Co-editors: Judith F. Krug, Director, and Roger L. Funk, Assistant Director,
Office for Intellectual Freedom, American Library Association

ISSN 0028-9485

November 1975 ☐ Volume XXIV ☐ No. 6

data bases and privacy

At the American Library Association's 1975 Annual Conference in San Francisco, the Intellectual Freedom Committee and the Information Science and Automation Division sponsored a program on an issue of growing concern: maintaining the right to privacy in an era in which often unidentified—and sometimes unidentifiable—governmental and private agencies are collecting personal data on every aspect of our lives.

At the invitation of the Committee and ISAD, a panel of experts on privacy law, data banks, and library automation addressed themselves to this issue and its implications for librarianship. The remarks of three of the panelists are printed here.

the privacy act of 1974

By CAROLE W. PARSONS, executive director of the Privacy Protection Study Commission. Prior to her present position, Ms. Parsons served as associate executive director of the Domestic Council Committee on the Right of Privacy and of the HEW advisory committee on automated personal data systems. She edited Records, Computers, and the Rights of Citizens.

During the last thirty years, Americans, as a society, have amassed an unprecedented amount of recorded information about one another. An explosive postwar growth in the service sector of the economy has provided much of the momentum for this development. New management challenges have generated new demands and new markets for information about people. Government expenditures on domestic social programs have stimulated a search for fine-grained measures of program impact.

Concern about waste and inefficiency has intensified the need for verifiable evidence that the taxpayer's dollar is being spent in a fair and judicious manner. And the society's appetite for general purpose knowledge about the experiences and personal circumstances of its members has meanwhile been growing by leaps and bounds.

With the advent of the computer, moreover, and especially with the recent marriage of computing and telecommunications, the society has begun to develop new service and accountability arrangements that depend centrally on the speed with which recorded information can now be brought to bear on particular decisions about particular individuals. These new capabilities, superimposed as they are on the already sizable accumulations of personal data developed during the pre-computer era, have had a profound effect

(Continued on overleaf)

Published by the ALA Intellectual Freedom Committee,
Florence McMullin, Chairperson

titles now troublesome

Books

The Happy Hooker . . . . p. 177
Man: A Course of Study . . . . pp. 170, 171
Show Me! . . . . p. 196
Tell Me How Long the Train's Been Gone . . . . p. 170

Films

Deep Throat . . . . pp. 178, 181, 183
The Devil in Miss Jones . . . . pp. 178, 183
Eye Spy . . . . p. 183
Language of Love . . . . p. 195
Love Riders . . . . p. 183
Naked Came the Stranger . . . . p. 181

Periodicals

Johnson City Press-Chronicle . . . . p. 180
Rutland Herald . . . . p. 180
Southern Cross . . . . p. 172
Sunday Times . . . . p. 165

On stage

Hair . . . . p. 173

Television shows

The Guns of Autumn . . . . p. 171
Harlem: Voices, Faces . . . . p. 171
Welcome Back, Kotter . . . . p. 171

---

on people's attitudes toward record-keeping practices and record-keeping organizations.

As the now familiar Department of Health, Education, and Welfare report on computers and privacy points out, it has become characteristic of present day American society for an individual to be asked to

> give information about himself to large and relatively faceless institutions, for handling and use by strangers—unknown, unseen and, all too frequently, unresponsive. Sometimes the individual does not even know that an organization maintains a record about him. Often he may not see it, much less contest its accuracy, control its dissemination, or challenge its use by others . . . [1]

This situation, the report suggests, may be the principal source of public concern about the protection of personal privacy—far more important than the seemingly voracious appetite for personal information—and it is the situation to which recent privacy legislation, in my view at least, is primarily addressed.

The Privacy Act of 1974, for example, applies to the handling of federal agency records about individuals. The act requires every agency that maintains such records in a system of records[2] to do four basic things from which a range of other more specific requirements then flow.

First, it requires the agency to assure that any information about an individual that it maintains in the system is both germane and necessary to the performance of a function the agency is required to perform by statute or executive order.

Second, it requires the agency to publish an annual notice in the *Federal Register* which details such items as the name and location of the system, the types of records in the system and the kinds of individuals to whom the records pertain, the policies and practices of the agency regarding storage, retrievability, retention and disposal of the records, and the title and business address of the agency official who is responsible for the system of records.

Third, it requires the agency to extablish various types of procedures—including procedures that allow an individual to review and challenge a record about himself—so that when a record in the system is used to make a decision about him, it will be as accurate, complete, timely, and relevant as is necessary to assure that the record itself is not the cause of an unfair decision.

Fourth, it requires the agency to observe certain minimum conditions with respect to the disclosure or dissemination of a record in a system of records, including keeping an accounting of the disclosures and disseminations that the agency makes.

Several points should be noted about these requirements. One, surely, is that the requirement to issue an annual public notice on each system of records an agency maintains is a universal one. No agency and no system of records (as defined by the act) is exempt from it.

(Continued on page 184)

Views of contributors to the **Newsletter on Intellectual Freedom** are not necessarily those of the editors, the Intellectual Freedom Committee, or the American Library Association.

Newsletter on Intellectual Freedom is published bimonthly (Jan., March, May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, Illinois 60611. Subscription: $6 per year. Change-of-address, undeliverable copies, and orders for subscriptions should be sent to the Subscription Department, American Library Association. Editorial mail should be addressed to the Office for Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611. Second Class postage paid at Chicago, Illinois and at additional mailing offices.

the extraordinary world of intelligence

Reports on programs uncovered by the Senate Select Committee on Intelligence, as well as forced revelations under the Freedom of Information Act, make it plain that U.S. intelligence agencies have for years operated in a never-never land of illegal activities and super-secrecy. If little else is accomplished, the discoveries have given a special poignancy to the ironic double meaning of the phrase, "congressional oversight."

Illegal mail surveillance

For twenty years prominent Americans–including Richard M. Nixon, Hubert H. Humphrey, Edward M. Kennedy, Linus Pauling, and Martin Luther King Jr.–had their mail opened and photographed by the Central Intelligence Agency. Operation of the illegal mail surveillance was disclosed in September by Senator Frank Church (D.-Ida.), chairman of the select committee.

Church, who charged that the program violated both the U.S. Constitution and federal statutes, claimed that even the letter he wrote to his mother-in-law while on a trip to the Soviet Union was opened by the CIA. Church promised full public hearings to expose the CIA's "far-flung" tampering with the liberties of Americans.

James Angleton, a former CIA counterintelligence chief, testified before the Senate committee that the mail opening program was an "indispensible" espionage tool aimed at compiling information on Soviet-bloc nations.

A spokesman for the Senate committee said the mail program was authorized in 1952, initiated in 1954, and continued through February 15, 1973. Angleton, who took over the program in 1955, said he knew all along that it was illegal. Reported in: *Chicago Sun-Times*, September 25.

Black bagging at the FBI

According to evidence presented to the Senate committee concerning the Federal Bureau of Investigation, the CIA was not alone in ignoring the boundaries of law. The committee was told that the FBI burglarized "subversive" groups 238 times in the 26-year period from 1942 to 1968 until J. Edgar Hoover stopped the so-called black bag jobs.

A former FBI official also testified before the committee that Hoover, then FBI director, ordered investigations of "every black student union or group" on U.S. college campuses in 1970, even though President Nixon had already canceled the "Huston plan" for domestic surveillance. The testimony was presented in the Senate committee's investigation of a plan conceived by Nixon aide Tom Charles Huston in 1970 to bring suspected radicals under surveillance by federal intelligence agencies. Nixon canceled the plan five days after he approved it because Hoover reportedly considered it illegal. Reported in: *Chicago Sun-Times*, September 26.

Hating the hate groups

Other revelations concerning the FBI disclosed that the Chicago office of the American Nazi Party was shut down in 1967 as a result of secret FBI efforts aimed at breaking up so-called hate groups.

Chicago authorities closed the Nazi office after the FBI anonymously forwarded information to Chicago contending that the building violated various codes and was uninhabitable. The action came after the Nazi Chicago branch committed its "full financial resources" to rehabilitating the building, which it had purchased in 1964.

The actions were described in documents obtained by reporters under the Freedom of Information Act and made available by FBI Director Clarence M. Kelley. The Chicago story was included among reports detailing activities of the FBI between 1956 and 1971 against the Nazis, seventeen Ku Klux Klan organizations, and eight other groups. Reported in: *Chicago Daily News*, August 15.

Sensitive and secret

Finally, it seems that the work of the National Security Council is so sensitive that even the release of the titles of documents it prepares would impair national security, at least according to an affidavit filed in U.S. District Court.

In the affidavit, the National Security Council argued

(Continued on page 190)

Statement of Ownership and Management

The *Newsletter on Intellectual Freedom* is published bimonthly (Jan., March, May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, Illinois 60611; American Library Association, owner; Judith F. Krug and Roger L. Funk, editors, 50 E. Huron St., Chicago, Illinois 60611. Known bondholders, mortgagees, and other security holders owning or holding 1 percent or more of total bonds, mortgages, or other securities: none.

Extent and Nature of Circulation

("Average" figures denote the average number of copies for issues during preceding 12 months. "Actual" figures denote the actual number of copies of single issue published nearest filing date.) Total number of copies printed: Average, 3500; Actual, 3500. Paid circulation through dealers and carriers, street vendors, and counter sales: Average, none; Actual, none. Paid circulation through mail subscriptions: Average, 2818; Actual, 2718. Total paid circulation: Average, 2818; Actual, 2718. Free distribution: Average, 53; Actual, 53. Total distribution: Average, 2871; Actual, 2771. Office use, leftover, unaccounted, spoiled: Average, 629; Actual, 729. Total: Average, 3500; Actual, 3500. Statement of Ownership, Management, and Circulation (PS Form 3526, Jan. 1975) filed with the United States Post Office in Chicago, September 19, 1975. I certify that the statements made by me above are correct and complete. /s/ Roger L. Funk

New York trustee calls for library exemption

In an appearance before the New York Board of Regents, Stephen Oppenheim, president of the State Association of Library Boards, asked the state board to support a proposal to exclude libarians and library trustees from possible one-year jail terms and fines of up to $1,000 under New York laws banning the dissemination of obscenity.

"The range of books [currently] under attack as obscene would be ludicrous, if it were not so frightening," Oppenheim said. He argued that libraries "are entitled to serve their communities without having to look over their shoulders for the censor."

Oppenheim further explained that the trustees were concerned about the "chilling effect" of the New York law on the selection of books and "the ability of our libraries to function as both the marketplace and storage place of ideas." Reported in: *New York Post,* September 11.

---

book raiders sentenced

Five men associated with Sacramento's Landmark Baptist Church pleaded no contest to vandalism charges stemming from their February 1975 vigilante raid on an adult bookstore *(see Newsletter,* May 1975, p. 79). Appearing before Municipal Court Judge Robert N. Zarick in late July, two ministers at the church and three of their parishioners were placed on probation for three years on the condition that they obey all laws and stay off the premises of the bookstore. However, the five vowed to keep up their picketing efforts and campaign against Sacramento's adult bookstores. Reported in: *Sacramento Union,* July 29.

MM fights 'gratuitous sex' on TV

Leaders of Morality in Media met in September with Richard E. Wiley, chairman of the Federal Communications Commission, to urge public hearings around the country on "the matter of gratuitous sex and violence in television programming." Rabbi Julius G. Newman, the Rev. Morton A. Hill, S.J., and the Rev. Winfrey C. Link, a Methodist minister, also presented the FCC chairman with petitions bearing 100,000 names in support of the hearings.

Wiley denied the request and noted that the FCC regularly holds regional meetings at which public views on television programming are often heard.

In a press conference after the meeting with Wiley, the clergymen said Morality in Media would respond to the FCC turndown with its own public hearings in New Orleans, Detroit, and Boston.

The group charges that "TV is a school" for violence in which "young or unstable viewers can learn a modus operandi for burgularly, rape, [and] arson."

According to surveys conducted by Morality in Media, its members prefer such television shows as "Little House on the Prairie" and "All in the Family." Among the shows they consider objectionable are "Mannix," "Streets of San Francisco," "The Rookies," "SWAT," and "Police Story." Reported in: *Washington Post,* September 19.

Soviet paper prints censorship protest

A Soviet newspaper created an intriguing mystery in August when it published an appeal for an end to the system of censorship operated by the Soviet government. The letter, written by a school teacher in Kiev to the newspaper *Teachers' Gazette,* complained that not enough Western films are permitted to filter down to the masses.

The teacher, Y. Koirakh, broadly attacked the entire system of screening that affects everything from radio to phonograph records in the Soviet Union. "My opinion is there is no need to forbid anything or to have any restrictions, for such things stir up an interest in forbidden things," the teacher wrote.

"According to my opinion it is necessary to educate the good taste of the young specatators to high art values and the ability to judge correctly," the letter continued. "Only then will they themselves understand what is good and what is bad."

The Soviet government almost never acknowledges the existence of censorship in the country, although most Soviet citizens are aware of it and many applaud it for screening out Western ideas. Reported in: *Philadelphia Inquirer,* August 11.

Moscow art show opens after censorship feud

Moscow's largest state-sanctioned exhibit of unofficial art to date—800 works by 160 artists—opened after artists and the Moscow City Council agreed to a compromise on the works which would be banned. Before the compromise, it appeared that the show would be closed after 160 artists removed their works from the walls of the Palace of Culture when they learned that the city had quietly removed forty-

one of the works on display because they were "tendentious" or biased.

During the feud, nearly 2,000 Muscovites, apparently having heard about the rare show by word of mouth, were kept standing in line by cordons of police and then told to go home.

After more than six hours of negotiations, the show opened a day late under the terms of the compromise. The show's organizers agreed to the removal of twenty works, of which the artists were allowed to choose fourteen.

Among the works on which the Soviet officials stood firm were two caricatures of China's Mao Tse-tung, which they said were not conducive to better Sino-Soviet relations. Reported in: *New York Times,* September 21; *Washington Post,* September 21, 22.

schism disrupts Lutheran-Missouri colleges

The bitter doctrinal controversy which has divided moderates and conservatives in the Lutheran Church-Missouri Synod has begun to disrupt the synod's sixteen institutions of higher education.

In recent developments, the Rev. Harvey A. Stegemoeller resigned as president of Concordia College in St. Paul after the institution's conservative board of control instructed him to follow the synod's resolutions requiring strict doctrinal uniformity and a literal interpretation of the Bible. President Stegemoeller said, "I can neither accept the resolutions for myself nor impose them on others."

The Rev. Rudolph P.F. Ressmeyer, moderate president of the synod's Atlantic district, was removed as chairman of the board of Concordia College in Bronxville, New York and replaced by the Rev. Merlin C. Meyer, a conservative pastor from Scarsdale.

In St. Louis, Seminex, the seminary-in-exile formed by moderate faculty members dismissed from the Concordia Seminary faculty, opened this fall with nearly 400 students enrolled. The Rev. John H. Tietjen, former head of the Concordia Seminary and now president of the seminary-in-exile, was suspended from Concordia for teaching "false doctrine." Reported in: *Chronicle of Higher Education,* September 15.

church letters flood FCC

Letters defending religious broadcasters threatened to smother the Federal Communications Commission in a protest movement against something the FCC decided not to do. As the *Newsletter* reported in September (p. 146), the FCC refused to disqualify religiously affiliated organizations and institutions from eligibility to operate noncommercial broadcast outlets. But still the mail came.

Letters and postcards totaled about 1.3 million, according to Harry Schockro, the FCC's chief of administrative services. What prompted the mail was a petition filed by two California broadcast consultants who contended that the assignment of more than one educational channel in a community to a religious group deprived minority groups of access to the scarce channels. Reported in: *Washington Star,* September 10.

"tough" law fizzels

Members of the Providence, Rhode Island Bureau of Licenses revealed in August that they have neither the staff nor the money to enforce the strict movie obscenity standards which they adopted with fanfare a year ago. John J. Sheehan Jr., board chairman, noted at a bureau meeting that the number of theaters showing *X*-rated movies had risen from two to five during the year that the regulations, once described as the toughest in the nation, had been in effect.

Other members of the bureau agreed with Sheehan, and some questioned whether the city should attempt to police the morals of its citizens. Reported in: *Providence Bulletin,* August 15; *Providence Journal,* August 26.

shredding the book burner image

The Madison County, Alabama district attorney ordered 326 pornographic books ripped up and fed to a paper shredder after they were found obscene by a local jury. The district attorney said he chose that means of destruction to avoid being labeled a book burner. Reported in: *Playboy,* September 1975.

British ban on thalidomide stories to be reviewed

Last spring, the European Commission on Human Rights in Strasbourg admitted a complaint by the *Sunday Times* of London concerning the injunction reimposed by the House of Lords in 1973 forbidding the paper to publish articles on the drug thalidomide. The paper argued that the ban represented a violation of Article 10 of the European Convention of Human Rights, which protects freedom of expression.

If the commission cannot propose an amicable settlement, the complaint will ultimately go before the European Court of Human Rights. Reported in: *Index,* Autumn 1975.

the published word

a column of reviews

The Flight from Reason: Essays on Intellectual Freedom in the Academy, the Press, and the Library. David K. Berninghausen. American Library Association, 1975. 190 p. $7.50 paper.

This is a curious book, a cantankerous, contentious book.

Its avowed "purpose" is "to urge the reaffirmation of faith in reason, dialogue and objective scholarship." But the book's tone is argumentative and angry, not reasoning. The dialogues are shadowboxing matches with straw men whom Berninghausen sets up and defeats. And, the objectivity of the scholarship in this collection of essays must be seriously questioned when it is discovered that there are misrepresentations of various positions and statements.

Berninghausen inveighs against the New Left, "Social Responsibility"-oriented librarians, and activist students. He faults the New Left for many ills. He says, "Among the most obvious results of this threat from the left were the election of ultra-conservative government officials at various levels, the rejection of the findings of the President's Commission on Obscenity and Pornography by President Nixon and the majority of the United States Senate, the appointment of four conservative members of the United States Supreme Court, and especially the June 21, 1973 decision of that court which gave individual states and localities the right to pass laws banning publications, films, or plays. Thus the fanaticism of the left enabled the fanaticism of the right to capitalize on the fears of the majority. . . ." (p. x) All this occurred because "the abuse and violence by the New Left fanned the extremism of the right." (p. ix) That is something like blaming the rape victim for the rape.

The threat to intellectual freedom, Berninghausen says, is from this New Left, although he admits that "he shares the view of the former Senator Margaret Chase Smith, that the greatest danger to intellectual freedom in the United States was in the period of McCarthyism, and still is, from the Radical Right." (p. ix) But his essays written since the McCarthy 1950s era bristle with rage, not against this more "durable threat from the Right," but against the "New Left" grouping.

It is this configuration of political left, "Social Responsibility" librarians and student activists that distrusts reason and relies on "gut" reactions, he claims. Further, it denies objectivity and demands free speech for itself but tells others to "shut up."

He says it is the "Social Responsibility" advocates in the library profession who would politicize the American Library Association and thus, he claims, bring about its destruction. It is this group, he would have us believe, that would have libraries, librarians, and the ALA take stands on housing, air pollution, the Vietnam War, pesticides, and promotion of the homosexual life style, and would, as a consequence, censor other points of view by not buying or providing materials on all sides in libraries.

