newsletter on
intellectual freedom
IFC ALA

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reality and reason intellectual freedom and youth

proceedings of the conference program

During the ALA's 1974 Annual Conference, the Intellectual Freedom Committee, the American Association of School Librarians, the Children's Services Division, the Young Adult Services Division, and the Intellectual Freedom Round Table sponsored a program to explore aspects of intellectual freedom in library service to young people.

The children's room in the library is by tradition the safe refuge. But, today, with the emergence of more realistic fiction, the nature of children's and young adult collections has changed dramatically.

Do librarians have an obligation to present to youth of all ages the gamut of what is being written? This was the issue that four panelists were asked to address.

The remarks of the panelists were introduced by the chairman of the Intellectual Freedom Committee, R. KATHLEEN MOLZ:

From June 21, 1973 to June 24, 1974 encompasses by any man's reckoning little more than a year of time. But in that twelve-month period, the nation's highest court handed down a series of opinions regarding First Amendment rights that created some confusion.

Last year the U.S. Supreme Court in an opinion affecting five cases ruled that national standards could no longer be called for in determining what is or what is not obscene. Community standards, presumably those of any of the 78,000 governmental jurisdictions of the United States, were to prevail. Within a few days of the decision, the Supreme Court of Georgia held that the film *Carnal Knowledge* was obscene according to local standards, and the appeal defending the film was submitted to the U.S. Supreme Court, which on June 24, 1974 overturned the Georgia decision holding that these same community juries so extolled a year ago do not "have unbridled discretion in determining what is patently offensive." One cannot say today that we have come full circle; we have not even come half circle; we seem to be standing up straight in the midst of muddle.

The court's newest rulings have left us with ambiguity as a guideline, which is to say that we are left with what Justice Brennan so rightly characterizes as the "mire of case-by-case determination" of what is licit or illicit in books, films, illustrations, etc.

The legislators who look to the jurists for guidance have been at work in the states to up-date their own state obscenity statutes and bring them into conformity with the high court's rulings of 1973. As a result, thirty-eight state legislatures have this year considered over 150 bills relating to the obscene. Some of these measures contain exemptions for libraries; others do not. Many make special provision for the protection of minors.

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

titles now troublesome

Films

Periodicals

Books

Television Shows

resolution honoring the memory of Earl Warren

Whereas, On July 9, 1974, the nation was saddened to learn of the death of Earl Warren, who served from 1953 to 1969 as the fourteenth Chief Justice of the United States: and

Whereas, As civic district attorney, State Attorney General, Governor of California, and subsequently as the Chief Justice of the nation's highest court, this distinguished jurist devoted over a half-century of his life to the cause of public service; and

Whereas, Under his leadership the Supreme Court broke new ground in the pursuit of individual and civil rights in notable decisions affecting the integration of the public schools, the expansion of the rights of those accused of crime, and the establishment of the one man/one vote principle, and many others; and

Whereas, These now historic decisions were consonant with Mr. Warren's own philosophy that the nation's highest judicial body should be "a people's court";

Therefore, Be It Resolved, That the American Library Association on the occasion of its 93d Annual Conference in New York City pay special tribute to the memory of Earl Warren, who declared life-long fidelity to one of the most ancient principles of jurisprudence, "Maintain the Right"; and

Be It Further Resolved, That this resolution be sent to the U.S. Supreme Court and to the family of the late Chief Justice.

policy on abridgment of the rights of freedom of expression of foreign nationals

Freedom of thought and freedom of expression are rights basic to all. This concept is now expressed in the Universal Declaration of Human Rights which was adopted and proclaimed by the General Assembly of the United

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IFC report to ALA Council

July 12, 1974

As I indicated in the Midwinter Report of the Intellectual Freedom Committee, the IFC's activities fall into two broad categories: international concerns and domestic ones. At this meeting, both of these matters will require action by Council.

Before I begin, however, one action will take precedence, and that refers to the passing of former Chief Justice Warren. When a small twig is snapped, little change occurs in the forest, but when the oak is felled the loss is felt for generations. In tribute to the memory of one whose influence over the Supreme Court for sixteen years will remain immeasurable, the Committee has drafted a memorial resolution. [The resolution—printed below—was adopted by the Council.]

In turning to international concerns, the Committee has been aware that since 1972, with the case of Raiza Palatnik, an imprisoned Russian librarian, the American Library Association has shown increasing concern with the abridgment of rights affecting foreign nations. In general, these rights have involved areas comparable to those embraced by the First Amendment of the U.S. Constitution, i.e., the rights of free expression of ideas. Last Midwinter, the Council endorsed resolutions affecting the suppression of a collection of poems and essays by three Portuguese women, the harassment of Soviet author, Alexander I. Solzhenitsyn, and the burning of books in Chile. All of these matters were originally brought to the Committee's attention by ALA members.

Since the IFC is primarily a committee devoted to the preservation of intellectual freedom in the U.S., the IFC felt that its efforts should be coordinated with the one body of the Association designated to carry out the Association's international program, the International Relations Committee. The chairmen of the two committees met and subsequently appointed an ad hoc committee drawn from their membership to draft a formal statement for the Council's approval at the New York Conference, which will place on the record the Association's continuing concerns and responsibilities for the freedom of expression of all men, regardless of nationality. During the Conference week, this policy statement was approved by IRC and IFC. [The policy—printed below—was adopted by the Council.]

On the domestic front, the Committee has been alerted to the abridgment of the rights of a number of academicians to discuss publicly on college campuses the results of their scholarship. However controversial these findings, their dissemination cannot be suppressed. The American Association of University Professors has already issued a strongly-worded statement defending the rights of scholars to pursue research and disseminate the findings of controversial studies which purport to find a relationship between intelligence and race. In consonance with Article IV of the *Library Bill of Rights*, which urges the cooperation of librarians with other groups in resisting censorship, the IFC submits a resolution to Council endorsing the AAUP's stand. [The resolution was amended and approved by the Council. The Council-approved resolution appears below.]

Another matter reported in the national media which occasioned the interest of a number of ALA members was the current litigation between CBS and Vanderbilt University. CBS has sued Vanderbilt University for making available through the university's tape archives tape transcripts of the CBS network's news broadcasts.

Although the specific issue is a complicated one, its particular complexities pale beside the larger issues of which this case is but a symptom. I refer to the whole matter of the preservation of the non-print record. Therefore, the IFC has recommended to the ALA Executive Board the appointment of an inter-organizational committee involving the ALA, the Association of American Archivists, the U.S. National Archives, the National Association of Broadcasters, and other concerned organizations to discuss the disposition of all major network news broadcasts and important documentaries for the ultimate use of scholarship. This recommendation was made to the Executive Board on July 11.

The Committee also met with the members of the RASD Interlibrary Loan Committee to discuss possible infringement of the rights of undergraduates by the National Inter-

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notice to subscribers

Effective January 1, 1975, the yearly subscription fee for the *Newsletter on Intellectual Freedom* will be $6.00. In addition, the following special rates will apply: 5 copies to the same address, $27.50; 10 or more, $5.00 each.

The yearly cost of the *Newsletter* has remained unchanged ($5.00) since 1969. In view of the recent increase in the cost of virtually everything connected with producing a periodical, and the nearly 100% increase—since 1969— in the cost of library periodicals generally, we believe that the above increase is both modest and understandable.

high court weaves tangled web

Some headline writers proclaimed a favorable change in the U.S. Supreme Court's attitude. Some even expressed a feeling of reassurance. After all, the justices did not consider *Carnal Knowledge* obscene. Is there not, then, firm hope for anyone who runs afoul of perverse local standards?

The Court's unanimous decision in *Jenkins* v. *Georgia,* handed down June 24, was indeed a victory for Bill Jenkins, the Albany, Georgia theater owner whose conviction for showing *Carnal Knowledge* was upheld by the Georgia Supreme Court. And his attorney before the Supreme Court, Louis Nizer, can only be congratulated for having won the exoneration of his client.

Justice Rehnquist, who wrote the Court's opinion in *Jenkins,* averred that jurors will not have "unbridled discretion" in determining what is "patently offensive." But it should be clearly noted that the reins of the bridle on discretion, or indiscretion, were snapped back fully two years after Jenkins' criminal conviction, and then only at the very highest level of the judiciary in the United States.

The opinion of the Court said little beyond observing that Justice Rehnquist and those justices who joined him, Burger, White, Blackmun, and Powell, did not find in the movie any depiction of sexual conduct that was "patently offensive."

Justice Brennan, quoting from his dissent in *Paris Adult Theatre* v. *Slaton* (413 U.S., at 92), said that it remains clear that as long as the *Miller* test remains in effect "one cannot say with certainty that material is obscene until at least five members of this Court, applying inevitably obscure standards, have pronounced it so." He added that the Court's new formulation "does not extricate us from the mire of the case-by-case determinations of obscenity."

Hamling v. *U.S.*

In *Hamling* v. *U.S.,* also decided June 24, the now-familiar majority of Chief Justice Burger and Justices White, Blackmun, Powell, and Rehnquist affirmed the judgment of the Court of Appeals for the Ninth Circuit, which upheld the convictions of Hamling and his co-petitioners for using the U.S. mails to distribute a brochure advertising an illustrated version of the *Report of the Commission on Obscenity and Pornography.*

Justice Rehnquist, who delivered the opinion of the Court, addressed himself to the meaning of "local community standards," authorized in *Miller* v. *California,* and held that the Court did not refer to any "precise geographical area." He reiterated the Court's view that the First and Fourteenth Amendments do not require uniform national standards and said: "A juror is entitled to draw on his own knowledge of the view of the average person in the community or vicinage from which he comes for making the required determination [of obscenity]. . . ."

No fear of patchwork effect

Distributors of communicative materials understand fully the effect that will be produced by standards which vary from hamlet to hamlet. But the Court's majority did not seem disturbed by the prospect of a major disruption of communicative networks. Rehnquist said: "The fact that distributors of allegedly obscene materials may be subjected to varying community standards in the various federal judicial districts into which they transmit the material does not render a federal statute unconstitutional because of the failure of application of uniform national standards. . . ."

In a dissent joined by Justices Stewart and Marshall, Justice Brennan observed that under the "local standards" authorized by the Court, "guilt or innocence of distributors of identical materials mailed from the same locale can now turn on the dicey course of transit or place of delivery of the materials."

"Knowledge" of legal status not required

Attorneys for Hamling argued that mere knowledge of the contents of challenged materials was insufficient to prove that a defendant intended to violate the law. It was contended that the prosecution should be required to prove

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Lisbon restricts new freedoms

Signs of increased restraints on Portugal's news media became evident after more than a month of press freedom following the military coup of April 25. Efforts to impose a stricter discipline affected the nation's two television channels and the leftist press.

A satiric television program which attacked the Roman Catholic Church for its close collaboration with the former Lisbon dictatorship was suddenly suspended. Officials alleged that people's sensibilities were offended by the program.

Among the actions signaling a tougher attitude toward newspaper editors was the arrest of a twenty-nine-year-old extreme leftist editor of a weekly newspaper, Luis Saldanha Sanches. He was detained for advocating desertion by Portuguese troops stationed in the African colonies of Portuguese Guinea, Angola, and Mozambique. Sanches will presumably be tried by a military tribunal. Reported in: *New York Times,* June 16.

free speech and censorship

By ERNEST VAN DEN HAAG, author of The Fabric of Society *and* Passion and Social Constraint. *This essay on censorship was given as a lecture at ALA's 1974 Annual Conference in New York City.*

Censorship proper, prior restraint of expression, is unconstitutional in the United States. There are other constraints, though, which may have effects similar to censorship: unlawful exercise of the freedom of speech can be punished, and the power of selection can be misused.

Speech can be punished when alleged to slander, or libel, or to infringe on copyrights, on privacy, or on other property rights; or to incite to injurious or unlawful actions; or to offend public decency. This limitation of freedom cannot be avoided for all rights are necessarily limited by other rights, and by the rights of others. The question is not whether abridgment of any freedom is ever justified, but when it is. I shall turn to this after considering the power of exclusion.

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Publishers and editors necessarily must select among manuscripts; libraries must select from what is published. Exclusion, entailed in selection, can no more be avoided than penalization. The question is how to minimize abuse of the power of selection.

Total safety is not of this world. But there is some safety in numbers. The more people select independently of each other, the less the likelihood of exclusion by identical tastes, or by concerted action. We can be reasonably satisfied here. There is an infinity of publishing houses, magazines and libraries. Each makes its own selection. Entry is reasonably free and easy. Most publications concerned with politics are against the government; most publications concerned with sex are for. Freedom of expression certainly stares you in the face. We are more likely to be swamped than starved. The power of exclusion is not being abused, though the power of inclusion may be.

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I shall make myself unpopular now by telling you that the power of selection should not be vested in librarians. For there is no relevant professional training, and there are no experts in the selection of books for general purposes, although a good general education, an open mind, and a tolerant disposition do help.[1] But professional training cannot produce these qualities. Ultimately the trustees or users, laymen, are entitled to select books for libraries, and they are quite within their rights when they exclude books librarians want. Democracy extends a nearly unlimited right to be silly to everybody. Trustees have a right to be silly, though they may over-exercise it. The librarian who shouts "censorship" when a book is excluded is wrong, unless he defines "censorship" as selection of books by non-librarians. But I find nothing in the Constitution to suggest that librarians alone are entitled to select books for libraries. Nor should high school teachers be vested with such rights. The ACLU just solicited my contribution to compel a school board in Drake, North Dakota to accept books a high school teacher had selected for class reading. I would rather defend the right of the school board to reject the books and the teacher. The power to select books for schools or libraries never should be vested exclusively in a group of professionals, whatever their educational credentials.[2] Credentials are no more relevant to selecting books than degrees in political science are to selecting policies. This is the task of politicians, not of political scientists, and it requires the approval of constituents, not credentials.

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Let me come to the hard part now. What reasons are there for freedom of speech and ideas? What limitations are needed?

Freedom of speech dates back only a few centuries and is usually defended with more eloquence than cogency. John Stuart Mill realized that it is "idle sentimentality" to believe that "men are more zealous for truth than they are for error."[3] But he still thought that, given freedom, truth wins: "Wrong opinions and practices gradually yield to fact and argument," he wrote.[4] Neither history nor logic supports him. Perhaps truth wins in an unlimited time span. But so does everything else. Nonetheless, Mill's remark is echoed in Justice Holmes' oft quoted dissent. Referring to political and moral matters, Holmes wrote: "The best test of truth is the power of thought to get itself accepted in the competition of the market. . . ."[5] Now, if we call "true" a thought because it *has* been accepted, Holmes' argument is correct because circular. Otherwise we find no evidence for truth prevailing more often than falsehood, even where there is freedom. The "competition of the market" may be the most economic and least burdensome way of making decisions. But the decisions that emerge are not right, or the thoughts true, because they were freely accepted.

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Where the merits or demerits of goods and services are concerned, we do not trust the competition of the market to discover the truth. Regulatory agencies are meant to protect the consumer against being misled, although he could easily learn from experience whether he was deceived about the soap he bought and, if so, stop buying it. Nor is

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let me say this about that

a column of reviews

The Law, The Supreme Court, and the People's Rights. Ann Fagan Ginger. Barron's Educational Series, Inc., 1974. 697 p. $3.95.

This handy household guide for the civil libertarian is a lively collection of what the author, a California constitutional lawyer and law professor, president and founder of the Meiklejohn Civil Liberties Institute in Berkeley, calls "landmarks in human rights law." All of the Supreme Court cases covered are "victories for the proponents of human rights law" during the years Earl Warren was Chief Justice. The book's range is very wide–with the three sections covering cases involving many facets of denials of freedom, justice, and equality. Ms. Ginger devotes only a few pages–one brief chapter out of twenty-nine–to freedom of the press and only a portion of those pages to what she considers–as do many students of the subject–probably the most important single Supreme Court decision on obscenity, *Roth* v. *United States* (1957). Much as *Roth* has been discussed, the Ginger report is useful and fresh. She points out that *Roth* was the very first case in the whole history of the U.S. Supreme Court to face up to the basic constitutionality of and the standards for American obscenity law. After reviewing the essentials of both the majority and dissenting opinions in *Roth,* she concludes this section with an updating paragraph on the implications of the famous–or infamous--1973 Court majority decisions relating to obscenity.

Certainly the Ginger volume is not essential for any library or librarian concerned only with the material it contains directly bearing on intellectual freedom–but its comprehensiveness on civil liberties generally, its up-to-dateness, and the very reasonable price (even for a paperback) combine to make it a valuable volume for all *Newsletter* readers.–*Reviewed by Eli M. Oboler, University Librarian, Idaho State University Library, Pocatello, Idaho.*

Sex and the Undecided Librarian: A Study of Librarians' Opinions on Sexually Oriented Literature. Michael Pope. Scarecrow Press, 1974. 219 p. $6.00.

Would you purchase "a book of photographs with little or no text of male homosexual couples engaging in various sex acts, including oral sex," for your library? If Michael Pope's doctoral thesis is any indication, you sure wouldn't. To test librarians' responses to such material, Pope developed a four-page questionnaire which he mailed to 1,200 librarians chosen from the 1970 ALA membership directory. Eligibility was limited to school, public, or college librarians who included their home address in the listing. Seven hundred eighteen responded, and *Sex and the Undecided Librarian* is the ultimate result.

Pope's questionnaire tested librarians' responses to fifty-five descriptive statements similar to the one quoted above. Librarians were offered six possible responses to each description, ranging from "Would actively seek out such material, open stacks, anyone may use" to "Under no circumstances would I willingly have in my library" (p. 38). By assigning numerical values (1-6) to each response, Pope was able to compute a "selection index," that is a mean score for each descriptive statement.

