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Justice Douglas retires

"Full and free discussion has indeed been the first article of our faith. We have founded our political system on it. It has been the safeguard of every religious, political philosophical, economic, and racial group amongst us. We have counted on it to keep us from embracing what is cheap and false; we have trusted the common sense of our people to choose the doctrine true to our genius and to reject the rest. This has been the one single outstanding tenet that has made our institutions the symbol of freedom and equality. We have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above all else feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world."

Uttered in dissent twenty-five years ago, these words of Justice William O. Douglas epitomize his position as the Supreme Court's most outspoken defender of intellectual freedom in America.

Justice Douglas' dissent was filed in a case in which the Court upheld the convictions of Gus Hall and other communists for violations of the Smith Act through conspiracy "to organize the Communist Party of the U.S. as a group to teach and advocate the overthrow of the government by force and violence."

Justice Douglas argued that what the petitioners did "was to organize people to teach and themselves teach the Marxist-Leninist doctrine contained chiefly in four books: *Foundations of Leninism* by Stalin, *The Communist Manifesto* by Marx and Engels, *State and Revolution* by Lenin, and the *History of the Communist Party of the Soviet Union."* Their conviction, he observed, hinged not on the doctrines they taught, but on the intent with which they taught them.

Justice Douglas noted: "There was a time in England when the concept of constructive treason flourished. Men were punished not for raising a hand against the king but for thinking murderous thoughts about him. The Framers of the Constitution were alive to that abuse and took steps to see that the practice would not flourish here."

We salute you, Mr. Justice Douglas, for thirty-six remarkable years in the service of liberty in our country. JFK, RLF.

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

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FTRF supports appeal of Iowan

In order to protect librarians who use the mails in Iowa, the executive committee of the Freedom to Read Foundation voted in October to support the appeal in the case of Jerry Lee Smith. Smith was convicted last September in U.S. District Court in Des Moines on seven counts of using the U.S. postal service to send allegedly obscene materials.

In a related action, the Foundation voted to finance an *amicus* brief to be filed with the U.S. Court of Appeals for the Eighth Circuit in the name of the Iowa Library Association. All preliminary briefs in the case, including the *amicus* brief, were scheduled for filing with the court in early December.

Both the Foundation and the Iowa Library Association were alarmed by the federal prosecution of Smith in a state whose law permits the dissemination of sexually explicit materials to adults. Iowa's law, which restricts only the distribution of materials to minors, was adopted by the state legislature without dissent in 1974.

In the view of the Foundation and the ILA Executive Board, which unanimously authorized the ILA brief on the recommendation of ILA's intellectual freedom committee, the Smith case raises at least two important issues: community standards and prior restraint.

Despite the fact that the elected representatives of all citizens of Iowa determined that their standards will not allow the suppression of communicative materials for adults, the members of the federal jury were permitted by the trial court to impose on Smith their own interpretation of Iowa standards, which obviously differed from the legislature's.

The issue of prior restraint was raised by the fact that the works mailed by Smith—from his now defunct firm, Intrigue—were all sent to fictitious names and addresses in Iowa used by postmasters to obtain materials for prosecution. It appears that the federal prosecutors requested the works solely to obtain their supression.

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more on the extraordinary world of intelligence

As 1975 drew to a close, Americans were rendered numb with a series of revelations about the outrageously illegal and immoral activities of U.S. intelligence agencies during the administrations of four recent presidents. Even congressmen who for years blindly ignored the agencies began to express alarm, some about the illegal activities revealed by special congressional committees, others about the future integrity of the intelligence institutions.

Federal Bureau of Investigation

In one of the most scandalous revelations to date, the Senate Intelligence Committee reported in November that the FBI for several years waged a campaign to destroy the Rev. Martin Luther King Jr., a campaign which included a threatening letter mailed to him one month before he was to accept the Nobel Peace Price in 1964. The letter was accompanied by a tape alleging adultery which included information gleaned from illegal electronic bugs the FBI had placed in hotel rooms King had occupied.

Among other activities conducted by the FBI, these were disclosed by the Senate committee in November:

• For thirty years the FBI maintained a list of thousands of persons to be jailed in the event of a war or national emergency, despite directives from attorneys general and Congress itself to destroy or substantially modify the list. When Hoover was ordered to destroy the "custodial detention list" in 1943 on the grounds that it served "no useful purpose," he simply changed the name of the file and ordered his agents not to reveal its existence to anyone other than military intelligence agencies.

• The FBI used "dirty tricks" in a twelve-year domestic spying program that included investigations of communists, students, black ministers, and feminists. The agency collected more than 500,000 dossiers on individuals between 1959 and 1971.

Senator Walter F. Mondale (D.-Minn.) denounced the FBI's campaign against King as "a road map to the destruction of American democracy.

"Apart from the direct, physical violence and apart from illegal incarceration, nothing in this case distinguishes this particular action much from what the KGB [Soviet secret police] does to dissenters," Mondale said. Reported in: *Chicago Sun Times,* November 19.

According to documents released by the Political Rights Defense Fund, which represents the Socialist Workers Party in a $27 million lawsuit against the FBI, the agency mailed phony letters to top Michigan Democrats in 1965 to persuade them that the Socialists had infiltrated the Young Democrat Club at Wayne State University. The documents also showed that the FBI told Cleveland school officials that a music teacher there was married to a Socialist Workers Party activist. The FBI said the action prompted the school board to fire the woman. Reported in: *Chicago Tribune,* October 6.

Central Intelligence Agency

In November the House and Senate intelligence committees also turned their attention to alleged links between the CIA and the national news media, particularly the television networks. Both committees began summoning veteran correspondents in executive session in order to question them on the concentration of CIA influence on the management of news organizations.

One incident which stirred congressional interest in the news media was reported by *Variety's* Washington bureau chief, Paul Harris, who said that a suit by a former ABC correspondent, Bill Gill, would reveal embarrassing aspects of ABC's relations with the Nixon administration. In particular, it was alleged that a story on CIA agent Lucien Conein, who reportedly masterminded the overthrow of

(Continued on page 26)

government 'secrets' revealed

By using the newly adopted provisions of the Freedom of Information Act, the Church of Scientology learned last year what the federal government "had" on the church. To its surprise, the religious organization discovered that a government investigator once wrote that scientologists used "LSD and perhaps other drugs" when they assembled. The church denied the allegation.

When poet Allen Ginsberg asked for federal records about himself, he was informed that a narcotics agent had reported in 1965 that the use of marijuana by college students "could be attributed in part to the influence of Allen Ginsberg and persons of his ilk."

During 1975, thousands of other requests were filed under the provisions of the Freedom of Information Act and the related Privacy Act, which went into effect September 27. "I thought it would peak, and it hasn't," said Thomas Susman, chief council to the Senate Judiciary Committee's Administrative Practices Subcommittee. He suggested that news reports about domestic spying by the Central Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency had aroused public concern about what government files might contain about them. Reported in: *Chicago Daily News,* October 21.

Pastore attacks relaxation of equal-time rule

In a round of hearings before his Communications Subcommittee, Senator John Pastore (D.-R.I.) told the Federal Communications Commission that it had created a "monstrosity" by its decision to relax the equal-time law for political candidates. He also charged that the move violated the Communications Act, which he said could be revised only by Congress.