It is this group, he states, that in universities denied the existence of objective scholarship and wanted to "take over" or "destroy" universities. It also demanded that recruiters be denied permission to recruit on college campuses. It disrupted public meetings where "a spokesman for South Vietnam, a critic of liberal policies in the ghettos, and a corporate executive who denied that his firm was morally responsible for the regime in South Africa" were speaking. (p. 72) Also, it is this group which "harassed" Harvard Professor Richard Herrnstein because "he theorizes that our society is evolving distinct classes based upon intelligence, and that the IQ gap between the upper and lower classes is increasing." As a result the "protests by the Students for a Democratic Society (SDS) were threatening to make scholars turn to more placid subjects." (p. 72)

In many respects he is shaking a fist at a receding memory. The New Left in 1975 has all but vanished. The "activists" on campus (with very few exceptions) are busy studying in order to better compete for the fewer jobs available in our recession economy, or are establishing new life patterns outside the political structure. And the Social Responsibility librarians are going their own way, working at the tasks they define as having top priority, introducing some spice and substance to ALA conventions, but not too optimistic about moving the ALA mastodon to do the same.

Still, there are current issues raised here that stir the blood and challenge the mind, and some of the essays written during the McCarthy period provide historical details and context to the intellectual freedom struggles of that time in which Berninghausen participated, thus giving first-hand accounts.

Berninghausen wants to reason and hold dialogues. Only through the use of reason can humanity survive, and only dialogue can resolve some of its problems. There is no quarrel with him on that. The problem arises when the "dialogue" is valued more than the action that should come out of it. (This may be endemic to academic communities.) "Dialogue is not verbalism. In dialogue, values and actions find unifying expression."[1] It is the *action* that Mr. Berninghausen seems to resent. When people say, "The time for discussion is over," they do not necessarily mean that

ideas and opinions are to be suppressed, only, perhaps, that it is time to roll up the sleeves and "get on with it." But this seems to be a real stumbling block.

One example. In his long listing of ills brought on by the activities of the New Left was the rejection of the Report of the President's Commission on Obscenity and Pornography by President Nixon and subsequently by the majority of the Senate. That rejection was "surely an act tantamount to censorship." (p. 63) And so Mr. Berninghausen discusses it in the chapter, "Problem Cases of Library Censorship."

Why then didn't the ALA accept the Commission's Report?

The fact is that "ALA did not 'support' or 'endorse' the findings of the majority report, in spite of the urging of the 'social responsibility' advocates among its members." (p. 68) In Mr. Berninghausen's view, "for ALA to officially have approved its contents would have destroyed any claim that librarianship is a *scholarly* profession." (p. 67)

In a resolution on January 20, 1971, adopted by the Council, ALA *"commended"* the Commission, *"urged"* the President and Senate to reconsider its "categorical rejection" and then *"urged"* all libraries *to provide* the report to their users!

Can that be considered an action befitting the occasion? Provide a report that would be in libraries anyway?

What would ALA and Berninghausen's stand have been if the president had accepted the report? Would they have assumed that the scholarship of President Nixon and the Senate members was greater, that they had had more time to read the report and the many supportive volumes? A parallel study on the same subject was proposed (but defeated) at the 1969 ALA convention. What would have been the proper response to its findings, one wonders.

Perhaps the argument that is posed in this book between "Intellectual Freedom" and the "Social Responsibility concept of librarianship" can be stated as the difference between a pure, distilled policy and the application of that policy to everyday library activities. One is written by a few people after much discussion of the dangers that had been experienced and that the policy document would help to eliminate in the future. The other takes the policy at its word, and for its intention, and requires that the policy be applied.

David Clift, in his introduction to *The Flight from Reason,* refers to Madison's statement that "a popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy," that "people who mean to be their own governors must arm themselves with the power which knowledge gives." And it is these concerns written into the First Amendment and later extended to the states by the Fourteenth Amendment that "forms the constitutional basis of what Mr. Berninghausen calls intellectual freedom, as well as its application to the press, the academy and the library." (p. vii)

It is significant that words of action were used by Madison. People should "arm themselves with power which knowledge gives," he said. Presumably, the information is to be used against any encroachments on their power to govern themselves, and certainly (it would seem) against governmental control of information or communication which would divest them of their power and leave them powerless.

Basic as this is, it is significant that Berninghausen never deals with the dangers to intellectual freedom from the government. He does, in passing, say, "Perhaps, temporarily, a government *might* close some of the channels of communication, thus hindering the dialogue. What may be even more ominous is the complex problem of how to use satellites in international communications. Chapter 6 illuminates this problem." (p. xi) 'Chapter 6 does not, nor any other chapter.) There is no discussion of governmental secrecy, exposed though it was through the Watergate scandal, although he does mention Watergate. The misuse of "classified" documents as a means of hiding information needed by the public for good judgment is not touched upon, although again and again Berninghausen speaks of free access to information as the very basis of intellectual freedom. Nor does he mention the use of spies, informers, and agents provacateurs among public groups who voice dissent.

Strangely enough, he mentions government investigations but not specifically the investigations by governmental agents into library circulation records, although he, as IFC chairperson, spoke eloquently before the ALA Council on the subject on January 20, 1971. He said:

> When the time comes in any society that government officials seek information as to what people are reading, it must be presumed that they expect to use these records as evidence of dangerous *thinking.* And when a government takes action to control what its citizens are *thinking,* it is a tell-tale sign that all is not well in that society."[2]

The ALA Council then adopted the "Policy on Confidentiality of Library Records" to protect the privacy of the library users so that they might think their own thoughts and speak their own minds without the fear that their library would divulge their interests.

The "tell-tale sign that all is not well in that society" was further indicated later that year when two librarians asked ALA at the annual conference at Dallas to take a stand against actions of the federal government that were used to intimidate and muzzle people critical of administrative policies, specifically the Vietnam War and defense of minority rights. It is a matter of personal pique (because I was one of the two librarians) that this intellectual freedom issue is also not even mentioned, although after much debate and discussion it resulted in the ALA document, "Resolution on Governmental Intimidation."

Nor, for that matter, is ALA's concern for the protection of journalists' rights to refuse to divulge information

sources mentioned in this book. There is a whole chapter devoted to theories of the press as bases for intellectual freedom and an eight-page appendix of "Statements of Ethical Principles" involved with "Free Press and Free Trial." But that it is thanks to the burrowing of the Free Press that the great dangers to our democratic institutions were exposed to light, that is not spoken of. Nor that many journalists went to jail to protect the "freedom of the press."

The chapter on the theories of the press rather deals with the question of "advocacy" as against "objective" journalism. Berninghausen decries editorializing in news stories. He does present the dilemma: "When the press merely narrated what McCarthy had said, they unquestionably helped him in his character assassinations." He comes to the conclusion that "ideally the news should be presented objectively and without any warping by editorial opinion. Even though pure, complete objectivity is not possible, it should nevertheless be the goal of every newsman." But, again, no word about official secrecy, suppression of news, control of news by fewer and fewer newspapers, nor attacks by the Nixon administration on reporters and news services that were seeking information and trying to present it as they saw it to the public.

The attack on the library press has been very well handled by that press. It would be presumptuous of me to comment.

What is this neutrality, this objectivity that David K. Berninghausen defends with such vigor? He speaks of colleges and university communities as rightful repositories of quiet reasoning and of objective research that has goals of eventually benefitting mankind. However, he himself provides a quotation from the former chairman of the Senate Foreign Relations Committee, William J. Fulbright, that refers to "the power of the military-industrial-academic complex." Fulbright said, "If American democracy is overthrown in our generation, it will not be by the radicals flying the Vietcong flag but by the right-wing radicals flying the American Flag." (p. 86)

Wasn't the perception of the students correct when they demanded an end to military-oriented research on university campuses? Wasn't their judgment better, based on more reading, more thinking, and more discussing than that of the rest of the country, when they demanded an end to the illegal and immoral Vietnam War and wished to protect the campus community from military recruiters? And how many of these "activist" students, who were frustrated by endless discussions, and by their clear knowledge of the monumental power of that "military-industrial-academic complex," were victimized by the conversion of a demonstration into a violent battle by how many FBI undercover agents and provacateurs? That we will never know. But the Tom Huston plan exposed during the Watergate hearings indicated that this had been going on and the operation was to be enlarged.

Academia is not the Mt. Olympus it is cracked up to be. It can and has been bought. Its "objective" research is for sale. The subject of the research is determined by the buyer. And, to bring it back to the library, the budget to support the research with library materials and access to information (one would suspect) would somehow be forthcoming, perhaps even at the cost to other subject areas.

It is important to inqure into Berninghausen's concept of neutrality in the library profession. He claims that "the central principle in the *Library Bill of Rights* is that libraries and the ALA must be impartial and neutral on substantive issues unrelated to librarianship." (p. 110) Nowhere in that document is such a principle expressed. On the contrary, the *Library Bill of Rights* refers to the library "as an *institution of education for democratic living.*"

It is therefore not neutral about "democratic living." Libraries, it may be inferred, are enjoined to behave as institutions *for* democratic living. As such they may be expected to be *for* policies that are beneficial to democratic

(Continued on page 190)

Kanawha schools open peacefully

Amid school critics' promises to keep their textbook fight alive, Kanawha County, West Virginia schools opened in September virtually without incident. Leaders of the anti-textbook forces continued to hold rallies and threatened massive actions, but there were no major disruptions of classroom activities.

A series of relatively small tangles with authorities did precede the opening of the school year, however. In late August, twenty women held a sit-in at the Kanawha County Board of Education demanding the resignation of all board members save Alice Moore, an ally of the anti-textbook forces, and the refund of tax monies used for public education. Refusing to leave until their demands were met, the women were forcibly removed by police under court order.

Last year, the anti-textbook forces seemingly won in the classes, but lost in the courtroom. They were successful in forcing the removal of over 300 books from the schools and the development of new guidelines for the purchase of textbooks. This year, however, many of the 300 books have been returned to the schools, although some principals refused to accept them or placed them in storage. Many teachers expressed anxiety over what teaching techniques they could employ in the classroom.

"You find you cannot teach any more, you worry that a parent is looking over your shoulder, questioning why you did that or did this, what you are doing," a twenty-eight-year-old teacher said. Reported in: *Charleston Gazette*, August 29, September 2; *Charleston Daily Mail*, September 1.

censorship dateline

libraries

Pinellas County, Florida

After winning at least the temporary removal of three books (*Blueschild Baby, Our Bodies, Ourselves, and Talk Show*) from school library shelves last spring, leaders of Churches United for Decency (CUD) promised in August to expand their fight against "dirty" works in libraries.

Speaking on behalf of CUD, the Rev. Donald J. Ralston said, "We don't plan to let this thing die. We're going to stick with it until something is done or we can't do any more. We want an end to sexual degeneracy spiced with gutter lingo in school libraries."

In July, at the urging of CUD members, the Tarpon Springs City Commission passed a resolution "objecting" to the "presence of obscene and lewd reading materials" in Pinellas County schools and asked the school board to remove the books from the school libraries.

Ralston sought similar support from the leadership of each of the twenty-four municipalities in Pinellas County and from the Pinellas County Commission. However, the commission said it would not consider the resolution unless at least one commissioner was willing to support it.

Summing up the feelings of the county commissioners, Chairman Pat Iley stated, "The County Commission has about as much business telling the school board about what books go into the school libraries as the school board has telling the County Commission what to do about the drainage and sewer problems in the county."

The controversy started several months ago (see *Newsletter,* Sept. 1975, p. 138) when a group of parents protested the presence of three books in the school library. The parents requested that the books be removed and wanted assurances that such books would not appear on the shelves again.

Although a comprise was reached between school officials and the protesting parents, CUD, formed in the meantime, was unwilling to accept the compromise and continued to protest. Ralston stated that the participation of parents on the book review committee, as agreed to in the compromise, was an inadequate solution to the problems in Pinellas County. Reported in: *St. Petersburg Independent,* August 5, 16.

Randolph, New York

All but five of 147 books, locked in a Randolph Central School vault in response to complaints from members of the Concerned Parents Committee (CPC), have now been returned to library shelves (see *Newsletter,* May 1975, p. 75; July 1975, p. 103). The problem in Randolph began in January when CPC members seized several books from the school library and displayed them to the public in an attempt to gain support for censorship of the school library.

One result of the controversy was a school board decision to amend library policy. Dwain B. Greene, library-media specialist at Randolph Central School, reported that he was directed to institute labeling procedures for the controversial books and all new library acquisitions. New materials, the board said, should be labeled according to age recommendations found in the standard review sources. Parental permission will be required for all materials labeled for an older age bracket than that of the student borrower. Parents will be able to request restrictions for all labeled works.

St. Marys, Pennsylvania

Continuing complaints about materials in the St. Marys Public Library escalated in September to demands for restricted access and the removal and labeling of books on library shelves. The controversy in St. Marys began last spring (see *Newsletter,* May 1975, p. 76) after Librarian Ted Smeal received complaints from church and parent associations about sex education literature.

Responding to the demands of parent and church groups, the library board held an open meeting in April to allow an airing of opinion. The meeting resulted in an agreement to appoint a committee to study the complaints and report at the next board meeting.

When the board reconvened in September, it was learned that the review committee had never been appointed. Without a committee report; the meeting dissolved into a heated discussion and rehashing of prior arguments. Members of the board refused to acknowledge the American Library Association's and the Pennsylvania State Library's policies and standards. "This is St. Marys and not any other community," stated the president of the library board, who spearheaded the attack.

After taking no action at their meeting in September and leaving the controversy unresolved, the board has scheduled its next meeting for January 1976.

Hillsville, Virginia

A James Baldwin novel, *Tell Me How Long the Train's Been Gone,* was removed last summer from library shelves at Carroll County High School by Dallas Philips, chairman of the Carroll County School Board. Philips intercepted the book, a recent purchase, even before it had been processed by library employees. Several months ago, the school board removed a textbook series from the approved curriculum list and books on demonology from the library, which also serves as the county's only public library.

In August the board authorized a ten-member review committee to screen all new library materials (approximately 1,000 per annum) prior to processing. Jean Bowman, the librarian who chairs the library screening committee, reported that the committee could not possibly screen all new materials and requested that the committee be required to review only those items on which complaints are filed. Board members rejected this solution and demanded that the committee fulfill its original charge. Bowman consented to report the school board's response to the committee.

In responding to Bowman, Philips stated that he believed a book can be reviewed without reading it from cover to cover. Reported in: *Galax Gazette,* August 14, September 11; *Carroll News,* September 11.

schools

Atlanta, Georgia

Opponents of two controversial state-approved textbooks won a promise from members of the Georgia Board of Education to press legislators for a law allowing parents to preview textbooks for Georgia schools.

Members of Better Education in Georgia Today (BEGAT), who have complained about the Scott Foresman series *Galaxy* and *America Reads,* argued that their taxes should not be used to purchase books which are "anti-God, anti-law, and un-American." Reported in: *Atlanta Journal,* September 12.

Sacramento, California

A bill approved by the California Assembly which would have extended to public school newspapers the right of California students to express themselves freely was defeated in August by the Senate.

Under current California law, primary, elementary, and secondary school students have the right to exercise free expression in such things as notices on school bulletin boards so long as they do not engage in obscene, libelous, or inciteful activities. The bill (A.B. 207) would have extended the same right to student newspapers.

Opponents to the change said the bill would authorize profane and vulgar words and printed discussions of premarital sex. At one point during the debate, Senator H.L. Richardson stunned his decorum-conscious colleagues when he used a four-letter expletive to make a point. Richardson told the Senate that when he questioned a youth on the bill before the Senate Education Committee, he asked the witness whether he was offended by the word "shit." He said the witness replied that it depended upon how it was used.

Mention of the word "shit" was thought to be unprecedented in California Senate debate. Reported in: *Ventura County Star-Free Press,* August 15.

East Baton Rouge Parish, Louisiana

A search for books and materials "containing obscenity, filth, or pornography" in East Baton Rouge Parish schools was ordered by the parish school board in September. A controversy over the use of "unfit" materials in East Baton Rouge schools has been simmering for a year (see *Newsletter,* July 1975, p. 104), fueled by parental complaints about a values clarification program and certain textbooks.

This summer a grand jury was impaneled to investigate the controversy and the school board responded to the complaints by establishing, in May, a systematic way for persons to file complaints. The new review system will be used to examine books brought to the attention of school board authorities as a result of the recent search order.

Teachers and librarians, who spent months writing new guidelines for textbook selection and establishing procedures for review of complaints, criticized the new search order, which they feel is a reversal of the school board's stand in May.

Superintendent Robert Aertker answered the teachers' criticism by stating that there would be "no wholesale removal of books." He said that the resolution was designed to head off further criticism of the school system for allegedly obscene books and materials in the schools. Reported in: *Baton Rouge State-Times,* August 27; *Baton Rouge Morning Advocate,* August 29, September 17; *Washington Star,* September 22.

Montclair, New Jersey

The Montclair Board of Education passed September 8 a resolution calling for the removal of the National Science Foundation's controversial social studies course, *Man: A Course of Study* (MACOS). The board also instructed Superintendent Walter L. Marks to prepare a replacement for MACOS to be implemented before January 1.

In casting the single negative vote on the resolution, Board Vice-President James Ramsey charged that the resolution was "totally unnecessary" because Marks had been previously instructed to review the course and advise the board on alternative social studies programs when the controversy over MACOS arose last spring.

Members of the public expressed their displeasure with the board's action, claiming that it had acted without

sufficient public comment on MACOS. Others complained that replacement of MACOS in mid-year would adversely affect students. Members of Better Education for All Montclair (BEAM), an anti-business group, defended the board's action. Reported in: *Montclair Times,* September 11.

Montgomery County, Maryland

A group of Montgomery County parents appealed in August to the Maryland Board of Education in an effort to keep sixty textbooks out of county schools.

The group, which calls itself Parents Who Care, filed a lengthy brief with the state board asking it to keep the books out of the school until three proposed committees composed of parents could pass judgment on them.

Parents Who Care argued that there should be no books in the schools which fail to conform to the prevailing moral values of Montgomery County or which violate the constitutional right to freedom of religion. Among the works singled out for extensive criticism was *Man: A Course of Study.* Reported in: *Washington Post,* August 29.

universities

Newton, Massachusetts

The student government of Boston College rescinded a September 18 speaking invitation to former South Vietnamese Premier Nguyen Cao Ky when student leaders became concerned for Ky's safety. After the invitation was issued, the Young Socialists and the Friends of Indochina Organizing Committee on the campus announced plans to picket Ky's appearance and released a statement calling him "a former dictator and heroine smuggler." Reported in: *Washington Post,* September 17.

television

Los Angeles, California

Navels are not permitted on CBS television during family viewing hours, a CBS censor has ruled, whether they belong to Cher, her guests, or a copy of the famous Venus de Milo.

Don Reo, co-producer of the Cher show, said a reproduction of the Greek masterpiece was ordered off the set of the show because Venus was naked. Reported in: *Chicago Daily News,* September 19.

West Palm Beach, Florida

Proclaiming that a woman's home is her castle, a group of Palm Beach County women demanded that major corporations, the television networks, and the federal government remove what they feel is offensive television advertising from their living rooms.

The women, members of Organization for Femininity (OFF), said they were determined to get advertisements for sanitary napkins, tampons, feminine deodorant sprays, douches, and jock itch powders off the air.

We're not a bunch of prudes," declared Joan Fenesy, one of OFF's chairpersons, "we just feel that these ads take away from the dignity of women and that showing them on TV is an invasion of privacy." Reported in: *Miami Herald,* July 27.

Boston, Massachusetts

One of the American Broadcasting Company's new television series, "Welcome Back, Kotter," a situation comedy which premiered in September, will not be seen in Boston. The series, which stars comedian Gabe Kaplan as a teacher in a tough high school in Brooklyn, was dropped by station WCVB-TV, ABC's Boston affiliate, because of the city's current school busing controversy. Reported in: *New York Daily News,* September 2.

New York, New York

More than half a dozen advertisers withdrew their commercials from the September 5 broadcast of the CBS News documentary on hunting, "The Guns of Autumn," after they received calls from the National Rifle Association and other U.S. gun and hunting clubs.

A CBS sales executive reported that the withdrawals were clearly the result of "a campaign to intimidate the advertiser." As a result, only one advertiser, Block Drug, remained in the program.