The bulk of the book is a presentation of the results, with descriptive statements displayed in groupings which facilitate the comparison of variables. For example, one statement describes "a book on artistic anatomy, primarily illustrated, containing *photographs* of male and female nudes," while the comparable description on the other form of the questionnaire substitutes *line drawings* for the photographs (underlining mine). Pope then provides the results which show a more restrictive selection index for the book with photographs. All fifty-five descriptive statements are presented in this manner. Specific conclusions noted in Pope's study include the following: male respondents tend to be less restrictive than female; school librarians are more restrictive than public or college librarians; college librarians make ready use of a response which defers the selection decision to the faculty; unillustrated texts are less restricted than illustrated texts; texts illustrated with line drawings are less restricted than those using photographs; inclusion or exclusion of oral sex acts in explicit manuals made little difference in the selection index (heavily restricted in either case); and explicit photo books dealing with homosexual acts were treated quite similar to those texts offering explicit photographic treatment of heterosexual acts (again, both heavily restricted).

Following this detailed discussion of the responses to each of the fifty-five statements, Pope presents responses as they relate to institutional, professional, and personal characteristics. Such factors as the size of the library, the geographic region of the country, the educational level of the librarian, the undergraduate major of the librarian, the sex and the age of the librarian are all isolated to permit the analysis of their effect on the selection index.

There is a wealth of material in Pope's book, and it deserves serious study in the profession. *Sex and the Undecided Librarian* is a must for those collections serving schools of library science. In addition, it should be read by

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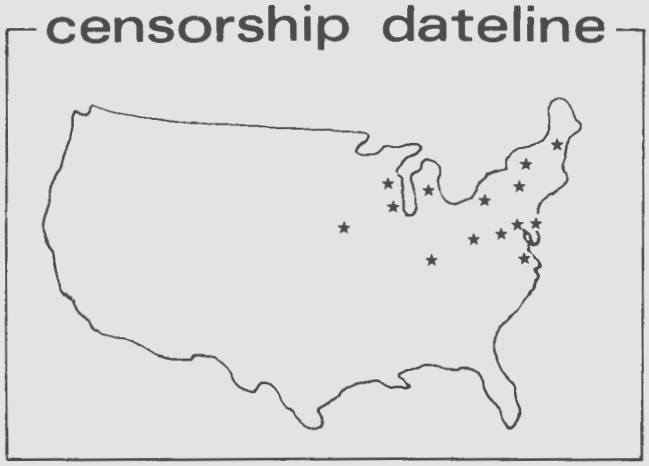
censorship dateline



libraries

Mount Laurel, New Jersey

Naomi Piccolo, former director of the Mount Laurel Public Library, told her version of the dispute between the township library board and herself which resulted in her resignation–requested by the township board–on July 12. The controversy reportedly began when the library started circulation of Alex Comfort's bestselling *The Joy of Sex.*

Two members of the board checked the book out and returned it in a brown paper bag, calling it a "dirty book" and a piece of pornography, Piccolo said. "I won't say who they were, but they objected very strenuously and said it should not be on the shelves."

After receiving the objection, Piccolo contacted the Intellectual Freedom Committee of the New Jersey Library Association. "That angered [the board members] even more. They told me I had no right to go over their heads," she said. "I told them 'censorship' is the most ugly word in the English language and nobody has the right to play God and determine what people can read."

Board members refused to comment on Piccolo's resignation, claiming that they had promised her they would not discuss the reasons. Piccolo claimed she sought no such promise, and only kept quiet about the resignation because she was in need of the severance pay. Reported in: *Philadelphia Inquirer,* July 28.

Phildelphia, Pennsylvania

Forty-five staff members at the Pennsylvania Advancement School protested censorship of a controversial book, *Boys and Sex,* after the mother of a student complained publicly that it was "too suggestive." Shively Willingham, an assistant director at the school, which offers an alternative education to elementary and junior high students, said, "We resent the arbitrary removal of the book by Dr. I. Ezra Staples from our school library."

"There are established procedures that should be followed before a book is taken off the library shelves. This has not been done. We simply received a telephone call from Dr. Staples telling us to take the book off the shelf," Willingham added.

The controversy over the book–which treats such subjects as masturbation, homosexuality, petting, intercourse, and oral sex–arose when Mamie Johnson, whose daughter read the book, called the school to register her complaint. She subsequently contacted the *Philadelphia Tribune* after what she contended was "a seeming lack of interest" on the part of the school administration.

The head of the school and various faculty members addressed a petition to Staples, who is associate superintendent for curriculum and instruction in the Philadelphia system. The petition said in part: "We, the undersigned of the Pennsylvania Advancement School, object to the arbitrary decision made concerning the challenged book, *Boys and Sex,* PAS is being forced to remove the book from the library without having had the opportunity to present its position." Reported in: *Philadelphia Tribune,* June 1.

Waukesha, Wisconsin

Manchild in the Promised Land was ordered removed from the high school library by administrators of the Waukesha school system. The action was taken following the complaint of one parent. The high school library serves 4,000 students.

schools

Prince George's County, Maryland

A book of translations of classic Greek comedies, including Aristophanes' *Lysistrata,* was banned from a Prince George's County high school following a letter of complaint written to school board member Nicholas R. Eny. Donald C. Kauffman, supervisor of English instruction for the school system, said the collection of Greek plays was dropped from DuVal High School's list of supplemental reading materials because the translation of *Lysistrata* was "poor" and contained "course, obscene language." According to Kauffman, only one complaint was received about the book.

Before decision was made to remove the book, the translation of *Lysistrata* was referred to staff members of the Folger Shakespeare Library. The Folger staff reportedly informed teachers that the translation was not a good one, and Kauffman said a decision was then made to dispose of the book.

The *Prince George's County Sentinel* responded editorially: "We compared a different version of the play to the one used at DuVal High School and found them both bawdy, although the bawdiness often was at different points in the play . . . If we thought it was really a poor

translation that motivated the educators, we would be glad to donate our copy to DuVal High School. But we suspect that it, too, would not pass inspection by those who have taken it on themselves to guard the impressionable minds of high school students from the naughtiness of Aristophanes." Reported in: *Prince George's County Sentinel,* June 5; *Washington Star-News,* June 7.

Ipswich, Massachusetts

The *Tiger's Tale,* a bimonthly publication of students at Ipswich High School, created a storm in this small North Shore town. An issue on sex and sexual attitudes provoked criticism from parents, anti-abortionists, and others who claimed that the publication was biased, only partially factual, and "inappropriate" for students at a public high school.

The controversial issue reported the results of a poll and interviews on the topic of sex. The poll of one hundred students revealed that fifty-two had participated in intercourse, and that only sixteen of the fifty-two had used contraceptives. Because of the low use of contraceptives, the co-authers of the edition, Jill Sheppard and Dawn Deangelis, printed lengthy interviews on sex and pregnancy with two local specialists in the field. The article also provided information on modern contraceptive devices and sex education courses offered by the school.

Because of threatened censorship by the school committee, members of the English department promised court action against any attempts to impose prior restraint on the *Tiger's Tale.* Reported in: *Boston Globe,* June 13.

museums-galleries

Evanston, Illinois

The Evanston Art Center—in the city synonymous in the minds of some with fusty suburbanism—offered a spring exhibition of paintings of nudes by Martha Edelheit. Many viewers, including Art Center members and some officers, apparently were so offended by the frontal male nudity that they asked that the exhibition be removed. Director Paula Prokopoff refused to do so.

Chicago Daily News critic Dennis Adrian said of the paintings: The nudes "have a relaxing freshness and lack of pretentious posing. The result is a healthy arcadian beauty and unself-consciousness, like the great poetic visions of sixteenth century pastoral nudes." Reported in: *Chicago Daily News,* June 6.

Danbury, Connecticut

A Redding artist abruptly withdrew all of his paintings from a Danbury art show to protest removal of four of his works which officials of the sponsoring art association said might be offensive. Allen Hermes, the artist, said removal of his paintings was "gratuitous censorship." Mrs. L. Alden Campbell, president of the Stanley Richter Association for the Arts, said she thought the works were not suitable for showing in a public park.

The "offending" works included a painting of a suffering Christ on the cross; a painting which Campbell described as "two lesbians" but which Hermes described as "two women, one a stylized nude"; a painting depicting peace marches in Washington, one with a legible obscenity on a banner; and a painting showing a male nude carrying an American flag.

Hermes said he accepted the invitation to exhibit in the show because "I assumed this was a bona fide place to show my works." Campbell said she did not object to nudity. "We left several other nudes up. Some of his art is just lovely." Reported in: *Danbury News-Times,* June 21.

colleges

Lincroft, New Jersey

Brookdale Community College in Lincroft was left without a journalism instructor or a student newspaper advisor. Assistant Professor Patricia Endress was dismissed for what college officials termed a "violation of freedom of the press" and for prompting the newspaper to print allegedly libelous material. Endress, who had served on the faculty for three years, was discharged one month after the board awarded her a new contract.

The charges stemmed from an article and editorial in the student newspaper which alleged a conflict of interest on the part of the chairman of the school's board of trustees. The editorial called for his resignation.

The New Jersey Education Association and the National Education Association expressed support on behalf of Endress. A spokesman for the college's faculty association said, "We are prepared to support her all the way to arrive at a fair and just solution, which means restoring her to her former position." Reported in: *Editor & Publisher,* July 13.

the press

Mississinewa, Indiana

Bill Ormsby, editor of the *Gas City* (Ind.) *Reporter,* was arrested May 28 at the request of the Mississinewa School Board after he refused to leave a meeting of the board. Ormsby declined to leave the meeting because incoming board members were allowed to remain. "I feel they're just as much members of the public as I am," Ormsby said.

Board President Russell Baskett said the board discussed "confidential matters" relating to negotiations between the system's teachers and the school board's negotiating team. He said the school board needed to discuss general matters of policy with its negotiators.

Richard Cardwell, general counsel for the Hoosier State Press Association, said: "To my knowledge, this is the first time a newspaperman has been arrested in Indiana for refusing to leave a meeting."

Cardwell said that Indiana's antisecrecy act does not define matters suitable for discussion in closed meetings of a governmental board or council. He said that if the Mississinewa board discussed a course of action on how much money to allow the teachers in bargaining discussions, then it could be a violation of the antisecrecy law. Reported in: *Editor & Publisher,* June 8.

television

New York, New York

The Sterling cable TV system, cancelled a scheduled showing of the "Underground Tonight Show" after legal counsel advised it was likely to be judged obscene by the courts or the Federal Communications Commission. Presentation of the public show, usually carried on Channel G, might have invited liability, Sterling said.

A group crusading against censorship previously aired over Sterling a five minute clip from a film about a "female masturbation class" consisting of several nude females performing yoga exercises.

Teleprompter, which serves upper Manhattan, refused to run it "in order to comply with FCC regulations." Reported in: *New York Times,* June 18; *New York Daily News,* June 22.

bookstores, etc.

Woodstock, Illinois

Mission Possible, a Woodstock youth and religious organization, spearheaded a drive to press city officials to enforce a city ordinance that prohibits the sale or display of "indecent publications." Harold Garrison, an organization sponsor who circulated petitions to ban *Playboy* and other magazines featuring nudity, said that "smut magazines add to higher divorce rates, higher VD rates, and the worst kind of perversity."

The Woodstock ordinance reads in part: "No person shall sell or offer for sale, or circulate, pass from one person to another or expose in any public place, in view of a place or store frequented by the public any immoral, indecent or obscene publication, printed or written matter or picture or other representation." Reported in: *Woodstock Sentinel,* June 24.

Northfield, Massachusetts

Playboy and *Penthouse* magazines are now banned in Northfield and, according to the town's police chief, *National Geographic* should be, too.

Police Chief Brian Scott asked store owners to stop displaying and selling *Playboy, Penthouse,* and other magazines featuring nude women. He told them that Massachusetts' new obscenity law, which took effect July 1, prohibits the display of uncovered female breasts.

Scott said the new law could be used against even *National Geographic* because it sometimes contains nudity. "If a white American female breast cannot be viewed under the law, then I do not see how a brown female breast of an Australian aborigine can be viewed," Scott remarked. He added, however, that he had no plans to remove *National Geographic* from schools or libraries. Reported in: *Hartford Courant,* July 3.

Dearborn, Michigan

City Attorney Joseph Burtell asked Dearborn merchants who sell "pornographic" literature not to display the material in public where it can be viewed by children. Burtell pointed out that merchants were requested ro remove such material voluntarily and called his letter setting forth the request "a probing action."

Burtell's letter apparently came in response to complaints to the city council about the availability of "smut magazines" such as *Penthouse* and *Playboy.* Members of the city council said they were powerless to adopt an effective ordinance.

Burtell noted that there has been "a great erosion in morality" and attributed this decline to a magazine which has been "setting the tempo" and to the film *Last Tango in Paris.* Reported in: *Dearborn Guide and Heights Journal,* June 6.

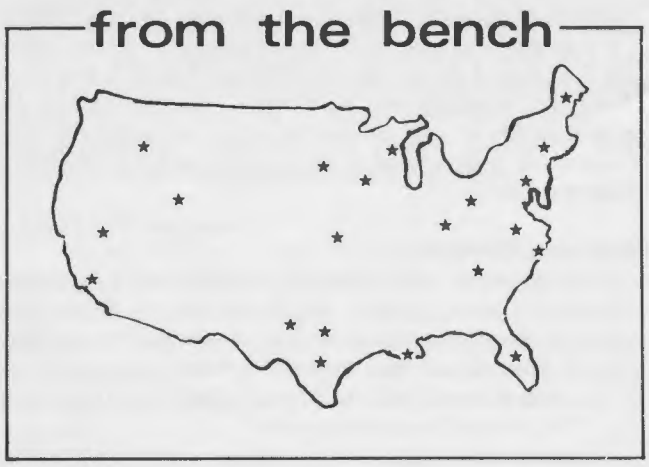
Newtown Square, Pennsylvania

An agreement reached by the Newtown Board of Supervisors and the Budco-Goldman circuit will preclude the showing of *X*-rated films at the twin theater to be built by the firm in this suburban Philadelphia community. The local newspaper, the *County Leader,* attacked the agreement as a form of censorship and said it was not the job of the supervisors or the board of censors to decide what film features should be shown.

The paper said in its editorial columns: "If [*X*-rated] films do not draw an audience, they will not make money. And if that happens, you'll see them disappear from the marquee. This® is truly the best expression of that local opinion cited by the Supreme Court. While the board is to be commended for its concern, it should not get into the business of censorship." Reported in: *Boxoffice,* July 1.

New York, New York

French publisher Maurice Girodias has encountered another snag in his attempt to publish a paperback novel entitled *President Kissinger.* Girodias, who became famous for publishing such books as Henry Miller's *Tropic of Cancer,* said that the Kable News Co. refused to distribute the new book because of two romantic passages involving the hero–a fictional secretary of state named Henry Kissinger who becomes U.S. President. Reported in: *Washington Star-News,* June 12.



U.S. Supreme Court rulings

In addition to U.S. Supreme Court rulings in cases involving obscenity (reported elsewhere in this issue), in the last weeks of June the high court handed down a number of opinions affecting First Amendment rights.

The Court:

• Invalidated Florida's "right of reply" statute that granted political candidates a right to equal space to answer criticism and attacks on their records by a newspaper. Writing for the unanimous Court, Chief Justice Burger said that the 1913 statute "fails to clear the barriers of the First Amendment because of its intrusion into the function of editors." Noting that a newspaper is more than "a passive receptacle or conduit for news, comment, and advertising, Chief Justice Burger declared that the "decisions made as to limitations on the size of the paper, and content, and treatment of public issues and public officials–whether fair or unfair–constitutes the exercise of editorial control and judgment." The Court concluded that governmental regulation of this "crucial process" cannot be exercised in manner consistent with First Amendment guarantees of a free press. (*Miami Herald Publishing Co.* v. *Tornillo,* decided June 25.)

• Ruled that a publisher or broadcaster of defamatory falsehoods about an individual who is neither a public official nor a public figure may not claim protection against liability for defamation on the ground that the defamatory statements concern an issue of public or general interest. In 1968 a Chicago policeman named Richard Nuccio shot and killed a youth whose family subsequently retained attorney Elmer Gertz to represent them in civil litigation against the policeman. In 1969 the John Birch Society's *American Opinion* published an article under the title "FRAME-UP: Richard Nuccio and the War on Police." Included in the article was a photograph of Gertz and a caption under it: "Elmer Gertz of the RED GUILD Harasses Nuccio." Justice Powell, writing for himself and Justices Stewart, Marshall, Blackmun and Rehnquist, said, "However pernicious an opinion may seem we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues." Justice White, who dissented, said the majority altered "in important respects the prevailing defamation law in all or most of fifty states." (*Gertz* v. *Robert Welch,* decided June 25.)

• Held that a municipal policy that bans political advertising on vehicles of a city transit system does not violate the free speech rights of a political candidate. Justice Blackmun, in whose opinion Chief Justice Burger and Justices White and Rehnquist joined, said, "Were we to hold the contrary, display cases in public hospitals, libraries, office buildings, military compounds, and other public facilities immediately would become Hyde Parks open to every would-be pamphleteer and politician. This the Constitution does not require." Justice Douglas, who concurred in the judgment of the Court, said that "if a bus is treated as a newspaper, then, as we have recently held . . . the owner cannot be forced to include in his offerings news or other items which outsiders may desire but which the owner abhors." (*Lehman* v. *City of Shaker Heights,* decided June 25.)

• Held that a ban on face-to-face interviews violates the First Amendment rights of neither prisoners nor jounalists. Justice Stewart, joined by Chief Justice Burger and Justices White, Blackmun, and Rehnquist, said that "in light of the alternative channels of communication that are open to prison inmates, we cannot say on the record in this case that this restriction on one manner [face-to-face interviews] in which prisioners can communicate with persons outside of prison is unconstitutional." With regard to journalists, the Court said that it could not suggest "that the Constitution imposes upon government the affirmative duty to make available to journalists sources of information not available to members of the public generally." (*Pell* v. *Procunier,* decided June 24.)