Pastore argued that the decision to permit candidates to hold press conferences without equal-time problems should be dubbed "The Incumbent's Bill" because of the disastrous effect it would have on challengers, who Pastore feared would lose in the battle with incumbents for access to air time.

Pastore also attacked relaxations of rules dealing with the fairness doctrine in large radio markets and agreements between citizens' groups and broadcast licensees, and the exemption of small stations from record keeping required under the equal employment opportunity program.

"Ya' know, I'm not a suspicious man," Pastore stated, "but one thing bothers me. To have the president of CBS and the head of the National Association of Broadcasters stand up here and say, 'We agree with everything the FCC does'—that makes me suspicious." Reported in: *Variety,* November 12.

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nominations requested for Downs Award

Nominations for the Robert B. Downs Award for intellectual freedom are due April 15. Any person is eligible who has "worked to further intellectual freedom and the cause of truth in any type of library."

The $500 Downs Award is presented annually in ceremonies at the University of Illinois Graduate School of Library Science. Nominations should be sent to Herbert Goldhor, Director of the School of Library Science, University of Illinois, Urbana, Illinois 61801.

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kill fairness rule, says FTC head

In a speech before a UCLA program on communications law, Federal Trade Commission Chairman Lewis Engman said it was "about time for Congress to abolish" the fairness doctrine. "[It] represents an unfortunate step away from freedom of speech, an unfortuante intrusion into the market place of speech," Engman claimed.

Engman attempted to undermine the arguments used to support the doctrine, particularly the argument based on the scarcity of broadcast channels that has been used by the FCC and Senator John O. Pastore (D.-R.I.). "It is entirely possible with today's cable technology for a single set to receive hundreds of signals. One reason it does not happen is that it is contrary to the network broadcasters' interest to have it happen, and the broadcasters have persuaded the government to adopt—or to continue—regulatory policies which keep it from happening," Engman said.

Engman also noted that the celebrated *Red Lion* case, in which the U.S. Supreme Court affirmed the right of the individual to have access to reply time under the doctrine, "arose during a period of time when there was a concerted political effort to harass . . . radio stations which habitually aired opinions which some people in Washington found repugnant." Reported in: *Variety,* November 5.

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law blasted as 'license to sell smut'

Sellers of sexually explicit materials in Tennessee have "virtually a free license to violate the law" because they must be notified twenty-four hours before a search warrant can be issued against them, the Tennessee Court of Criminal Appeals said in October. Tennessee's obscenity law requires that violators be given twenty-four hours' notice and a chance to appear in court before judges can issue search warrants against them.

The law "seriously handicaps law-enforcement officers in ferreting out and prosecuting violators" by giving them a chance to flee, the appeals court said.

"It strikes us as being ridiculous to give a 'dealer in obscene material' a twenty-four-hour notice that an attempt will be made to prosecute him for his violations," the court added. "No other type of law violators are so privileged under our laws."

The court's opinion overturned the Lauderdale County conviction of Donald V. Runions, who was sentenced to six months in jail in 1974 after he was found guilty of possession of obscene materials. His conviction was overturned because law enforcement officials did not follow the provisions of the Tennessee law in the prosecution of his case. Reported in: *Memphis Commercial Appeal,* October 23.

Soviets block Sakharov trip abroad

Soviet authorities in mid-November refused permission for dissident physicist Andrei D. Sakharov to travel to Oslo

to receive the 1975 Nobel Peace Prize. Sakharov, the leading proponent of intellectual freedom in the USSR, was denied an exit visa on the grounds that he possesses state secrets, although he has not worked in the Soviet nuclear program for seven years.

In a related development, the Soviet government stripped author Vladimir I. Maximov of his citizenship. Maximov, a close associate of Sakharov, now lives in Paris. The government decree said Maximov had "systemically undertaken actions besmirching the prestige of the Soviet Union and incompatible with the holding of Soviet citizenship."

Sakharov protested the denial of permission to travel, saying that "there are no reasons to suppose I shall commit a state crime." Sakharov told western correspondents outside the Soviet visa office that his trip to Oslo would be observed by the entire world, a circumstance that would make it impossible to reveal state secrets.

Sakharov called upon international public opinion to help reverse the decision. Reported in: *Chicago Tribune,* November 13.

U.S. asked to support freedom of all writers

In an appearance before a Senate subcommittee in November, a panel of writers and publishers contended that the United States has an obligation to guarantee the freedom of authors everywhere to issue their work without peril of suppression, harassment, torture or death.

Testifying before the permanent Subcommittee on Investigations, Arthur Miller, Harrison E. Salisbury, and Robert L. Bernstein contended that the internal affairs of other nations were subject to U.S. scrutiny and pressure when they violated the Universal Declaration of Human Rights or the Declaration of Principles signed at Helsinki.

At the end of the hearing, Senator Henry M. Jackson (D.-Wash.), subcommittee chairman, expressed approval of the testimony and the suggestion made by Rose Styron of Amnesty International to create a permanent congressional subcommittee to oversee U.S. activity in this area. Reported in: *New York Times,* November 19.

MM advocates school for prosecutors

At Morality in Media's tenth annual presentation banquet, the nation's most outspoken clergymen against pornography called for renewal of federal funding for the anti-obscenity center at California Lutheran College. The center had been funded by a grant administered by the U.S. Department of Justice's Law Enforcement Assistance Administration. The center, which trained prosecutors in techniques of fighting obscenity, was notified last April that the Justice Department planned to cancel federal support (see *Newsletter,* July 1975, p. 129).

One of the founders of MM, Father Morton Hill, S.J., called for the utilization of every "constitutional and effective means" of combating pornography. "Today dirty movies have invaded every village and roadside screen," Hill said. Reported in: *Variety,* November 12.

MM target of the month

In its November newsletter, Morality in Media called upon its members to write to President Ford, asking him why the Department of Justice permitted entry into this country of a film which was advertised as the first sexually explicit movie ever passed by U.S. Customs. The target of the campaign was *Exhibition,* a film made in France which was shown last Fall at the New York Film Festival.

British press wins major battle

In a decision that could have a major impact on the relationship between the press and the government in Great Britain, a high court judge rejected in October the government's request that publication of the diaries of the late Richard Crossman be halted (see *Newsletter,* Sept. 1975, p. 134).

The ruling dismissed the government's claim that all cabinet discussions, and not just matters of security, are secret. The government had based its contention on a doctrine of "confidentiality."

"A great inhibition has been removed," said Harold Evans, editor of the *Sunday Times,* which was barred from printing extracts from Crossman's diaries after the publication of several installments.

In his judgment, the Lord Chief Justice of England, Lord Widgery, observed: "I cannot believe that the publication at this interval of anything in this volume would inhibit free discussion in the Cabinet of today, even though the individuals involved are often the same and the national problems have a distressing similarity with those of a decade ago."

Lord Widgery continued: "The Attorney General asks for a perpetual injunction to restrain further publication of the diaries in whole or in part. I am far from convinced that he has made out a case that the public interest requires such a draconian remedy when due regard is had to other public interest, such as freedom of speech." Reported in: *New York Times,* October 2.

the published word

a column of reviews

The Morality of Consent. Alexander M. Bickel. Yale University Press, 1975. 156 p. $10.00.