Even before the program was aired, CBS News received mail from gun advocates around the country. With the first announcement that the program was in production, most gun and hunting groups seemed certain that the program would arouse sentiment against their right to own guns. Reported in: *New York Times,* September 6.

Commenting on the Senate floor on the decision of CBS News to broadcast a follow-up program, "Echos of the Guns of Autumn," aired September 28, Senator William Proxmire (D.-Wis.) said it was a good bet that the program was designed to fulfill the requirements of the Federal Communications Commission's so-called fairness doctrine. Proxmire asked whether, under the First Amendment, a government agency had the right to decide if a show is fair. He said in his judgment it did not. Reported in: *Variety,* September 17.

New York, New York

According to an announcement released in September, the controversial Swedish-made film *Harlem: Voices, Faces* was finally scheduled for broadcast (in October) by Channel 13 in New York. The station, which holds the U.S. rights to the ninety-minute program, withdrew it from a scheduled public broadcasting system airing in mid-May after a group of black activists at the station charged that it was grossly unfair.

The station tried three times to assemble panels to discuss the program before the May telecast, but each time panel members backed off under the activist pressure.

PBS officials in Washington said privately that they felt the New York station had knuckled under to censorship and had been nudging it to air the program.

The original three-hour film, seen in seventeen countries, has received critical praise. Reported in: *Washington Post,* September 19.

Cleveland, Ohio

In a major effort to win television acceptance of advertisements for its Trojan brand of condoms, the Youngs Drug Products Corporation asked WJAN-TV, Canton-Cleveland, to carry two of its commercials. The reaction to news reports about the content of the ads was so violent and vituperative that they were pulled by the station before their planned August 4 starting date.

In San Jose, California, however, station KNTV asked its viewers to call or write about their attitudes toward such advertising and discovered that callers were eighty-five percent in favor, and that the mail ran five to one in favor.

Neither the Cleveland-Canton outlet nor the San Jose station subscribes to the television and radio codes of the National Association of Broadcasters, a self-regulatory body that currently rejects condom advertising. It is a common tactic for advertisers who want to have the code changed to get their advertising accepted by non-code stations and then prove to the code boards that such advertising does not cause a public outcry. Reported in: *New York Times,* July 31; *Advertising Age,* August 11.

the press

Chicago, Illinois

On an assignment to cover a grand jury investigation, *Chicago Daily News* reporter Larry Green was banned from a corridor of the Cook County Criminal Courts Building and then ordered removed from the building by Chief Judge Joseph Power. In a lecture to Green, Judge Power said he acted to protect the secrecy and the sanctity of the grand jury.

When Green, who helped uncover the police spying scandal under investigation by a grand jury at the time, protested that he had a right to remain in a public place, Judge Power denied that the Criminal Courts Building is a public structure. Reported in: *Chicago Daily News,* August 15.

religious press

San Diego, California

A group of seventy-five Spanish-speaking Roman Catholics in the diocese of San Diego protested an editor's order to remove a Spanish-language column from the diocesan newspaper on the grounds that it "promoted Communism." The priest who wrote the offending article, the Rev. Luis Bernal, threatened to take the issue before the Peace and Justice Commission of the U.S. Catholic Conference in Washington, D.C.

Bishop Leo T. Maher, head of the San Diego diocese, became involved in the conflict when he backed Michael Newman, editor of the *Southern Cross,* in his decision first to cut two paragraphs from the Bernal article in the paper's August 14 issue and then to drop the column entirely.

Newman, who said he was "revamping the entire editorial content of the *Southern Cross,*" said Bernal's "ideas sounded like Communist propaganda by bringing out the good things and not the bad in Communist China and implying that in the U.S. riches are sinful."

Bishop Maher said the column was the type "that I don't want to find in our Catholic paper." Commenting on Bernal's claim that all in China "have everything that is necessary to live a rightful human life," the bishop said, "If that isn't promoting Communism, I don't know what is." Reported in: *Los Angeles Times,* August 28.

U.S. Immigration Service

New York, New York

Pathfinder Press charged in September that the U.S. Department of State violated the Helsinki Agreement, signed last July, by blocking the entry of author Hugo Blanco into the U.S. Pathfinder, which announced that Blanco intended to go on a national speaking tour, said that the provisions of the Helsinki agreement "guarantee the rights of authors to travel to meet with their publishers" and charged that the U.S. was the first to violate this section of the agreement, which was aimed at the Soviet Union and its restrictions on the travel of its citizens.

The State Department said that Blanco was "ineligible" under a section of the Immigration Act, but if the U.S. Consul in Sweden were to rule in favor of an appeal it would take a ruling by the Attorney General to admit the author.

Pathfinder identified Blanco as a Peruvian revolutionary living in Sweden, where he fled from Chile before the coup in that nation. Reported in: *LJ/SLJ Hotline,* September 29.

New York, New York

The Council on Foreign Relations in New York revealed in September that its October dinner meeting on Italy might not include its Communist guest of honor, due to the uncertainty of American policy toward the Italian Communist Party.

The guest, Sergio Segre, head of the foreign section of the Italian Communist Party for five years, said he was reluctant to apply for a visa without some indication from

Washington that the State Department would say yes. Every sign from Washington, however, hinted that the answer would be no.

According to Alvin Shuster, writing in the *New York Times,* it was the U.S. position that granting a visa to Communist Party officials would be regarded in Italy as a change in attitude toward the party and would serve to undermine the Christian Democrats, who face increasing pressure from the Communists at the polls.

One defense of the U.S. policy came in an interview with U.S. Ambassador John A. Volpe published in the news magazine *Epocha.* Volpe said that detente implied balance and stability and that Communist regimes in Italy or Portugal would represent "a substantive alteration" in that balance.

"Italy's domestic affairs are a matter solely for the Italians to decide," Volpe added. "But we and our allies obviously favor those forces which wish to remain allied with us in a progressive democratic system which avoids extremism of either left or right. We will give no encouragement to those who advocate radical divergences from this framework." Reported in: *New York Times,* September 14.

on stage

Augusta, Georgia

The well publicized and controversial nude scene in the musical *Hair* failed to materialize at Augusta's Bell Auditorium in July when show officials panicked. "We had heard all kinds of rumors that [the police] were going to bust us so why jeopardize ourselves," commented Richard Van Arsdale, road manager for Rock Talent Associates Inc. of New York, which staged the show.

Van Arsdale reported that the Augusta performance marked the first time that the nude scene had been cut out of a performance by his touring company just prior to show time. He said that in other cities it had been eliminated at the request of city officials.

Van Arsdale added: "We don't have time for a court battle. We came down here to give the town some good vibrations."

When *Hair* was performed in Augusta in 1972, two members of the cast were arrested and charged with public indecency. However, their cases were quashed by State Court Judge Gordon W. Chambers four months later. Reported in: *Augusta Chronicle,* July 28.

art exhibits

Corsicana, Texas

A female nude painted by Renoir was withdrawn from a traveling exhibit displayed at a Corsicana bank. "As far as I'm concerned, it isn't correct," explained W.D. Wyatt, president of the First National Bank. "A few people in a community such as this might not consider it art. They look at it as a nude woman." Reported in: *Philadelphia Inquirer,* September 20.

obscenity and related matters

Chicago, Illinois

Speaking at a convention of the Sons of Italy, Chicago Mayor Richard J. Daley lashed out at "filth" in the entertainment media and strongly suggested that his views on the subject played a role in the closing of six Loop movie theaters during the mayoral campaign earlier in 1975.

After complimenting the Sons of Italy for its long antipornography campaign, Daley explained why the theaters were shut down. "I did it, you did it, because the picture was no good," Daley said. "We're seeing too much of the violence and sex on TV and in the movies."

During the mayoral campaign, Daley said the theaters—all of them showing movies containing sex and violence—were closed because of fire code violations. Reported in: *Chicago Tribune,* August 22.

Moline, Illinois

Objecting to sexually explicit covers on magazines displayed in local stores, Moline Mayor Earl Wendt called upon the Moline City Council to pass an ordinance barring the display of magazines with nude subjects on their cover as well as the sale of any such magazines to persons under eighteen.

"The little old lady that goes to the drugstore to get her prescription filled, when she goes up to the checkout counter, she shouldn't have to stand there and look at all these magazines that are right there," Mayor Wendt said. "Customers have got a right to turn their heads, but how can they turn their head when the thing is staring them right in the face in back of the cash register or something?" Reported in: *Christian Science Monitor,* August 20.

Prince George's County, Maryland

The Prince George's County State's Attorney's Office suggested in August that the county government should consider stricter regulation of adult bookstores. The recommendation was prompted by a number of complaints to county offices, according to Stephen C. Orenstein, chief of the civil division of the State's Attorney's Office.

"We are suggesting to the county government that it restrict the operation of such stores by regulating zoning and licensing," Orenstein said. He commented that it would be difficult to take any other course of action "because you are dealing with the First Amendment."

Representatives of churches in the area said there had

(Continued on page 182)

from the bench

teachers' rights

Bismarck, North Dakota

In November 1973, the school board in Drake, North Dakota committed copies of Kurt Vonnegut's *Slaughter-house-Five* and James Dickey's *Deliverance* to the flames of the school incinerator. The teacher who ordered the works for his high school English class, Bruce Severy, was dismissed at the end of the school year.

Last September, nearly two years after the book burning, Severy was vindicated in U.S. District Court. Judge Paul Benson ordered the school board to pay Severy $5,000 in damages and to refrain from describing his teaching performance in Drake is unsatisfactory. He further ordered that Drake teachers be allowed to use the two works in eleventh and twelfth grade English classes.

students' rights

Baltimore, Maryland

In still another ruling on the question of censorship of student publications in Baltimore County schools, U.S. District Court Judge Edward S. Northrop denied a request for a temporary injunction to prevent Baltimore County schools from pre-publication censorship of student newspapers. Filed by Barbara Gold, director of the Student Press Law Center, on behalf of three Woodlawn Senior High School students, Sam Nitzberg, Rodney Jackson, and Richard Smith, the request for the injunction claimed that school officials were not attempting in good faith to expeditiously produce censorship regulations as directed by the U.S. Court of Appeals for the Fourth Circuit (see *Newsletter*, July 1975, p. 110).

In refusing the request, Judge Northrop pointed out that he expected Gold to appeal to the Fourth Circuit again "as a vehicle to get it to throw out prior censorship entirely."

"That is her privilege, although I disagree with her philosophy," Judge Northrop continued, commenting that "there are already too many things that impinge on the basic purpose of the system—to educate students. [Graduates] are unable to withstand the discipline they need in the business world or in life itself. They are also ill-prepared to enter higher education." Reported in: *Baltimore Sun*, September 26.

freedom of speech

Boston, Massachusetts

The public use of offensive or vulgar words that fall short of being "fighting words" is not punishable under a 200-year-old Massachusetts law prohibiting "idle and disorderly" conduct, according to a ruling of the Massachusetts Supreme Judicial Court, the state's highest bench.

The court said that however offensive certain words might be to some people, they enjoy the protection of the First Amendment so long as they do not "inflict injury" or "tend to incite an immediate breach of the peace."

The unanimous decision, written by Justice Edward F. Hennessey, directed the Boston Juvenile Court to dismiss a case in which a Boston youth was charged with being idle and disorderly in a Boston store on March 20, 1974. Allegedly, he shouted obscenities for forty minutes at saleswomen and a crowd of 100 shoppers. Reported in: *Boston Globe*, September 12.

New York, New York

According to a ruling of the U.S. Court of Appeals, topless dancing is "a harmless form of diversion or entertainment" and a form of "communication" protected by the First Amendment to the U.S. Constitution. The ruling of the appellate court upheld a U.S. District Court ruling which had found unconstitutional a North Hempstead, Long Island ordinance banning topless dancing. The ordinance had been challenged in court by two night clubs there. Reported in: *New York Daily News*, August 29.

Baltimore, Maryland

Maryland's 1972 ban on the sale of college term papers violated the First Amendment, a Baltimore County Circuit Court judge ruled in August. In declaring the law invalid, Judge John N. Maquire overturned a lower court conviction of Harry R. McNulty, who was found guilty in February of selling a twelve-page research paper on a World War II German warship to an undercover policeman posing as a student.

In his opinion, the judge found that the law was "overbroad" in covering term paper vendors who are not aware of purchasers' intentions of submitting the papers as their own work. "Placing such a pall over the sale of potentially valuable resource items, irrespective of the seller's intent, sweeps too widely through the First Amendment area," the

judge concluded.

Maquire added that the state had a right to preserve the integrity of Maryland schools by prosecuting "persons who seek to aid in the fraudulent submission" of term papers.

In view of the fact that the jurisdiction of Maguire's court is restricted to Baltimore County, prosecutors in other counties in Maryland were expected to ask the General Assembly to tighten the law. Reported in: *Washington Star,* August 12; *New York Times,* August 13.

the press

Glendale, California

The Socialist Labor Party in August won a suit against the city of Glendale over the sale of its newspaper, the *Weekly People,* from sidewalk newsracks. At issue was a new Glendale ordinance, which went into effect July 24, limiting the number of newsracks per city block and giving priority to daily newspapers.

The *Weekly People,* which was placed at the bottom of the list in the assignment of priorities, claimed that Glendale was trying to put it out of business and filed suit.

In his ruling on the charges against the city of Glendale, which were prepared for the Socialists by the American Civil Liberties Union, Superior Court Judge Norman Dowds said the newspaper has as much right to First Amendment freedom of the press and protection of expression as any political contender for office. The judge enjoined enforcement of the ordinance on the grounds that it violated the First Amendment. Reported in: *Los Angeles Times,* August 13.

Long Beach, California

A Long Beach Superior Court judge upheld the right of an *Independent Press Telegram* reporter to withhold confidential news sources in connection with a story about a Las Vegas gambling interest's attempts to obtain a business lease on the Queen Mary, now a Long Beach tourist attraction and shopping complex.

Judge Hampton Hutton ruled that California's shield law applies in the libel action brought against Mary Neiswender for her September 1974 story. The suit was filed by John Daugherty, who operates a Torrance pinball firm owned by Las Vegas casino owner Jay Sarno.

The suit charged that Daugherty had been defamed, that the defamation was malicious, and that Neiswender's story falsely implied that he was associated with gamblers, crime syndicates, and organized crime. Reported in: *Editor & Publisher,* August 16.

Rockford, Illinois

A $300,000 libel suit against the *Rockford Morning Star* and the *Evening Register-Republic* was dismissed by Circuit Court Judge John T. Reardon, the fourth judge to preside in the case. The suit stemmed from the newspapers' criticism of Fred C. Cooper, chief deputy in the Winnebago County Circuit Court Clerk's office, who was described as "a political hack" (see *Newsletter,* Sept. 1975, p. 145).

"It's recognized by all parties to this proceeding that the freedom of expression upon public questions that exist in the press must be preserved and protected," Judge Reardon commented in his dismissal. "Unquestionably, this is one of the bulwarks of our constitutional government."

"Our government, in the legislative action and in judicial precedent, has nurtured and protected the concept that from free discussion there will flow a more responsive government conforming to the will of the people." Reported in: *Chicago Tribune,* September 14.

Baltimore, Maryland

A $281,000 judgment awarded a high school principal who claimed he was libeled by a story in the *Montgomery County Sentinel* was overturned in August by the Maryland Court of Special Appeals. Reporters William Bancroft and Bob Woodward (now with the *Washington Post*) called the principal "unsuited" for his job in a 1971 a story which rated the county's high school principals.

In December 1973, a Frederick County Circuit Court jury awarded Fred L. Dunn, the principal, both compensatory and punitive damages to be paid by the publishers of the *Sentinel,* the two reporters, and their editor.

In overturning the ruling, the appeals court said the principal was a public figure and that his "suitability for the position was a matter of public or general interest or concern." Dunn's attorney announced that he would appeal the decision to the Maryland Court of Appeals, the state's highest court. Reported in: *Editor & Publisher,* August 9.

Waukesha, Wisconsin

Circuit Court Judge Clair Voss ruled in August that a compilation of test results given Waukesha pupils is a public record which must be made available to the public and the press. Judge Voss' ruling upheld a request by the publisher of the *Waukesha Freeman* to inspect the test results.

Kenneth Reinke, superintendent of schools, testified that he felt release of the results would have an adverse effect on the school system. The *Freeman* sought only the compilation of the test scores, not the results of individual tests, which are confidential. Reported in: *Milwaukee Journal,* August 22.

Knoxville, Tennessee

A U.S. District Court judge refused in August to issue an order declaring unconstitutional a section of a Tennessee law dealing with the publication of juveniles' names.

Ruling on a suit filed by Dan Hicks Jr., publisher of the *Monroe County Observer,* Madisonville, Judge Robert L.

Taylor declared that the law would have to be challenged in state courts before it could be reviewed by the federal judiciary.

Hicks' suit stemmed from contempt of court charges brought against him by Monroe County Court Judge J.P. Kennedy for printing the name of a juvenile in a murder trial after being ordered not to publish anything on the case (see *Newsletter*, Sept. 1975, p. 145).

"I am still under order not to print anything on the case," Hicks said when filing his civil suit July 28, "but I have written about it and nothing has happened since the failing." Reported in: *Editor & Publisher*, August 2; *New York Times*, August 6.

Charleston, West Virginia

Two reporters for the *Charleston Gazette* refused in September to testify in court about stories they wrote concerning recent coal strike rallies and as a consequence were jailed for contempt. Andrew Gallagher and Rick Steelhammer were ordered jailed until further notice of the court for a period not to exceed six months.

Although confidentiality of news sources was not at issue, both reporters stated that they felt their role would be compromised by any testimony. Four other Charleston reporters chose to testify at the hearing on whether to hold two miners in contempt of court for ignoring court orders. The miners were fined $500 each and sentenced to jail for a period not to exceed six months. Reported in: *Editor & Publisher*, September 13.

'gag'rules

Los Angeles, California

The American Civil Liberties Union charged in September that Jane Fonda's suit against federal government surveillance was bound by "an unprecedented gag order" by a U.S. District Court judge. According to the ACLU, Judge Malcolm M. Lucas forbad any public disclosure of information obtained from the Federal Bureau of Investigation, the Central Intelligence Agency, or other federal agencies names as defendants. "The court has effectively shut off from public disclosure outrageous and blatant governmental misconduct in a period when we are presumably attempting to purge our high offices of this sort of behavior," the ACLU contended.

Fonda's suit alleges that she was subjected to physical and electronic surveillance, mail openings, surreptitious entries, spying on her bank and personal records, and other "intimidation and harassment." Reported in: *Variety*, September 10.

Chicago, Illinois

The U.S. Court of Appeals for the Seventh Circuit ruled unconstitutional a lower federal court order banning attorneys from commenting publicly on pending civil cases and similarly eased a ban involving criminal litigation. The ruling was handed down in a suit brought by the Chicago Council of Lawyers in 1970 against then U.S. Attorney William J. Bauer, now a federal judge.

In the opinion written by Judge Luther Swygert, the three-judge appeals panel seemed most troubled by the problems of attorneys' comments in criminal trials and ordered the lower court to draft more specific rules for criminal cases. Reported in: *Chicago Tribune*, August 10.

Springfield, Illinois

The Illinois Supreme Court refused in September to hear an appeal by a former Chicago police consultant and thus upheld a lower court ruling that a "gag order" imposed upon him as a grand jury witness did not violate his constitutional right of free speech.

Cook County Criminal Court Judge Richard J. Fitzgerald said that the gag on John J. Clarke was necessary to preserve the secrecy of a "sensitive" grand jury investigation into illegal police surveillance of citizens' groups. Reported in: *Chicago-Sun Times*, September 18.

public school texts

Nashville, Tennessee

Two months after the fiftieth anniversary of the Scopes monkey trial, a federal judge and the Tennessee Supreme Court on the same day in August declared unconstitutional a 1973 Tennessee law requiring textbooks to provide equal space to biblical and scientific theories on the creation of the universe.