• Found that the policy of the Federal Bureau of Prisons prohibiting personal interviews between reporters and individually designated inmates does not deny the press access to sources of information available to members of the general public. Reversing lower courts, Stewart said that the experience of the Bureau suggests that the interest of the press is often "concentrated on a relatively small number of inmates who, as a result, [become] virtual 'public figures' withing the prison society and gain a disproportionate degree of notoriety and influence among their fellow inmates." (*Saxbe* v. *Washington Post Co.,* decided June 24.)

• Declared that a prisoner's First, Sixth, and Fourteenth

Amendment rights are not infringed when mail from his attorney is opened in his presence. Writing in an opinion joined by Chief Justice Burger and Justices Stewart, Blackmun, Powell and Rehnquist, Justice White said, "As to the ability to open [attorney-prisoner] mail in the presence of inmates, this could in no way constitute censorship, since the mail would not be read. Neither could it chill such communications since the inmate's presence insures that prison officials will not read the mail. The possibility that contraband will be enclosed in letters, even those from apparent attorneys, surely warrants prison officials in opening the letters." (*Wolff* v. *McDonnell,* decided June 26.)

• Ruled six to three in an unsigned opinion that the state of Washington could not stop a Seattle student from expressing his opinion by affixing such items as peace symbols to his privately owned flag flown on his own property. The Court said that "given the protected character of his expression and in light of the fact that no interest the State may have in preserving the physical integrity of a privately-owned flag was significantly impaired on these facts, the conviction must be invalidated." (*Spence* v. *Washington,* decided June 25.)

• Held that articles of the Uniform Code of Military Justice that punish conduct unbecoming an officer and all disorders and neglects to the prejudice of good order and discipline in the Armed Forces do not infringe on First Amendment rights. Howard Levy, a physician and former captain in the Army who in 1966 expressed his opposition to the war and both vowed not to go there and urged other military personnel to refuse service there, charged that Article 133 of the Uniform Code, which punishes a commissioned officer for "conduct unbecoming an officer and gentleman," and Article 134, which punishes "all disorders and neglects to the prejudice of good order and discipline in the Armed Forces," infringed on rights protected by the First Amendment. Justice Rehnquist said that conduct of a "commissioned officer publicly urging enlisted personnel to refuse to obey orders which might send them into combat, was unprotected under the most expansive notions of the First Amendment." (*Parker* v. *Levy,* decided June 19.)

Other rulings

In another five-to-four vote, handed down July 25, the Court let stand a New York Court of Appeals decision that the newspaper *Screw* is obscene. *Screw,* one of the largest of the U.S. newspapers devoted to sex, figured in one of the three obscenity cases the Court dispensed with at the end of a lengthy term.

Justices Brennan, Stewart and Marshall wanted to hear the case and decide the constitutionality of New York's obscenity law. Justice Douglas, who has long opposed all obscenity laws, wanted to reverse the state court immediately.

In two other cases, the Court dismissed a second appeal in bookseller Marvin Miller's battle to overturn California's obscenity law, and refused for a second time to review a ruling against a Georgia theather for showing obscene films.

obscenity law

Los Angeles, California

Ruling on a case involving the seizure by Orange County officials of four copies of the film *Deep Throat,* a three-judge federal panel struck down California's obscenity statute as it applies to both motion picures and printed material. The unanimous decision of the panel of judges, who heard arguments on the unconstitutionality of the statute submitted by Freedom to Read Foundation Trustee and Attorney Stanley Fleishman, ruled that the statute could not pass constitutional standards because it did not specifically define what types of sexual activity should be prohibited in books and movies.

The decision immediately prompted a dispute among California officials. "The law dictates that we hold in abeyance our pending prosecutions," said Joseph P. Russoniello, San Francisco's assistant district attorney who handles obscenity prosecutions. Arlo Smith, an assistant attorney general who directs state-wide obscenity prosecutions, disagreed. "The federal court ruling is binding only on those parties [in the case] and is not binding on any other California courts," Smith stated.

Los Angeles County Sheriff Peter J. Pitchess urged officials of Los Angeles County and all of its cities to pass local ordinances prohibiting obscenity. "The net result of this latest ruling may be a greater control of the 'fast buck pornographers' who have made a farce of our constitutional guarantees solely for personal gain," Pitchess said. He argued that invalidation of the state statute made possible local ordinances that were previously preempted by the state law.

Orange County officials vowed to appeal the three-judge decision directly to the U.S. Supreme Court. A spokesman for California Attorney General Evelle Younger announced the intention of the state to join the Orange County officials in their appeal. Reported in: *Los Angeles Times,* June 5; *San Francisco Chronicle,* June 6; *New York Times,* June 10; *Los Angeles Daily Journal,* June 12.

Idaho Falls, Idaho

Last Tango in Paris played to packed houses in Idaho Falls after a temporary restraining order against exhibition of the film was declared void by Seventh District Court Judge Boyd Thomas. The order was vacated because Idaho Falls City Attorney Arthur Smith failed to produce supporting evidence against the film.

The subsequent trial in Judge Thomas's courtroom was Idaho's first district court trial under the state's new obscenity law. Although it was expected that the decision

of the court would give an indication of local community standards in Idaho, the trial resulted in a hung jury. Reported in: *Idaho Falls Post-Register,* June 21.

New Orleans, Louisiana

Louisiana's Fourth Circuit Court of Appeals in a two-to-one decision lifted an injunction forbidding sale of obscene books at a Tulane Avenue store operated by Excaliber Books Inc. Judges Ernest N. Morial and Patrick M. Schott invalidated an injunction granted July 13, 1973 under the abatement of public nuisances act. Judge Morial noted that "this statute was specifically declared unconstitutional by our Supreme Court" (see *Newsletter,* March 1974, p. 34).

Judge Schott added: "While it is crystal clear to anyone that the material described in plaintiff's petition and in the trial judge's reasons for judgment in this case is unmitigated filth . . . the fact remains that the plain wording of this injunction depends upon the existence of such a legal definition [of obscenity] and no such viable definition now exists in our law." Reported in: *New Orleans Times-Picayune,* May 21.

Detroit, Michigan

Six theaters that were closed in early May by Wayne County Circuit Court Judge Thomas J. Foley reopened May 10 after the Michigan Supreme Court voted five-to-one to allow the movie houses to continue operations while the local court order remained on appeal.

Films shown at the theaters, including *Deep Throat* and *The Devil in Miss Jones,* were declared obscene by Foley and an advisory jury. The judge subsequently declared the theaters "public nuisances" and ordered them closed and their equipment sold. Reported in: *Boxoffice,* June 24.

Jefferson City, Missouri

The Missouri Supreme Court reaffirmed an October 1973 opinion upholding a Kansas City ordinance prohibiting the exhibition of obscene films. The case was appealed from Division 1 of the Supreme Court to the seven judges sitting as a body

In three cases defendants challenged the trial court's denial of a motion to suppress allegedly obscene films confiscated by police without either a warrant or a prior hearing. The Supreme Court said the Kansas City ordinance was constitutional and the convictions valid in light of the June 1973 U.S. Supreme Court decision. The ordinance permits police officers to confiscate allegedly pornographic material and to make arrests on the basis of their own determination.

Dissenting Judge Robert E. Seiler said the Kansas City ordinance was unconstitutionally vague because of its attempt to incorporate by reference all new U.S. Supreme Court rulings on obscenity. Seiler added: "The constitutional protection of freedom of speech is aptly expressed by the converse of this statement, 'freedom extends to where another man's nose begins.' We defeat the spirit of this contitutional provision by deciding that the state may dictate the material an adult individual may purchase and the films he may see. . . ." Reported in: *St. Louis Post-Dispatch,* June 24.

Beaumont, Texas

Two Films, *Cousin Pauline* and *Coming Through the Window,* were ruled obscene by County Court Judge George Buford; subsequently, criminal charges were lodged against the Beaumont theater manager and projectionist who exhibited them.

During the course of the trial expert testimony was given by M. Dwayne Smith, sociology professor at Lamar University. Concerning the two films, Smith said, "Given recent research into the habits of Americans, [the films] do not extend beyond customary limits of candor." He cited showings of similar films in Houston and audience demands for such material. Reported in: *Beaumont Enterprise,* June 20.

Wichita Falls, Texas

In the first injunction of its type in Wichita County, District Court Judge Temple Driver granted an injunction against Eros Threatre to "abate a public nuisance" and to enjoin the theater "from any future commercial exhibition of obscene material. . . ."

The injunction was sought by two attorneys acting as private citizens. In granting the injunction, Judge Driver said: "I am finding that the plaintiffs have proven their allegation that this Eros Theatre has violated the Texas obscenity laws by habitually displaying or commercially exhibiting obscene materials." Driver said he also found that "in accordance with the recent U.S. Supreme Court decision of *Miller* v. *California* that the movie shown to me and the ones in the other exhibits that have been shown by the Eros Theatre for a period exceeding three years . . . have habitually violated the Texas obscenity statutes . . . ."

Driver told reports that to his knowledge no similar suit had ever been tried "anywhere in the state of Texas before." Reported in: *Wichita Falls Times,* May 17.

Milwaukee, Wisconsin

A three-judge federal panel ruled that the Wisconsin criminal obscenity statue as now interpreted may not be applied retroactively. In an opinion written by Judge Myron L. Gordon, the court ruled contrary to a decision of the Wisconsin Supreme Court and said that the obscenity statute "as construed prior to May 8 was unconstitutional and that prosecutions for conduct occurring prior to that date are unconstitutional as violative of the due process requirements of fair notice."

The federal court decision referred to a state court opinion that became effective May 8. That opinion requires

state prosecutors to show that challenged works, taken as a whole, lack "serious literary, artistic, political or scientific value." Reported in: *Milwaukee Sentinel,* June 19.

obscenity convictions

Rockford, Illinois

Ray S. Hanna, aged 75, was found guilty of seven violations of the Illinois obscenity statute for possession of obscene films. Rockford police had seized the films during a raid on the bookstore in which Hanna worked as a clerk.

Hanna's was the first arrest made in Winnebago County since the U.S. Supreme Court's rulings of June 1973. Hanna faces a possible sentence of one year in jail and a fine of $1,000. Reported in: *Rockford Morning Star,* July 11.

Akron, Ohio

The Ninth District Court of Appeals of Ohio upheld pornography convictions against operators of an Akron theater. Retired Judge Oscar Hunsicker, joined by Retired Judge Arthur Doyle and Visiting Judge Ralph Cole, cited recent court rulings which "go a long way to give a few rights to the long-suffering public, who have constantly been beseiged by obscenity, as have the citizens of this community by the so-called adult theater. . . ."

Hunsicker characterized the operation of the Akron theater, as "a persistent, repeated, and continuous commercial exploitation of sex by persons who, by their devious conduct, show a nefarious desire to destroy rather than to construct."

Hunsicker called the two films which prompted Akron officials to go to court "displays of vulgar, indecent, and revolting acts of hard-core pornography" that do not have "one iota of redeeming social, cultural or artistic value." The films were *Virgin Hostage* and *Nut House.* Reported in: *Akron Beacon Journal,* June 19.

Cincinnati, Ohio

The First District Court of Appeals of Ohio upheld a 1972 Hamilton County Common Pleas Court obscenity conviction of the owner of a Cincinnati bookstore and one of his clerks. They were convicted by a jury of eight men and four women for sale of a book, *The New Recruit,* and a plastic model of a penis. The items were sold to an investigator for the county prosecutor.

The Court of Appeals opinion, signed by Judges Otis R. Hess, Raymond E. Shannon, and George H. Palmer, state that the panel disagreed with arguments that the book and the object could not be ruled obscene under contemporary community standards. The judges stated, after reviewing the book and the object, that the "determination of their obscenity was supported by substantial credible evidence." Reported in: *Cincinnati Enquirer,* June 25.

special report: "Deep Throat"

The exhibition of sexually explicit materials to consenting adults in the United States is an uncertain and often dangerous undertaking. Many are puzzled by this fact, but that it is a fact there can be no doubt.

The compilation below is based on a selection of the reports received by the editors during the months of June and July. All of the reports concern one movie, *Deep Throat.*

California

Beverly Hills Municipal Court Judge Leonard Wolf dismissed obscenity charges against two West Hollywood theater operators who showed *Deep Throat.* The judge acted on a recommendation of the prosecutor, Gerald Haney, who observed that an earlier trial in the same case had ended in a hung jury. He noted that defendants in two other trials in Los Angeles County were acquitted and said there was no reasonable possiblity of getting a different verdict in Beverly Hills.

Colorado

Operators of a Denver theater were fined $300 each and given suspended thirty-day sentences by County Judge Robert E. Cummins. Cummins found them guilty of continued showing of an obscene film, *Deep Throat.* "It's just utter filth from beginning to end," the judge said. In his view there was "no question" that the film is "hard core pornography."

Florida

The Florida Supreme Court upheld an obscenity prosecution for showing *Deep Throat* and ruled that Florida's 1973 obscenity law is constitutional with clear language that bans the showing of certain sex acts. The high court's action cleared the way for the felony prosecution of St. Petersburg projectionist Sal Auippa for showing *Deep Throat* in Pinellas County.

Georgia

The operator of an Atlanta theater where *Deep Throat* had a lengthy run in 1973 was sentenced to two years in prison and fined $2,000. Arthur Sanders Jr. was found guilty by a jury of four women and one man who deliberated less than half an hour in Fulton County Criminal Court.

Maryland

Ruling on a ban imposed by the Maryland Board of Motion Picture Censors, whose members had unanimously refused to license *Deep Throat,* Circuit Court Judge James W. Murphy ruled that the movie is unfit for legal exhibition anywhere in Maryland. Murphy called the movie an "unartistic" exhibition performed by persons "whose only talent was their ability to overcome any feelings of decency or morality." Commenting on the testimony of two

witnesses who said that most persons patronizing the movie would not be offended, Judge Murphy said: "That there exists a small coterie of pornography fans who seek out such entertainment does not necessarily mean that this particular form of recreation is most people's cup of tea."

New Hampshire

Fourteen state troopers and a German shepherd swooped down on a Grafton County theater and seized prints of *Deep Throat* and arrested the theater's owner, John Eames. Eames, a lawyer, is also Grafton County Attorney and hence the highest ranking law enforcement officer in the area. Governor Meldrim Thomson Jr. ordered the state attorney general "to raid every theater in the state if they make an effort to show the film."

New York

District Attorney Edward C. Cosgrove obtained a court order banning the showing of *Deep Throat* at a Buffalo theater and announced that warrants for the arrest of theater personnel would be served. City Judge Julian F. Kubiniec viewed the film and found reasonable cause to believe it was obscene.

Ohio

The Ohio Supreme Court refused to review an Eighth District Court of Appeals decision favoring the operators of a Cleveland theater that showed *Deep Throat.* A Cuyahoga County Common Pleas Court had found the film obscene, but the appellate court reversed the decision, holding that the trial court erred in not allowing a defense motion to dismiss the case.

In Toledo, however, the Sixth District Court of Appeals ordered a theater closed and its contents sold following successful actions brought in suits involving exhibitions of *Deep Throat,* which was found obscene in a lower court.

South Dakota

A Sioux Falls jury of eight men and four women decided that *Deep Throat* is not obscene and cleared of all charges operators of the Mini-Kota Art Theatres Inc. and Studio One, where *Deep Throat* played for eight weeks in March and April. Assistant City Attorney Duane Anderson, who prosecuted the case, reacted: "You never expect to get beat on a deal like this, but the jury viewed the film and made its own dicision based on their instructions."

Texas

A forty-seven-year-old ticket taker at the Capri Theater in Fort Worth was fined $500 and sentenced to thirty days in jail following a conviction for his participation in a showing of *Deep Throat.* One of the six jurors said that she could not "see how that movie could add to the quality of life for anyone."

In San Antonio, members of the vice squad confiscated copies of *Deep Throat* from the Fiesta Theater and charged the theater manager and ticket taker with commercial obscenity. Justice of the Peace Fred Clark, who viewed the movie and held an adversary hearing, found the movie obscene.

A municipal court hearing held in Dallas to determine the obscenity of *Deep Throat* concluded with a hung jury. Municipal Judge George Orndoff dismissed the six-member jury after they reported they were unable to deliver a unanimous verdict. However, Judge Orndoff said he would probably rule the movie obscene on his own "since I couldn't get a consensus from the jury."

Utah

A crowd applauded Salt Lake County vice officers as they seized copies of *Deep Throat* from a theater in Magna. The action followed a ruling by Judge Maurice D. Jones, who held that movie "went substantially beyond customary limits of candor in its description or representation of sexual activity."

And finally, a charge of sexism . . .

Three officers of the Buffalo Chapter of the National Organization for Women, aided by the New York Civil Liberties Union, asked the New York Supreme Court to force a Buffalo theater to remove its "for men only" sign and admit women to showings of *Deep Throat.* The manager of the theater, who received a jail sentence on contempt charges for showing the picture earlier, said the males-only policy was adopted in response to "complaints from neighbors offended at seeing long lines of women waiting to see the movie." He was ordered to show cause why women should be excluded.

the press

Long Beach, California

A new Long Beach ordinance banning newspapers with cover pictures of nudes from sidewalk vending machines was ruled constitutional by Superior Court Judge Roy J. Brown. The American Civil Liberties Union, which won a court ruling against a similar Los Angeles ordinance (see below), had filed suit challenging the law as a violation of the First Amendment.

However, a second part of the ordinance which would have outlawed the sale of "harmful matter" to minors was struck down on technical grounds.

Judge Brown, who took an active part in the debate between attorneys, said: "It seems strange that people can be prohibited from smoking in certain areas because the smoke is unpleasant and offensive to others in the same place . . . and yet the government is powerless to prevent the kind of annoyance that comes from having to look at pictures that are repulsive, indecent."