This posthumously published volume, based on lectures delivered at Yale in 1974, is a book that, like Yale law professor Bickel himself, will comfort the afflicted and afflict the comfortable. It may even rearrange–if not completely reverse–your prejudices.

What Bickel, throughout a long writing career (which, a useful bibliography of his writings in *Consent* tells us, included nine books, 154 periodical articles and book chapters, and fifteen book reviews), strove to communicate to his legal colleagues and to justice-minded citizens, was that there is more–much more–to the search for justice and equality than seen by those whom he describes as "disenchanted and embittered simplifiers and moralizers."

To the hard questions he asks in his book, on such vital matters as the proper goals of the U.S. Supreme Court, the duties and responsibilities of a citizen and the proper role of what he calls "domesticated civil disobedience" in a democracy, and the relationship of the intellectual and moral authority, Bickel has no easy answers. But in a comparatively brief space he outlines for the thoughtful the possibilities of at least "an imperfect justice, for there is no other kind" and of a moral authority which will be made strong by arising from "that middle distance where values are prominently held, are tested, and evolve within the legal order. . . ."

Not, I hasten to add, that this kind of reasonable, ratiocinative approach means Bickel was an either-or type, an on-this-side-and-that-side wabbler. He is quite definite and clear as to where he stands on many issues quite significant for civil libertarians. For example, he agrees with a 1971 Supreme Court decision in *Rosenbloom* v. *Metromedia, Inc.*, which he paraphrases as stating "that freedom of expression, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of this period."

Bickel was clearly on the side of the conservatives as regards obscenity. He sees the role of any law against obscenity as "supportive, tentative, even provisional. It walks a tightrope and runs high risks." He admits that "on occasion, in some corner of the country, some fool finds Chaucer obscene or the lower female leg indecent," but still he feels there need to be such laws, although they "must avoid tyrannical enforcement of supposed majority tastes, while providing visible support for the diffuse private endeavors of an overwhelming majority of people to sustain the style and quality of life minimally congenial to them."

Clearly Bickel was not an all-out follower of the John Stuart Mill kind of libertarianism; as the first twenty-five pages of this book state unequivocally, he favors Edmund Burke above John Locke and Rousseau. As many passages indicate, he is in disagreement with Justice Hugo Black's all-out, black-and-white reading of the First Amendment's protection of freedom of *all* speech, of "an absolute right to self-expression and to conscience."

There is a good deal in Bickel's book that will irritate, perhaps even inflame the librarian who sees every word of the *Library Bill of Rights* as revealed gospel. But, as Bickel reminds us–if the continual recent surprises from the Burger Court when dealing with such matters haven't already–"ambiguity and ambivalence . . . is, if not the theory, at any rate the condition of the First Amendment in the law of our Constitution." There are grounds for agreement with his pronouncement that "one has to believe that no amount of opinion can be eternally certain of the moral righteousness of its preferences, and that whoever is in power in the government is entitled to give effect to his preferences."

Bickel is against "a dictatorship of the self-righteous," and so am I. Yet, writing this review, as I am, on the first day after the resignation of that doughty warrior for the First Amendment and defender of library freedoms, William O. Douglas, I wonder if Bickel was not perhaps a shade *too* cautious, too un-liberal in his Burkean conservative-liberalism. Yet he *was* the chief–and victorious–counsel for the *New York Times* in the Pentagon Papers case. If prior restraint in this "national security" case had been sanctioned by the Supreme Court, we might *never* have gotten rid of Richard Nixon!

This one goes on my shelf of recent "re-readables," alongside John Rawls' *A Theory of Justice*, Robert Nozick's *Anarchy, State, and Utopia*, and James M. Buchanan's *The Limits of Liberty*. Those who favor the recently suggested sweeping revision of the *Library Bill of Rights* might well read all four before going *too* far on the road to complete Rousseauism.–*Reviewed by Eli M. Oboler, Idaho State University, Pocatello.*

A Closer Look at Junior ROTC. Steve Selden and Alan H. Feldman. Interfaith Committee on Draft and Military Information, 1975. 23 p. $.40. (Order from Friends Peace Committee, 1515 Cherry St., Philadelphia 19102.)

Steve Selden and Alan Feldman must have learned how to write by studying high school history textbooks. There's no other way they could have learned to make such interesting material so excruciatingly dull.

If it were the purpose of this review to be a demonstration of the pedantic writing style used by these authors, then the sentence now under examination by the reader would be one possible example of that style. But my purpose here isn't to imitate Selden and Feldman. I just want to emphasize what a big barrier their language is for anyone who wants to discover what they're saying.

It's a shame that the barrier is there, because the authors *do* have some worthwhile information about an important subject. Junior ROTC has been used by the military for years as a way to get into the schools. Its main interest, though, is not to recruit officers (the Army admits that JROTC doesn't do much in that respect) but to train young people to be obedient and, in the Army's sense of the word, patriotic.

As this booklet shows, the JROTC curricula are aimed at promoting just that. Terms like "leadership" are twisted by JROTC to mean blind obedience to those above you and manipulation of those below. The curricula talk about teaching values, but there is nothing to help students develop or question their own beliefs—just an attempt to inculcate military values.

The Junior ROTC program is voluntary in some school districts and compulsory in others. In either case, it needs to be carefully examined by teachers and administrators, by the community . . . and, especially, by students.

That's the second area in which this book fails. Any book about a program that affects students so much should be aimed at least partly at those students. But this one isn't. Selden and Feldman say it is "directed to citizen groups, school board members and superintendents who will decide on whether or not to use the JROTC curricula in their schools."

In other words, they aren't interested in reaching students. That was already clear from their writing style. The trouble with that is, even if the authors *do* succeed in getting JROTC programs canceled in some schools, it will be a small victory. Instead of kids being told they have to participate in JROTC, they'll be told they can't. In neither case do students themselves get any real control over what happens to them—they are still just the football that others are kicking around. The only difference now is that Selden and Feldman have joined the game.

If this book were better written, if it could be easily read by kids even though the authors meant it to be for adults, then I might state my misgivings and recommend it anyway. But kids aren't going to read this thing; I suspect few enough adults will. I'm quite sympathetic to the Interfaith Committee on Draft and Military Information, which published the book. They have done a lot of good work. But in this case they blew it.—*Reviewed by Jonathan Schaller, Youth Liberation, Ann Arbor, Michigan.*

'the old man on the hill'

By ELI M. OBOLER, University Librarian, Idaho State University, Pocatello.

It was not quite a small town—too small to be known without atlas reference but too big to ignore. It had a fire department and a water department and a police department and a public library. It had a school system. In each school was a collection of books called a "library"—and each library had a "librarian"—a book-keeper—an order-maintainer, a room-minder.

And one day I spoke in that town to a meeting of educators—teachers and librarians—and asked the wrong question: "Do you have any censorship problems?" And the young woman who was in charge of the school library in that town said, rather plaintively, "Well, yes—I've had to take *The Catcher in the Rye* off my open shelves and into my closet." "Why?" I asked. "Because there's an old man on the hill who says it's a bad book." Was he someone in a position of authority over her? No. Was he on the school board—or even a past member? No. Was he a town leader? Well, sort of. Politician? Banker? Lawyer? No, none of these . . . but everyone in town knew about the old man on the hill. And because he had told her he didn't like the book, she had hidden it away? Yes . . . it just wasn't worth the hassle.