U.S. District Court Judge Frank Gray Jr. declared that the Tennessee law violated First Amendment guarantees of freedom of religion. His ruling was issued in accordance with the directive from the U.S. Court of Appeals for the Sixth Circuit, which declared that another federal court had erred in abstaining from a judgment in the case.

Tennessee's high court affirmed a ruling by Davidson County Chancellor Ben H. Cantrell that the law violated both the U.S. and the Tennessee constitutions.

The federal judge found the law unreasonable. "Every religious sect, from the worshipers of Apollo to the followers of Zoroaster, has its belief or theory," Gray said. "It is beyond the comprehension of this court how the legislature, if indeed it did, expected that all such theories could be included in any textbook of reasonable size." Reported in: *Chicago Daily News*, August 20.

state fair

Indianapolis, Indiana

Ruling on a suit filed by the Indiana Civil Liberties Union and the Committee for the Preservation of Life, an

anti-abortion group, Marion County Circuit Court Judge J. Patrick Endsley ordered the Indiana State Fair Board to allot the two groups booth space in an exposition hall at the 1975 fair.

In rejecting the applications for exhibit space, the fair's governing board said: "The board again reaffirmed the policy adopted in years past, that the Indiana State Fair Board will continue to refuse rental to any groups of a political or controversial nature."

Endsley observed that the board had no official rules setting standards for booth applications. He issued a permanent injunction against the board barring enforcement of any unofficial policy citing "controversial" or "political" purposes. The ICLU had never exhibited at the state fair, but the Committee for the Preservation of Life rented booths there in 1972, 1973, and 1974. Reported in: *Louisville Courier-Journal,* July 26.

Milwaukee, Wisconsin

After being urged by County Supervisor Fred Tabak and State Representative Gary Barczak to void an exhibit contract with the Milwaukee Nazi Party, the chairman of the Wisconsin State Fair Board announced in August that Wisconsin Attorney General Bronson La Follette had advised him that removal of the Nazis from the Fair would represent an unconstitutional infringement of the right of free speech.

Supervisor Tabak alleged that the Nazis "go beyond free speech." He argued that the literature which they distribute is "inflammatory and inciteful and provocative," with a "potential for civil disturbance."

William Lynch, executive director of the Wisconsin Civil Liberties Union, applauded the decision of the State Fair Board. "Freedom of speech must be protected for all groups, no matter how unpopular or obnoxious their views may be," Lynch said. Reported in: *Milwaukee Journal,* August 7.

obscenity law

Des Moines, Iowa

Jerry Lee Smith of Des Moines was convicted in September on seven counts of an indictment charging that he sent obscene material through the mail. A jury of ten women and two men deliberated for two hours before returning the verdict in U.S. District Court.

Testimony in the trial showed that Smith was arrested after postal officials ordered sexually explicit materials—including magazines, pictures, and movies—from a Des Moines company called Intrigue, with which Smith was connected.

Smith's attorney, C.A. Frerichs, introduced as evidence material he said was purchased legally at adult bookstores in Davenport and Des Moines. The materials were as explicit as those Smith was accused of sending through the mail, Frerichs told the jury.

Frerichs based much of Smith's defense on the fact that Iowa's obscenity law does not make it illegal for adults to obtain obscene material, and that the legislature's wording of the law makes it impossible for municipalities, counties, or other governmental units within Iowa to enact any law relating to the availability of obscene materials to adults.

The prosecutor, U.S. Attorney Allen Donielson, told the jury: "You are to determine what the average person in this community considers obscene. The Iowa law has nothing to do with the federal law. It is against federal law to send obscene material through the mails."

Frerichs announced that he would appeal the decision to the U.S. Court of Appeals. Reported in: *Des Moines Register,* September 10.

Jefferson City, Missouri

On a directive issued by the Missouri Supreme Court, *The Happy Hooker,* banned from commercial bookshelves in St. Louis County since February 1973, will get a new trial. This time, an advisory jury will be asked to determine whether it is obscene by community standards in the county.

In reversing St. Louis County Circuit Court Judge Drew W. Luten Jr. and sending the case back to his courtroom, the Missouri Supreme Court adopted a novel guideline for obscenity cases: according to the high state court, a trial judge must now direct obscenity issues to an advisory jury to determine whether the material is obscene by community standards.

Under the new procedures, if a jury says materials are obscene, the trial judge must independently determine the additional constitutional question of whether they depict "patently offensive, hard-core sexual conduct."

In an editorial comment on the decision, the *St. Louis Post-Dispatch* challenged the decision: "One of the reasons that the courts have had so much trouble in this realm of censorship is that everybody, including the judges, has his own notion as to what obscenity is. If seeking the opinion of advisory juries is the penultimate step, the ultimate would be to leave the whole problem to the individual. Could he not be allowed to determine what is obscene, and what he wants to read or not to read, all by himself—without the assistance of legislators, judges, prosecutors, police or advisory juries?" Reported in: *St. Louis Post-Dispatch,* September 9, 11.

Great Falls, Montana

District Court Judge Paul Hatfield ruled in July that Montana's obscenity law is unconstitutional and contrary to standards established by the U.S. Supreme Court. The decision applied to a section of the law which prohibited cities from adopting obscenity laws which are more restric-

tive than the state's.

The judge's ruling also upheld a Great Falls obscenity ordinance which took effect June 6. Hatfield argued that the community standards mentioned by the U.S. Supreme Court should be local standards as opposed to state-wide standards.

A firm which owns a bookstore in Great Falls had contended that the Great Falls ordinance attempted to define obscenity in a manner which conflicted with the Montana law. Reported in: *Helena Independent Record,* July 16.

Hauppauge, New York

In an appearance before Suffolk County District Court Judge Rudolph L. Mazzei, the operator of a Smithtown bookstore was acquitted of charges of selling an obscene magazine to an undercover detective.

During the non-jury trial before Judge Mazzei, the bookseller's attorney pointed out that the New York obscenity law permits the sale of obscene materials to "persons or institutions having scientific, educational, governmental or other similar justification for possessing or viewing the same," and that the bookseller had obeyed the law by posting signs in his bookstore indicating that sexually explicit material was sold "only for scientific or educational purposes."

Judge Mazzei accepted the argument of the attorney that it was up to the buyer, and not the seller, to obey the conditions of sale. Mazzei said: "The statute involved here cannot be interpreted to mean that only formal educators, students or scientists are persons with the necessary justification to possess or view such materials." Judge Mazzei said that restricting sales to college professors would be "to sanction an elite class reminiscent of the final commandment of Orwell's *Animal Farm.*"

All animals are equal, George Orwell said, but some animals are more equal than others. Reported in: *Newsday,* August 7.

Cincinnati, Ohio

The first federal obscenity conviction involving the film *Deep Throat* was upheld in July by the U.S. Court of Appeals for the Sixth Circuit. The decision sustained the eight-count convictions of three men and two corporations which exhibited the film in Newport, Kentucky prior to a raid by federal agents in 1973.

The defendants contended that the trial court judge gave the jury improper instructions about the community standards to be employed in determining obscenity. Judges Paul C. Weick and Albert J. Engel rejected the claim, stating that "it is plain to us that the material in the case was obscene, irrespective of which standards are applied."

Judge Wade McCree, who would have reversed the convictions, argued that improper standards were applied. Reported in: *Cincinnati Enquirer,* July 31; *Cincinnati Post and Times-Star,* July 31.

San Antonio, Texas

A federal judge declined in late July to stop District Attorney Ted Butler from raiding a lounge that insisted on showing the movie *Deep Throat* after it had been declared obscene in Bexar County.

U.S. District Court Judge John Wood Jr. said lounge operator Gary Rape had jeopardized any federal relief he might have received by publicly announcing that he was going to show the film despite threats by Butler to confiscate it. Reported in: *San Antonio Light,* July 25; *San Antonio News,* July 25.

obscenity: convictions, acquittals, etc.

Newport Beach, California

Newport Beach Municipal Court Judge Donald Dungan ruled that *Deep Throat* and *The Devil in Miss Jones* are obscene and thus upheld the Newport Beach police in their seizure of the films from the Balboa Pussycat Theater.

Dungan, who viewed the films in a private showing arranged by police and the prosecution, said his judgment was based primarily on the movies themselves. He insisted that they, and not testimony by expert defense witnesses, were the "best evidence."

Among those charged with exhibiting obscene material was Vincent Miranda, owner of the Pussycat chain, whose case in connection with another arrest on charges of showing an obscene film was recently returned to the California courts by the U.S. Supreme Court. Reported in: *Long Beach Press-Telegram,* August 9; *Newport Beach Orange Coast Pilot,* August 10.

St. Louis, Missouri

The first obscenity case to be heard in a St. Louis federal court since the 1973 U.S. Supreme Court decision that local standards could be applied in the determination of obscenity resulted in a guilty verdict against the owner of a chain of adult bookstores.

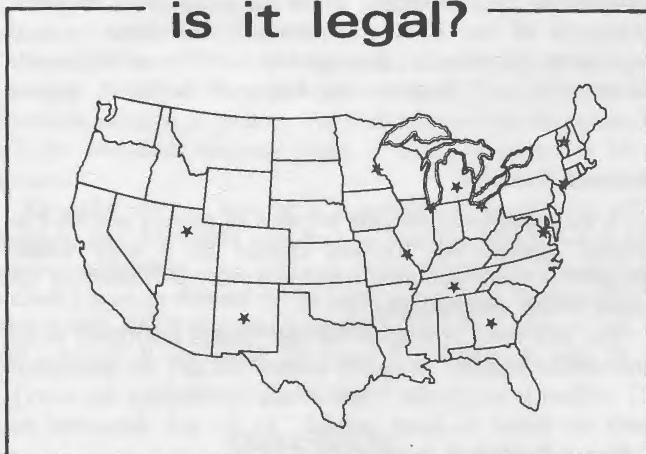
U.S. District Court Judge Kenneth Wangelin found Thomas C. Kelly guilty on seven counts of interstate transportation of obscene material. The judge ruled that magazines received by Kelly from a Cleveland, Ohio firm were "clearly legally obscene." Reported in: *St. Louis Globe-Democrat,* July 29.

Omaha, Nebraska

After deliberating for only one-half hour, an all female jury found the American Theater Corporation guilty of distributing obscene material. The guilty finding represented the corporation's third obscenity conviction this year.

(Continued on page 183)

is it legal?



in the U.S. Supreme court

Senator James L. Buckley (Con.-R.-N.Y.) and eleven other challengers of the new federal camapign financing law told the Supreme Court in September that the U.S. Court of Appeals for the District of Columbia's ruling against them had "wholly failed" to examine the impact of the law and instead "uncritically deferred" to the Congress when it upheld nearly all of the new legislation in an August 15 decision.

The appeals court held that the Congress acted within its powers when it provided for public financing of presidential elections and strictly limited the amount of money politicians may raise and spend in seeking election to federal office. Only one minor provision of the 1974 law was overturned by the court.

The challengers contended that the new legislation requires special scrutiny—because of the First Amendent rights involved and because of the Watergate context in which it was enacted. But, they argued, "the court below failed to give the challenged legislation even the normally careful scrutiny required when First Amendment rights are at stake."

The challengers include former Senator Eugene J. McCarthy and the New York Civil Liberties Union. Reported in: *Chicago Daily News,* August 15; *New York Times,* September 21.

Reporter appeals contempt conviction

William T. Farr, the Los Angeles reporter who has fought for years to protect the confidentiality of his news sources, was rebuffed by the U.S. Court of Appeals for the Ninth Circuit in his effort to have his five-day jail sentence for contempt overturned. However, he was granted a stay by the appeals court pending the filing and final disposition of his petition to the Supreme Court.

Farr's case stems from his refusal to disclose sources for an article he wrote during the Charles Manson murder trial in 1971.

The appeals court held that in a "notorious case" like the Manson trial, the confidentiality of news sources was not constitutionally protected because it was secondary to a defendant's right to a fair trial.

After his original citation for contempt, Farr was jailed for forty-six days until released by order of Justice William O. Douglas. A state court later ruled that Farr's indeterminate sentence, which was ended by Justice Douglas, was "cruel and unusual punishment" because it had become apparent that it would not achieve its purpose of forcing him to name his sources. That court said he could receive only a sentence of five days in jail and a $500 fine. Reported in: *New York Times,* August 10; *Editor & Publisher,* August 30.

Alabama obscenity law to be reviewed

In the area of obscenity, the Supreme Court will review a section of the Alabama obscenity statute which provides that a solicitor for any judicial circuit may institute a civil action when he has reason to believe that allegedly obscene material is about to brought into Alabama or sold in the state. The petitioner in the case, Chester McKinney, was found guilty in an Alabama court for selling a magazine which had previously been declared obscene. The crucial issue in the case is the fact that McKinney was neither a named party to the civil action nor given timely notice of its pendency and the right to intervene. During criminal proceedings against him, he was never granted an opportunity to present evidence or cross-examine witnesses on the issue of obscenity.

the press

Washington, D.C.

The U.S. Department of Justice has ordered ninety-one newspapers to stop printing classified housing advertisements that are sexually discriminatory.

Commenting on the order, Assistant Attorney General J. Stanley Pottinger, head of the department's civil rights division, said that advertising which indicates a preference for or limitation to tenants of one sex or the other had been illegal for more than a year.

Pottinger urged "affirmative action" such as printing an announcement by the Department of Housing and Urban Development, prepared as part of HUD's fair housing ad guidelines, which would notify a paper's readers of the paper's commitment to compliance with the Fair Housing Act.

Representatives of the American Newspaper Publishers Association and the National Newspaper Association met in July with officials of the Justice Department and HUD. Both government departments agreed to consider adopting guidelines for voluntary compliance as a basis for further

discussion with the papers. Reported in: *Editor & Publisher,* August 2.

Waycross, Georgia

A spokesman for the *Waycross Journal-Herald* said in late August that his paper would, under protest, abide by a judicial restriction on coverage of a trial while he consulted with the paper's attorneys.

Superior Court Judge Ben Hodges, in narrowing an earlier sweeping ban on press coverage of a trial stemming from theft of timber from public land, barred publication of the testimony of two of four defendants. Judge Hodges explained that he limited use of the testimony in order to protect the rights of the two defendants in later trials.

The president of the Georgia Press Association, noting that the trial involved a county commissioner, immediately took issue with the judge. "The action of Ware County Judge Ben Hodges in ordering a ban on the public issue of testimony in a public trial where the welfare and tax money of the people of Ware County are involved has too many characteristics of Watergate," said W.H. Champion, publisher of the *Dublin Courier-Herald.* Reported in: *Editor & Publisher,* August 30.

Chicago, Illinois

Chicago station WBBM-TV became involved in a controversy in September when it secretly filmed and then broadcast an alleged attempt at extortion by a Chicago Fire Department lieutenant.

By broadcasting the incident, WBBM-TV apparently ran afoul of a little-known Illinois statute–similar to laws in only four other states–which prohibits the broadcast of an eavesdropped conversation until "it is involved in criminal proceedings," i.e., until it goes to court. WBBM-TV characterized the law as unconstitutional and claimed that it favors the print media.

When a spokesman for the American Civil Liberties Union said of the broadcase, "If that doesn't violate the Illinois statutes, the statutes don't exist," a WBBM-TV editorialist blistered the ACLU, which he said spent its time defending Nazis and not the rights of the paint shop owner who WBBM said was shaken down by the fire lieutenant for a paint job in return for a satisfactory fire inspection. Reported in: *Variety,* September 10.

Johnson City, Tennessee

A $2 million damage suit has been filed against the *Johnson City Press-Chronicle* for its 1974 publication of photographs of a murder victim. Brought by relatives of Milburn Fred Hammonds, who was fatally shot in a family argument, the suit charges that the publication of the pictures of Hammonds' body represented a malicious invasion of the Hammonds family's privacy.

Hammonds' relatives contend that the publication of the photos was "not privileged under the freedom of the press guarantee of the First Amendment" and "was so outrageous in character . . . as to go beyond all possible bounds of decency. . . ." Reported in: *Editor & Publisher,* August 9.

Rutland, Vermont

A $2 million suit alleging invasion of privacy was filed in August against the *Rutland Herald* by a man whose daughter's name was mentioned in a story published by the paper on her alleged rape.

The suit seeks $1 million for the "severe emotional stress and mental anguish" allegedly caused the girl. An additional $1 million is sought for "maliciously [publishing the story] with the intent to cause anguish" to the girl. Reported in: *Editor & Publisher:* August 23.

freedom of information

Washington, D.C.

A listing of all suits pending under the Freedom of Information Act on May 1, 1975 was prepared by the U.S. Department of Justice at the request of Senator Edward M. Kennedy (D.-Mass.). Published in the *Congressional Record* for September 10, the listing revealed that suits have been filed to obtain:

- Documents relating to the Federal Trade Commission's investigation of the credit reporting industry (*Retail Credit Company* v. *FTC,* filed in U.S. District Court for the District of Columbia).
- All annual financial reports filed with the Federal Communications Commission since 1966 for a specified corporation (*Maxwell Broadcasting Corporation* v. *FCC,* filed in U.S. District Court for Northern Texas).
- Documents pertaining to a proposed trade regulation rule for food advertising (*Association of National Advertisers* v. *FTC,* filed in U.S. District Court for the District of Columbia).
- Volume 3 of the Department of Labor's Wage-Hour Division Field Operations Handbook (*Lord & Taylor* v. *Department of Labor,* filed in U.S. District Court for Southern New York).
- Certain national security actions, a 1952 presidential memorandum establishing the National Security Agency, and all NSA intelligence directives issued since 1948 (*Klaus and Halperin* v. *National Security Council,* filed in U.S. District Court for the District of Columbia). Reported in: *Access Reports,* September 22.

prisoners' rights

Salt Lake City, Utah

A Wyoming State Prison inmate filed suit in U.S. District Court in July contending that his rights under the First

Amendment were violated when prison officials interfered with his worship of the devil.

The inmate, Weldon M. Kennedy, alleged that Warden Leonard F. Meacham "provides religious items for the Christian religion in prison, but will not provide the plaintiff the required religious items in order to conduct his services."

Kennedy alleged that he is a member of the Church of Satan in San Francisco and that he has the right to act as a teacher and priest. The religious items refused by Meacham included a nude woman to be used as an altar, black robes with hoods, black and white candles, a bell, a chalice, elixir, and a sword. Reported in: *St. Louis Post-Dispatch,* July 27.

obscenity

Lansing, Michigan

An injunction issued by an Oakland County Circuit Court judge against the showing of *Naked Came the Stranger,* an *X*-rated film, was lifted—at least temporarily—by the Michigan Court of Appeals. The appeals court ruled in September that Circuit Court Judge Richard Kuhn's decision to block the showing of the film violated the First Amendment prohibition against prior restraint because the judge did not view the film in its entirety.

"Every work alleged to be obscene must be judged as a whole," the appeals court declared, and it is impossible to determine a film's "literary or artistic merit or its merit as social commentary by viewing less than fifty-five minutes of an eighty-two minute motion picture."

At the same time, U.S. District Court Judge John Feikens issued a temporary order restraining Oakland County Prosecutor L. Brooks Patterson from attempts to seize prints of the film. "Until a jury decides that it is obscene, then it cannot be banned," Judge Feikens ruled. He added that he would not tolerate a "charade" of search warrants and arrests.

Several prints of the film, shown at the Studio Nine Theater in Ferndale, were seized by Prosecutor Patterson on the grounds that the movie is obscene. Patterson, obviously angered by the state appeals court decision, said he could not believe "that three judges who don't even know where Ferndale is could issue an order with such a drastic effect on the homes, the lives, and the children of people of this city." Reported in: *Detroit Free Press,* September 13, 14, 17, 19.