The American Civil Liberties Union announced it would immediately appeal Judge Brown's decision. Reported in: *Long Beach Press-Telegram,* July 17.

Los Angeles, California

The City of Los Angeles was enjoined from enforcing a month-old ordinance banning nudity in publications sold in sidewalk newsracks. Superior Judge Campbell M. Lucas

issued a preliminary injunction at the request of the American Civil Liberties Union. His ruling placed the regulation in limbo until the civil suit goes to full trial, probably in two or three years.

The suit was filed by the ACLU to stop misuse of public funds to enforce an unconstitutional ordinance. Los Angeles City Attorney Burt Pines warned that the ordinance might be unconstitutional when it was adopted by the city council May 2 and signed by Mayor Tom Bradley a week later (see *Newsletter*, July 1974, p. 81).

Judge Lucas stated that the total ban on nudity appeared unconstitutionally overbroad. He said ACLU attorney Richard Jacobson cited as an excellent example publication of the painting *Venus Wounded by a Thorn* on page one of the *Los Angeles Times*. Reported in: *Los Angeles Times*, June 11.

Los Angeles, California

Los Angeles Times court reporter William Farr was found in contempt of the county grand jury and in contempt of court for refusing to answer six questions about the source of a story he wrote on the Charles Manson murder clan in 1970. Superior Court Judge Raymond Choate issued the contempt citation and ordered Farr to return to court for sentencing.

One week later, on July 2, the contempt order against him was vacated.

This was the second contempt citiation for Farr, who served forty-six days in jail on an open-end sentence imposed by Superior Court Judge Charles H. Older before he was released pending appeal. Reported in: *Chicago Sun-Times*, June 28; *Editor & Publisher*, July 6.

Vernon, Connecticut

The *Vernon Journal Inquirer* won its law suit against the towns of Enfield for evicting one of its reporters, Dennis Hogan, from a January 7 meeting of the town council. State Referee Howard W. Alcorn ruled July 15 that Hogan, who was arrested when he refused to leave the session, was correct in asserting his right to remain in attendance until a vote was taken.

A Connecticut statute prohibits a town council from holding closed sessions without taking a vote. Reported in: *Editor & Publisher*, July 20.

Honolulu, Hawaii

A ban on the release of police information to reporters, recently enacted by the state legislature, was lifted under a preliminary injunction issued by Circuit Court Judge Norito Kawakami. The ruling came in a suit filed by the *Honolulu Star-Bulletin*, which was joined by KGMB-TV, KITV-TV, KHON-TV, KHVH radio, and the AP and UPI news services.

An attorney for the *Star-Bulletin* argued that the news media would have been "unreasonably restricted in their ability to gather and disseminate newsworthy information to the public." Judge Kawakami ordered police not to enforce a new section of the law "in a manner which restricts the flow of information to the news media in a degree inconsistent with the manner in which such information was obtainable by said media prior to the amendment of said section."

The new law, Act 45, forbad release of any information concerning an arrest prior to its being made public in court. Reported in: *Honolulu Star-Bulletin*, June 21

New Orleans, Louisiana

A New Orleans criminal court judge ordered members of the press not to report open court testimony given during a pretrial hearing in a rape-murder case. Judge Oliver P. Schulingkamp in addition prohibited publication of interviews with witnesses, criminal records or confessions of the defendants unless they were made a part of the court record, or any editorial comment during the trial that might influence the court, witnesses, or the jury.

New Orleans newspapers and WVUE-TV tried without success to get the Louisiana Supreme Court to overturn the order. Federal courts, including the Court of Appeals for the Fifth Circuit, refused to hear the case, holding that it should have been appealed directly to the U.S. Supreme Court. Reported in: *New York Times*, July 15.

Lowell, Massachusetts

A Middlesex Superior Court judge upheld the right of two newsmen from the *Lowell Sun* to refuse to answer questions before a grand jury investigating alleged political corruption and bribery. *Sun* city editor Kendall Wallace and reporter Frank Phillips pleaded both the First and Fifth Amendments as grounds for refusal to divulge sources.

Although Judge Joseph Ford rejected the newsmen's plea of the First Amendment, citing the U.S. Supreme Court's *Caldwell* decision, he stated that they had a Fifth Amendment right to refuse to answer questions that might result in criminal indictments against them for possible obstruction of justice.

In February 1974 the two newsmen wrote an investigative three-part series in which they exposed an extortion scheme and implicated several Dracut, Massachusetts town officials. At the time, the district attorney said there was no evidence in the case. Reported in: *Editor & Publisher*, July 13.

schools

Cincinnati, Ohio

The U.S. Court of Appeals for the Sixth Circuit reversed a lower court decision which held that a Reynoldsburg (Ohio) high school principal acted legally in stifling an edition of the school newspaper. The court ruled that the U.S. District Court in Columbus "clearly erred" in dismissing a suit brought by students against Principal Joseph

Endry, and ordered the case returned to the district court for trial.

In November 1972 Endry cancelled an edition of the school paper because, he said, he feared an editorial in it would spark student violence. The article, "Where Are You Mr. H.S. Athlete?" contended that the school's athletes were breaking training rules by staying out late and drinking liquor. Coaches were accused of failing to discipline the offenders. Reported in: *Columbus Dispatch,* June 26.

Dallas, Texas

Suspensions and disciplinary actions against black students in the Dallas Independent School District have been caused by "institutional racism," according to a ruling by U.S. District Court Judge Sarah Hughes. School Superintendent Nolan Estes used the same phrase in admitting before the court that racial prejudice exists in the school. The judge ordered the school district to put into effect by September 1974 an affirmative program of "institutional and structural changes" to combat racism.

Earlier this year Dallas school officials attempted to censor school programs on the grounds that the inclusion of black speakers and works by blacks would promote racial disturbances (see *Newsletter,* May 1974, p. 62). Reported in: *Education USA,* June 24.

Richmond, Virginia

In a ruling that favored freedom of the press, the Virginia Supreme Court ruled that a Charlottesville judge had no authority to close court hearings to the press, to deny reporters access to court records, or to impose gag rules on participants. In an unsigned opinion, the high court ruled that Albemarle County Circuit Court Judge David F. Berry lacked authority to bar reporters from covering courtroom hearings relating to grand jury probes into allegations of misconduct by county officials.

Berry's ruling was contested by the *Charlottesville Daily Progress,* which contended that the judge's orders violated constitutional guarantees of freedom of the press and Virginia's Freedom of Information Act. The Supreme Court did not rule on the constitutional issues in the case, but did find that Berry lacked statutory authority for his actions and said, "Nor is there in the record anything justifying such actions under his inherent powers."

Berry's ruling came after Albemarle County Attorney George St. John filed a motion to quash the probe of county officials on the grounds that some of the grand jurors were biased against the county officials that they were investigating. Reported in: *Washington Star-News,* June 20.

Abingdon, Virginia

Objecting to contemporary fiction in a volume of *The Responding Series* assigned to their school children, a group of Washington County parents asked for a court ban of the work. Ruling on their complaint, Circuit Court Judge J. Aubrey Matthews said he personally agreed with the parents who were offended by some of the words in the textbook, but he added that his court had no authority to order removal of the state-approved series.

After noting that the school board had allowed parents objecting to the text to place their children in classes using other works, Matthews stated that the question was "not whether [the board] acted wisely or unwisely, but did they act within their authority."

An attorney representing the parents argued vainly that the school board had exceeded its authority by denying citizens freedom of religion. The writings teach other religions, degrade God, preach immorality, and use obscenities, attorney Bobby Sproles said. Reported in: *Roanoke Times,* June 6.

miscellany

Macon and Augusta, Georgia

Federal judges in Macon and Augusta ruled that those cities must permit on city buses political advertisements bought by J.B. Stoner, a self-styled racist and candidate for lieutenant governor. The judges declared that Stoner's First Amendment rights were violated when city officials ordered the ads removed. A third suit filed against the city of Columbus was dropped when U.S. District Court Judge J. Robert Elliott ruled that Stoner failed to show that the city officials named in the suit were responsible for removal of his ads.

Ruling in the Macon case, U.S. District Court Judge Wilbur Owens Jr. found that Mayor Ronnie Thompson had established himself as a censor. Owens scolded the city council for continuing "to permit the defendant mayor [Thompson] to regulate by means of his unabashed dictates." "Lest we become vassals of men rather than souls of law, we conclude that the Fourteenth Amendment prohibits this mayor from being crowned a censor-in-chief," Owens said.

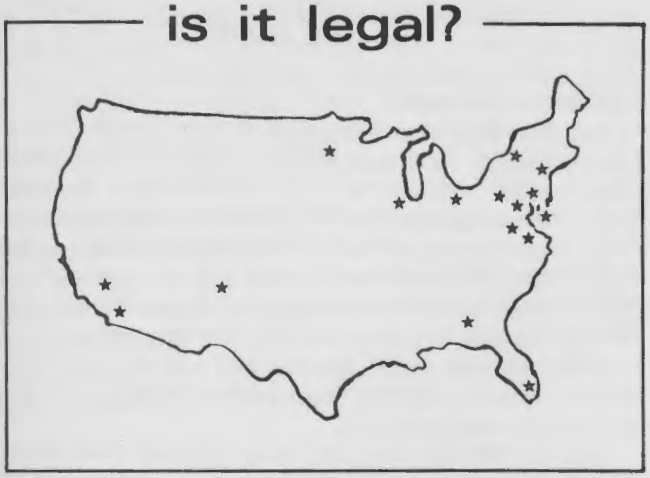
U.S. District Court Judge Anthony Alaimo rejected the contentions of Augusta City Attorney Sam MacQuire, who attempted to prove that Stoner's ads posed a "clear and present danger" to Augusta. Several prominent blacks from Augusta testified in court that the ads generated a negative feeling in the city's black community. Reported in: *Atlanta Constitution,* June 11.

Cambridge, Massachusetts

A Middlesex County grand jury dismissed indictments of adultery and lewdness against two players in *Sweet Eros,* who had been charged by Cambridge police with engaging in sexual intercourse on a theater stage at a rehearsal on May 21.

(Continued on page 138)

is it legal?



in the U.S. Supreme Court

Before it recessed in July, the U.S. Supreme Court agreed to review:

• A decision by the U.S. District Court in Washington which outlawed sections of the Federal Campaign Finance Act of 1971. Ruling on a case involving the *New York Times* and the American Civil Liberties Union, a three-judge federal panel declared unconstitutional a law that required candidates for public office to submit statements to newspapers in which they want to publish ads declaring that the publication will not cause them to exceed statutory expenditure limits.

• The constitutionality of a Virginia law prohibiting the advertising of abortion services. The U.S. Supreme Court vacated a Virginia Supreme Court judgment upholding the conviction of a Charlottesville editor for publishing an ad on abortion services and remanded the case to the Virginia court after the 1973 decision declaring criminal prohibitions of abortion unconstitutional. After the Virginia Supreme Court affirmed its earlier decision, the editor decided to appeal again to the U.S. Supreme Court (see *Newsletter*, July 1974, p. 89).

In other action before the high court, the Times Picayune Publishing Corporation of New Orleans asked Justice Lewis F. Powell Jr. to issue a stay order suspending limitations on reporters ordered by State Criminal Court Judge Oliver P. Schulingkamp, whose press restrictions were upheld by the Louisiana Supreme Court. Among the issues in the case referred to Justice Powell was an order to the press not to report on testimony heard in the hearing of pretrial motions until after the selection of a jury. Reported in: *Editor & Publisher*, July 20.

obscenity law

Montgomery, Alabama

An Auburn University student expelled last spring after his arrest for possession of pornographic material asked a U.S. District Court to order his reinstatement. Robert Prongay, who won a temporary restraining order that allowed him to finish the spring quarter, seeks a ruling that would permit him to remain in school.

Prongay was arrested May 14 by Auburn police officials who said they found pornographic movies, photos, and tape recordings in his room in a campus dormitory. He was expelled after the university's discipline committee ruled that he had violated a section of the school code that prohibits "lewd, indecent or obscene conduct."

Prongay contends that the expulsion deprives him of his constitutional rights, including "a First Amendment right to possess obscene materials in one's own residence." Reported in: *New York Daily News*, June 8.

Burnsville, Minnesota

Burnsville Mayor Alfred Hall's efforts to push through his city council an ordinance banning magazines with nudes on their covers and lingerie shows in bars still has not met with success. Although members of the council agree that they do not "advocate entertainment or activity which is generally obscene or lewd or nude," they awaited expressions of opinion from Burnsville residents on restrictions on freedom of choice.

Council member Mary Modjeski admitted that "you'd have to be against the American flag" to oppose Hall's recommendations to ban sex acts in nightclubs, but she added that she did not think council members should "dictate everything to their community." Reported in: *Variety*, June 12.

The July 1974 *Newsletter* (p. 87) erroneously located Burnsville—a Minneapolis suburb—in Wisconsin.

Elizabeth, New Jersey

Thirty Union County store owners and clerks were indicted by a grand jury on charges of selling obscene materials to juveniles. Charges against the defendants were filed after raids in various municipalities.

The arrests were made after juveniles who were recruited by police purchased allegedly obscene materials in numerous "corner" stores. Reported in: *Elizabeth Journal*, June 20.

Flemington, New Jersey

A planned attack on pornography in Raritan Township was halted by a directive from Michael R. Imbriani, acting prosecutor for Hunterdon County, who pointed out that municipalities in New Jersey have no power to regulate pornographic material in any form.

The directive, which ended plans by Township Committeeman Donald Mulligan to introduce an ordinance regulating the distribution of pornography, cited an appellate court decision which ruled against municipal control of obscene materials. A May 14 decision of the New Jersey Supreme Court declining review made the appellate

court decision final. Reported in: *Boxoffice,* July 1.

Albuquerque, New Mexico

Voters in Albuquerque's runoff election approved a referendum directing the governing body of the city to "consider and make a good faith effort to enact a comprehensive ordinance prohibiting the sale, distribution or exhibition of obscene and/or pornographic matter to adults." At only two of the city's sixty-three polling places, both in the downtown area, was the referendum defeated.

Harry Kinney, who in the election became the city's first mayor under its new charter, said in the course of his campaign that he favored a "reasonable" ordinance within the guidelines of the U.S. Supreme Court. A former city manager who was defeated in the mayoral race declined to take a stand on the pornography issue other than to say he would support the will of the people.

The issue arose in April when then-mayoral candidate State Senator John Irick said if elected he would fight for passage of an anti-obscenity ordinance.

Of the 44,965 persons voted on the referendum question, 29,077 favored it. Reported in: *Albuquerque Tribune,* June 19.

Cincinnati, Ohio

United Artists Corporation asked the U.S. District Court in Cincinnati to declare that the motion picture *Last Tango in Paris* is not obscene and therefore does not violate Ohio laws. United Artists also asked the court to enjoin Hamilton County Prosecutor Simon L. Leis Jr. from preventing showings of the movie in Hamilton County.

The film was shown at a Cincinnati theater until Leis threatened to take the theater owner, Roy B. White, before a grand jury if he did not voluntarily agree to stop showing it. The suit alleges that White refused to show the movie since receiving the threat from Leis because "he is afraid of losing his reputation in the community due to Mr. Leis's threats of criminal charges." Reported in: *Cincinnati Post & Times-Star,* June 20.

Providence, Rhode Island

The Providence Bureau of Licenses, which has established specific guidelines for sexually explicit movies, denied licenses to two Providence theaters for the exhibition of six films. The Bureau filed complaints in Superior Court involving *Ride to Ecstacy, The Young, Rich and Ripe, Mrs. Barrington, Dandy,* and *Bed Bunnies.*

Referring to recent U.S. Supreme Court rulings on community standards, bureau chairman John J. Sheehan said his board has "a general feeling" of local standards.

The bureau's standards would limit the duration of a film's sexual encounter to three minutes, allow only one encounter every half hour, ban male frontal nudity, and not allow the showing of certain sex acts. Reported in: *Providence Journal,* June 7.

students' rights

Long Beach, California

A civil complaint charging that the Long Beach Unified School District unconstitutionally censored a newspaper published by students was filed in Long Beach Superior Court. The complaint asks that the court order the school district to allow distribution of the February edition of the *Rising Star,* which was banned from city high schools, and that the rules invoked in banning the paper be invalidated. Finally, the suit asks the court to erase the suspension of five students who defied the ban, and asks for a clarification of school authority over student behavior in the vicinity of school grounds.

The suit was filed by the *Rising Star*'s legal adviser on behalf of eighteen-year-old Jerry Neuberger, a Wilson high school student who edits the paper, and other students who said they were "intimidated, harassed, and threatened" by school officials when they tried to hand out the paper.

The suit alleges that a school regulation requiring approval forty-eight hours before papers are distributed imposes "prior censorship." The suit also alleges that the district's rules are vague, uncertain, and broad, and that there is no appeal procedure when school officials reject a newspaper for distribuiton. Reported in: *Long Beach Press-Telegram,* June 12.

Baltimore, Maryland

Arguing that Baltimore County school officials have no right of prior review of the contents of independent publications by students, the American Civil Liberties Union appealed on behalf of three students a U.S. District Court judge's ruling to the contrary.

U.S. District Court Judge Edward S. Northrop accepted in May the county school system's revised newspaper regulations, which permit prior review under what the judge considered constitutionally acceptable guidelines. A spokesman for the ACLU said the appeal to the higher court would confront directly the issue of prior censorship.