How many intellectual freedom committees in many states take for granted that the *Library Bill of Rights,* once promulgated—via state library association periodical or "intellectual freedom kit," or by whatever means—automatically becomes part of the practices of those who have received it? Or how many give lip-service to its principles, voiced at a state conference, as equalling reality?

My point is, of course, an old one, but, unfortunately, one that seems to have to be made over and over. Librarians—even professionally trained ones—are human, all too human. We react to pressures; and public opinion (even if epitomized in "the old man on the hill") is much more often what we heed than the bare bones of rhetoric, lacking meaningfulness unless they are fleshed out by our actually doing what we say we do.

Have you an "old man on the hill"? Then dig your library's copy of *The Catcher in the Rye* out of its hiding place, and put it where it belongs—*on the open shelf.* And be damned to the Censor!

of oaths and subpoenas

AAParagraphs

The perennial confrontation between freedom of expression and the needs, real or supposed, of the official processes of government takes many forms.

On one front recently, there was modest cause for encouragement. In another case, an appeal in behalf of First Amendment rights was addressed by AAP to the Congress.

The heartening news was to be found in the public statement by Attorney General Edward H. Levi that he interprets Justice Department guidelines governing the issuance of subpoenas to "members of the news media" to include under that umbrella authors who write on public affairs. This has always been the interpretation presumed by AAP, ever since Attorney General John Mitchell, in 1970, ordered subpoenas to "newsmen" to be cleared by himself personally. When a successor attorney general, Elliot Richardson, in 1973 transformed Mitchell's fiat into official policy (Title 28, DFR, 50.10), the rule stated that "no Justice Department official shall request, or make arrangements for, a subpoena to any member of the news media without the express authorization of the Attorney General."

But what are the "news media?" It remained for Levi to spell that out, in the course of a wide-ranging address to the corps of United States attorneys and marshals assembled at Tuscon, Arizona:

"The news media, as well as scholars and authors of non-fiction material, have expressed great concern about the effect upon their work of demands by the government for information given them in confidence or the identity of confidential sources," Levi declared. Although the Supreme Court has held that reporters' First Amendment rights are not abridged if they are required to disclose the identity of their sources to a grand jury engaged in a good-faith investigation, he went on, "the issue does involve values close to First Amendment rights and the Department has a special responsibility.

"There is another related aspect to be considered, and that is the importance of avoiding the appearance that the government, by use of subpoenas, is trying to harass writers who have reported on matters embarrassing to the officials of government."

Levi cited the various restraints contained in the Richardson regulation, which requires negotiation between prosecutors and newsmen to seek a mutually acceptable arrangement before authorization for a subpoena is sought, and concluded: "The Department has taken the position on several occasions that the scope of the regulation should be construed broadly to cover not only employees of recognized publications or broadcast organizations but also to cover all individuals engaged in reporting on public affairs. . . . Whenever the potential issue of confidentiality of sources arises–whether the subject of the proposed subpoena is a newspaper reporter, documentary film producer or author–you should refer the matter to my office for approval."

In the other instance, it was the clash between a government employee's First Amendment rights and his signature on an official secrecy oath that led the president of AAP to address a plea to the chairmen of the two congressional committees investigating the Central Intelligence Agency.

The case that set the events in motion was that of Victor L. Marchetti, whom the CIA sought to enjoin from publishing first all, then portions of a book about the agency; the CIA cited the pledges of confidentiality Marchetti had signed upon entering and leaving the agency's employ.

AAP President Townsend Hoopes, in letters to Senator Frank Church and Representative Otis Pike, contended that the Fourth Circuit U.S. Court of Appeals, in ruling against Marchetti and his publisher, Alfred A. Knopf, Inc., "raised a pro forma secrecy agreement to a level of such primacy and importance as virtually to eclipse Marchetti's First Amendment rights.

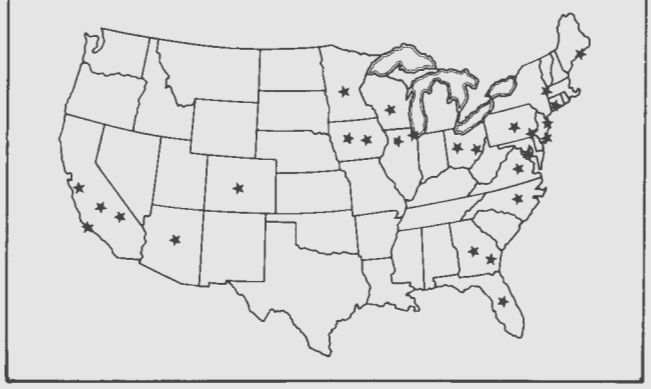
"Earlier Supreme Court decisions had made clear that government employees have constitutional rights, and that contracts and other conditions of employment cannot be used to do away with them," Hoopes' letter noted. "Yet the Court of Appeals in effect brushed aside the heavy constitutional presumption against the government's right to impose a prior restraint on publication and imposed on Marchetti the burden of proving that the material he sought to publish fell outside the scope of the secrecy agreement."

The regrettable fact that the Supreme Court refused to review the Court of Appeals decision, Hoopes suggested, does not foreclose House or Senate CIA investigators from "examining the deadly presumption that confidentiality oaths as used by the CIA and other government agencies are valid and enforceable, without limit as to time or degree, even as against a citizen's basic rights under the First Amendment.

"The gross abuses of power by the CIA, its invasion of the constitutional rights of large numbers of American citizens and the lid of secrecy under which such malfeasances have been carried on–all of which have been uncovered by your Committees–suggest that restoration of public confidence in the healthy functioning of a free democratic system cannot be achieved by reinforcing governmental power to hide its mistakes, especially not by muzzling American citizens; on the contrary, that it can be achieved only by reinforcing the fundamental constitutional right of every citizen to freedom of expression," the Hoopes letters to Church and Pike added.

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

censorship dateline



libraries

Phoenix, Arizona

Controversial articles on topics like sex and alcohol appearing in general circulation magazines create problems for elementary school libraries, a group of elementary school principals alleged in September. The superintendents, at a meeting of the Greater Phoenix Superintendents Association, cited examples of nudity and other "inappropriate" material.

Fred Miller, superintendent of the Laveen School District, said his district removed from library shelves copies of *Newsweek* and *Time* that carried pictures of nude persons. He said he also removed a copy of *Glamour* magazine that carried an article entitled, "Do You Feel Bad After Sex?"

Miller advised his fellow superintendents to "go out and check your libraries." The other superintendents said that they would work in consultation with their staffs on the problem of "controversial materials."

"We certainly don't condone these magazines with this type of information," said Gene Hertzke, superintendent of the Creighton Elementary District and the group's president. Reported in: *Phoenix Republic,* September 24.

Pinellas County, Florida

Fulfilling their promise to continue protesting the presence of allegedly obscene materials in school classrooms and libraries, representatives of Churches United for Decency (CUD) and the Florida Action Committee for Education (FACE) last fall carried their complaints to Florida Education Commissioner Ralph Turlington and to a Florida Senate Education Committee hearing.