St. Louis, Missouri

In a long-standing dispute over what parts of the movie *Deep Throat* may be exhibited in St. Louis County, three judges of the Missouri Court of Appeals heard arguments in early September on whether William Clyde Houston Jr. of Denver must spend a year in jail for having shown an edited version of the movie last fall.

Thomas W. Tierney, Houston's attorney, contended that his client's freedom of expression had been unduly curtailed by a judge's order barring him from showing *Deep Throat* or any version "substantially the same."

Tierney characterized the judge's order as "prior restraint of expression at its most blatant." Andrew J. Minardi, an associate county counselor, argued that Houston should be jailed for contempt simply because he violated the judge's order.

Chief Judge Gerald M. Smith announced that a ruling would be handed down within several weeks. Reported in: *St. Louis Post-Dispatch,* September 4.

Albuquerque, New Mexico

The vice-chairman of the Albuquerque Anti-Obscenity Board announced on September 3 that he expected more court challenges to the city's pornography ordinance, despite revisions approved by the city council.

Among the revisions was an amendment passed to meet the objections of District Court Judge Gerald Fowlie. The new provision requires the city attorney to file charges against a movie operator five days after the board declares a movie a public nuisance. The amendment also limited the discretionary power of the mayor that was part of the original bill.

Judge Fowlie had ruled in a suit that the original ordinance did not provide for prompt judicial review of material declared obscene by the board.

Among the points which might invalidate the law under the U.S. Constitution, according to council attorney Pat Bryant, is a section that allows the city to collect entry fees received by theaters convicted under the bill. Reported in: *Albuquerque Tribune,* September 3.

etc.

Minneapolis, Minnesota

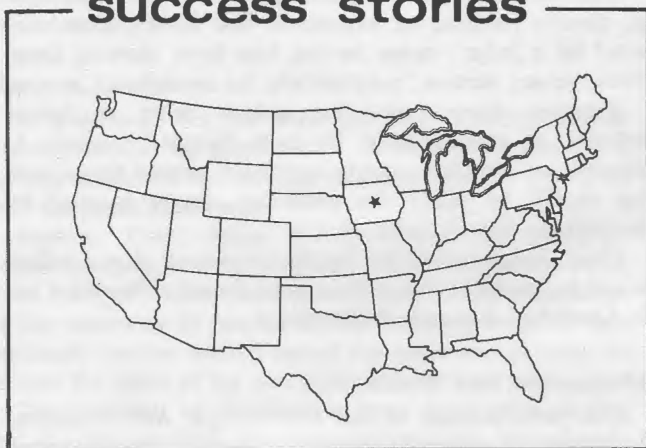
An attorney for the Minnesota Civil Liberties Union told the Minnesota Environmental Quality Council in July that if it took up the issue of the Parkway Theater in Minneapolis it would become the Minnesota censorship board. In June more than 1,500 Minneapolis residents petitioned state officials to prepare an environmental impact statement on the potential effects of the theater on their neighborhood (see *Newsletter,* Sept. 1975, p. 158).

Randall Tigue, legal counsel for the MCLU, said that "as a matter of law" no environmental assessment of the city or the environmental council could result in the denial of a license for a theater.

An environmental impact statement would consider the social and economic effect of a theater showing *X*-rated films. Tigue warned that the environmental council could

(Continued on page 183)

success stories



Cedar Rapids, Iowa

After consideration of a citizen's objections to "pornographic" language in Bob Ottum's *All Right, Everybody Off the Planet!*, the board of trustees of the Cedar Rapids Public Library followed the recommendation of a review committee and voted unanimously to retain the book.

The original complaint requested only the removal of Ottum's book, but in the ensuing hearings several larger questions arose. Donald Witherell, who lodged the complaint, and his supporters expressed disagreement with the board members regarding the role of the library, the library's selection policy, and the constitution of the review committee. According to the library's policy, review committees are to be composed of professionals, some from without the system.

In his report to the board, Library Director Thomas L. Carney said he concurred in the recommendation of the review committee requesting that the committee's charge be expanded to include the questions of policy raised during the reconsideration of *All Right.*

Queens, New York

A newly elected Community School Board No. 25 voted in September to repeal the notorious 1971 decision of a previous board to ban Piri Thomas' *Down These Mean Streets* from district school libraries. That censorship, upheld in a U.S. Court of Appeals' decision which the Supreme Court declined to review, was effectively annulled when the book was returned to three junior high school libraries.

Also included in the resolution to return the book was a provision repealing a parent option plan—adopted by the previous board in 1971—which made the book available to parents or children in the three junior high schools upon request.

Thomas McCarthy, a parent of a child attending P.S. 32, opposed the action. He said he objected to the book's being placed on school library shelves because he regarded "graphic descriptions of homosexual acts, prostitution, promiscuity, and physical brutality as unsuitable school reading material for some of the younger children." Reported in: *Long Island Press,* September 18.

(Censorship dateline . . . from page 173)

not been a lot of complaints from their congregations. A clerk at one store said many of his customers were area residents and that their patronage had increased steadily since the opening of his store. Reported in: *Prince George's County Sentinel,* August 20.

New York, New York

An intensive assault on pornography and prostitution in Manhattan, especially in the midtown area, which will coordinate business groups, community groups, and the police, will be inaugurated by the city in anticipation of the 1976 Democratic presidential convention to be held in Madison Square Garden.

The drive against outlets selling sexually explicit materials will take the form of frequent inspections by the building, fire, and health departments, in search of violations on the premises.

City officials involved in planning the new drive against pornography are resigned to the idea that they will be criticized for "harassment." Police officials justified the plan by saying that district attorneys seemed to show very little interest in investigation and conviction in the area of pornography, and usually assigned their newest assistants to handle such cases. Reported in: *New York Times,* September 1.

Dayton, Ohio

Ten Dayton area citizens, who said they have widespread community backing, formed a group to fight obscenity and in August filed complaints with police against five Dayton bookstores.

The Rev. Garry Ernest Miller, pastor of the Woodlawn Baptist Church, said: "This is not a moral issue or anything like that. There is a law that prohibits this type of material and we want the law to be enforced."

City Prosecutor Henry W. Phillips commented, however, that the problem was not as simple as it appeared to the group. "Most prosecutors have the feeling of frustration that they're able to successfully prosecute these cases locally but meet with less success in the higher courts," Phillips said. He added that such cases are tried locally on emotional issues, but in the appellate courts "the judges are not swayed by emotion [but] are interested in the legal and constitutional arguments." Reported in: *Dayton Journal Herald,* August 19; *Dayton News,* August 20.

Dallas, Texas

Having been ridiculed for their previous public display law, which was interpreted to ban display of a *Newsweek* magazine cover showing the genitalia of a wounded Vietnamese child, the Dallas City Council passed a new law prohibiting books, pamphlets, newspapers, and magazines displayed "in a manner calculated to arouse sexual lust or perversion for commercial gain."

City attorneys said the new ordinance was based on a ruling of the U.S. Supreme Court which declared a Jacksonville, Florida law unconstitutional because it failed to define the content of the material to be regulated. The attorneys said the new Dallas law specifically defines the regulated material.

The law declares that sexually explicit materials must be removed from the view of youths under seventeen years of age. The passage of the law was applauded by a group called Citizens Against Pornography. Reported in: *Dallas Times Herald,* July 22.

Houston, Texas

Teenager Dwight L. Miles appeared before the Houston City Council to tell the tale of his August 16 arrest for wearing a T-shirt adorned with an alleged obscenity. He said he had purchased the shirt, bearing a reference to animal manure, at a local store.

Police records show that Miles was arrested on charges of "obscene display." Miles said he and two other men, riding in a pickup truck, were stopped by two police officers and that he alone was arrested because of the shirt.

"I think it's stupid," said Councilman Johnny Goyen. "I might very well wear a shirt like that myself because I feel this way quite often." The Rev. C. Anderson Davis, director of the Houston National Association for the Advancement of Colored People, requested that the case be presented to a Harris County grand jury. "Police brutality isn't always hitting somebody on the head. It's just harassing people," Davis said. Reported in: *Houston Post,* August 28.

(From the bench . . . from page 178)

The corporation was charged with exhibiting two obscene movies, *Eye Spy* and *Love Riders,* which were shown at the corporation's Pussycat Theater in Omaha. Reported in: *Omaha World Herald,* July 26.

Salem, New Hampshire

A clerk employed in the Little Caesar Bookstore pleaded *nolo contendere* in Salem District Court to charges of selling obscene material. The clerk, who was arrested after the store had been open for only two hours, was fined $200.

According to Salem police chief John P. Ganley, the store would be removed from Salem. Reported in: *Lawrence* (Mass.) *Eagle-Tribune,* August 12.

Paterson, New Jersey

Indictments charging the director and producer of *Deep Sleep* and two persons who appeared in it with sexual crimes were dismissed in exchange for guilty pleas to disorderly persons offenses. "We have better things to do than clutter up the courts with matters involving conspiracy to fornicate," Superior Court Judge Charles S. Joelson said.

Deep Sleep was released in the Paterson area a year ago and drew community wrath because the homes of several prominent residents were shown in the picture. Reported in: *New York Times,* September 9; *Variety,* September 10.

Eaton, Ohio

The failure of a judge to review allegedly obscene films led to the dismissal of charges of pandering obscenity against the operator of a local drive-in. The operator was charged with obscenity after a traffic jam was created in April when motorists slowed down to watch portions of *Deep Throat* and *The Devil in Miss Jones* at the drive-in.

According to a spokesman for the Eaton Municipal Court, the judge who issued the warrants in the case failed to view the films in a prior judicial determination of obscenity. Reported in: *Dayton Journal Herald,* August 7.

Portland, Oregon

The owner of an adult bookstore was acquitted of charges of selling an obscene film by a ten-to-two jury vote announced in the courtroom of John C. Beatty Jr. An attorney for the defense presented several sexually explicit magazines sold widely in the Portland area and argued that their pictorial content was just as explicit as the scenes in the film. Reported in: *Portland Oregonian,* August 30.

Houston, Texas

Roy C. Ames entered a plea of guilty in U.S. District Court in July to charges of mailing obscene movies and magazines displaying homosexual acts among young boys. U.S. District Court Judge Carl O. Bue examined the films and publications and judged them to be obscene.

Assistant U.S. Attorney Scott Campbell told the court that Ames was a national distributor of obscene matter from his headquarters in Houston. Reported in: *Houston Chronicle,* July 26.

(Is it legal . . . from page 181)

"wind up doing an environmental assessment anytime a neighbor objects to a movie." Tigue said that Indians might object to a showing of *How the West Was Won,* or blacks to

the classic *Birth of a Nation.* Reported in: *Minneapolis Star,* July 31.

Chicago, Illinois

The producers of an Allman Brothers Band concert threatened to file suit in U.S. District Court in Chicago to test a Chicago-area village's ordinance prohibiting rock concerts. Lawyers for the producers said the ban by North Aurora trustees "arbitrarily classifies rock concerts in a different category from other musical events, thereby violating freedom of speech, equal protection, and due process of the law."

A Kane County Circuit Court judge ruled earlier that a scheduled concert could not be performed after a key witness, a professor of music, testified that the Allman Brothers and another scheduled group performed rock music. Concert promoters said that country music would be played, and that the ban was improper. Reported in: *Chicago Daily News,* September 4.

New York, New York

Ruling on a motion filed by Grove Press in its $10 million damage suit against the Central Intelligence Agency, U.S. District Court Judge Kevin Thomas Duffy declined to order the CIA to turn over to the court all files on Grove Press allegedly developed through illegal surveillance.

Grove Press charged the CIA with bombing, infiltrating, and wiretapping its offices in New York in July 1969. Officers of the firm stated that the CIA released some "innocuous records" but withheld "the substantial part of them." They contended that the files withheld by the CIA would show that the agency's actions were "improper, unlawful, and criminal."

The CIA submitted an affidavit to Judge Duffy stating that none of the Grove Press documents or files would be "willfully destroyed" before the conclusion of the case. Reported in: *Editor & Publisher,* July 28; *Variety,* August 27.

Cleveland, Ohio

Members of the International Society for Krishna Consciousness Inc. (ISKCON) cannot legally be prevented from distributing their literature at Cleveland Hopkins International Airport, a lawyer for the group stated in August. ISKCON filed suit in U.S. District Court against Cleveland Police Chief Lloyd F. Garey, Police Prosecutor Almeta A. Johnson, and Ports Director Andrew C. Putka, charging that they were depriving ISKCON members of their rights to free speech, assembly, press, and religion by interfering with their activities at the airport. Reported in: *Cleveland Plain Dealer,* August 23.

(Data bases . . . from page 162)

Another is that in the vast majority of cases the steps an agency takes to assure the accuracy, relevance, timeliness, and completeness of a record about an individual shall include procedures that give the individual an opportunity to confront the record in question. With certain exceptions, such as properly classified intelligence material and investigatory material whose disclosure would reveal the identity of a source to whom confidentiality has been expressly promised, this means that an agency must give an individual access to a record that it maintains about him and permit him to challenge its content.

Privacy and freedom of information

A close reader will doubtless note in addition that while the Privacy Act in theory resembles the Freedom of Information Act, it makes no substantial change in the latter. Subsection (b) of the Privacy Act stipulates that

> No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior consent of, the individual to whom the record pertains, unless disclosure of the record would be . . . (2) required under section 552 of this title. . . .

—which is to say, required by the Freedom of Information Act.

What this means in practice is that, with respect to the Freedom of Information Act, the *status quo* is preserved. A member of the public, seeking information about one or more individuals named or otherwise identified in a government file, will make his (or her) request under the FoIA—not the Privacy Act—and the determination to disclose or withhold, and any subsequent court review of a contested determination to withhold, will be made in the manner provided for in the Freedom of Information Act rather than in the Privacy Act.

Finally, it is important to understand that the Privacy Act, like other recent legislation of its type (notably the Fair Credit Reporting Act and the Family Educational Rights and Privacy Act of 1974), sets standards regarding the circulation of individually identified records about people which must be interpreted in the light of other more or less stringent disclosure prohibitions. The Privacy Act applies, for example, to individual tax returns and related Internal Revenue Service material on taxpayers, but a question that now must be asked is whether the act constitutes an adequate set of safeguards for such material.

The authors of the Privacy Act of 1974 were at pains to avoid making definitive determinations about what should go into a record about an individual and about who should be able to know what is in such a record on the theory that those two areas, collection and disclosure, are the ones in

which congressional action would have been most in danger of intruding on other equally legitimate, countervailing interests. Instead the Congress opted for an arrangement wherein the fact that something is being recorded will now be a matter of public record along with the record keeper's policies on retaining, using, and disclosing it, and wherein the individual involved will be guaranteed the right to confront what has been recorded, to correct inaccuracies in it, and to hold the record keeper accountable for what he says he is going to do with it.

This is a major breakthrough and one that I trust will serve us well in the future. Perhaps it is enough. However, to the extent that collection and disclosure policies have been set by statutes and regulations that were not designed to take account of the technological realities of the computer age, and to the extent that new types of applications–electronic payments systems, for example–are near prospects, it is my own personal view that we must rethink the question of what should be recorded about an individual and who should have access to it. The question for the future, I would argue, is not so much how to prevent misuses of records about people but rather how to decide what constitutes a misuse.

Such an undertaking is virtually unprecedented in our history, save for a few well known and relatively isolated cases, such as the long controversy over the content and confidentiality of census records–a controversy which, I should add, continues to this day. But I nonetheless think it is a task that needs to be done and the Privacy Act should make it much easier for us to do it.

1. *Records, Computers, and the Rights of Citizens:* Report of the (DHEW) Secretary's Advisory Committee on Automated Personal Data Systems (Washington, D.C.: U.S. Government Printing Office), July 1973, p. 29.

2. Defined as a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

some dangers in privacy legislation

By WILLIAM A. FENWICK, attorney at law and a partner in the firm of Davis, Stafford, Kellman & Fenwick. Mr. Fenwick's special interests include both systems analysis and the law of privacy. He is the author of several articles on the subject of privacy and chairs the American Bar Association's committee on law relating to computers.

An extraordinary number of privacy bills–which would regulate access to and exchange of information–have been proposed in the federal and state legislatures in the last two years. Over 102 bills were introduced in Congress alone in 1973, and one of these became law–the Privacy Act of 1974.

Areas of concern

Some of today's privacy bills–though not the federal Privacy Act–represent the first attempts ever to regulate the exchange of information in the private sector which is unrelated to national security. Unfortunately, the thrust of this legislation may be in conflict with the traditional value of our society that encourages one to acquire as much information about a subject as is possible.

Some people who are proposing to regulate the exchange of information in the private sector appear not to have thought the entire problem through and therefore may not have considered the impact of regulation on some vital areas. I will raise a few problems to tweak your imagination.

What would be the state of history if prior generations had been prohibited from disclosing or gathering personal information without first obtaining the consent of the subject?

What would be the state of the political process if prior generations had been prohibited from gathering and disseminating personal information about public figures without first obtaining the written consent of those public figures? Put more directly, would the purge of Watergate have been possible? What about exposure of the Teapot Dome scandal?

What implications do such restrictions hold for social research? Medical research? Research in general?

What exactly are privacy laws trying to protect against? They appear to be attempting to deal with the misuse of personal information. Unfortunately, the usual approaches appear to throw the baby out with the bath. They attempt to prevent misuses of information by regulating *all* uses of information.

It must be emphasized that there is much we do not know about the ramifications of regulating the exchange of information. Such regulation may have unknown impacts upon the intellectual and political process equal to the unknown physical and chemical implications that existed when scientists were struggling to split the atom.

Is the proposed privacy legislation reacting to a real or merely a potential threat? Most discussions of privacy legislation focus on the abuses of personal information occurring in connection with credit granting, but there is already a reasonably effective federal law, the Fair Credit Reporting Act, for dealing with that problem. This act and similar laws have the additional advantage of impacting only on organizations related to the credit-granting functions.

Most people's understanding–or fear–of what the computer can do is based upon the publications of the last fifteen years which discussed all of the magical attributes of the computer. In reality, the things that are being done

today with computers only now enjoy levels of achievement which were being attributed to the machines in the late 1950s.

The remaining part of the discussion one hears about privacy legislation (other than the discussion of the credit abuses) is how such legislation will regulate personal data banks. However, when one removes the buzz words and the cliches, it turns out that the personal information to be regulated is not in any way restricted to personal information contained in so-called data banks.

Background of the concept

The first mention of the right of privacy in law seems to have been in an article written by Professors Brandeis and Warren.[1] The concept as devised by the professors was concerned with the right of an individual to be left alone. After Professor Brandeis became Justice Brandeis, he had occasion from time to time to refer to the right of privacy and in 1928 dissented from a Supreme Court decision which held that wiretaps were not prohibited by the Fourth Amendment. The basis of his dissent was that the right to be left alone was among the most cherishable rights.

From time to time there were passing references made in some tort cases to the right of privacy. These normally came up in the context of actions for defamation. The concept, as used in the tort cases, was generally concerned with the exploitation of information about people for profit or sensationalism.

Professor Prosser's article (1960), dealing with the concept of the right of privacy as a tort, breaks it down into four categories: (1) intrusion upon seclusion of solitude; (2) public disclosure of embarrassing private facts; (3) publicity that places a person in a false light in the public eye; and (4) appropriation—the taking of the name or likeness of another and using it for the purpose of making a profit.[2]

In the mid-1960s, the U.S. Supreme Court alluded to a right of privacy in the Connecticut contraceptive case, *Griswold* v. *Connecticut,* 381 U.S. 479 (1965). There were a number of opinions in that case, most of which alluded to a right of privacy without specifically pinning it down to a single provision of the Bill of Rights. The Court's 1973 decision legalizing abortion was in part based on a concept of privacy.