The students contend that school officials may properly prescribe only the time, manner, and place of distribution of their publications. Rodney Jackson and Sam Nitzberg, who were graduated this year from Woodlawn Senior High, were editors of *Today's World* and the *Lampoon,* respectively. The third student, Richard Smith, is a junior and will continue to edit the *Lampoon.* Reported in: *Baltimore Sun,* June 18.

the press

Los Angeles, California

Will Lewis, general manager of Los Angeles radio station

KPFK, was released on his own recognizance from the Federal Correctional Institution on Terminal Island on orders from U.S. Supreme Court Justice William O. Douglas. Douglas said that Lewis should be free pending decision of his appeal on grounds that an FM station is protected by the First Amendment from disclosing news sources.

On June 19 U.S. District Court Judge A. Andrew Hauk ordered Lewis held until he agreed to give a federal grand jury the original of a tape of Patricia Hearst and a letter from the Weather Underground. Hauk held that there was no confidentiality involved. Lewis stated that he did not want to turn the station into a law enforcement arm. Reported in: *Editor & Publisher,* July 20.

Washington, D.C.

The Federal Communications Commission denied the request of a *Washington Star-News* reporter to inspect the minutes of the American Telegraph and Telephone Company's executive policy committee. Disclosure of the minutes–which were furnished the FCC for record purposes in a rate-making proceeding–was opposed by the Bell System, which said that the minutes summarized highly privileged discussions.

The reporter, Stephen Aug, sought the minutes because of his interest in the Bell System's decision-making processes concerning such matters as rates.

Aug claimed right of access under the Freedom of Information Act. The FCC ruled that the information sought is specifically protected from mandatory disclosure under an exemption of the act. According to the provisions of the act, "investigatory files complied for law enforcement purposes [are exempt] except to the extent available by law to a private party." Reported in: *Editor & Publisher,* July 6.

New York, New York

The *New York Times* was barred by the New York Commission on Human Rights from running classified advertisements for employment in racially segregated South Africa. The order stemmed from a complaint filed in 1972 by the commission and various groups that charged the practice was racially discriminating against blacks.

"We do not agree with that decision," said James Goodale, executive vice-president of the Times Company. "We have not in any way discriminated as to race, color or national origin."

The *Times* immediately filed an appeal in the state supreme court. In arguments before the commission, the *Times* said that its First Amendment right to freedom of speech and freedom of the press would be violated by the order barring such advertisements. The *Times* did not deny having printed ads for jobs in South Africa, but a spokesman said "the ads, on their face, are inoffensive and do not express discrimination." Reported in: *Washington Post,* July 23.

Utica, New York

U.S. District Court Judge Edmund Port ordered Utica Mayor Edward A. Hanna to halt discrimination against employees of Utica newspapers. The federal court order was sought by Utica newspapers after Hanna ordered city department heads not to talk to reporters from the local newspapers (see *Newsletter,* May 1974, p. 56). Hanna charged Utica reporters with "inaccurate, irresponsible, and lopsided" coverage of local government.

In a counterattack Mayor Hanna filed a series of suits against the *Utica Observer-Dispatch* and the *Utica Daily Press,* charging them with harassment of the city government. Hanna also issued a ten-point set of guidelines for reporters which requires that all reporters' questions be written and signed and denies the use of cameras or recording devices at press conferences. Reported in: *New York Times,* July 4; *Editor & Publishers,* July 6, 13.

Miami, Florida

Immediately upon the U.S. Supreme Court's invalidation of Florida's "right of reply" statute *(Miami Herald Publishing Co.* v. *Tornillo,* decided June 25), Gore Newspapers Co., parent company of the *Fort Lauderdale News,* filed suit in U.S. District Court to test two other Florida statutes. The suit, filed against the state of Florida, challenges the constitutionality of a statute that requires newspapers to offer political candidates and groups involved in state, county, and municipal elections the lowest advertising rate possible. Also to be tested is a law which prohibits newspapers from publishing critical stories and information about candidates on election days.

The Gore suit argues that the 1973 laws violate freedom of the press under the First Amendment, as well as the newspapers' right of equal protection and due process under the Fourteenth Amendment. Reported in: *Editor & Publisher,* July 13.

television

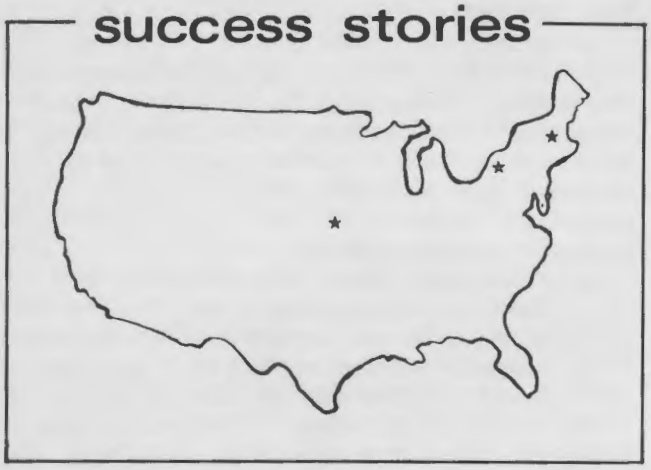
Chicago, Illinois

The son of prohibition era gangster Roger Touhy obtained a temporary federal injunction against the Columbia Broadcasting System to halt the broadcast of the movie *Roger Touhy, Gangster.*

The younger Touhy, who said he was a construction worker, appeared before U.S. District Court Judge Hubert L. Will. He stated that the movie was "not based on my father's life at all, and is loosely put together." He also said that Warner Brothers, which made the movie in 1944, had agreed to destroy the film and paid his father "substantial damages" in an out-of-court settlement.

A spokesman for CBS said he hoped that the film could be shown after the hearing on a permanent injunction set to be heard by U.S. District Court Judge Thomas Lynch. Reported in: *Chicago Tribune,* July 17.

success stories



Spencer, Iowa

The director and the trustees of the Spencer Public Library were informed by the city attorney that complaints had been received in his office concerning the library's making available to all patrons the illustrated edition of *The Joy of Sex.* After reviewing the complaints and the possibility of legal action under Iowa's new obscenity law—which applies to dissemination to minors and exempts educational materials in libraries—the library board voted unanimously to keep the work in circulation until such time as it may be found obscene in a court of law.

A timely intellectual freedom workshop conducted by the Iowa Library Association had prepared the Spencer trustees for the problem. One of the works discussed at the workshop as a potential source of complaints was *The Joy of Sex.*

Bennington, Vermont

Contrary to expectations reported in the July 1974 *Newsletter,* (p. 80), the board of the Mount Anthony Union High School voted eight to three to keep *Ms.* magazine on school library shelves, despite the wish of some parents that the feminist magazine be banned because of its "obscene" contents.

More than 450 local residents and newsmen attended the school board session called to consider the controversy over *Ms.* Some of those present called for the removal of "this kind of material" from the library and demanded cancellation of the subscription and removal of all issues from the library. Others called for expurgation of the article considered particularly offensive—an exerpt from Erica Jong's novel *Fear of Flying.* In the end, the board voted to retain *Ms.* without any alterations.

In a later action the board defeated a move to allow the subscription to expire without renewal. However, board approval was given to a resolution calling for "careful scrutiny" of the magazine by the public and the school board before any decision to renew the subscription in August. Reported in: *Bennington Banner,* June 5; *Washington Post,* June 6; *Boston Globe,* June 12.

North Syracuse, New York

A report of the North Syracuse School District's learning materials review committee was approved seven-to-one by the district's board of education. The books examined by the committee were *Flowers for Algernon, Catcher in the Rye, The Pigman,* and *Soul on Ice.* The largest number of dissenting votes (four) from the committee composed of parents, teachers, and administrators was lodged against *Soul on Ice.*

One member of the committee, outraged over the approval of *Catcher, Flowers,* and *Soul on Ice,* printed a newspaper advertisement addressed to "all parents who do not approve of dirty books in the schoolroom." Parents were asked to write for "documented proof of the salacious material in our children's school books." A response to the ad brought a two-page mimeographed compilation of exerpts from the three works. Reported in: *The Scotchman Star-News,* May 22, 29, June 5.

News Council rules on charges against AP, CBS

The National News Council dismissed charges filed against the Associated Press and CBS News.

A complaint filed by Carter Kirk, president of Select Western Lands Inc., contended that an AP article by Peter Arnett about land sales in the Southwest was inaccurate regarding statements of certain individuals who purchase land from Kirk's company. The council held that there was clear evidence that someone from AP visited the buyers and that there were no material differences between the affidavit from the individuals supplied by Kirk and the account in the AP story.

The council also dismissed charges brought against CBS News, for both documentary reports and two items aired on the CBS nightly news with Walter Cronkite.

One complaint, lodged against CBS News by two University of Chicago graduate students, concerned a documentary broadcast on January 17, 1974 dealing with the worldwide alert called by President Nixon during the 1973 Middle-East crisis. CBS was charged with "advocacy journalism" in questioning the alert, and it was contended that Dan Rather contributed to "an already existing credibility gap" by asking why it was called after presenting the facts in the documentary. The council found the program to be "legitimate journalistic inquiry on a subject of continuing public interest and controversy. Reported in: *Editor & Publisher,* July 6.

(Reality and Reason . . . from page 105)

The word "obscene" is an interesting one. Etymologically, the word is said to have derived from a Greek word meaning that which was off the scene, that is, the part of the drama or play that could not be shown upon the stage. In that sense, it is related to the phrases we use ourselves when we speak of something beyond the pale or off-limits. The problem comes, of course, when one person tries to determine for another the precise demarcation point for those limits. Here the matter gets fuzzy, so fuzzy in fact that one Supreme Court jurist said that he couldn't define hard core pronography, but he knew it when he saw it.

I wager that most of us would be happy to have our own value judgments in such matters left to ourselves. Live and let live is not a bad axiom in questions of intellectual and aesthetic taste. The rub comes when the question of minors is introduced—because adults make many things off-limits to youth. Society makes liquor and tobacco unpurchasable by them; it enforces laws requiring them to attend school and protects them from exploitation in the labor market. Society will even protect them from their parents if they are shown to abuse them or cause them harm. Society's view is a little like Wordsworth's in that children are seen as innocents and that such innocence should be protected until some chronological point when the child is no longer a child but an adult.

Somewhere in between these two points in time the maturation process is supposed to occur, and one vehicle for that process is education which involves books and reading. Now we come to the sticky part—for are there limits to a child's vicarious exposure to experience? For them, what cannot or should not be shown upon their stage? And if there are such things better left unrevealed, then who is to determine what they are: their parents, their teachers, the librarians from whose collections they borrow?

I am not a specialist in the literature of youth. All I can do is detail for you briefly some of my observations after reading some of the correspondence received by the youth divisions of ALA and some of the commentaries which have appeared in journals devoted to the concerns of youth and their books.

The limitations appear to be these:

First, offensive language: A school library supervisor writing to ALA comments:

> I realize that profanity is often a very large part of the spoken language, but to see it in print in an elementary school library book is offensive and rather shocking . . .

The book: *The Drowning Boy* by Susan Terris.

Second, candor in the treatment of sexual conduct: A classroom teacher comments:

> I do not believe a book that presents a story based on a thirteen-year-old girl's marriage to a retarded boy and includes a scene where he attempts to mate with her should be placed on library shelves with the seal of the Newbery Award on its cover . . .

The book: *Julie of the Wolves* by Jean C. George.

Third, violence: The book "appeals directly to any latent sadistic impulses in its young readers, giving explicit accounts of the wounds and blood of both man and beast."

The book: *Shadow of a Bull* by Maia Wojciechowska.

Fourth, stereotyping: "I do not feel that a distinguished award should portray policemen as 'pigs'. With all the present day feelings about policemen, a book especially a children's book, should not help to emphasize this ill-feeling."

The book: *Sylvester and the Magic Pebble* by William Steig.

Fifth, misrepresentation of racial, ethnic, and religious groups:

> The author makes false statements which are very offensive to Jews and to thinking, sensitive Christians.

The book: *The Tale of Ancient Israel* by Roger Lancelyn Green.

> America knows the wrongs of history perpetrated on minority races, and we feel that this book is a bitter comment of man's inhumanity to man. How can such a book do anything for young children, except increase the hatred and violence already carried to the extreme?

The book: *Sounder* by William H. Armstrong.

> It is beyond our comprehension how a book like this is still being published. It is biased and filled with half-truths concerning the lives of Mexican-Americans . . . We are demanding that the book be banned from all libraries supported by public monies.

The book: *Bad Boy, Good Boy* by Marie H. Ets.

Profanity, violence, sexual candor, stereotyping, and misrepresentation of ethnic, religious, and racial groups—these seem to be the principal areas of concern and all of them seem to bear on the key words that introduce this program this morning: Reality and Reason.

Is realism conveyed by a liberal sprinkling of four-letter words? Is it reasonable to expect that children can be left innocent of sexual matters when the advertising world exploits sex in almost all of the mass media? Is it rational to expect that the ghetto or the barrio can be depicted without giving some offense? These are the ponderables that will be considered this morning.

everybody's talking at me

By RICHARD H. ESCOTT, Superintendent, Rochester Community Schools, Rochester, Michigan.

The title of this program is "Reality and Reason: Intellectual Freedom and Youth." Perhaps there is a better, more melodic title for it. In contemplating what it might be, I think I hit on it: "When the Saints Come Marching

In." That's frequently the way those of us on the receiving end of trouble feel about controversy over literature.

But let's be more realistic. For openers, let's use a line from one of the country's most popular songs just a few years ago.

The theme of the movie *Midnight Cowboy* had everyone singing: "Everybody's talking at me. I don't hear a word they're sayin'." Actually, this confused man wandering through a moody America didn't know what the trouble was. A couple of years back everyone was talking at me . . . and I listened—consciously or unconsciously—and heard *everything* they were sayin'.

You see, one of the characteristics of a controversy is that there is an awful lot of reality, but very little reason. And, at times, one even has to question his own sanity. Involvement in controversy is a great deal like the old saw about about the guy who kept hitting himself on the head with a hammer.

EXTRA COPIES AVAILABLE—Readers who wish to order additional copies of this issue of the *Newsletter* (cost: $1.00 each) should write to: Order Dept., American Library Assn., 50 E. Huron St., Chicago, Ill. 60611. Payment must accompany all orders under $5.00.

Reason is a hard enough thing to find in normal times; during periods of controversy it's like trying to point one's finger at the *real* Watergate villain. Perhaps I should mention a quote from the May 1973 issue of the American School Board Journal. The article is entitled: "Banning Books: An Ancient Sport Makes a Rowdy Comeback Among School Boards." And indeed it has:

> In Ridgefield, Connecticut, a middle-aged, widowed school teacher found her dog, a pet poodle, hanging by its choke collar in a tree in her yard. In this same town, automobile tires have been slashed, a school board meeting was interrupted because of a bomb threat, 360 teachers in the school district threatened to strike, the superintendent was fired after six years on the job, and armed guards have manned the doors at public board of education meetings. Why this? The school board and the twenty thousand people of this no longer sleepy New England town are involved in a controversial current event—book banning.

An engaging little poem by Alan Gladhorn says:

> What is learning, it is a journey, not a destination.
> What is the goal, open minds, not closed issues.
> What is a school, whatever we chose to make it.

And indeed that is what a school should be, whatever we—students, teachers, librarians, administrators, and parents—choose to make it.

As many of you may well know, the Rochester Public Schools were involved in a controversy over the selection of literature for an English class on current literature at the high school level during the past three years. The book in question: Kurt Vonnegut's *Slaughterhouse-Five.* Incidently, in the history of the Rochester Schools, this was only the fourth complaint received about literary or library selections. Two occurred about fifteen years ago that had to do with Walter Clark's *Oxbow Incident* and Sinclair Lewis' *Dodsworth.* More recently, it was Claude Brown's *Manchild in the Promised Land,* and again, Kurt Vonnegut's *Slaughterhouse-Five.* Since then, we have been concerned with literature taught in a junior high school course, "Social Exiles."

During the *Slaughterhouse-Five* controversy, I remember the search for a solution carrying over to a cocktail party. That was the night I got eight different solutions to the problem. The interesting thing is that there were only seven people at the party.

My first reaction to the controversy as it emerged brought me back several years in time . . . to the movie in which Hardy with proper disdain said to Laurel: "Here's another fine mess you've gotten me into." The thought was directed toward our teachers of English.

Today the controversy that we in public education are experiencing can easily be tied to current literature. I say current literature because it was in 1957 that a well-known decision was handed down by the U.S. Supreme Court. In this decision the court determined that a book is not obscene unless it is totally devoid of all redeeming social value.

A consequence of that legal development was the proliferation of books, magazines, movies, etc., containing material undeniably obscene by older definitions but permitted to circulate because they have clear artistic or social merit. It also seems clear because of that decision that a book cannot be suppressed because part of it is obscene. The book must be judged as a whole and not on the basis of parts which may be objectionable.

The whole basis for the legal definition of obscenity in literature in the United States goes back to a British court decision in 1868. However, this definition was overturned by our Supreme Court in 1957. Since that time, hundreds of books have been attacked. Arthur Donart, an instructor at Western Illinois University, listed many of the books and the reason for the attack. *Jonathan Livingston Seagull,* for example, was attacked because it has overtones of reincarnation; the *Girl Scout Handbook* was attacked because the book was felt to be un-American; *Silas Marner* was attacked because you can't prove what that dirty old man was doing with the child between chapters; *Lady with a Dog* and *Crime and Punishment* were attacked because they were written by Russians. The *Tarzan* books, because Tarzan and Jane were never married.

So you can see, any district, and perhaps any book, can run into a problem because, as reported in the recent issue

of the *School Board Journal,* it takes only one parent offended by one book to turn a quiet community into a mob scene with the school board in the middle.

I will avoid returning to the details of our *Slaughterhouse-Five* controversy itself. Let it suffice to point out that we still see evidences of the fallout from a citizens' group which is still visible although decreasing its activity . . . to administrators who still get the quivers when the list of recommended books is submitted to the board for approval each year . . . to a librarian who has taken a sabbatical to hide in the stacks and think things over.