The original controversy in Pinellas County was provisionally settled in July when parents and school officials agreed to formal review procedures for controversial textbooks and library materials (see *Newsletter,* Nov. 1975, p. 160; Sept. 1975, p. 138). Dissatisfied with the settlement, members of CUD and FACE took their complaints to the state government.

Irate members of CUD and FACE met with Education Commissioner Turlington for two hours. The Rev. Donald J. Ralston of CUD explained that the groups would continue their protest because the issue was not just a question of one book, but a "trend" toward the use of "filthy, godless works." Turlington told the protesters that local school boards can choose from among five textbooks for each subject area on the state-approved lists, but that library books are not required reading and therefore not subject to the same constraints in selection.

In October, State Senator Richard J. Deeb, responding to FACE and CUD complaints, requested a ruling from Florida Attorney General Robert Shevin on whether *Blueschild Baby,* removed for several months from Pinellas County high school libraries, violated state laws on the distribution of obscene and pornographic materials. Deeb's action followed a Pinellas County review committee's decision to keep the book on library shelves but restrict its use to eighteen-year-old students or those who have written parental permission.

Ray Marky, Shevin's pornography expert, read *Blueschild Baby* and criticized its grammar, vocabulary, and sentence structure. But Marky was not ready to rule on its obscenity. He stated, "Legally, if it has educational value, it cannot be obscene in law."

Testifying before the Senate Education Committee, FACE representatives accused the schools of using materials containing obscenity and sexual perversion, incitement to revolution, and "leftist" thoughts. The solution, said Shirley Correll, a FACE spokesperson, should be removal of the offending textbooks from the list and careful review of any additions, or repeal of the state's compulsory education law so parents could keep their children out of school. Correll referred to the case of Marion Ryan, arrested for breaking Florida's truancy laws when she kept her children out of school in a protest against the use of allegedly obscene textbooks.

Gus Sakkis, Pinellas County school superintendent, responded to FACE charges, saying that members of FACE regarded the removal of books as a cure for all of the world's problems. "The panacea is to remove certain books—[so] drugs, racism, corruption in high levels of government will hereby not exist as far as the students are concerned." Sakkis concluded, "No group has the right to deny others something they want to read."

The legislators expressed sympathy with FACE's contention that schools should not force children to read textbooks against their family beliefs. The committee considered a plan that would require the establishment of county review committees to hold hearings, analyze proposed textbooks, and choose those best suited to local community standards. Library materials and non-required

reading would not be regulated under the proposal. Reported in: *Miami Herald,* October 13, 14, 19; *Florida Times-Union,* October 15; *St. Petersburg Times,* October 7.

Niles, Illinois

In a letter to the publisher of *Father Christmas,* the superintendent of Niles elementary schools announced that he had ordered the book removed from school libraries. The school official, Clarence E. Culver, said he had "rarely felt as disturbed and astounded after reading a children's book. Disgraceful!"

According to Culver, the book, which was selected by the ALA Children's Services Division as a notable children's book, served "only to emphasize the negative aspects of a season which should be filled with feelings of good will and fellowship."

"Rather than expose our school's children to this trash," Culver concluded his letter to the publisher, "we are returning the book with hopes that you discontinue the distribution and spare others the trouble."

South Portland, Maine

Members of the National Association for the Advancement of Colored People and the Association for Black Progress joined together last fall to exert pressure for the removal of D.W. Griffith's 1915 classic, *Birth of a Nation,* from the city library's fall film series. The black groups objected to the showing of the film because it is "so negative in regards to the black contribution to the birth of the nation," according to James W. Matthews, president of the local chapter of the NAACP.

The *Portland Express* editorialized in its November 4 issue: "The decision of the Assistant City Manager David C. Dutton to drop the film–a decision made over the objections of library officials–represents the unwisest of intrusions by the city into the functioning of the library. By cancelling the film South Portland has indicated its readiness to bow to pressure and to engage in library censorship."

Hillsville, Virginia

At the September 15 meeting of the Carroll County school board, Phyllis Hall, parent and co-chairperson of the library screening committee, reported that the committee had voted unanimously to stand firm on its decision not to review every book before its placement on library shelves (see *Newsletter,* Nov. 1975, p. 170). A few weeks earlier, the committee made its position known to the board, but Dallas Philips, board chairperson, asked the committee to reconsider.

The tremendous amount of time involved and the lack of training in book selection were among reasons given for the committee's decision. Hall, speaking for the committee, said that book selection is in the domain of the librarians and that they had done this job satisfactorily for years. The screening committee will act only on "properly presented complaints."

The controversey in Carroll County began in the spring of 1975 when works on witchcraft and demonology were removed from library shelves. Reported in: *Carroll News,* September 25; *Galax Gazette,* September 25.

schools

Collbran, Colorado

Parents of students in School District 50 complained at the opening of the school year about the use of "questionable" stories in a seventh-grade literature reader, *Elements of Literature,* published by Holt, Rinehart and Winston. The parents objected to the "violence" and "grotesque" illustrations and stories included in the book.

School Principal John Severson said the decision to adopt the Holt, Rinehart and Winston series was based upon its excellence and quality and on the fact that the state of Oregon had adopted the series for school use.

Elements of Literature includes tales written by Edgar Allen Poe. Reported in: *Grand Junction Sentinel,* September 16.

Oak Grove, California

After a parent complained bitterly about the contents of *Popular Songs,* a book used in the Oak Grove School District, Oak Grove Superintendent Leonard Howard sent a letter to parents of all children attending the Sakamoto School, telling them the book had been withdrawn from use.

The complainant, Mike Kechula, whose eleven-year-old daughter attends the Sakamoto School, objected to song lyrics which he said encourage the use of marijuana and LSD. Kechula, who was not satisfied by Howard's letter, demanded the review of other materials used in the English program which utilized *Popular Songs.* Reported in: *San Jose News,* November 1.

Columbus, Georgia

At its meeting last November, the Georgia Baptist Convention passed a resolution calling for the removal of objectionable textbooks from Georgia schools. The convention's resolution said it agreed with the presentment of a DeKalb County grand jury that two series published by Scott Foresman, *America Reads* and *Galaxy,* and the National Science Foundation's *Man: A Course of Study,* should be removed from Georgia classrooms.

The Rev. Herschel Markham, drafter of the resolution, said he believed some textbooks used in Georgia schools advocate or approve murder and wife-swapping. "We now find the federal government funding a new type of subject matter which teaches the concept of a savage and pagan culture at an early age," he commented.

Markham also charged that contemporary public school programs no longer impart knowledge, but rather employ a process of behaviorism based upon techniques for training animals and those who cannot think. Reported in: *Atlanta Journal,* November 12.

New Jersey

A controversy over the National Science Foundation's social studies course, *Man, A Course of Study,* led to orders for its termination in three New Jersey communities–Montclair, Westfield, and Mahwah.

Howard Cadmans, president of the Montclair board of education, charged that *Man* was "given in the present tense–Eskimos do this, leave the elderly on ice floes to die, kill their girl children." He stated that the Netsiliks became Roman Catholics thirty-five years ago and now care for their elderly.

The Montclair school board, whose members are appointed by the town commissioners, last June ordered a faculty study of the course. On September 8, the board voted five to one to order an alternative course to be put into effect by January 1.