Some recent history

In 1964, perhaps reflecting concern over such excesses as those of McCarthyism, the chairman of the Government Operations Committee created a Special Subcommittee on Invasion of Privacy which began inquiries into investigative activities of federal agencies. The inquiries were also concerned with the creation of a national data bank. Hearings were held over the course of the next couple of years, and a report was issued in 1968.

In 1970, the Fair Credit Reporting Act was developed as a method to deal with the abuses in the private sector which were uncovered by the Special Subcommittee. The FCRA was probably the first substantial privacy bill passed since the Bill of Rights (if one assumes the Bill of Rights in fact contains a right to privacy).

Two years later, the first omnibus privacy bill was introduced in the federal legislature by the Foreign Operations Government Information Subcommittee in the form of H.R. 9527. It didn't become law. In the same year, the Secretary of the Department of Health, Education and Welfare created an Advisory Committee on Automated Personal Data Systems to review federal government practices in the use and handling of personal information. The HEW committee's report and the work done on it, combined with Watergate, led to the groundswell of proposed legislation which is now pending.

The HEW report set forth in bold print what the committee felt should be the principles of information handling and the committee's recommendations on policies and procedures for use by federal agencies. Many enterprising legislators simply excerpted the bold print portions of the committee report and introduced them as privacy bills. A couple of items of interest: the committee did not study the privacy issue as it affects the private sector, and it did not know it was drafting legislation.

In 1973 and 1974, a number of Congressmen introduced a variety of privacy bills. The key bills of 1974 were the Koch-Goldwater bill, introduced in the House, and the Ervin bill, introduced in the Senate. Both of these pieces of legislation included the public and private sector in an omnibus scheme to regulate information handling practices. Fortunately, or unfortunately, depending on your point of view, both the House and the Senate were in a terrible uproar to get on with the impeachment of Mr. Nixon when these pieces of legislation were before congressional committees. I suspect that in order to avoid what had the potential of becoming substantial opposition to the entire proposal, both bills were amended, removing the private sector. Both bills passed and of course, as you know, they became the Privacy Act of 1974.

Where we stand today

A simple characterization of prior legislation would say that it regulated governmental handling of information in such areas as inter-agency data sharing and management of confidential information collected by governmental agencies. Intra-governmental regulation has of course also taken the form of national security measures.

However, the government has in addition attempted to regulate the nongovernmental dissemination of information by preventing the publication of various kinds of information through legal action. In *United States* v. *Dickinson,* 465 F.2d 496 (1972), the case involved the protection of a fair trial for criminal defendants (the so-called press gag rule). There have been two recent cases dealing with the

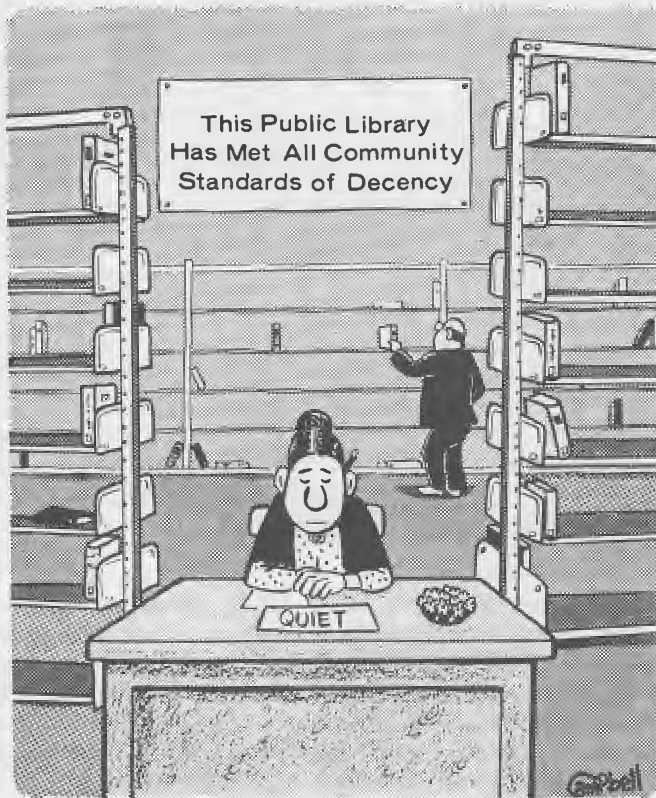
publication of materials having to do with national security: *New York Times Company* v. *United States,* 403 U.S. 713 (1974) (the Pentagon Papers case) and *United States* v. *Marchetti,* 466 F.2d 1309 (1972), the case dealing with the government's attempt to suppress the publication of *The CIA and the Cult of Intelligence* by Victor Marchetti.

There has also been suppression of obscene material involved in *Miller* v. *California,* 413 U.S. 15 (1973) and *Paris Adult Theatre I* v. *Slaton,* 413 U.S. 49 (1973).

Finally, mention should be made of the cases involving material having a tendency to injure an interest in privacy. The two latest are *Briscoe* v. *Readers Digest Association, Inc.,* 4 Cal.3d 529; 93 Cal. Rptr. 886; 483 P.2d 34, and *Cox Broadcasting Company* v. *Cohn,* 43 U.S.L.W. 4343.

In the *Cox* case, the United States Supreme Court held unconstitutional a Georgia law which prohibited the publishing of the name of a rape victim, although a description of the rape incident was allowed to be published. The Supreme Court stated that anyone could publish any information obtained from public records which themselves were open to public inspection.

Cox illustrates the recent trend in which privacy concerns have begun to be subordinated to free speech considerations (a trend inaugurated by the famous case of *New York Times* v. *Sullivan,* 376 U.S. 254 [1964]). The latest cases appear to be more in line with the decision of the 1950s when the concept of "newsworthiness" was so broad that about anything published was considered to be newsworthy. In the 1960s, as represented by the *Briscoe* case, there appeared to be an increased judicial sensitivity to privacy considerations, but the *Cox* case indicates that that view is now being abandoned.



Copyright 1975 by the *Tennessean*, Used with permission.

What needs to be done

Before we jump headlong into either side of the privacy question, there must be more thought given to the intellectual and political impact of restricting information exchange and availability. We must be well aware of what abuses of privacy are occurring so that proper consideration can be given to the trade-off society must make between protecting against the misuse of personal information and assuring the free flow of information essential to the preservation of our form of government. Specific approaches to specific abuses of privacy must be developed.

---

1. Louis D. Brandeis and Samuel D. Warren, "The Right to Privacy," 4 *Harv. L. Rev.* 193 (1890).
2. W.L. Prosser, "Privacy," 48 *Calif. L. Rev.* 383 (1960).

librarianship and privacy

By I.M. KLEMPNER, professor of library and information science at the State University of New York at Albany. Prof. Klempner has had wide experience in government and governmental libraries, having worked in the Department of State, the Library of Congress, and the National Library of Medicine. He has engaged in extensive research on the topics of governmental secrecy and controls on access to information. He has written on these subjects and has testified before committees of Congress on freedom of information legislation.

I am delighted to have this opportunity to express my point of view with respect to this highly complex, contemporary, and yet enduring issue. Somehow it seems proper that the Information Science and Automation Division and the ALA Intellectual Freedom Committee should be the co-sponsors of this meeting. For in this age of complexity, with its intricate organizational structures, there is a need for us within our own organization to interact; many of the issues confronting our special interest groups overlap; they are cross-linked; they require inter-dependent, common approaches and solutions.

What, then, is the significance of the theme of this meeting, "Data Bases and Privacy"? After all, since time immemorial, libraries and librarians have been involved in the creation of data bases. Is *privacy* really a subject of paramount importance to librarianship? In a more contem-

porary context, can we equate the issue of data bases and privacy to that of library automation and intellectual freedom? What, indeed, is the relationship between the more general advances in library and information science, including its evolving technology, and the right of the individual to the free expression of ideas, the right of the individual to read, the right to maintain control over the overt and covert societal mechanisms which have been designed for his or her physical, mental or intellectual surveillance? Within this still democratic society of ours, are our constitutional rights being undermined, eroded and subverted by a relentless force, by an expanding information technology which is imbued with a dynamism of its own, which, though carefully programmed to link, match, merge, and manipulate data bases at electronic speed, is nevertheless out of control and running amuck? What is the librarian's professional, moral, and ethical responsibility in controlling information science technology so that it could be used as a force for the liberation rather than for the enslavement of the human mind?

I submit to you that the issues with which we are dealing today are not merely issues of philosophical or rhetorical import, issues to be raised at an ALA conference, perhaps in one or two library schools, discussed briefly, and then forgotten. These are issues which I deeply believe exert a pervasive and profound influence on our daily personal and professional lives.

What I will seek to show in this brief talk is that I find no inherent conflict between the acquisition, organization, and servicing of information, i.e., between the creation and use of library data bases, and privacy. On the contrary, I find the concept of access to information, of access to ideas, of individual intellectual freedom, to encompass the notion of privacy. I will seek to show that it is not so much the creation and availability of data bases, but the secondary, misdirected and, often, illegitimate use of data bases that represents a violation of a *de facto* contractual agreement between the compilers and the subjects of data bases.

I would like to consider the term "data base" as reflective of societal, governmental, i.e., institutional, rather than personal or individual aims and efforts to acquire transactions and interchanges of information. In personal transactions and interchanges of information, it is the individual who has control over the privacy of information. He weighs the advantages and disadvantages of disclosure against the possible benefits that may accrue to him, and makes his decisions accordingly. However, it is the societal institutions rather than private individuals that have the financial resources to create and operate computerized data banks; it is societal institutions rather than the private individual that can coerce a citizen to supply personal information, that can use the threat and power of the state to withhold vital benefits, the threat of statutes, grand jury probes, contempt of court citations, harassments through FBI, IRS and, apparently, CIA investigations to compel disclosure. Certainly, no private individual or organization has at its disposal such a powerful arsenal of coercion. No wonder that in the face of the continuous abuse of such powers, the ALA Council found it necessary in February 1973 to adopt a resolution on government intimidation seeking a halt in the unjustified and often illegitimate use of these coercive mechanisms by our federal government agencies.

In perhaps a superficial sense the relationship between data bases and privacy may be perceived to represent a conflict between societal needs and demands for information, i.e., the institutional aims and efforts at creating, merging, and manipulating data bases, and the individual's need and right to withhold, to maintain control over, *personal* information.

Librarianship and privacy

Let us here acknowledge the fact that historically librarianship has been concerned not so much with the issue of privacy as with data bank creation and use. After all, our prime function has been, and continues to be, the acquisition, organization, storage, and diffusion of information. Dealing as we do with published materials, privacy for published materials represents an illogical absurdity. We are aware that the very act of publication represents a *de facto* denial of privacy. The act of publication represents an act of public declaration, of making generally known, of disclosing, of imparting data or information to others. Thus, the ALA Office for Intellectual Freedom, the Freedom to Read Foundation, the Intellectual Freedom Committee, and a number of other groups within this and other professional library associations have been concentrating their efforts on the necessary and incessant fight to gain access to information, the fight against censorship, against prior restraint of publications, and in general, in support of the rights of our citizenry to read, hear, discuss, think or publish the unthinkable. The *Library Bill of Rights,* adopted in June of 1948, does not confront the issue of privacy, but it does specifically ask libraries to provide a challenge to censorship in the maintenance of library responsibility "to provide *public* information and enlightenment," and urges libraries to cooperate with "persons and groups concerned with *resisting abridgment of free expression and free access to ideas.*"

The right to privacy

The right to privacy, though not expressly stated in the U.S. Constitution, does have its roots anchored in the First, Fourth, Fifth, Ninth, Tenth and Fourteenth Amendments. Briefly, the First Amendment relates to freedom of religion (i.e., freedom of conscience, of belief), freedom of the press, freedom of speech; the Fourth Amendment refers to the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures; the Fifth Amendment relates to prohibition

against self-incrimination and the deprivation of "life, liberty, or property, without due process"; the Fourteenth Amendment also refers to due process; the Ninth and Tenth Amendments note that the enumeration or delegation of certain rights in the Constitution ought not to be considered as a denial or disparagement of the nonenumerated and nondelegated rights, which are to be retained by the people. During this bicentennial celebration of the U.S. Constitution, it may not be out of place for us to recall and reaffirm the concept expressed in the Declaration of Independence, that "governments are instituted among men, deriving their just powers from the consent of the governed." It may also not be out of place to recall that our government and its institutions were created not to destroy, but to protect and preserve the rights of the individual. It should be clearer now that whereas the individual's right to privacy is an all-pervasive and guaranteed right under the U.S. constitutional form of government, society's right to know particularly of private, i.e., personal information, is a delegated right, is not an absolute right, is not a comprehensive right, is a right narrowly defined and to be narrowly applied.

It is the bureaucratic encroachment on narrowly defined, narrowly delegated and undelegated citizen rights that, of course, diminishes personal privacy, individual choices, individual actions, and, ultimately, the individual's intellectual freedom. Thus, it seems to me, it is erroneous to equate society's "right to know" (and its "right" to keep its information secret) with the citizen's or individual's right to privacy. If the purpose of our government, as I believe it to be, is to nurture the constructive and creative potential of the individual, and if that requires the use of privacy, and if the right to privacy is inherent under our constitutional form of government, then the ends of our institutions and their data bases ought to be to enhance, and not to impede, the privacy of the individual. Stated more simply, the government's "right" to know represents an intrusion on the individual's right to freedom. If and when freedom of an individual is to be limited, it must be narrowly limited, temporarily limited, in favor of the individual and not the government. The intellectual freedom of the individual in our society is paramount, then, over the often illegitimate needs of the state.

The ALA definition of intellectual freedom, reflecting as it has historically outside events, would need to be expanded to embrace the concept of privacy. In doing so, we would lend recognition to the library as an inviolable sanctuary of diverse ideas. It follows that the users of a library's collection and its information services must be freed from the possible fear of intimidation and possible incrimination when they make use of materials which run counter to prevailing governmental pronouncements, desires or societal beliefs.

I should like to add here that I do not consider the concept of privacy to be a static one, to be expressed in absolute "yes" and "no" terms. The definition of privacy would, of necessity, have to change and expand since the technological means for invasion of privacy are also changing and expanding.

The invasion of privacy

An elaborate information technology exists today to invade privacy and, in a sense, to create data bases. Laser microphones are available which can pick up conversations from as far away as two miles. Very High Frequency (VHF) antennae have been developed for picking up a conversation taking place within an enclosed room a block away. Miniature cameras and optical devices exist which enable the capture of data under the most adverse conditions. Infrared lights have been developed which enable intruders literally "to see in the dark." Cable television can be rigged not only for viewing, but for being viewed. Of course, we know about audio tapes and phone tapping devices as mechanisms for data base creation.

While Congress rejected in 1968 the concept of a National Data Bank, while it rejected last year the FEDNET Project seeking to link federal agency computers, while it is disallowing funds for the Department of Agriculture's internal data bank because the agency did not adhere to safeguards to protect private information, we learn of the existence of other federal electronic intelligence projects and networks, such as Project ZENITH, HARVEST, ARPANET, making use of Interface Message Processor (IMP) technology developed by the DoD Advanced Research Projects Agency—a technology enabling the linking of White House, CIA, Defense Department and a number of other data bases and providing a capability for potential if not actual illegal access to the files of millions of American citizens. We have had instances of White House decision memoranda and official executive orders authorizing one agency to examine the citizen records collected for a specific purpose by another agency (e.g., EO 11697, signed January 17, 1973, authorized the Department of Agriculture to examine the tax returns of 3 million farm operators "as may be needed for statistical purposes"). National Wiretap Commission investigators have just discovered that nearly half of certain devices sold for use in wiretapping phones and households surveillance go to police in states where possession of such devices is illegal.

As indicated earlier, the concept of privacy has not been given significant attention by the library profession; neither have we shown thus far sufficient concern about the consequences ensuing from the overt or covert application of information science technology. There is, of course, every indication that in the future, librarians and information scientists will increasingly be given the responsibility for acquiring, organizing, and servicing collections of archives, agency records, official papers, and similar files which would involve not so much published information as private information, restricted information, personal information.

Even at this very moment, libraries and information centers do have a responsibility over data bases which require a greater or lesser degree of protection. Computerized or manual, do not the library's circulation records or personnel files demand protection? Does not open access to the library's record of reference questions, literature searches, and similar records which can be linked to names of specific individuals endanger their privacy?

Within the last decade, we have had a good number of requests for information contained in library files which, if granted, would undoubtedly have infringed on the individual's right to privacy. Requests have been noted from deans seeking the reading history of faculty members as an aid in determining merit increases, from professors seeking the reading history of students as an aid in determining grades. I haven't as yet heard of requests from students seeking out the reading history of their professors—although this may be happening now. Certainly a record of reference requests, literature searches, linked to a specific individual, could be used to reveal that individual's current research activities, method of attacking research problems, or research progress. There have been numerous requests from government agents seeking access to internal library data files as aids to processing security clearances.

The library literature indicates that in the spring and summer of 1970, the Milwaukee Public Library and public libraries in Cleveland, Richmond, California, and twenty-seven public libraries and branch libraries in the Atlanta area were visited by U.S. Treasury Department agents seeking to link specific circulation records with individual criminal activity. In practically none of the cases was a request for private information based on any formal process, order, or subpoena authorized by a federal court. The Executive Board of ALA found it necessary to state soon after the wholesale public library invasion by Treasury agents that "the efforts of the Federal government to convert library circulation records into 'suspect lists' constitute an unconscionable and unconstitutional invasion of privacy of library patrons and, if permitted to continue, will do irreparable damage to the educational and social value of the libraries in this country."

In a resultant policy on the confidentiality of library records, adopted by the ALA Council in January of 1971, the Council strongly recommended that the responsible officers of each library in the United States: (1) adopt a policy which recognizes that its circulation records and other records identifying the names of library users with specific materials to be confidential; (2) that such records not be made available to state, federal or local government agents unless a "process, order or subpoena" is issued; (3) that libraries resist the issuance or enforcement of such an order or subpoena until a "proper showing of good cause has been made in a court of competent jurisdiction."

(Continued on page 195)

(The extraodinary world . . . from page 163)

that the slightest breach of classified documents could lead to efforts on the part of "unfriendly outside powers" to exploit differences in opinion among U.S. foreign policy leaders. The National Security Council's statement was submitted to the court on July 25 to explain why it should not be forced to release documents sought by one of its former staffers, Morton Halperin, in a freedom of information suit.

Halperin filed suit under the Freedom of Information Act in an attempt to gain access to the numbers and titles of all national security study memoranda and decision memoranda since 1969 for use in analyzing foreign policy trends. All the material except one document remains classified, and that one allows the National Security Council to declassify and release documents, the Council said. Reported in: *Washington Post*, August 6.

(The published world . . . from page 168)

living and *against* policies that threaten democratic living.

It is on this basic assumption that the Social Responsibility advocates have over the years called for action in providing library service to the unserved. They have demanded equal opportunities and equal pay for women in the library profession and elsewhere. And they raised their voices for equality of opportunity for Blacks, Chicanos, Native Americans. Some have courageously worked to sensitize the profession to the discrimination against homosexuals. Many have come to the defense of people, librarians and others, who have suffered discrimination or been victimized in the defense of intellectual freedom. It is these advocates of Social Responsibility who, recognizing the threat posed by President Nixon to the democratic institutions, called for a resolution to have him impeached. It is interesting that in the Bodger case, the report of which is reproduced here in Appendix A, it was the Missouri Social Responsibility Round Table that initiated the request for "informing Missouri citizens of Commission policies" when Joan Bodger was dismissed for coming to the defense of intellectual freedom.

If this be advocacy librarianship, it is advocacy for democratic living which is an inherent part of our *Library Bill of Rights.*

It is a misinterpretation of the *Library Bill of Rights* if Berninghausen suggests that taking a stand against the Vietnam War or against the use of nuclear power for energy destroys any library or librarian's ability to select and provide information on all sides of these issues. That is comparable to saying that a lawyer will not protect the legal rights of a person who he thinks committed a crime, or a doctor will not help a patient suffering from lung cancer because he/she continues to smoke cigarettes. Daily, librarians provide information and books that they may like

or dislike, agree with or not, understand or be baffled by.