I should point out that we still remember the positives also. Letters and calls of support came from all over the country, reinforcing those from our community who urged us to carry on "for what is right." I also remember the words of encouragement as well as the financial assistance we received not only from local citizens but from the Office for Intellectual Freedom and the Freedom to Read Foundation–assistance which enabled us to pursue our principles in the courts and through the appeal.

Let's turn for just the next few minutes to the future, and what school administrators have to do if they are going to avoid the pitfalls *in* a controversy. You'll notice that I didn's say *avoid* controversy–I said avoid the pitfalls *in* a controversy.

That, I think, is an important consideration. I accept the fact that there will continue to be controversy, in fact its frequency is likely to increase. What we are concerned about is its intensity.

Recent developments in our country point unmistakably to increased freedom of expression in all media of communication. Books, magazines, films–and even television–reflect a lowering of barriers to expressions of artistic and social values.

Such developments tend to produce persons united in a common cause, generally that of a return to "the good old days, where right was right and wrong was wrong." Certainly, much of modern literature does pose a threat to traditional views of what is appropriate for our youth. This aspect causes–or should cause–educators and the public alike to be concerned.

But: "Should we censor?" It's a complex problem–one that has remained clouded by the shadows of intense personal feelings throughout our history.

It is also a question that presents a dilemma for the librarian, the teacher, and the school administrator. To choose only "clean" books is to ignore much that is current, timely, relevant, and artistically important. Such choosing also places the educator in the role of censor. This, I am convinced, is wrong!

Let's go back to the title of our topic: Reality and Reason. Is it reasonable to assume that because I am a superintendent I am qualified to decide what an individual should or should not read? Is it reasonable to expect me to read and put my stamp of approval on every book in our school district? Is it reasonable to expect the board of education to do this . . . or the teachers . . . or the parents? The answer to all these questions is no. And that's reality.

We educators are in an age of "accountability," and I'm all for it. But if it applies to me, then it applies to others. Look at the kids: They all–or most of them–eventually reach an "accountable age." Is it reasonable for me to say when it is achieved? No, not necessarily. In reality, only the parent and the child can say.

So, then, why shouldn't they determine whether *Slaughterhouse-Five* is appropriate reading? We should respect their decision as it applies to them.

On the other hand, that parent and youngster should not have the right to deprive others of their right to read it. This appears to be both realistic and reasonable.

My job, as I see it in this area, is to facilitate education. Like others in our profession, I am very much concerned about students as individuals. I am against making decisions for kids, but very much for helping them make their own.

Allow me to make a case for the use of objectives, Rochester style. We all know that everyone needs to have something to shoot for . . . and school districts do, too. That is why we develop district-wide goals and objectives, and monitor progress. District goals provide direction because we require individuals to develop objectives in concert with them.

But where do these goals come from? Actually, from a couple of directions. The primary source is the public. Through an advanced opinion research program, the board of education gathers information which helps pinpoint the direction in which we should be headed. Additional inputs are made in a variety of ways, from citizen committees, evaluation of previous progress, etc. Teachers and administrators also have their say. It is the board's function to sort through these inputs as we administrators, teachers and librarians temper, change or support them with our professional expertise.

Without giving you all the background on our approach to management by objectives, let me just say that this organized search for direction regularly takes place at all levels. Fortunately–or unfortunately–it's my job to orchestrate activities toward goals (and I keep remembering that when an orchestra is bad, they rarely fire the tuba player first).

What objectives do is provide a sense of direction established by educators and a participating public. And that's a very important technique for justifying what you are doing–your purpose. It is also a way to avoid controversy–or to confront it when it occurs.

Our book selection procedures are built on this foundation. They assure all the flexibility any individual could want. And they don't deny the rights of some individuals because of the desires of others.

Sure, we still have to make choices, but we make them in respect to what is required by the instructional objectives

involved. That is why we have made our procedures clear and consistent.

We feel our procedures *and* goals are based on a positive system of values which reflects today's world as perceived by society–and particularly our youth. To leave out the kids is both unreasonable and unrealistic.

Our youngsters are living in a world where change is the only constant. They need the great literature of the past, yet they are faced with demands that only the literature of today can meet.

Millions pass through this educational system without once having to search out the contradictions in their own value systems, to probe their life goals deeply, or even discuss these matters candidly with adults and peers. What are the solutions to the problems of controversy in children's literature? I'm not sure. Tomorrow's problems will most surely be as complex as today's. The beginning key is establishing "rules of the road." Each case must be handled individually–yet each case must be handled with consistency. After all, we have over 200 million potential controversies walking around America, and only a few thousand librarians.

But if literature is to square with reality, honesty must be promoted and hypocrisy must be avoided. The intrusion of language which is commonly considered objectionable into our literature cannot be avoided, nor can it be effectively censored. Reasonable or not, that's reality.

reason, not emotion

By ELAINE SIMPSON, Associate Professor, Rutgers Graduate School of Library Service, and Editor, McNaughton YA Plan.

Reason, the application of logical processes to accomplish a desired end, and the selection of materials for young adults sounds so obvious, doesn't it? All of us are sure that clearness of thought, soundness of reasoning, and freedom from bias underlie our decision to buy or not to buy a book, a film, a record.

However you may word your criteria for selection, they are probably encompassed in these broad considerations suggested by John Rowe Townsend: (1) "popularity or potential popularity"; (2) "relevance", that is "the power, or possible power, of theme or subject matter to make the [young adult] more aware of current social or personal problems or to suggest solutions to him" or her–to have significance in any way for the prospective audience; (3) "literary merit"; (4) "suitability", that is, the "appropriateness to the supposed" user.[1]

This last area for appraisal, suitability, has always been one which has posed problems and touched off arguments among selectors of materials for any age group, but particularly among those who select for children and young adults. The problems seem to have been intensified within the past few years. Librarians are having to pass judgment upon materials which, because of subject, style, story line, language, or other element, disturb some to the point that emotion overrules, or at least seriously affects, reason.

For years librarians and others have criticized junior novels saying they are written to a formula; they all have pat, sweetness-and-light resolutions that instill false conceptions of life; they fail to deal with fundamental problems of personal and societal adjustment that are of immediate concern to young adults, etc, etc. But, they would continue, teenage fiction does serve a purpose. It is good transitional material for the younger readers; it helps them move on to adult books. And, besides, it's all we've got.

Then juvenile authors and editors began giving us such books as *Go Ask Alice, Run Softly, Go Fast, Admission to the Feast, Run, Shelley, Run, The Chocolate War.* I could go on and on naming both fiction and non-fiction.

And what happened? All too many of these same people who had been asking for an honest story about serious teenage probelms began protesting: language like *that* in a book for young people? Are rape, abortion, homosexuality, unwed mothers, suicide, drugs, unsympathetic portrayal of parents, and violence appropriate subjects for junior novels? Are young people ready for such explicit realism; Would you want your daughter to read one?

Several years ago Clifton Fadiman wrote, in essence: If a young person cannot understand what he reads, it will not harm him; while if he can understand, he is ready to read of life situations truly presented. It is a disservice to the young, who mature at different rates, to limit them to "puerile interests and simplified writing" when there is a desperate need for the young to expand their experience with the world.[2]

The reaction to and interpretation of a book by a twelve-to-fourteen-year-old is not the same as that of an adult. Each of us, adult and young adult, brings different and varying degrees of experience, different backgrounds and pasts to a book. These diversities affect our responses to what we read. We adults may read more into an event than is actually there. One of my students in talking about Mrs. Klein's *It's Not What You Expect* said that the mother's job handing out flyers in a shopping center had unconscious sexual implications unfitting for young adults to read about.

Sometimes one might think we are reading different versions of the same book because we disagree about what has been written. An example of such a disagreement occurred in one of my classes two or three years ago during the discussion of *Journey All Alone* by Deloris Harrison. One student said Mildred had been raped; another said she had not and thought the book pointless because she could see no reason for Mildred's thinking she had to make a sad journey through life all alone. Each student was so positive of the correctness of his or her interpretation of events that everyone in class read the book in order to make up his or

her own mind about the question.

This episode is also an example of an unfortunate reaction some adults have to these realistic junior novels: their attention is so caught by language or an incident which they find shocking that they focus on that element alone; they cannot accept the story as a unified work which ought to be judged in its totality, not by some isolated parts. In *I'll Get There, It Better Be Worth the Trip,* for instance, there is a brief, not really explicit, homosexual experience. In letters to *Library Journal* and in other comments this experience was so exaggerated in importance that it was made to seem the issue on which the whole story depends. Actually it was only one of the many experiences in the life of a young boy adapting himself to grief, change of life-style, and growing up.

Especially in the areas of sex and drugs, as Barbara Wersba has pointed out, adults think they are considering whether or not teenagers should read about these subjects; but actually they are judging what they think a teenager should *do* about them.[3]

As for the language—I think that young adults have two vocabularies, one that they use around most adults and another, much freer one, that they use among themselves. I think that many adults are ignorant of, or refuse to accept, the fact that teenagers in white, middle class communities as well as in the inner city know and use this second vocabulary.

For a book to meet the needs of today's young people, its characters should speak in their language; its problems be those currently most pressing to them; details of action and of reaction to events and attitudes toward life should agree with psychologically valid patterns of behavior among them.

If we feed children and young adults a steady diet of pap—of the false, the trivial, the phoney—we will produce adults who will continue to believe lies and cheap sentimentalities because they do not know truth.

We seem to have an innate compulsion to protect those who are younger and more innocent than we. Repeatedly the teenagers who review books for me say, in effect, "This is an honest book, and I got a lot from it; but I would not recommend it for younger readers." We adults too often bring this same over-protective attitude to our judgment of what is or is not suitable for young adults to read. This is not protection; it is betrayal.

Those who teach in library school or argue for the young adult's freedom to read or urge you to use reason, not emotion, to judge all books cannot teach you commitment to the ALA policy stated in "Free Access to Libraries for Minors."

One day I left the classroom too closely upon the heels of the departing students and heard one say to another, "Humpf! She can argue all she wants about that kind of book. I'm not going to have them in *my* library!" She had already made her commitment, and I could only hope that she would never hold any library job that would involve materials selection for any age group.

Do not, please, assume that I am saying that all of the current books being published for young adults are desirable additions to your collection. Among them you will find propaganda and case studies thinly disguised as fiction; distorted and exaggerated personal problems; amateurish sociology and psychology; incident and language that seem to have been dragged in for shock value and are not an integral, enlightening element of plot or character. And even the most innovative ideas can become shopworn cliches.

Let us not be panicked into reverting to the early concept that librarians, as the arbiters of morality, should control materials provided for their public.

Let us, instead, use reason, not emotion, in selection. Let us recognize that we are living in a changing world with changing values and crucial problems and that a book about today, to be honest, must reflect this world.

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1. Quoted and paraphrased from "Standards for Criticism for Children's Literature" by John Rowe Townsend. *Top of the News,* June 1971, p. 380.

2. Fadiman, Clifton. "Children's Reading" in *Party of One: Selected Writings of Clifton Fadiman.* World, 1955.

3. Paraphrased from "Sexuality in Books for Children" by Barbara Wersba. *Library Journal,* February 15, 1973, p. 620.

4. Paraphrased from "Real Adventure Belongs to Us" by Ivan Southall. *Top of the News,* June 1974, pp. 383-384.

advocating children's rights

By PATRICIA FINLEY, Children's Services Consultant, Onondaga Library System, Syracuse, New York.

Materials published specifically for children are becoming broader in both subject matter and treatment. Publishing on formerly tabooed subjects and writing styles that use tabooed language have brought morally outraged reactions from parents, teachers, and librarians. At the same time, a sincere concern about the injustices suffered by minorities and women in our society has led to recommendations for the removal or editing of older titles now deemed racist or sexist. Implicit in these two very different motivations for censoring children's books is the idea that books do something to children and that what they do should be good for a child's development. Adults attach purpose to books for children and ask that children's books perform a variety of socializing functions.

It may be that the underlying cause behind this moral approach to the selection of books for children is the tradition in children's librarianship that a children's collection contains only the best literature. How often do we quote Walter de la Mare and smile serenely? Whether or not it is true that our collections contain only the best,and despite the difference between literary and moral values, we have,

nonetheless, by our emphasis on "good" literature, led the public to believe and administrators to take refuge in the notion that the children's collection is a "safe" little corner in every library. As a result, we find ourselves involved in justifications and denunciations of individual titles rather than in the defense of the intellectual freedom rights of children.

It seems to me that we children's librarians have a special obligation to defend children's rights in this area, for we have had a unique control over children's access to books. Eighty-five to ninety percent of the trade books published for children in this country are sold to schools and libraries. Most bookshops stock very few children's books and usually only those titles that parents and grandparents and aunts and uncles will buy for the children in their lives. The advent of children's paperbacks has not really increased a child's ability to make his or her own choice of reading material in the market place because children's paperbacks are not mass marketed. They do not appear on every drugstore or supermarket rack. Children's librarians are the ones who decide what books will be made available to the children—although we may be on the verge of losing our exclusive control. If more children who can't find the books that interest them in their libraries follow the example of Robbie Quinan and Mark Doucette, we'll have "Kid's Libraries" in towns other than Wellesley, Massachusetts.

By representing children's collections as "good" we are advising children to lay aside their critical perceptions and to drink down all our books like so much good medicine. Instead of spending most of our time as critics manque, evaluating children's books, we might be better off devoting some of that time to helping children develop their critical abilities. Rather than always talking about our "standards" of book selection and creating the image of a collection of "good" and therefore "safe" books, we might be better off with as wide a selection of books as possible and perhaps a sign over that collection proclaiming, "Danger Here! Ideas, experiences, ways of thinking and doing that may differ from yours. Not all of these books are equally 'good' in literary, artistic, political, scientific or moral value. You be the judge—but, please, judge only for yourself."

We seem to have been afraid to let our patrons know that the library is a "dangerous" place full of ideas. We have done little to help our patrons understand the implications of censorship. Nor have we as children's librarians offered children any tools to aid their critical judgments. A discussion group is a rare phenomenon in a program of library service for children, and discussion is one very obvious vehicle for encouraging a child's questioning attitude toward books and other forms of communication. At the New York Library Association's intellectual freedom workshop, during an informal discussion of what librarians can do to promote an understanding of intellectual freedom, I was impressed by the parent who said she didn't want us taking controversial books off our shelves or taking it upon ourselves to restrict her child's reading. But she also said that she would feel better about the library's being a "dangerous" place if we were helping children and their parents to take a critical approach. Are we doing anything? What can we do? Should we?

Some efforts in that direction might be better than substituting book selection for reader's guidance and letting a narrow selection show how much we distrust the ability of the young to make critical judgments.

Yes, children are impressionable, and they try on different roles. But any adult who hasn't fossilized continues doing the same thing—in different ways, on different levels of significance. We try on new ideas all the time to see if we can integrate them with our present philosophy. A child is not going to be traumatized by a book and set in a rigid pattern for life by what we offer in libraries. There are too many other influences in an individual's development. However, we can offer children wider experience in the form of books and other materials and programs and perhaps help them develop the critical awareness that permits an open approach to life.

Because of the nature of publishing and marketing of books for children, we children's librarians do have a special obligation to offer as representative a collection as possible. This obligation is particularly compelling in the area of the transitional book.

Since society has made childhood a state of second-class, even non-citizenship, children are often quite anxious to grow older as fast as possible, and they like to read about children older than themselves. People do mature physically, emotionally, and intellectually at different rates, and the so-called transitional books will miss some of their intended audience if restricted to your adult collections. Another aspect of the problem of the transitional book is that many libraries which do not have young adult collections never purchase the transitional books at all because we librarians want to preserve the aura of that "safe" little children's corner. Thus, in many communities, the children these books speak to never have a chance at them.

A new development in children's book publishing, however, may diminish our power to kill the transitional book. Some publishers are listing this kind of book in both their juvenile and adult catalogs, and if children don't find the books they want to read in the children's collection, they'll be able to find them in the adult collection, in the bookshop, and eventually on that mass market paperback rack in the drugstore.

Our dilemma has been that, whether we want it or not, the tradition of library service for children has placed us in the role of protector, not advocate. Children and children's books are tough and full of spirit. Instead of trying to protect children and launder their reading, why don't we show our respect for them, give children, and older people as well, the chance to discover in our libraries the true

wealth of children's literature, and take on our proper role of child advocate by being first in the defense of a child's right to full library service.

more realism for children

By NORMA KLEIN, author of Girls Can Be Anything, Love and Other Euphemisms, *and* Mom, the Wolfman and Me.

I was asked to address myself to the following three questions: How did I come to write *Mom, the Wolfman and Me?* Do I have any reservations about the book? and Do I feel that limits are placed on my creativity because of the criticism I receive?

I started out as a writer of short stories for adults. Most of these stories appeared in literary quarterlies in the decade after I graduated college. I don't think it would have occurred to me to write for children if I had not had children of my own. I know many children's book authors claim that their main source of inspiration is their own childhood; in their adult lives they often have little to do with real children. For me the opposite is true. My memories of my own childhood are relatively foggy. My main source of inspiration is hearing and observing my own children, two girls, now aged four and seven. The inspiration is both literary and directly from life. It's literary in the sense that I also read many books aloud to them and thus become aware of what is being written in the field at the present. It's directly from life in that, as a parent, I of course share in the intimate details of their lives in a way that I would never share in the lives of my friends' children or children in general.

I started out intending to write picture books of the kind I was reading to my own children at the time. But I had difficulty in placing these, and was advised by an agent that there was a greater market for books for older children, realistic books about contemporary life. Since I'm someone who finds it easier to write 100 pages than ten, I decided to give it a try. The result was *Mom, the Wolfman and Me,* which I wrote in two weeks in the spring of 1971.