In Westfield, Lawrence F. Green, superintendent of schools, said that *Man,* given for four years, was ordered withdrawn by the school board. Mahwah's school board ordered it dropped at the beginning of the 1975-76 school years. Reported in: *New York Times,* October 22.

Cold Spring Harbor, New York

Carolyn Mayer and Elizabeth Kennedy, parents of students at Cold Spring Harbor High School, petitioned the local school board in September, demanding that the superintendent of schools apologize for the contents of the school's 1975 year book. The petition, which showed sixty-four examples of allegedly offensive language in the book, called upon Superintendent Reed Hagen to show "moral leadership" in keeping corrupting influences out of the reach of students.

Mayer's petition failed to comment on the contribution of her son, Eugene, to the year book. He wrote in part: "Kill a nigger a day, it keeps the porgies in the bay! White is right!!!"

Mayer, a local representative of Parents of New York-United (PONY-U), said her son was "so square" that he couldn't mean anything bad by what many alleged was a racial slur.

Superintendent Hagen said he does not review the contents of the school's year books. Board President Robert Smails said the matter would be discussed by the school board. "I think we could have a better quality year book without some of the things that were put into it," he said. "I don't want to get into censorship, but I think we can hopefully work towards a higher quality product." Reported in: *Newsday,* October 9.

Lower Moreland, Pennsylvania

A letter to the editor published in a Lower Moreland high school student newspaper describing Republicans in the township as a cast of dictatorial Walt Disney characters caused the all-Republican school board to suspend publication of the paper. During the ensuing controversy, Democrats in the small community in Montgomery County said the action proved that the "Watergate mentality" was alive in their community.

The letter, which appeared in a pre-election issue of the *Lion's Roar,* was written by the township's Democratic chairperson, Carolyn S. Lasky. Lasky said: "I have a recurrent dream that the Republican Party ran a slate of Walt Disney characters. The kids loved having Mickey Mouse run the school board and Donald Duck discovered a way to balance the budget–he eliminated Election Day and relieved the citizens of the useless act of rubber stamping candidates into office."

Laskey explained that she was trying to reach "students in the high school who are eligible to vote or soon will be. I was trying to prevent them doing what many of their parents do–rote voting." Student co-editor Geoffrey Gompers commented on the incident, "We felt that if we did not print her letter we would have taken away her rights as provided by the student handbook and the First Amendment." Reported in: *Philadelphia Inquirer,* November 20.

Madison, Wisconsin

The *National Lampoon* was harpooned in October by the administration of the Madison public schools. East Area Director Donald Hafeman and West Area Director Conan Edwards canceled subscriptions to the monthly periodical for Madison's two alternative high schools, Malcolm Shabazz and City School.

"The kind of pictures in it were pornographic and that was the end," Hafeman stated. "It is about the same thing as letting them have *Playboy,*" Edwards commented. "It has no important intellectual value and questionable moral standards."

A staff member at Malcolm Shabazz, who requested that he not be named, said the school had ordered the *National Lampoon* for use in a course on contemporary magazines. "It is not an issue worth pressing," he said. "I am not interested in having a whole bunch of people on our necks about it."

The October issue of the magazine included a page of snapshots of women in mock fold-out poses who ostensibly entered the *National Lampoon's* Foto Funnies Contest. Reported in: *Madison Times,* October 8.

colleges-universities

Claremont, California

After the Claremont Colleges announced that Angela Davis had been hired as a part-time instructor, the institution received letters from outraged alumni who expressed fears about Davis' ideology and possible "corruption" of the minds of Claremont students. Several donors threatened to cut the college out of their wills.

Davis was hired by former Claremont administrator James Garrett to teach a course on black women and the development of the black community. Garrett was fired last spring, in part for his role in a sit-in at a campus administration building protesting cancellation of a program for black and Chicano freshmen. Reported in: *Los Angeles Times,* November 3.

San Jose, California

In the face of protests from students at San Jose State University, a campus showing of *The Devil in Miss Jones* was canceled last November by the Associated Students Organization. LaDonna Yumori, film chairperson for the Associated Students program board, said students had expressed objections to the expenditure of funds for programs to which they morally objected.

Yumori maintained, however, that the board would show *X*-rated films if students indicated that that was what they wanted. An exhibition of *Deep Throat* on the campus created a storm of student debate and led to a poll in which a majority of the students expressed opposition to sexually explicit film fare. Reported in: *San Jose News,* October 23.

Mt. Vernon, Iowa

President Philip B. Secor of Cornell College decided in October to ban the sale of *Playboy* and *Playgirl* magazines at the campus bookstore. The college's 900 students learned about the decision when they were told that the November issues of the magazines would not be stocked.

Some students were angry, calling the decision an attempt to censor materials at the bookstore, but others supported the move.

Secor was unavailable for comment when the ban was revealed, but the college's vice-president said Secor believed that the two magazines were "sexist" and "dehumanizing." Reported in: *Des Moines Tribune,* October 17.

Chicago, Illinois

An official of the Illinois Right to Life Committee charged in November that students at Northeastern Illinois University used censorship to remove an anti-abortion exhibit from the institution's library. A university spokesman admitted that the exhibit had been withdrawn from a display case at the library after students objected to it, but he alleged that the student who placed it there had withdrawn it voluntarily.

"It just amazes me," said Laura Canning, the Right to Life Committee's assistant director. "If it were any kind of skin flicks or pornography, it would be tolerated on campus. But to show the flesh of an aborted child is not tolerated."

The university's acting vice-president for academic affairs, Ann Smith, said an informal group of students had started a petition for the exhibit's removal. "They said it was in poor taste," she said. Reported in: *Chicago Sun-Times,* November 13.

Iowa City, Iowa

University of Iowa officials refused in October to allow a visiting dance company to perform one of its works in the nude. James Wockenfuss, director of the Hancher Auditorium at the university, substituted another dance company for the contemporary dance group Pilobolus, which was originally scheduled to perform.

Philobolus wanted to perform an untitled work featuring two male dancers in the nude. Pilobolus manager Chris Asche said the University of Iowa was the only location at which the work was banned.

"We decided if we cannot do the dance as it was choreographed, we wouldn't do it at all," Asche commented. Asche added that Pilobolus was first persuaded to perform the work, which he described as a humorous look at the subject of birth, at the Ravinia Festival in Chicago with two males wearing dance belts to cover the genitals. "It looked silly," he said, so the company decided to do it nude or not at all. Reported in: *Des Moines Register,* October 14.

Bemidji, Minnesota

The printer of the *Northern Student,* the campus newspaper at Bemidji State University, refused in October to print an issue which included a "graffiti" page. The page displayed photographs of graffiti on various restroom walls on the BSU campus.

The printer, Garth Lords, called the graffiti "smut" and told the editors they would have to have their newspaper printed elsewhere.

Lester Pope, staff adviser to the *Northern Student,* said the paper might take legal action if the printer continued to reject copy. Reported in: *St. Paul Dispatch,* October 28.

Cincinnati, Ohio

University of Cincinnati officials threatened in October to reconsider the institution's policy of permitting the showing of *X*-rated films. The concern of the officials was expressed after the University of Cincinnati Film Society canceled a showing of an experimental movie, *Pink Flamingos,* when it was heard that the audience would probably include members of the Cincinnati vice squad.

