Alternatives In Print is available in paperback for $6.95 and can be ordered directly from the publisher: Glide Publications, 330 Ellis St., San Francisco, CA 94102.

the shocking Dr. Shockley

Dr. William B. Shockley, the Nobel Prize-winning physicist, continues to face harassment from groups that find his racial theories morally repugnant. A debate at Princeton University between Shockley and Roy Innis, director of the Congress of Racial Equality, was limited to faculty and students bearing Princeton identification cards, apparently in order to forestall disturbances on the campus.

A leader of Princeton's Whig-Cliosophic Society, a student debating group, said, "We're putting on the debate for university people only, and we've decided that only people from the university will cover the event for the press."

Several members of the Princeton faculty and spokesmen for groups representing minorities on the campus suggested strategies to show contempt for Shockley's view that intelligence is largely inherited and that the disadvantaged racial position of blacks is due principally to heredity. The recommended tactics included heckling and a boycott. Reported in: *New York Times,* December 2.

the right to read: dream or reality?

The right to read is firmly established in U.S. Constitutional law, right? And both librarians and library patrons can rest assured that their rights have received careful review by the courts, correct? Well, not exactly. Or so says Prof. Robert M. O'Neil in a recent article in the *University of Cincinnati Law Review* ("Libraries, Liberties and the First Amendment," v. 42, no. 2 [1973]).

"The basis for a constitutional right to read seems logically compelling, but it is not squarely embedded in constitutional law," O'Neil argues. "There are many useful fragments and analogies, but nothing precisely in point, even in the lower federal and state courts."

O'Neil explains that the primary basis of the library patron's right to read is the widely assumed right of the citizen to receive information. Developments in case law that afford significant analogies to dissemination through the public library include a decision of the U.S. Supreme Court that struck down a federal statute requiring addressees of certain types of printed matter from the Soviet Union to request delivery from the post office. The discussion of the rights of prisoners to read notes that "it would be anomalous indeed if the library patron had fewer constitutional rights to receive printed matter than does a prisoner."

The author concludes by observing that, "if anything, the public library should be *freer* of governmental control and censorship than the private library or bookstore . . . If the citizenry is to be fully informed and if the primary functions of government are to be exercised by a responsible and knowledgeable electorate, then the libraries should be as unfettered as the press, the broadcast media, and the universities."

Knopf files suit against CIA

In an action that mirrors the Pentagon Papers case, Alfred A. Knopf, Inc. and co-authors Victor L. Marchetti and John D. Marks filed suit in U.S. District Court to enjoin the government from deleting ten percent of the material in their forthcoming book, *The CIA and the Cult of Intelligence.* Named as defendants in the action were William Colby, Director of the CIA, former employer of Marchetti, and Secretary of State Kissinger, whose department employs Mr. Marks. The suit marks the second time in the country's history–the first was the Pentagon Papers case–that legal action has been brought against the federal government to overturn an injunction against publication of material the government wants to keep classified. The suit claims that the government's action violates the First and Fifth Amendments by prohibiting the plaintiffs from delivering an uncensored version of the manuscript to the publisher, and that the purported security agreements signed by both Marchetti and Marks were unconstitutional prior restraints on freedom of speech and freedom of the press. Reported in: *New York Times,* October 31.

Authors League warns on USSR agreement

At the request of the Authors League of America (6,000 members), Senator John L. McClellan has introduced a bill (S. 1359) which would prevent any foreign nation from using U.S. copyrights as a means of suppressing the publication of works of dissident authors in the United States. The League fears that the Soviet Union's agreement last May to adhere to the Universal Copyright Convention was not motivated entirely by the reasons given.

The USSR stated that it wished to join the West in a more extensive exchange of ideas and contacts and cooperation among creative artists, but it is now feared that the agreement will have the opposite effect, that the USSR will use U.S. copyrights to control or appropriate the works of Soviet writers whose works remain unpublished at home because of their challenges to the Soviet system.

State control over writers' works abroad, the Authors League fears, would effectively cut off the only avenue Soviet writers have for publication beyond *"samizdat"* (or "self-publishing"). Reported in: *The New Republic,* October 27.

state workshops on intellectual freedom

The money, time, and planning invested in the ALA Prototype Intellectual Freedom Workshop held in April 1973 (see *Newsletter,* July 1973, p. 65) are beginning to bear fruit. The purpose of the Prototype was to prepare key people on the state-level to plan and carry out similar programs in their home states. In the first six months since the Prototype, twelve state intellectual freedom committees (Virginia, Colorado, Arkansas, Oregon, North Carolina, Washington, Mississippi, Minnesota, Iowa, Arizona, California, North Dakota) have sponsored workshops; and fourteen other state committees have workshops scheduled for the first part of 1974. Support for the workshops has been excellent and in every case, registration has been well above the anticipated attendance.

During the months ahead we urge you to be on the watch for news of an intellectual freedom workshop in your state.–PRH

(NYLA . . . from page 7)

Also during October, the New York Legislature's Joint Codes Committee held hearings throughout the state to determine what, if any, action the state should take regarding the Supreme Court's new guidelines.

NYLA President Stanley A. Ransom informed the committee of NYLA's position that "in a free society no law concerning obscenity for adults is needed." He added, "New York State is a leader in the production of works of art and literature, and its people . . . do not need a paternalistic law to tell them what they can or cannot read, see or hear."

Daniel W. Casey, president of the American Library Trustee Association, expressed his view that the Supreme Court's decisions "encourage the imposition of censorship functions on libraries." Speaking of the efforts of librarians

to provide materials on all points of view and the resistance these efforts often meet from those who misunderstand the role of the library, Casey said that "now, emotionally charged vigilantes, over-zealous district attorneys, and hastily informed juries will decide what books will be banned. . . "

The Authors League of America and the Periodical and Book Association of America both supported legislation to require a prior civil judicial determination that a work is obscene before a librarian, bookseller or theater owner can be criminally prosecuted for disseminating it.

Representatives of the Motion Picture Association of America appeared ready to sacrifice so-called hard-core pornography in order to gain legal protection for "legitimate" films of serious artistic value. MPAA attempted to define obscenity for the committee by employing the terms used by Chief Justice Warren E. Burger in *Miller* v. *California.*– RLF

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