I was born and raised in New York City, in Manhattan, and I suppose I'm one of the few people left who still loves the city. As a child I found it a fine place to grow up in; as an adult I find it a fine place in which to raise children. Since many of the juvenile novels I read had country backgrounds or showed the city only in its negative aspects, one of my goals in *Mom, the Wolfman and Me* was to show city children and parents leading enjoyable, interesting lives. I was brought up by liberal, intellectual parents who gave me the same room to grow and develop that I would like my own children to have. I wanted to show these kind of parents in action. Many of the books I had read seemed to hardly bother with adult characters at all—they were shadowy, genial figures floating in the background. Or the adult characters, in their stupidity and grossness, were seen by the the authors as justification for any kind of idiocy on the part of the juvenile protagonist. I wanted to show parents as intelligent, caring, but also fallible, still growing and developing themselves. I don't believe that to reveal adult weakness to a child is to rob her of a sense of security. In any case, I believe most children are more aware of the fallibilities of the adult world than most adults would care to acknowledge. I myself, as an adult, have had a relatively old fashioned happy marriage, but I was aware that many people around me did not, were searching for new solutions to family life. I wanted to write a book that would reflect some of these new solutions.

More specifically, the idea for *Wolfman* grew out of a situation I observed indirectly. A professor of mine in college had a daughter slightly younger than myself who became pregnant by a man who didn't want to marry her. She decided to raise the child herself. After several years of managing on her own, she did, in fact, meet a new man, got married, and had a "regular" family. What struck me at the time, however, was the intelligence and calm with which the situation was handled, both by the girl herself and by her parents. Not only was her life not ruined, but she developed a strength of character and sense of purpose that I, at least, had not seen in most girls her age.

Living in New York City, associating with people who, to the bulk of Americans, might be considered sophisticated, intelligent, liberal, has made writing books like *Mom, the Wolfman and Me* relatively easy. Since I don't know anyone personally who would regard anything in the book as objectionable, it's hard for me to imagine how or why such a book might affect anyone negatively. To me *Mom, the Wolfman and Me* is completely innocuous. The only detail relating to sex is that the mother's boyfriend sleeps over. As far as language goes, there are no four-letter words and only a few five-letter ones that I gather some people still find offensive.

I gather from some letters I have received that some people worry that if an unmarried mother copes successfully with raising her child, one is encouraging young girls to rush out and become unwed mothers. All I can say to this is that, as a voracious reader myself, both as a child and as an adult, I was never prompted, nor ever heard of anyone so prompted, to follow a work of fiction so literally. Others said I was not portraying the average unwed mother who would be bound to have more problems than my heroine's mother. To that I would reply that no writer of fiction of whom I know has any interest in writing about a faceless "average" person. What draws us as writers to particular characters is the way in which they deviate from the norm, their eccentricities and qualities which make them unusual and interesting. We leave to statisticians the job of calculating the average.

There are some people in the field of children's literature who feel that realistic fiction for children is superior to

current realistic fiction for adults. I feel the opposite. I read about a hundred adult novels each year and about a hundred juvenile novels. To my mind we do not now have in the field of children's books realistic writers who come near to approaching the depth and skill of adult writers such as Margaret Drabble, Joyce Carol Oates, Alice Munro, and Anne Tyler, to name a few of my own personal favorites. I believe this discrepancy is due, not only to the lesser status of children's books in the literary world as a whole, but to the continuing existence of many taboos which hinder writers from expressing themselves freely. These taboos center on two main things: language and subject matter.

I have to plead guilty to the fact that, out of cowardice, I have removed, at the behest of editors, various so called "dirty words" from my books, even when I personally felt these words were appropriate. I cannot defend this cowardice. I can only hope others, as well as myself, will show greater strength of character in the future. I would like to see four-letter words used as frequently in realistic books for children as they are in the everyday lives of what I would consider respectable, middle and upper class people.

I have a friend who is a writer of extremely successful books for children. When I asked her if she, in her everyday life, used four-letter words, she replied, "Of course!" I then asked if she would ever have a mother in one of her books use a four-letter word. Her answer was a vehement no. "You lose too many readers," she said. "It's just not worth it." I think many writers are like this woman and myself. We want to be read. We know that if we overstep what are considered by some to be the bounds of good taste, we will lose a great many readers. We aren't willing to take the chance, even though we want to and know deep down it's important. Hopefully, all this will change in time.

Although I feel hopeful that in my lifetime we will see the language of children's books freed from its present constraints, my own main concern is in the area of subject matter. I think most of us would agree that the sexual development of girls does not begin with adolescence. Yet in books for girls before the teenage we have, at present, almost nothing which deals honestly and openly with sexuality. The present state of books for teenage girls is too horrendous to even begin to go into here. In an era in which many fourteen-year-old girls have a more active sex life than their thirty-six-year-old mothers, we have scarcely begun to speak above a whisper about menstruation and masturbation. I would love to see a book about a teenage girl's love affair in which both she and the boy were nice kids, in which no one got pregnant, no one had to undergo an abortion, in which no one ended up getting married. Just an affair with all the traumas affairs usually have, but with no moralistic overlay, no sense that sex is a crime for which some of us still seem to feel, even in 1974, that girls have to pay. I focus on girls because even though there has certainly not been a great number of books dealing with the sexuality of boys, there is more of a common belief, even in teenage books, that this is something boys are interested in, want to do, enjoy doing. Girls, at any age, are still the ones who only "give in" after being pressured by some evil boy who inevitably turns out to be the villain. Women of my generation who were often reared on the morality implicit in these books know only too well the toll this repression and double standard can take. We want to safeguard our own daughters from this fate and by openly writing about sexuality I believe we will be taking the first step in that direction.

As a mother of young girls, I would like to see books for the youngest age group, four, five and six, which deal with the sexuality of children. I don't think anyone who has raised a baby can deny the fascination that her own body has to the average child, can deny the often delightfully ribald humor of the average four-year-old. Young children are not sentimental. Basically, I think they are freer in their physical expression than older children. I would like to see books in which they, in their own language, talk about their bodies, touch them, express to adults their curiosity.

Whenever you say you are interested in realistic fiction which deals with modern themes, people assume you mean something grim, what has come to be known as "problem" books. That very term is revealing; it shows the extent to which we still regard any aspect of sexual development as negative, perforce a "problem." I would not like to write or see written books that tell How I Discovered My Mother Was a Lesbian, or What a Grand and Glorious Experience My First Abortion Was. I would like sexuality to be woven into the texture of books, not dealt with head on, grimly, as the theme, just something kids do and think about while in the midst of family and school situations. Books that deal with topics we regard as difficult need not be difficult themselves. Hopefully, they will often be light and funny. I defy anyone to overhear two little children in the bathtub and find their spontaneous observations and comments anything but hilarious and delightful.

Another retort which has been made, at least to me, when I have expressed a desire for more realistic books for children is: you mean you want us to throw away our fairy tales, our *Alice in Wonderland,* our *Winnie the Pooh.* I would like to say that for my own part, at least, I feel that some of the finest contributions to children's books have been made in the area of fantasy. I yield to no one in my love of books like *Charlotte's Web* and *Mary Poppins.* I presume more such books will always be written. But since there has been a weakness in the field of realistic fiction, it is there that I would like more to be done. I see no reason why the two traditions, realistic and fantastic, cannot continue side by side. It is not a matter of better or worse. One day one is in a mood for escaping into a world of talking animals. On another day one may want a book that reflects the concerns of one's own everyday life.

I am sometimes asked whether the interests of the chil-

dren in my books are not solely those of city children. Aren't children growing up in the country or suburbs more naive, less aware of sex, for example, or aware at a later age? I don't think so. I think city kids are sometimes verbally more advanced. Intellectually, they know more. But curiously, I think they often do less. I would say that the difference is primarily in the consciousness of adults. City parents seem to me on the whole more ready to admit what their children are really doing and saying. Possibly parents from rural areas are more alarmed at what they see and know and chose to deny it for their own peace of mind.

Modern books are needed, it is said, because our children are exposed to so many things at an early age through watching television. I believe this point has been immensely exaggerated. I myself grew up in a house without television and my children only watch it rarely. The fact is that children have been interested in their own sexuality for hundreds of years; television and what we would call modern life is not basic to this awareness. I am sure that Laura Ingalls Wilder, as a little girl sleeping in the same room as her parents, had moments of wondering what was going on in that bed in the corner. It's just that Laura Ingalls Wilder as an adult chose to censure these thoughts as inappropriate.

Is this a slight at Laura Ingalls Wilder? Am I saying all books for children should deal with sexuality? My answer would be no. In many books it would be inappropriate or irrelevant. It's just that if one read a thousand books for children and found that trees were never mentioned one would begin to wonder at the reason for this omission. Similarly, the absence of any frank treatment of sexuality in book after book for children of all ages makes one aware that more than just routine selection of topics is going on. We are dealing here with fear on the part of adults, a fear I believe to be not only unjustified but an important deterrent to providing children with the fine books they deserve.

As I said earlier, I do not in my personal life come into contact with the kinds of people who would be likely to find my books offensive. But I come into indirect contact with such people through magazine articles. In *Newsweek* a few months ago I was quoted as saying that I wanted more realistic books for children. One reader wrote in: "Forgive me, Miss Klein, but I will miss *The Night Before Christmas.* Maybe revision will save it; Santa is a drug crazed sleigh hijacker who steals the toys, shoots the father, rapes the mother and puts the children in the fireplace, while chanting 'Happy Christmas to all and to all a good fright!' "

What interested and at the same time appalled me in this letter was the view of reality on the part of the writer. Clearly her idea of reality was something very ugly, violent, disturbing. While not considering myself a cockeyed optimist, I would say that my own view is somewhat more benign. I do not feel that the breakdown of certain traditional values means the breakdown of all value. I feel it merely means in many cases the substitution of more intelligent, rational values for some of the ones we already have. As a parent, especially of daughters, I would rather be alive now, in 1974, than in 1944 or 1924. It seems to me that the new freedom that our children will benefit from will not lead to anarchy or chaos but to healthier, freer, happier lives. I hope that it will be possible in books for children to reflect some of this positive approach without retreating into nostalgia for the past or into a world of fantasy.

(Earl Warren . . . from page 106)

Nations. Article 19 of this Declaration reads as follows: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."

Aware that this priceless right is still being threatened, the Association affirms its stance that threats to the freedom of expression of any person become threats to the freedom of all and therefore adopts as its policy of governance the principles of Article 19 of the Universal Declaration. The Association will address the grievance of foreign nationals where the infringement of their rights of free expression is clearly a matter in which all free people should show concern. Resolutions or other documents attesting to such grievances will be brought to the attention of the Executive Board and Council by both of the Council's committees involved in the area: Intellectual Freedom Committee and International Relations Committee and will be subject to the joint endorsement of both.

Upon adoption, the resolutions will be sent to the U.S. Department of State, the United Nations, international library associations, the national library association or associations of the nation involved, the nation's embassy, and such other bodies as may be deemed appropriate by the resolution's drafters.

resolution on the rights of scholars to discuss their findings

Whereas, Committee A on Academic Freedom and Tenure of the American Association of University Professors issued a statement on February 14, 1974, reaffirming the rights of scholars "to choose their directions of research and study, and to publish and discuss their reasoned conclusions without hindrance"; and

Whereas, Article IV of the *Library Bill of Rights* states that "Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas";

Therefore, Be It Resolved, That the American Library Association go on record in condemning any attempts to hinder free discussion, and endorse the February 14 state-

ment of the AAUP Committee on Academic Freedom and Tenure;

And, Be It Further Resolved, That a copy of this resolution be sent to the chairman of the AAUP's Committee A on Academic Freedom and Tenure: Dr. Ralph S. Brown Jr., Professor of Law, Yale University.

The statement made public by Professor Brown said:

"Some of its own members are undermining the integrity of the academic community by attempting to suppress unpopular opinions. What was known decades ago as the 'nature-nurture controversy,' has achieved renewed prominence through studies of intelligence that, in varying degrees, purport to find race-linked relationships. Previous research and debate concentrated on the relative contributions of environment and heredity to measured intelligence. Some participants in the new controversy, maintaining that genetic studies of intelligence foster theories of racial inferiority and thereby support racism, have urged that such studies be condemned out of hand and that their dissemination be prohibited by professional organizations, academic departments, and scholarly journals.

"The Association's Committee A on Academic Freedom and Tenure, ever concerned with the academician's right to speak, and long supportive of the open-ness of research, cannot accept the rationale underlying these attacks: it categorically rejects any proposal to curtail the freedom to report research studies or the interpretive conclusions based on them, however unpalatable either may be. Mindful that the quality of research endeavors and the conclusions drawn from them may reflect varying degrees of scientific rigor, we assert nonetheless the paramount virtue of the open forum for the dissemination of ideas through publication, exposition and debate. No less importantly, we commend open channels of expression as the basic source of counterpositions and correctives, where critics of distasteful views can express themselves without restraint.

"We reaffirm our expectation that all members of the academic profession will support the rights of all their colleagues to choose their directions of research and study, and to publish and discuss their reasoned conclusions without hindrance."

(IFC Report . . . from page 107)

library Loan Code. The Committee welcomed the comments of the RASD group in clarifying certain of the restrictive portions of the Code, and deemed that the matter did not represent a conflict with the *Library Bill of Rights.*

It is obvious to you that the June 1974 decisions of the Supreme Court came up for considerable discussion by the Committee. As a member of the National Ad Hoc Committee Against Censorship, the ALA has been working throughout the year with other concerned organizations to realize an educational program for their members. As a part of the ad hoc committee's work, a statement expressing their communal concern that censorship "constitutes an unacceptable dictatorship" upon the mind, has been drafted and will be mailed to the memberships of over seventy-five national organizations, including ALA, NCTE, NEA, ACLU, and many others.

Since over 150 anti-obscenity bills have been considered in almost forty of the state legislatures this past year, the Committee is fully aware that the censorship battle has merely only begun. These statutes undeniably link the legislative and intellectual freedom concerns of our state and regional chapters, and the Committee feels strongly that our chapters are the key links in maintaining the Association's national position against censorship. Our proposal for funding a national conference to bring together the permanent executive secretaries of the state chapters, the state ALA councilors, and other key chapter appointees to Headquarters to meet with the ALA Committees on Intellectual Freedom, Legislation and Chapter Relations was not granted. Not daunted, the Committee has recommended a shoe-string version of this same idea, and plans are afoot to hold such a conference before the January 1975 Midwinter Meeting. The success of the Committee's prototype intellectual freedom workshop, which has now been replicated in a majority of the states, indicates to the Committee that our educational program is an important one and must be continued.

And last, the Committee wishes to make a brief statement concerning one of its former and most respected members. Alex Allain, attorney and library trustee, steps down this year as president of the Freedom to Read Foundation. That the accord between the Committee and the Foundation has been one of total harmony was and remains owing largely to his dedication and devotion to the cause of intellectual freedom.

Respectfully submitted, R. Kathleen Molz, Chairman, Joseph Anderson, Edmund Arnold, Edwin Castagna, L. H. Coltharp Jr., Paul B. Cors, J. Phillip Immroth, Mrs. Annette L. Phinazee, Frank Van Zanten, Rabbi Karl Weiner, Sam G. Whitten.

(High Court . . . from page 108)

that a defendent knew or believed the materials to be illegal. The Court held:

> It is constitutionally sufficient [to show] that a defendant had knowledge of the contents of the materials . . . and that he knew the character and nature of the materials. To require knowledge of the legal status of the materials would permit the defendant to avoid prosecution by simply claiming that he had not brushed up on the law.

In the *amicus* brief which the Freedom to Read Foundation filed with the Court in *Hamling,* it was contended that the Court's construction makes "the distribution of

obscenity a crime where liability is absolute and intent irrelevant."

The Serbonian bog

Whether the Supreme Court will be able to save the nation from the Serbonian bog of obscenity remains to be seen. It is manifestly clear, however, that the majority composed of Chief Justice Burger and Justices White, Blackmun, Powell, and Rehnquist will not establish mandatory safeguards that would serve as warnings to those whose professions or businesses bring them near the dangers of the bog. Attorneys for the Foundation had suggested in briefs submitted to the Court that no prosecutions for dissemination of "obscene" materials should be permitted unless there has been a prior judicial determination of obscenity in a civil proceeding.

At their meeting on July 5 members of the Board of Trustees of the Freedom to Read Foundation expressed their firm intention to continue the battle against vague and overbroad criminal obscenity laws. Attorneys on the board stressed the importance of pressing the Court to clarify the apparent contradiction between its assigning to the jury the task of find the "fact" of obscenity (*Miller* v. *California*) and its emphasis on the importance of review by the appellate courts (*Jenkins* v. *Georgia*). RLF

(Free Speech . . . from page 109)

the damage fatal. Producers anyway would find it unprofitable to make deceptive claims. They would lose sales when customers learn they have been deceived. Nonetheless, the freedom of producers to make claims is restricted to protect consumers.

Not so with political or general ideas. Here it is hard for consumers ever to check whether they are sold a bill of goods. When they do learn from experience it is usually too late. When you want to stop buying a political idea such as disarmament, or an ideology such as Marxism, or Nazism, you may find that you have been sold and cannot get a refund. Unaccountably, the very people who trust the government to protect us from the deceptive claims of advertisers, bitterly oppose protection from deceptive political claims. They insist that the freedom of ideologues never be abridged, however great the potential injury of consumers. The government never should be trusted to protect us from deceptive political claims. I am at a loss to explain so striking an inconsistency.

The frequent explanation, that freedom of expression need not be abridged as long as freedom of action can be, does not help. Ideas and actions are not easily separated. Free expression of Adolph Hitler's ideas in "the competition of the market" persuaded Germans to support him. His freedom was not abridged owing to the doctrinaire cowardice of the Weimar Republic, which led to its undoing, and to more than twenty million dead, many dying horrendously in concentration camps. This is a high price to pay for Hitler's unabridged freedom, the effects of which were foreseeable.