"There really wasn't much of a choice," said Brian Gordan, co-head of the film society and a UC sophomore. "We didn't want to get any film society members or projectionists arrested." He added that the movie was "definitely *X*-rated but not pornographic."

In spring 1975, a showing of *Last Tango in Paris* was canceled at UC after Hamilton County Prosecutor Simon Leis threatened to confiscate it. The film was shown later after a state court ruled that it was not obscene.

Leis told reporters that his vice squad had called him about *Pink Flamingos.* "They understood it would be an *X*-rated, obscene movie," he commented. "They wanted to know what to do. I suggested the proper thing to do was to view it." Reported in: *Cincinnati Enquirer,* October 19; *Cincinnati Post and Times-Star,* October 20.

Milwaukee, Wisconsin

The University of Wisconsin-Milwaukee Union Policy Board voted in October to cancel a series of *X*-rated films shown free at the Union Gasthaus. The vote, which was nine to two with two abstentions, was commented upon in a statement approved by the board: "While the Union Policy Board does not wish to act as a censor with regard to the films shown in the Union, we do feel that it is inappropriate to use films for promotion that are objectionable to a significant segment of the campus community."

The board said the films were to have been used in a promotional effort on behalf of the Gasthaus. Reported in: *Milwaukee Sentinel,* October 9.

broadcasting

Washington, D.C.

The National Association of Broadcasters announced in October that its code board had acted to restrict the advertising of feminine personal products to specific time periods. Starting January 1, the advertising of sanitary napkins, tampons, douches will be allowed only from 9:00 a.m. to 4:00 p.m. during the week and after 10:00 p.m. on weekends.

The code board also rejected a request from the Population Institute to permit the advertising of contraceptives. The board ordered further study.

Members of the board met with representatives of the National Organization for Women and issued a policy statement saying:

"Advertisers and broadcasters should endeavor to depict all persons in a positive manner, always keeping in mind the importance of dignity to every human being.

"Increased efforts should be made to promote concepts of self-pride, dignity, and individual worth. All parties involved in the preparation of broadcast material should be sensitive to the need for balance in the portrayals of men and women in all aspects of society, both inside and outside the home." Reported in: *Baltimore Sun,* October 13.

New York, New York

Four advertisers withdrew last October from a rerun on NBC of "Born Innocent," stating that they considered the controversial film an inappropriate context for their commercials. When it was first aired in September 1974, the work, which depicts conditions in a juvenile detention home, upset many viewers. One scene in the film shows a teenager who is raped with a broom handle by other inmates.

Although NBC announced that it had edited the rape scene for the repeat showing, the advertisers withdrew after the network announced that it was substituting "Born Innocent" for a previously scheduled film, "The Midnight Man."

"Born Innocent" is not the right vehicle for Chevrolet, it was announced by Lou Schultz, a vice president of Campbell-Ewald Advertising, the agency for Chevrolet.

In addition to Chevrolet, the advertisers that canceled were Peter Paul Kitchens, Holiday Inns, and Pfizer Inc. The defecting sponsors were identified by a lesbian activist group, Lesbian Feminist Liberation, which said it had persuaded them to quit the show in a campaign the organization waged against the film.

"This is the only time this year that lesbians are being presented on television," a spokesperson for the liberation group said, "and we are shown as criminals. We regard the film as propaganda against lesbians." Reported in: *New York Times,* October 25.

on stage

Hollywood, California

Los Angeles police raided *What Do You Say to a Naked Waiter* in October, taking the cast to jail in handcuffs. In addition to seven performers in the naked revue at the Meeting House Cabaret, police arrested producer Gerald Gordon and four waiters. The twelve were charged with nudity and aiding and abetting nudity in a place selling liquor.

According to Gordon, the first performance was almost finished "when a troop of cops appeared and stopped the show. The cast and waiters were taken into the lobby and handcuffed and then taken to the Wilshire precinct in squad cars."

According to a ruling of the U.S. Supreme Court, it is permissible for the California Liquor Agency to ban nudity from places selling alcoholic beverages.

Following the arrests, performances of *What Do You Say* were resumed without liquor sales. Reported in: *Variety,* October 8.

publishing

New York, New York

After refusing to discuss charges of censorship, William Jovanovich, publisher of Harcourt Brace Jovanovich Inc., said it would be like saying, "You know, I don't beat my wife." He contended to the *New York Times:* "I've spent twenty-one years in publishing and I run a quarter-billion-dollar enterprise. I've no reason to fear anyone or anything and I have never in my life yielded to pressure—from the government, from corporations, school boards or authors. I care deeply about freedom from censorship."

The charges of censorship against Jovanovich were made by Joan Simpson Burns, author of *The Awkward Embrace,* a study of nine men who through their organizations influence culture. Burns contends that Jovanovich, one of the nine, delayed publication of her book for four and a half years because he objected to the image of him that she portrayed.

"In spite of a letter of agreement with me, this man acted as a censor," Burns said. "He used his position and power to force me to remove parts of interviews with him that he had already approved, as well as things others had said about him."

"He cost us $10,000 and a lot of energy and time we should have been spending writing," said James MacGregor Burns, the author's husband.

"The whole thing is an absolute lie, a slander," Jovanovich responded. "She is elevating a private dispute between two individuals into some damn cosmic happening."

The author was released from a contract with Harcourt Brace so her book could be published with Alfred A. Knopf, but the settlement with Harcourt Brace required the removal of nearly eighty pages from the work, according to Burns. Reported in: *New York Times,* November 4.

films

Atlanta, Georgia

Two Nazi-era films by Leni Riefenstahl, *Olympia* and *Triumph of The Will,* scheduled for October showings at Atlanta's Festival of Women in the Arts, provoked a controversy during which charges of censorship were hurled against the Anti-Defamation League.

The southern office of the Anti-Defamation League condemned the contents of the movies and declared that selection of the owrks was the result of moral insensitivity.

The city of Atlanta, whose Bureau of Cultural and International Affairs in part sponsored the festival, refused to call for cancellation of the films. Mayor Maynard Jackson, who decided against ending the city's role in the festival, said his decision was based on the belief that censorship of the festival would be improper. But he emphasized that he "could never endorse the distorted ideas and evil goals represented by the film."

Olympia is a documentary of the 1936 Olympic Games in Germany. *Triumph of the Will* extols Nazi values through depiction of a 1934 party rally held at Nuremberg.

Spokesmen for the ADL denied that they advocated censorship. "We believe that the High Museum [which co-sponsored the films] has a right to select whatever it chooses to show in its film festival. We believe that we, as one of the human relations agencies representing the Jewish community, have the right to criticize the selection and to state publicly that we believe that the selection was morally insensitive and lacking in good taste and judgment," the ADL said. Reported in: *Atlanta Constitution,* October 9, 10, 13, 20; *New York Times,* October 14.

Dayton, Ohio

Last fall the *Dayton News* revealed that Ed Lampton, director of Dayton's drug abuse methadone clinic, and two of the clinic's former patients had joined last spring in an effort to suppress a documentary called *Methadone: An American Way of Dealing.* The film was made at the Dayton clinic by Julia Reichert and James Klein, nationally acclaimed for their documentaries *Growing Up Female* and *Men's Lives.*

The film, which contrasts the Dayton clinic unfavorably with an apparently successful drug-free treatment program in the District of Columbia, provoked the outrage not only of Lampton, but also of Herman Joseph, one of the developers of the methadone maintenance program at the Rockefeller Institute in New York City. Joseph called the film "dangerous."