Our libraries do not now have "balanced" collections. They serve those who come in to use them, or those who may be expected to come in. And a very small percentage of the populace it is. It is with the desire to learn and respond to the needs of a larger community's needs that many librarians have raised the cry for Social Responsibility. It is a reasonable cry, it would seem.

One must ask, whose is the flight from reason?—*Reviewed by Zoia Horn, Reference Services Analyst, 49/99 Cooperative Library System and Central Association of Libraries, Stockton-San Joaquin County Library, Stockton, California.*

---

1. Sajed Kamal "The Nature of Dialogue in Humanistic Education," *Journal of Education,* August 1975, p. 13.
2. *Intellectual Freedom Manual* (ALA, 1974), pt. 2, p. 29.

The Pulse of Freedom. Alan Reitman, ed. W.W. Norton and Company, 1975. 352 p. $12.50.

Though its title is misleading, Reitman's *The Pulse of Freedom* presents a valuable historical panorama, not of "American Liberties, 1920-1970s" as the book's subtitle would have us believe, but rather the momentous successes enjoyed by the American Civil Liberties Union throughout those fifty years. As the ACLU's associate executive director, he is to be excused for this corporate ego trip; however, the implication supported by all five contributors, each of whom lends his expertise to one decade, that the ACLU single-handedly faced the censorship dragon, is unfortunate.

The unique value of this painstakingly documented text is its presentation of the universality that pervades all censorship attempts. Ramsey Clark, in the book's foreword, laments that we live in "a period when respect for accumulated knowledge does not occupy the high station it once did." Undoubtedly, that high station is central to the book's planning and execution and allows today's intellectual freedom fighter to take heart, knowing he comes from a long line of such historical voices.

With rational constitutionality as the heart of his arguments, Paul Murphy points to the World War I intrusion of the federal government in the free lives of its citizens, climaxing in the stand of Wilson and Harding agains unionization. He also provides extensive coverage of what surely remains at the heart of intellectual freedom today; in speaking of the rights of the Communist, he records a 1922 ACLU statement: "While we thoroughly disagree with the Communist attitude toward free speech, with their melodramatic secret tactics and with their talk about revolutionary violence, we shall defend their right to meet and speak as they choose." (p. 44) Tragically, those stout words were belied by the 1940 ACLU removal of Communist Elizabeth Gurley Flynn from its board of directors.

The 1940s witnessed a never ending search and destruction of all who would question the American way. The love-it-or-leave-it mentality gave rise to a loyalty mania that swept America's colleges, politics, businesses, and communication and entertainment industries, introducing what William Preston decried as a "non-violent third degree," electronic intrusion. We are thus reminded that censorship at its effective best, is simplistic and compelling, reducing all of us to the good guys and the bad guys, to those who love our children and those who would corrupt and destroy them.

The McCarthy phenomenon, which today evokes a fey smile, was in the post-war 1950s a veritable judgment from the hand of God and wielded, as John Caughey makes clear, a destructive power that was unquestioned. However, Caughey and his fellow contributors err significantly, I believe, in assigning such power to the senator, independent of the climate in which he moved. Nowhere, throughout the book, is there examination or even recognition of the psyche of yesterday and today's censor. Overlooked completely is the idea that people create the climate which in turn creates the McCarthy or Comstock or Kanawha County book burner.

Analogous to this is the erroneous assumption throughout the book's six chapters that the establishment, in most cases government, is the principal, if not the only, agent of censorship. Although we were warned as early as 1936 to "heed anti-libertarian forces more dangerous than the federal government" (p. 79), the book's contributors seem to have assumed that government is the only censor worthy of our concern. The danger of such a misleading concept was pointed to by many including the City of New York Bar Association, which declared that "private censorship is more insidious than that by the state." (p. 198) Notwithstanding, we are presented throughout with an army of presidents, governors, senators, and assorted petty officials who war against our freedom to choose, climaxing in Reitman's concluding statement that "each of the five decades offers clear illustration of how the magnification of government power interfered with the rights of people." And again, "over the half-century an arching pattern of government depredation appears, with the most dominant element being the fear of an alien philosophy whose economic and political system challenged our own." While it is foolish to question the validity of such a statement, it is equally foolish to limit one's understanding of such forces to one and only one agent.

However, it would be grossly unfair to single out the book's shortcomings to the detriment of its obvious strengths and in so doing, invalidate the book's very real contribution to today's scholarship treating the subject of human freedom. What may be accidental to the text, in no way disparages a content that provides a treasure of facts, court cases, sources, personalities, and trends, all of which are carefully researched and documented. Further, the

pervading emphasis on the strengths and interpretations of the Bill of Rights adds a sound and rational dimension to our historical understanding of censorship attempts.

The wealth of information the contributors have offered the reader represents an effective introduction for the novice or an insightful reinforcement for the experienced. Either way, the book deserves our attention.—*Reviewed by Joan F. Malone, Secondary School Librarian, Buffalo, New York.*

Perspective. Charles Rembar. Arbor House, 1975. 264 p. $8.95.

At one point described in *Perspective,* the author is to appear as part of a televised panel discussion. The transcript of the moderator's introduction is as follows: "On my far right is William Rusher, the publisher of the *National Review;* he is a conservative. . . . To my immediate right is Anthony Lewis, whom I think we can term a liberal. In the center is Charles Rembar, who is a constitutional lawyer; I do not know whether we should try to categorize his leanings." One is left with a similar impression after reading this collection of essays written since the appearance in 1968 of Rembar's award winning *The End of Obscenity.*

Subjects in this book range from the trials of Dr. Spock and Bobby Seale, through issues having to do with literary and artistic censorship, to a consideration of Watergate and the fall of Richard Nixon. Essays were published originally in periodicals as varied as *Evergreen Review, Esquire,* and the *Atlantic.* The opinions expressed are diverse and sometimes contradictory. The thread that ties this accumulation together is a continued, reasoned, articulate exposition of the importance that personal freedoms have in our society and the vital role of law and the legal process in protecting those freedoms.

In his prefatory remarks, Rembar divides his work according to three main themes. The first is "fair trial," where his primary concern is the rights of the accused. The Spock affair illustrates for Rembar the character of "political trials" in our society. He has no great sympathy with any of the participants: "The nature of the trial permits no heroes." But he feels that the outcome becomes foreordained as soon as the government decides to prosecute words rather than the substantive crimes admittedly committed by the defendants. The charge is conspiracy, agreement to say that the draft will be resisted. As long as we have the First Amendment, according to Rembar, this kind of political charge is not going to be successfully prosecuted in this country.

In the book's longest essay, "Read One, Marry One," Rembar undertakes the sort of literary exercise that he does best. He describes a censorship case, in which he is the lawyer for the defense, in a blow-by-blow account. An issue of *Evergreen Review* is seized by order of the District Attorney for Nassau County. After much effort and with the help of clever tactical maneuvers lovingly detailed, the case is dismissed for lack of evidence; another demonstration that sound legal guidance and perceptive judgments from the bench will preserve inviolate the people's First Amendment rights.

The second theme takes as its primary focus the ideal of freedom of expression. "The Outrageously Immoral Fact" summarizes the state of affairs that existed after *The End of Obscenity* (in which Rembar discussed his crucial role as defense attorney in Supreme Court cases that established the test of redeeming social value to determine whether a work was to be judged pornographic). With those decisions, he tells us, "literary censorship was gone." Of course there was the Ginzburg case, which demonstrated that "extreme forms of smirking wise-guy advertising might get [publishers and booksellers] in trouble," and the new freedoms were not entirely an occasion for rejoicing. After all, unrestrained expression led to the appearance of materials that are "distinguished only by the fact that once they would have put their publishers in jail. . . . Second-hand Freud gives the film director a line on which to hang his heroine's clothes," and "television commercials peddle sex with an idiot slyness." But Rembar is confident that this "acne on our culture" will eventually go away, and it is a small price to pay, in any case, for the freedom of artistic and literary expression that has been achieved.

"The Outrageously Immoral Fact" was written prior to the 1973 Supreme Court decisions which have so alarmed intellectual freedom advocates. Rembar is not dismayed. In "A Divergent View" he argues that the new tests of local standards and serious intellectual merit have not changed the balance of power with regard to literary censorhip. No one can define local standards, he says, and merit must ultimately be evaluated by the courts, where it has always been decided upon. Given intelligent legal defense and judges who know the Constitution, decisions in the future will continue to follow the pattern of the past.

The third theme of the book, comprising almost half the content, has to do with Watergate, its consequences, and the abuse of executive power that it dramatizes. Here Rembar focuses less on First Amendment freedoms, but he does attempt to relate events to this concern. In "First Amendment—Second Stage" he analyzes the issue of preserving effective speech in the contemporary society. With a government that has powers far surpassing those envisioned by the framers of the Constitution, the people need to seek means of strengthening the guarantees of the Bill of Rights. Legislation is one possibility. The First Amendment states that "Congress shall make no law. . . ." Perhaps Congress *should* make some laws that affirm the right of free speech. If that is done, however, it will introduce government control over basic freedoms, and that may become more of a curse than a blessing. No, Rembar concludes, it is better to maintain our relativistic interpretation and reinterpretation of the Constitution according to the temper of the time.

The greatest benefit we may have derived from Watergate and the "outlaw government" responsible for that outrage is the heartening evidence that has been offered in support of the strength of our constitutional system in the face of a severe test. Principles of liberty, however imperfectly realized in practice, have triumphed over the dogma of order. The principle of freedom has not succumbed to the doctrine of authority.

Perspective shares the weaknesses which we associate with contemporary essay collections. There is no index or bibliography. Opinions written in 1967 or 1970 may have lost some of their impact. Information that seemed important at the time may now seem a bothersome digression, even when the author footnotes an apology ("Let's try to arrest a cop." Footnote: "A suggestion less eccentric now than in 1964."). Consistency of point of view is not guaranteed. In "Paper Victory; the United States v. the *New York Times* and the *Washington Post,*" the author criticizes the newspapers' lawyers for making the tactical decision to emphasize the issue of prior restraint over more essential constitutional issues, yet he seems to have made the same decision in "Read One, Marry One" where he says that his first concern is the welfare of his client rather than some abstract constitutional test.

Other bothersome matters go beyond form. In his reaction to the new Supreme Court guidelines, one gets the impression that he may be indulging a need to defend the pronouncements of *The End of Obscenity.* While his observations about the immediate impact of the decisions seem reasonable, he chooses to ignore the fact that the legislatures of virtually every state have been encouraged to launch new censorship legislation that is bound to be troublesome. He does not mention the important fact that the burden of proof with respect to the value test has been transferred from the plaintiff to the defense. And he refuses to acknowledge the "chilling effect" of the decisions on authors, publishers, booksellers, and librarians even as he quotes a statement by a lawyer acquaintance that writer clients "whose works contain a good deal of sex" have reported that "their publishers are concerned about their latest novels."

These small defects detract little from the worth of a book which brings us an expert legal view of the past, the present, and the projected future of First Amendment freedoms in our society. Charles Rembar has indeed provided a balanced *Perspective* on a vital literary, social, and political issue, and he has presented it with wit and grace and courage. His message is a welcome one. The events related here indicate that our system of government pursues a halting, precarious, but stubbornly dogged course toward the ideal of a rule of law that affirms our unique guarantees of personal freedom. He leaves us, however, with the salutary and sobering warning that the situation will remain favorable only so long as the people of this country appreciate our ideals and insist on their application.*—Reviewed by Jerold Nelson, University of Washington.*

---

voluntary press guidelines adopted for busing dispute

In an unusual move in American journalism, Louisville's newspapers and radio and television stations adopted a voluntary set of guidelines for coverage of the busing of school children in a court-ordered school desegregation plan.

The city's news editors acted in response to U.S. District Court Judge James F. Gordon's indication that he might enforce his own guidelines. Judge Gordon did not disguise his belief that in other desegregation cases around the country, most civil disruptions stemmed from an irresponsible press.

The volunatry guidelines, drawn up to ensure fair and accurate news coverage, had little effect in terms of reports filed by the two city's daily newspapers, which *New York Times* reporter Martin Arnold characterized as having had a long reputation "for fair and accurate news reporting and presentation."

Louisville's electronic media agreed to the following statements: "Outside the school building: We want to assure the courts that none of the three television stations plans to use any trucks in or near the schools in any of its coverage, nor will there be any cables strewn anywhere. Television photographers will have all the equipment they need on their persons. No equipment they use will in any manner obstruct other persons' passage.

"Inside the schools: Where lights are necessary inside relatively windowless newer schools, we will use them at a minimum. Our photographers will be specifically instructed to turn off all lights if any situation becomes tense."

Reporters who commented on cooperation from school officials characterized it as "remarkable." "It's like covering an event they actually want you to cover," said Harry Barnes of the *St. Louis Post-Dispatch.*

The desegregation of Jefferson County and Louisville public schools was ordered July 17 by Judge Gordon, who acted on the orders of the U.S. Court of Appeals for the Sixth Circuit.

On August 21, Judge Gordon ordered the voluntary guidelines published. "I want you on record and to hold you to your responsibility," he told the news media. Reported in: *Variety,* September 10.

A dinosaur for our time

AAParagraphs

He liked to refer to himself as a "neanderthal" and a "dinosaur," but in the same breath would own up to having come pretty far from the thinking that once might have made such characterizations apt. For Craig T. Senft, the chairman of AAP's Freedom to Read Committee, who died of a sudden heart attack last August, had come to the view that fighting censorship is every publisher's business—and not just the concern of those whose books or magazines dealers keep hidden beneath their counters.

"I hold no brief for obscenity," Mr. Senft told AAP's 1974 Annual Meeting, "but I do have very strong feelings against censorship." And in thrity-four years in school publishing—the last six at the helm of Litton Educational Publishing, Inc.—he acknowledged that he was no stranger to external pressures on what to publish.

"Textbook publishers have long lived with censorship," he said recently. "It's unimportant in small, isolated instances. But the time has come"—here he was talking in the context of the previous year's violent textbook controversies—"when educational publishers have got to take joint action that does not violate antitrust laws. As publishers we must speak with one voice.

On another occasion, it was not just school publishers' freedom that concerned him: after the 1973 Supreme Court obscenity decision, Mr. Senft told an audience of publishing colleagues: "The Supreme Court rulings have created a whole new dimension: now anything that anyone considers obscene may be challenged. And in my more than thirty years' experience, I have found that everything that can be challenged will be—and every time it is, it costs publishers a piece of their hide."

No doubt it was such forthright public utterances—startling from a textbook publisher—plus the virulent attacks on schoolbooks of the recent past that led to Mr. Senft's appointment as the first school publisher to head AAP's anti-censorship Freedom to Read Committee. It is equally indisputable that the appointment caused dismay among some of the AAP's First Amendment absolutists.

But history should record that, as early as the close of the first committee meeting at which Mr. Senft presided (there were to be just two meetings under his chairmanship), some of his incipient critics had come around, perhaps a bit reluctantly, to admire his basic fairness and allegiance to publishing freedoms. It was Mr. Senft himself for example, who, feeling the need for a statement of the Freedom to Read Committee's mission, drafted the following: "The committee is charged by the AAP Board of Directors with the responsibility of protecting First Amendment rights as they apply to book publishing, and taking any measures it deems appropriate to secure these rights against infringement." Hardly the views of a dinosaur or neanderthal; that the committee did not ultimately adopt this language was not the result of any perceived inadequacy in it, but rather of a consensus that, since this was how they saw their mission and was what they had been doing right along, there seemed to be no need to declare it.

Not that there weren't still traces of the "old" Craig Senft in this man of sixty who prided himself on his youthful adaptability. At a recent conference-retreat, he listened in horror as fellow-publishers debated a fictitious case history that called for a publisher to decide whether or not to publish secret documents, probably stolen, purporting to disclose CIA involvement in planned violence in Portugal. "I feel," Mr. Senft exploded (and one may be forgiven for lifting in his case the conference participants' cloak of anonymity), "I feel like a Boy Scout in a brothel—my first reaction would be to call the police and then I'd call the prosecuting attorney. A traitor is at large here and I'm a U.S. citizen. That responsibility transcends my responsibility as a publisher."

This, then, was Craig Senft, a man of tradition and a man of change. Now, his distinguished predecessor as Freedom to Read chairman, Doubleday's Kenneth D. McCormick, told the Committee after his death, "We must go on and do what Craig was doing so wonderfully."

At his death, Mr. Senft was a member of AAP's Board of Directors. On September 9, his fellow-directors adopted this statement:

"The entire book publishing community has been saddened by the untimely death of our friend and fellow director, Craig T. Senft. He was an active leader in his community and state. His contributions to national affairs, particularly in urban education and First Amendment rights, were notable. An outstanding publisher over several decades, he was a source of strength to the Association of American Publishers, to which he unstintingly contributed his knowledge and his leadership in several capacities: as a member of the Board of Directors, as chairman of the Freedom to Read Committee, as chairman of the Great Cities Committee. He was also a former president of the American Textbook Publishers Institute. In each of these positions he set high standards of excellence.

"We believe his contributions will have a lasting effect on our industry and on the educational community. We know he will be greatly missed by all those who had the privilege of knowing and working with him."

This column is contributed by the Freedom to Read Committee of the Association of American Publishers.

(*Data bases . . . from page 190*)

Thus, it is obvious from recent and past experience that governmental institutions have too often failed to respect the constitutional rights of the individual. Our government officials need to be reminded that privacy of the individual does represent one of the fundamental pillars upon which our Constitution is based. We need to remind ourselves that our intellectual freedom and the intellectual freedom of library users will be diminished to the extent that individual privacy atrophies. Justice Louis D. Brandeis (*Olmstead* v. *U.S.*, 1928) has noted:

> Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

Libraries, while seeking to develop data bases, must also seek to foster adequate internal administrative controls, staff educational programs, physical security and software safeguards, as well as promote local and national awareness of the rights of privacy of the individual. The unauthorized release of private data would represent a betrayal of the trust between the library and its public. Our data bases and library systems would become meaningless were they to be operated in an environment of lack of trust, of uncertainty, of potential danger or fear on the part of the library patron. I am glad to see that in the ALA Statement of Professional Ethics, prepared by the Code of Ethics Committee and accepted by the ALA Council in January of 1975, libraries are asked to "protect the essential confidential relationship which exists between a library user and a library."

Of course, a code of ethics does not have the force of law. Neither can laws be truly enforced without the individual's cooperation. I submit that it is our ethical, moral, and professional responsibility to assure that library data bases, files, circulation records, and reference requests are not used as unlawful appendages of a governmental political system. It is our responsibility to assure that our data bases are devoted to the needs of the independent human mind. We must not compromise the humanity of the individual for the expediency of the state. We must not lose sight of our major priorities.

In the past, we have had no difficulty whatever with the concept of providing public access to public information. We should have no difficulty whatever in the future in limiting access to private information. These are not incompatible objectives. These objectives represent an integral part of the stated goals of this association; they form an integral part of the concept of intellectual freedom.

sources

The latest edition of the *National Action Guide,* a listing of action organizations and alternative media across the country, is now available. The guide includes coverage of such topics as drugs, environment, family planning, prisons, taxes, women, senior citizens, and transportation. Priced at $1.50, it can be ordered from the *DC Gazette,* 109 Eighth Street, N.E., Washington, D.C. 20002. For $3.00 you will receive the guide and a one-year subscription to *Topics,* a national newsletter for activists.