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That idea and action are easily separated is a mistaken view which dies hard. Jimmy Walker is debited with the remark: "No girl has ever been seduced by a book." Had he been as familiar with books as with girls, he would never have made it. To be sure, the seduced reader bears the responsibility for accepting and acting upon what he reads. Yet, reading does influence, if not compel, people and it can precipitate action. Else writing would be silly. Without the Bible, there would be few Christians, without *Das Kapital* no Marxists, and without *The Sorrows of Young Werther* there would have been fewer romantic suicides.

Meeting Francesca in the second circle of Hell, Dante Alighieri asked the customary question: "What's a nice girl like you doing in a place like this?" He got a tale of woe, culminating in the line, *galleotto fu il libro e chi lo scrisse."* Francesca blamed the book she had been reading with Paolo Malatesta. She was right. The Sexual nature of human beings has not changed in historical time. But the sexes court, or seduce each other, and perceive their emotions and roles, quite differently in each period. That difference is generated by different ideas, attitudes, and fashions which are spread by speech, picture, and print. Even when they don't read them, girls are seduced by books, Gloria Steinem as much as Emma Bovary, or Francesca da Rimini.

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Its instrumental benefits are unproven, and the dangers clear, but freedom of speech still remains desirable for its own sake. Further, there are two arguments which should caution us against abridging free expression lightly: first, there often is no certain way to separate true from false, innocuous from injurious ideas; and secondly, if there is such a way, public authorities are unlikely to find it. Holmes and Mill went too far in asserting that somehow "the competition of the market" would be "the best test," or a good one, to separate true from false ideas. But the govenment cannot be shown to do any better.

Granted as much, I think we should give flaming rhetoric a rest, and find the perimeters of freedom of speech. Where and how might it be extended or limited to advantage? Freedom should never be abridged, unless the abridgment is less injurious that what it abridges. The case is clearest when abridgment helps safeguard the freedom it abridges. Thus, where we have a time-tested and self-correcting institution which permits freedom of expression and the continuous enactment of change, advocacy of its violent overthrow could well be restricted. Our freedoms would be safer if all advocacy of their abolition by unconstitu-

tional means were penalized just as action is now.[6] But other values should be protected as well.

Freedom of expression should be limited when it offends public decency. Objectors to this kind of limitation believe that a range of shared values is not necessary for a society; or, that unbounded freedom produces, or will not harm shared values; or, finally, that abridgment of freedom does not protect shared values and will cause excessive harm.

Call the range of shared values public decency and we reach the problem of pornography. Keep in mind, though, that public decency is not limited to sexual matters. The slaughtering of cows is a crime in Hindu India. So is the raising of pigs in Israel. Restrictions are needed not only because the shared values are what they are, but also because they play the social role they play: they express shared sensibilities, are intensely held, and are, or have become, important to social cohesion.

Can societies cohere without a common outlook? I doubt it. In the words of Sigmund Freud: "The disappearance of the emotional ties which hold the group together [produces] . . . the cessation of all feelings of consideration. . . . A gigantic and senseless dread is set free. . . ."[7] We do not have emotional ties with insects.[8] We do with other sensate beings, because we share a range of sensibilities, attitudes, and values. We have most ties with those who share most of our values and attitudes, enough to form a society. Societies attempt to preserve common values, without precluding their evolution and change, through institutions such as schools, churches, and libraries, and by sanctions against those who venture too far beyond the traditional range. Where individual freedom of expression is among the shared values, penalties still must limit it: unbounded freedom cannot produce the solidarity society needs.

Now, what is prohibited and punished is what tempts at least some people. Therefore, prohibitions are unlikely to eliminate altogether what they prohibit. However, they proclaim as wrong what they forbid. And penalties raise the cost of what they penalize. The offensive activity will still occur, but it will occur furtively, and less often. Further, restrictions on freedom of expression do not produce "police states." None has ever been preceded, or prepared, by such restrictions. On the contrary, political oppression usually is a reaction, not to limitations, but to what is felt as excessive freedom.

Sometimes it is feared that outlawing pornography will produce aesthetic or literary harm. This harm would be unavoidable if pornography were not separable from works of merit. Some critics indeed will not, or cannot, tell art, or literature, from pornography. But anyone who cannot distinguish between art and what is not should not be a critic. Once the general distinction is made, one may still disagree on whether a particular item is pornographic. But such disagreements concern only borderline cases, not the body of either art or pornography. Borderline cases occur in separating sight from blindness, but they do not preclude the distinction, which, in controversial cases, the courts exist to make.

One cannot seriously deny that *Deep Throat* is pornography and *Carnal Knowledge,* though without merit, is not. We usually cherish the diversity produced by different local community standards. Now, it oddly enrages many people. Yet that diversity would have enabled residents of Georgia to find *Carnal Knowledge* did they crave it enough. Anyway, the Supreme Court has just restored it to them, proving that something that is not art need not be pornography.

Anyone who favors outlawing pornography is told that he is neurotic since he opposes sex and that this undermines his case. This view is popular probably because it combines two fallacies in one argument.

First the genetic fallacy. Whether neurotic or not, the sex life of the advocate is irrelevent to merits of what he advocates. Some persons find pornography offensive because they dislike sex. Others because they like it. But it does not matter, since the merits of an argument are independent of the merits, or motives, of those who urge it. (Incidentally, neither the liking nor the disliking need be neurotic. But let that go.)

The second fallacy is a *petitio principii.* To object to pornography is to object to public depiction or performance of sex acts, not to the sex acts performed or depicted. Therefore, a defense of sex begs the question. Defecation is not objectionable. But the exhibition or depiction of it—or of other private acts—for the sake of prurient interest, or voyeuristic participation, is offensive nonetheless. To argue that defecation is healthy is to beg the question. The issue is not which acts should be performed, but which acts should be private, what offends public decency.

Individuals can easily refrain from attending obscene spectacles or from reading pornographic books. But this is besides the point. Nothing that is for public sale, nothing publicly accessible, can be fully private. We do prohibit gladiatorial combat among consenting adults because it is degrading and indecent. Yet those involved could volunteer, as pornographic actors do. And spectators could easily refrain. Advertising and public knowledge cause publicly available pornography to affect society as a whole. It pollutes the social atmosphere and affects bystanders just as pollution of the physical atmosphere does. The mentality of each of us unavoidably affects the quality of life of all of us. "No man is an island entire of itself. . . ." Wherefore a judicious balance between individual liberty and social restraint is needed, however free the society. It is society that grants the right to pursue values—our freedom—and secures it by restraints. Similarly, society must make it possible for values to be generated and attained by imposing restraints on what would erode them. Else there is no happiness to be pursued, no use to be made of the freedom secured by

society. It becomes empty, useless, and boring.

Granted that shared values must be protected when they are important in the normative structure of a society—why is restraint of public sexual display so important? How does pornography endanger individuals or society?

Consider individuals first. The cravings pornography mobilizes are felt by many persons as threats to what personality integration and Ego dominance they have achieved. They fear a loss of control. It matters not at all whether such a loss would actually occur. The fear does. Often the fear is projected on others: the fearful person may may see them as uncontrolled, himself as victim. The fear itself requires defensive laws. Such laws are the social analogue and adjunct to individual repressions and sublimations. They would not become psychologically unnecessary if they were demonstrated to be rationally unneeded. On the contrary, the elimination of legal repression would stimulate non-legal repression by private persons and groups—just as stimulations which it cannot handle may bring about sweeping repressions in the individual psyche.

Did people not feel tempted, there would be no problem. But for most, "the spirit is willing but the flesh is weak." The problem is not solved by removing the spirit and inviting the flesh. Both are part of us, and both are needed, as is the tension between them. Laws against pornography are enacted because we are enticed by what they prohibit, and have decided not to yield and, therefore, want to reduce the temptation. This, after all, is the reason for all laws. Each of us needs all the help society can give.

Admittedly neither repression nor outlawing what mobilizes the repressed is an ideal solution to problems of anxiety or self-control. But we do not live in an ideal world nor with ideal people. Ideal "solutions" that ignore (or define away) the problems actual people have in the actual world are not helpful. These "solutions" are what makes rationalists so dangerous and their Utopias so oppressive.

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Society is imperiled by pornography no less than individuals. The pornographic regression separates sexual impulses from the emotions normally fused with them, from reality as well as morality, above all from socially indispensable restraints and sublimations. In a sense this is but a spinning out of pre-adolescent fantasies which reject reality and the burdens of individuation, of thought, restraint, tension, conflict, commitment, consideration and love, of regarding others as more than objects—burdens which become both heavier and less avoidable as we pass through adolescence. We always bear them with some reluctance; wherefore, pornography, while dreary and repulsive to one part of us, is always inviting and seductive to another. But by reducing the world to orifices and organs, to bare, solipsistic sensations, pornography implicitly denies solidarity, thought, feeling, or love, the human ties society rests on. It removes the indispensable internal barriers to crime.

Ralph Waldo Emerson pointed out that the moral identity which we feel with other human beings is the basis of any society. Pornography strikes at that basis. It invites us to de-identify, to regard others as mere means. Yet if we do not identify enough with others to feel empathy with them, they are easily relegated beyond the pale, to be used but for the pleasure they can give, or like animals for their hide or teeth. They cease being fellow humans, ends in themselves, and become instruments.

It is the empathy and mutual identification stripped away by pornography which enable us to acknowledge others as fellow humans and which restrain us from treating them as mere means, or sources of sensation. Ultimately, pornography endangers the psychological ties which bind us to our fellows and make society cohere.

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1. Children cannot speak for themselves as well as adults. Their needs can be studied by the children's librarian who may know a little more on how to select books for children or to entertain them than an untrained person. So with the librarian serving a profession. Yet here, too, ultimately the consumer knows best.

2. Colleges and universities differ from high schools in two relevant respects: (1) Students are not compelled to attend; if they do, they choose where. (2) Professors are meant to be scholars and experts in their subjects; high school teachers are not.

3. *On Liberty,* Chap. I.

4. *Ibid.*

5. U.S. v. Abrams (1919)

6. Advocacy can be distinguished from analysis, discussion, or prediction, inasmuch as there is a clear intent to organize for, or to produce action.

7. *Group Psychology and the Analysis of the Ego,* pp. 46 ff.

8. Social insects have instinctive solidarity instead. But we do not.

EXTRA COPIES AVAILABLE—Readers who wish to order additional copies of this issue of the *Newsletter* (cost: $1.00 each) should write to: Order Dept., American Library Assn., 50 E. Huron St., Chicago, Ill. 60611. Payment must accompany all orders under $5.00.

(Let Me Say This . . . from page 110)

all librarians who profess an interest in intellectual freedom and the *Library Bill of Rights.* As Pope notes, "The true interpretation of the *Library Bill of Rights* will not be determined by rhetoric in library literature; it can only be measured by the materials in library collections" (p. 184). Pope's study indicates a tendency of librarians to conclude that sexually explicit material is outside the umbrella of intellectual freedom and to respond by excluding it from their collections. Such action seems to contradict our

rhetorical opposition to censorship. Must we change our actions, our rhetoric, or can we live with this discrepancy? *–Reviewed by Tom Holberg, Librarian, Times-World Corp., Roanoke, Virginia.*

Should Newspapers be Required to Give Reply Space to Political Candidates and Others They have Attacked? 31 p. $2.00. (Available from The Advocates, WGBH Boston, 475 Western Avenue, Boston, Massachusetts 02134)

This transcript of "The Advocates" program for the week of April 18, 1974 presents arguments for and against a "right to reply" act. Such an act aims at legislating media responsibility by requiring reply space for those editorially attacked. Proponents point to the growing media concentration as justification for legislative intervention, while opponents attack such intervention as a direct violation of the First Amendment. Despite the U.S. Supreme Court's recent unanimous decision declaring the Florida right-to-reply act unconstitutional, the issue of media responsibility and accountability remains. This brief pamphlet provides a basic introduction to one aspect of that larger issue. Among the participants in the debate were Professor Jerome Barron, generally considered the leading proponent for right-to-reply acts and the author of the book, *Freedom of the Press for Whom?,* and Reg Murphy, editor of the *Atlanta Constitution* and recent kidnapping victim. *–Reviewed by Tom Holberg.*

(From the Bench . . . from page 120)

The grand jury also dismissed charges of open and gross lewdness which were filed against the play's producer, director, and assistant director. Similar charges brought by Cambridge police against other actors in the play, ushers, and ticket sellers (see *Newsletter,* July 1974, p. 82) were dismissed by the district court. Reported in: *Boston Globe,* June 5.

Albany, New York

New York's highest court ruled that the state could not ban distribution of a sex information pamphlet at the New York State Fair. The Court of Appeals held that Agriculture and Markets Commissioner Frank Walkley had acted arbitrarily in banning the work, *Zing Comix–Ten Heavy Facts About Sex,* from the 1972 fair.

All parties to the dispute conceded that the work was not obscene. Walkley contended, however, that the material was objectionable in that it condoned homosexuality, bisexuality, and perversion. Walkley had agreed to allow distribution of the work provided that it would not be given to minors without the consent of their parents. The stipulation was refused, and the work was then banned altogether. Reported in: *New York Post,* July 10.

New York, New York

The U.S. Court of Appeals for the Second Circuit ruled that "dancing is a form of expression protected by the First Amendment" and upheld a lower court decision barring the Long Island town of Hampstead from prosecuting owners of topless bars. In a two-to-one decision the court held: "Even nude dancing in a bar can be within the constitutional protection of free expression. To the extent that this expression is constitutionally protected, the town may not prohibit it." Reported in: *New York Times,* June 26.

FTRF elects officers

Members of the Freedom to Read Foundation Board of Trustees assembled in New York on July 5, elected new officers for 1974-75. Richard L. Darling, dean of Columbia University's School of Library Service and a former chairman of the ALA Intellectual Freedom Committee, was elected president. Florence McMullin, a trustee of the King County Library System, Seattle, was elected vice-president, and Jean-Anne South, library planner on the Baltimore County Regional Planning Council, treasurer. Alex P. Allain, Jeanerette (La.) attorney and the first president of the Foundation, was appointed special counsel upon leaving the presidency.

In the area of litigation, the Trustees authorized the filing of an *amicus* brief in *Board of School Commissioners of the City of Indianapolis* v. *Jacobs,* in which the U.S. Supreme Court granted a petition for writ of certiorari on June 3. The case involves the right of public school students to distribute their newspapers under rules which do not constitute a form of prior restraint.

After reviewing important cases in the U.S. Supreme Court in which the Foundation was involved as an *amicus,* including *Hamling* v. *U.S.* and *Jenkins* v. *Georgia,* the Trustees voted to file an *amicus* brief in support of a motion to reduce the sentences of William L. Hamling and his co-petitioners, whose criminal convictions were upheld by the U.S. Supreme Court in its June 24 ruling in *Hamling.* In a brief prepared by the Foundation's general counsel, it is argued that the petitioners' convictions were upheld by the Supreme Court according to standards established after their trial in district court, and that this imposition of standards they could not have known constitutes a denial of due process.

In other action taken at the meeting on July 5, the Trustees voted to authorize a special $5.00 membership for students. It was the hope of Trustees that students in library school programs would commit themselves at the beginning of their careers to active support of intellectual freedom in libraries. The Trustees also welcomed official observers from the eleven ALA divisions not represented on the Board of Trustees.

During the Annual Conference of the American Library Association that followed the meeting of the Foundation Trustees, the Foundation was the recipient of a $1,000 contribution from the Maryland Library Association and a $100 gift from the Intellectual Freedom Round Table. In addition, the Foundation received the $500 John R. Rowe Memorial Award established by the Exhibits Round Table.

Merritt Fund changed in scope

The Executive Committee of the Foundation Board of Trustees, who by virtue of their office on the Board serve as Trustees of the LeRoy C. Merritt Humanitarian Fund, voted in their capacity as Trustees of the Fund to expand the scope of the Fund to include, in addition to matters of intellectual freedom, discrimination on the basis of sex, sexual preference, race, religion, and place of national origin, as well as violations of employment rights. The Trustees expressed their conviction that the Fund can better aid librarians if its scope corresponds more closely to the realities of employment disputes.

The Trustees also asked legal counsel to prepare a new trust agreement that will allow donors to the Merritt Fund to elect the trustees in accordance with "the best principles of the democratic process."

more obscenity laws

Legislators in Louisiana and Massachusetts responded promptly to declarations of their state supreme courts that invalidated pre-*Miller* obscenity laws on grounds of vagueness. New laws adopted in the two states now specify in detail those sexual activities that cannot be depicted by word or picture. Spokesmen for the library community were able to win exemptions to protect the rights of library patrons and employees.

Louisiana: H. 573 (Act 274)
Definitation of obscenity: Miller test
Definition of sexual conduct: extensive list
Community: not defined
Prior civil proceedings: mandatory except for "explicit, close-up" depictions of genitals that give "the appearance of the consummation of ultimate sexual acts"
Note: does not preempt regulation of obscenity by municipalities and parishes; public libraries, schools, churches, medical clinics, etc., are exempted

Massachusetts: H. 6069
Definition of obscenity: Miller test for adults and minors
Definition of sexual conduct: extensive list
Community: state
Prior civil proceedings: mandatory for books
Note: libraries, schools and museums are exempted

Iowa's new law, adopted in May, was inadvertently omitted from the list of laws published in the July 1974 *Newsletter.*

Iowa: H. 1102
Definition of obscenity: Miller test for minors
Definition of sexual conduct: extensive list
Community: not defined
Prior civil proceedings: not required
Note: law applies only to dissemination, etc., to persons under the age of eighteen; law does not apply to "appropriate material for educational purposes" in any accredited school or public library; law is preemptive

A brief explanation of the annotations given above can be found on p. 98 of the July 1974 issue.

intellectual freedom bibliography

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

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