OIF exhibit bibliography

A bibliography of the 500-plus alternative periodicals displayed in the Office for Intellectual Freedom's exhibit is now complete. If you would like a copy, send 50 cents to the Office for Intellectual Freedom, American Library Association, 50 E. Huron St., Chicago, Illinois 60611. (Stamps are okay. If you send a check, make it payable to the American Library Association.)

movie distributors threatened in Britain

In a ruling that beclouded the future of the industry-sponsored system of motion picture censorship in Great Britain, a London magistrate ruled in August that the Classic theater chain had to stand trial for exhibiting the *Language of Love,* which cleared the British Board of Film Censors with an *X* certificate.

Both the film and the chain were committed to criminal trial for allegedly outraging public decency. The case was instigated by plaintiff Raymond Blackburn, a former member of Parliament, under English common law, according to which defendants in censorship cases cannot summon expert witnesses as they can under statutory law.

Blackburn's suit brought into focus the fact that the British film industry's self-censorship never had any statutory underpinning but is operated only with tacit acceptance. Reported in: *Variety,* August 27.

French want censorship, face pornography tax

A large majority of French citizens would like to restore film censorship now that sexually explicit films have invaded the French cinema, according to an opinion poll published recently in Paris.

The poll, carried out by the magazine *Paris Match,* showed that fifty-nine percent of those interviewed favored

a return of the old censorship laws only a few months after President Giscard d'Estaing's reformed-minded administration lifted them.

Commenting on the same subject, French Economy and Finance Minister Jean-Pierre Fourcade announced that he was considering the imposition of a tax on pornography to help balance the budget. He said such a tax would provide substantial income and bring "more morality to the street scene." Reported in: *Washington Post,* September 10; *Christian Science Monitor,* September 19.

Show Me! shown the door in Canada and St. Louis

The controversial and much publicized *Show Me!,* a picture book on sex for children and parents published by St. Martin's Press, was refused clearance last summer by Canadian Customs and in September faced its first U.S. legal action in St. Louis.

The refusal of Canadian Customs to allow entry of the book occurred after it was declared immoral by the Canadian Department of National Revenue. The Macmillan Company of Canada, Canadian distributor for St. Martins, said it would appeal the decision.

In St. Louis, a Brentano's book outlet was charged with a misdemeanor by St. Louis County Magistrate Judge Harvey J. Schramm, after fellow Magistrate Dennis J. Quillin found that *Show Me!,* sold by Brentano's, is arguably obscene. The complaint against the bookstore was filed by Billie Lasker, who has become well known in the St. Louis area for her campaigns against what she considers pornography.

Asked about the charges, St. Louis County Prosecuting Attorney Courtney Goodman Jr. said: "A magistrate has found probable cause that this book is obscene. Therefore, we have no alternative but to begin prosecution." Lloyd Schwartz, Brentano's manager, declined to comment. Reported in: *St. Louis Post-Dispatch,* September 9; *St. Louis Globe-Democrat,* September 9.

assassination attempts spark controversy

News coverage of the two attempts in California to assassinate President Ford added fuel to the controversy over whether the press, in giving prominence to such events, does not inspire a contagion of violence.

Vice President Rockefeller commented: "Let's stop talking about it. Let's stop putting it on the front pages and on television. Psychiatrists say every time there is any publicity, it is stimulating to the unstable."

Osborn Elliott, chief editor of *Newsweek,* said, "Our first responsibility is to report the news to our readers as accurately and as unbiased as possible. When the president becomes a target twice in seventeen days, I don't think it's sensationalizing to report these events."

Eric Sevareid, commenting on CBS News, said that no one denied that the press had a right to report that President Ford sometimes wore a protective vest, but he said that to do so was "outrageous."

The attack on the press was reminiscent of charges often leveled in the 1960s that the news media helped create street violence by dramatic pictorial reporting of civil disruptions. Reported in: *New York Times,* September 28.

FCC alters equal time rule

Reversing a long standing policy, the Federal Communications Commission ruled September 25 that radio and television broadcasts of candidates' news conferences and political debates will no longer require equal-time access for the response of opponents.

The five-to-two ruling of the Commission, which was objected to by the Democratic National Committee, was expected to have an important impact upon the presidential campaign in 1976.

According to the ruling, it will be up to broadcasters to determine whether the news conferences of President Ford or his numerous Democratic challengers are worth covering for their news value. The FCC majority specifically rejected the Democratic Party's argument that, because the presidency is inherently a more newsworthy platform, any incumbent president will have an unfair advantage over his rivals.

It was CBS which filed the petitions that prompted both the old and new FCC policies. In 1964, when CBS asked that President Johnson's news conferences be exempted from the equal time rule, the FCC ruled that news conferences were too easily manipulated for partisan advantage to qualify automatically as news events.

The 1975 ruling of the FCC said: "Presidential conferences, as well as the press conferences by governors, mayors, and any other candidates whose press conferences may be considered newsworthy and subject to on-the-spot coverage may be exempt" from the equal time rule. Reported in: *New York Times,* September 26.

Prior to the announcement from the FCC, actor Jerry Fogel threatened to file suit in U.S. District Court in Los Angeles to support his claim that the rule forced actors to give up their livelihoods when seeking elective office.

Fogel, whose charges were supported by the Screen

Actors Guild and the American Federation of TV and Radio Artists, alleged that free speech and other constitutional rights of professional actors were "severely infringed" and that FCC rulings "effectively bar television and radio actors and personalities from pursuing elective office and at the same time maintaining their professional livelihood."

Fogel said he planned to run for Congress in California's 24th Congressional District. Reported in: *Variety,* August 20.

ABA delegates debate press gag rule

At their meeting in Montreal in August, members of the American Bar Association heatedly debated a proposal to give journalists advance notice of and a right to object to judicial "gag orders" restricting press accounts of criminal cases.

Paul H. Roney, a federal judge from St. Petersburg, Florida, chairman of the ABA's Committee on Fair Trial and Freedom of the Press, said the news media should have a chance to tell judges in advance of a trial why certain restraints on court reporting should not be imposed.

The opposition complained about common news reporting practices. "The press and TV cameras roll into the state's attorney's office and he announces the indictment and how Joe Jones is running an auto theft ring," said Leon Segan, a New York attorney, in testimony to an ABA committee. "That should be stopped. Are we not really holding the hand of the press and acquiescing more to the press [sic] than the concept of a fair trial?"

Retired U.S. District Court Judge Walter E. Hoffman, from Norfolk, Virginia, called the proposal a "trap" for judges, giving journalists the right to intervene in criminal cases without ensuring that judges have wide powers to clear the courtroom and maintain at least temporary secrecy of certain trial information.

The proposal, whose principal draftsman was Jack C. Landau of the Newhouse newspaper chain, will undergo further public hearings and a policy vote in February by the ABA House of Delegates. Reported in: *Chicago Sun-Times,* August 8; *Washington Post,* August 8.

FRC vacancy filled

The new head of the Association of American Publishers' Freedom to Read Committee is Simon Michael Bessie, appointed by AAP directors to fill the vacancy created by the unexpected death of Craig T. Senft. Bessie is senior vice-president and a director of Harper and Row.

Bessie has been a member of the board of directors of the Association of American Publishers and at present serves on the Government Advisory Committee on International Book and Library Programs. He also serves on the board of directors of the Franklin Book Programs and the board of the MacDowell Colony, is chairman of the Special Projects Panel of the National Council on the Arts, is a director of the Associated Harvard Alumni, and serves on the Visiting Committee to the Harvard History Department and the Harvard University Press. In 1959, Bessie was one of the founders of Atheneum Publishers.

---

uniform press privilege bill killed

The National Conference of Commissioners on Uniform State Laws, meeting in Quebec City August 2-8, killed a proposed uniform reporter's privilege bill. If the uniform act had been accepted by the conference, every state would have been asked to enact the proposal.

Opposition to the privilege bill, which would have granted reporters the right to maintain confidential news sources, was led by Albert E. Jenner, drafter of the federal rules for the U.S. Judicial Conference, and U.S. District Court Judge Charles W. Joiner, Detroit.

Jenner and others argued that the question of privilege should be decided by the courts on a case-by-case basis. Those who favored the measure attempted to rebut their opponents' arguments by pointing out that various courts, including the U.S. Supreme Court, have said that there should be legislative enactments by the states to protect reporters. Others contended that the conference committee did not go far enough in that its proposal should have recommended an absolute privilege for reporters.

A statement authorized by the conference and released after the action on the privilege measure read: "The . . . conference voted to end consideration [of the proposal] when members could not agree on details or that a need existed." Reported in: *Editor & Publisher,* August 30.

---

release of Watergate tapes likely

Those notorious Watergate tapes could become available to broadcasters and manufacturers of records under a resolution passed by the Senate in September. The action rejected rules proposed by the General Services Administration which would have made the tapes available to re-

searchers but banned their reproduction. The resolution was passed after both the Senate Government Operations Committee and the House Administration Subcommittee on Printing refused to accept GSA rules.

The Senate resolution stated that over-commercialization of the tapes—the fear that prompted the GSA rules—"is the risk of a free society. It is a risk the founding fathers accepted in adopting the free speech protections of the First Amendment."

It was expected that the House would pass a similar measure. Reported in: *Variety*, September 17.

Coors promises not to censor public TV

In an appearance before the Senate Commerce Committee in September, beer executive Joseph Coors assured senators that if his nomination to the board of the Corporation for Public Broadcasting were approved, he would not use it as a vehicle to censor views opposed to his own conservative political philosophy.

Coors also told the senators that he saw no conflict of interest between his nomination and his two-year-old Television News Inc. According to Coors, TVN presents only "hard news" and PBC does not.

Under repeated questioning from Senator Vance Hartke (D.-Ind.) about what he would do if public broadcasting stations presented what Coors considered an "unbalanced view," Coors responded: "I would suggest that the other side should be presented as required by law. Although we differ on what is balance . . . I don't feel funds should be cut off unless they break federal laws."

Senator Russell B. Long (D.-La.) told Coors "controversy surrounds you because you stand for something. . . . That is a plus."

The first of several witnesses to urge rejection of Coors was Nicholas Johnson, a former member of the Federal Communications Commission. Johnson said: "[Coors] has demonstrated no special experience, competence, qualification, or understanding regarding the needs and role of public broadcasting that might provide colorable justification for this nomination." Reported in: *Washington Star*, September 10.

Oregon privacy law repealed

The Oregon legislature hastened in September to repeal a law passed at the end of its regular session last June. The bill closed all police and court records to the public and prohibited law enforcement officials from giving out any information concerning arrests.

The bill, designed to protect the privacy of arrested persons, prohibited officials from giving arrest data to the press and the public and even the friends and families of arrested persons.

In Pendleton, the small municipal jail was jammed for an entire weekend with 175 persons, most of whom were arrested for minor offenses connected with roughhousing at a local rodeo. All but fourteen of them could have made bail, but the new law forbad officers from informing their relatives and friends of their arrest.

When the law was passed, Attorney General Lee Johnson advised Governor Robert Straub that the law was clearly unconstitutional at both the federal and state levels. Reported in: *Washington Post*, September 10; *Chicago Tribune*, September 28.

---

chief justice urges press restraint in criticism of judiciary

In an interview broadcast by the Voice of America, Chief Justice Warren E. Burger called upon the American press to use restraint in criticizing the judiciary and to expose "all facts" when judges are attacked. In the interview, conducted by the U.S. Information Agency, Burger said the press possesses "virtually unreviewable" power and thus has a special obligation when the judiciary is attacked because, traditionally, "judges never respond."

Burger alleged that the U.S. judiciary has been the target of "irresponsible attacks . . . from time to time, particularly in the last twenty or twenty-five years."

Burger also commented that he was sure the news media would not agree that freedom of the press is adequately safeguarded in the U.S. He cited a conflict over court orders requiring reporters to divulge their sources, which was resolved by the U.S. Supreme Court in 1972 with Burger voting with the five-justice majority against press confidentiality. Burger added that any future solution would have to be worked out in the legislatures, not in the courts.

The interview with the Chief Justice was recorded in July and broadcast in August. Reported in: *Washington Post*, September 24.

---

bill on criminal information opposed

Four newspaper groups submitted a statement to Congress in August objecting to the proposed "Criminal Justice Information Control and Protection of Privacy Act

of 1975." The press groups recommended several changes in the legistlation (S. 2008 and H.R. 8227) in an effort to bring about a better balance between the public's right to know and the individual's right to privacy.

Sections of the measure provide for the sealing of criminal court records after a specified period of time; restrictions on press access to arrest record information; and possible restrictions on press access to police blotter information. The objections to the bill were filed by the American Newspaper Publishers Association, the American Society of Newspaper Editors, the National Newspaper Association, and the Associated Press Managing Editors Association.

The press charged that the bill "would make the operation of the criminal justice system virtually unaccountable to the public." The associations said their recommendations were submitted "not in the press' self-interest, but in the interest of the public and in the interest of maintaining a watchful eye on those areas of government which are critical to the maintenance of our form of government, namely, the police, the prosecutorial agencies, and the courts." Reported in: *Editor & Publisher,* August 16.

---

intellectual freedom bibliography

Compiled by REBECCA S. MUELLER, Assistant to the Director, Office for Intellectual Freedom.

"Backwash Benefits for Second-Class Citizens: Prisoner's First Amendment and Procedural Due Process Rights," *University of Colorado Law Review,* Spring 1975 (v. 46), p. 377-431.

Bernstein, Peter. "Reporting in Pretoria," *Index,* Autumn 1975 (v. 4), p. 44-48.

Beytagh, Francis X. "Privacy and a Free Press: A Contemporary Conflict in Values," *New York Law Forum,* Winter 1975 (v. 20), p. 453-514.

Bowen, Ada M. "Freedom Corner," *Florida Libraries,* May-June 1975 (v. 25), p. 4.

Bradley, Norman. "What Do You Care What I Read? or What Do I Care What You Read?" *Tennessee Librarian.* Spring 1975 (v. 27), p. 58-61.

Buller, Grace. "IFCW: The Right to Know," *Feliciter* (Newsletter of the Canadian Library Association), July-August 1975 (v. 21), p. 11.

Burleson, Derek L. "Explicit Media–Sources and Suggestions," *SIECUS* Report, July 1975 (v. 3), p. 4-5.

Calderwood, Deryck. "Protect the Children!" *SIECUS Report,* July 1975 (v. 3), p. 3.

Carrera, Michael A. and Sharon Lieberman. "Evaluating the Use of Explicit Media in a Human Sexuality Course," *SIECUS Report,* July 1975 (v. 3), p. 1-3.

Casady, Simon. "Lee Kuan Yew and the Singapore Media: Purging the Press," *Index,* Autumn 1975 (v. 4), p. 3-7.

"Civil Procedures: Distinguishing First Amendment Issues for Purposes of Res judicata–A Problem in Semantics," *Minnesota Law Review,* January 1975 (v. 59), p. 623-632.

"Constitutional Law–First Amendment Freedom of the Press and Reply Statutes," *New York Law Forum,* Winter 1975 (v. 20), p. 645-654.

Denniston, Lyle. "Battle Over Control of the Nixon Papers and Tapes," *The Quill,* July-August 1975, p. 27-29.

Douglas, Charles G. "New Hampshire Right to Know Law: An Analysis," *New Hampshire Bar Journal,* March 1975 (v. 16), p. 127-144.

Ely, John Hart. "Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis," *Harvard Law Review,* May 1975 (v. 88), p. 1482-1508.

"FRF Board Alters Its Composition," *Wilson Library Bulletin,* September 1975 (v. 50), p. 17.

Farmakides, John B. "The Legal Environment of the Information Scientist," *Bulletin of the American Society for Information Science,* May 1975 (v. 1), p. 8-9.

Flanagan, Leo. "Defending the Indefensible: Intellectual Freedom and Its Implications of Anti-Intellectualism and Anti-Professionalism in Librarianship," *RILA Bulletin* (Rhode Island Library Association), July 1975 (v. 48), p. 2-11.

Gaddy, Wayne. "The Obscenity Muddle," *PNLA Quarterly* (Pacific Northwest Library Association), Summer 1975 (v. 39), p. 4-9.

Goss, Patricia. "The First Amendment's Weakest Link: Government Regulation of Controversial Advertising," *New York Law Forum,* Winter 1975 (v. 20), p. 617-632.

Kassner, Herbert S. "Obscenity Leads to Perversion," *New York Law Forum,* Winter 1975 (v. 20), p. 551-568.

Kuper, Leo. "Censorship by Proxy," *Index,* Autumn 1975 (v. 4), p. 48-50.

"L.A. City Attorney Validates Porno Report," *Wilson Library Bulletin,* November 1974 (v. 49), p. 211.

Lent, John A. "Protecting the People," *Index,* Autumn 1975 (v. 4), p. 7-16.

"Limits to Freedom?–Project Announced," *Oklahoma Librarian,* July 1975 (v. 25), p. 32.

McIlvenna, Ted and Phyllis Lyon. "Use of Explicit Sex Films For Adult Education," *SIECUS Report,* July 1975

(v. 3), p. 5.
MacLeod, Lanette. "The Censorship History of *Catcher in the Rye," PNLA Quarterly* (Pacific Northwest Library Association), Summer 1975 (v. 39), p. 10-13.
"Merritt Humanitarian Fund: Identity Switch," *Wilson Library Bulletin,* March 1975 (v. 49), p. 483.
Miller, Jay. "S. 1 Must Be Stopped," *Civil Liberties,* September 1975, p. 2.
"Moore v. *Younger*–Round One for Librarians," Wison *Library Bulletin,* March 1975 (v. 49), p. 535.
"NEA Report on Kanawha County," *Wilson Library Bulletin,* March 1975 (v. 49), p. 483-485.
"O'Neil, Robert M. "Shield Laws: Partial Solution to a Pervasive Problem," *New York Law Forum,* Winter 1975 (v. 20), p. 515-550.
"Privacy Policy Reaffirmed by New Jersey Attorney General," *Editor & Publisher,* September 20, 1975, p. 13.
"Right to Receive and the Commercial Speech Doctrine: A New Constitutional Consideration," *Georgia Law Journal,* February 1975 (v. 53), p. 775-803.
Semas, Philip W. "How the FBI Tried to Subvert Campus Rebellion," *Chronicle of Higher Education,* September 15, 1975 (v. 11), p. 5.
Simon, Roger. "S. 1–A Menace to the Press," *The Quill,* July-August 1975, p. 19-21.
Smith, Diana. "What Next in Lisbon," *Index,* Autumn 1975 (v. 4), p. 26-32.
Smith, Ruell. "The Alternative Press in British Columbia," *British Columbia Library Quarterly,* Winter 1975 (v. 38), p. 7-16.
Stein, Harry. "The Ballad of John Henry," *New Times,* October 3, 1975, p. 53-59.
Stone, Geoffrey R. "Fora Americana: Speech in Public Places," *Supreme Court Review,* 1974, p. 233-280.
"Sulzberger Calls 'Publisher-Judge' Trend Dangerous," *Editor & Publisher,* September 20, 1975, p. 11.
Taeuber, Richard C. "The Right to Privacy," *Bulletin of the American Society for Information Science,* May 1975 (v. 10), p. 17-18.
"Textbook Battles: They're Brewing and Bubbling," *American School Board Journal,* July 1975 (v. 162), p. 21-28.
Waas, George. "How Fair is the Fairness Doctrine?" *Florida Bar Journal,* May 1975 (v. 49), p. 246-249.
Walker, Jerome H. "Does the 'First' Protect Press in Privacy Suits?" *Editor & Publisher,* September 20, 1975, p. 7.
Welles, Chris. "The Fairness Doctrine," *The TV Guide,* August 30, 1975, p. 4-9.
Yodelis, Mary Ann. "The Rejection of Florida's Right to Reply Statute: A Setback for a 'New Right' of Access to the Press," *New York Law Forum,* Winter 1975 (v. 20), p. 633-642.

NEWSLETTER ON INTELLECTUAL FREEDOM
50 East Huron Street • Chicago, Illinois 60611