In its October 3 edition, the *Dayton News* editorialized: "What is dangerous is Mr. Joseph's attitude. He obviously does not believe the public is qualified to examine the pros and cons of methadone maintenance. He and his colleagues know best.

"But other authorities now believe with the film's producers that methadone should be used carefully and sparingly, usually only as a short-term expedient. . . . It is curious, if Mr. Joseph's position is so unassailable, that he perfers to silence another point of view rather than debate it."

etc.

Washington, D.C.

Under pressure from U.S. Roman Catholic bishops, the principal U.S. organization of Catholic laypersons last year ceased distribution of a book critical of American values, the U.S. government, and the Roman Catholic Church. *A Question of Values,* published in January 1975, was attacked as "intellectual pornography" by one bishop and as

(Continued on page 23)

from the bench

U.S. Supreme Court rulings

With no dissenting vote, the U.S. Supreme Court declined in October to review a $150,000 libel judgment against the publisher of *TV Guide*. The author of a book about a "party girl" successfully contended in the courts below that she was libeled when the *Guide*, in its listing of a panel show on which both she and a prostitute were to appear, said the topic was to be "party girl to call girl" but mentioned only her, not the prostitute, as a guest.

The Court also let stand a $250,000 libel judgment against the *Charleston Daily Mail* for stories it published in 1968 about a West Virginia gubernatorial candidate. The decision upheld a West Virginia Supreme Court of Appeals decision affirming a jury verdict that headlines on a series of stories in the newspaper had libeled the 1968 candidate for governor, James M. Sprouse. Justices Douglas and Brennan voted to review the decision.

In the area of obscenity, the Court in November vacated a lower federal court ruling which had struck down as unconstitutional Indiana's new obscenity law. Over the objections of Justices Brennan, Stewart, and Marshall, the Court remanded the case for "further consideration" by the lower court in light of earlier Supreme Court rulings limiting the power of federal courts to interfere with state proceedings.

Earlier in the term, the Court refused to review convictions in two obscenity cases which Justices Brennan, Stewart, and Marshall would have accepted. In each case, Justice Douglas said the Court should have accepted the case for summary reversal.

the press

Fresno, California

In an unusual move in October, California Superior Court Judge Kenneth Andreen granted a request from the *Fresno Bee* that its lawyers be allowed to comment on the issue of a restriction on the publication of news.

Acting upon a request by Attorney Philip C. Fullerton, representing the *Bee*, the judge agreed to allow interested news organizations to express their views on a defense motion to seal a grand jury transcript which led to the indictment of a man accused of killing five California residents.

"The press and the courts have struggled over a proper accommodation and harmonization of the First Amendment right to freedom of the press and the Sixth Amendment right to a fair trial," the judge noted, explaining that he "leaned in favor" of the American Bar Association's recommendation that news media be notified in such cases. Reported in: *Fresno Bee*, October 11.

students' rights

Los Angeles, California

An October decision of the California Court of Appeal struck down prior censorship by school officials of an underground student newspaper which sought to publish allegedly libelous statements. Reversing a superior court ruling in a case involving the *Red Tide* at University High School, the appellate court held that a provision of the state education code does not authorize prior restraint in such cases.

The case arose in 1974 when University High School students led by Susannah Bright sought permission to distribute an issue of the *Red Tide* containing an article which accused the principal of another school of telling "lies" about dress rules. Permission to distribute the newspaper on campus was denied on the grounds that the principal was possibly libeled by the statements.

School officials acted under a district regulation purporting to implement the state law. They were upheld in 1974 by Superior Court Judge Campbell M. Lucas, who in turn was overruled by the appellate bench.

The California Education Code states that certain expressions by students, including that which is libelous, are "prohibited." But Justice James A. Colby, writing for the majority of the appellate bench, drew a distinction between "prohibited" and "prevented."

"Prior restraint of publication because of the content thereof is a particularly odious form of censorship and is unconstitutional save in exceptional cases," Colby wrote. Reported in: *Los Angeles Times*, October 7.

In an editorial comment on the decision the *Los Angeles Times* (October 10) said: "In brief, minors are people, and it's their Constitution, too, and adults, in setting the rules, cannot set aside the law."

Columbus, Ohio

The Ohio Supreme Court found no substantial constitu-

tional question in an appeal by parents wanting to ban two "obscene" novels from high school English class use. The high court thus dismissed the case resulting from a suit filed by five Strongsville residents asking the Cuyahoga County Common Pleas Court to order the Strongsville Board of Education to ban the two works, *Manchild in the Promised Land* and *One Flew Over the Cuckoo's Nest.*

Common Pleas Judge George C. McMonagle decided that the books "met legal standards of obscenity" and "harmful matter" and banned them from classroom use. But he also ruled that they could be used if parents gave written consent and filed it with teachers. The parents appealed on the grounds that "no one can authorize a public official [including a school teacher] to do an illegal act."

On May 29 McMonagle's ruling was upheld by an appeals court; the case was then taken to the state's highest court. Reported in: *Kent Record-Courier,* October 17.

teachers' rights

Fort Walton Beach, Florida

On Monday, November 17, for the first time in the memory of current pupils, Okaloosa County public schools began without mandatory prayer and passages from the Bible. The practice, required by the county school board despite U.S. Supreme Court decisions, was halted November 14 by U.S. District Court Judge Winston Arno.

In granting a temporary injunction against the prayers, Judge Arno called Okaloosa's policy "a mistake" and "a clear violation" of the Constitution. "In order for a government to survive, there must be a separation of church and state, and forced religion on the people would cause disrespect for the system," Arno said.

The court action stemmed from a dispute which arose when several parents complained that some teachers neglected the school board's policy on prayers. Among those was Champee Kemp, a teacher of sixth-grade mathematics, who filed suit in the federal court charging that she and other teachers who refused to conduct devotionals risked dismissal. Reported in: *Washington Post,* November 17.

North Bergen, New Jersey

A teacher fired at the end of the 1971 school year for openly expressing her opinions on educational philosophy was restored last September to her position as guidance counselor at North Bergen High School. On order of Fred G. Burke, New Jersey commissioner of education, teacher Marilyn Stein also received partial payment of the wages she would have received had she remained at the school.

Commissioner Burke held that Stein had been denied reemployment only because she differed philosophically with the school principal and had exercised her constitutional right to free speech in questioning certain administrative policies.

In upholding Stein's rights, Commissioner Burke noted that all her differences with the principal were "pupil related" and that she never used subterfuge or other unprofessional means to express her opinions. Reported in: *American Teacher,* October 1975.

Philadelphia, Pennsylvania

Last summer the U.S. Court of Appeals for the Third Circuit upheld a lower federal court decision that the freedom of speech of a former professor at Indiana University in Pennsylvania does not encompass essentially private expressions that have a potentially disruptive impact on the functioning of her department. The teacher had brought suit against the university charging that she was dismissed for remarks made during the course of a faculty meeting.

When the university failed to renew her contract, she filed suit contending that her First and Fourteenth Amendment rights had been violated. In ruling in favor of the university, the appellate court distinguished the case from those in which the U.S. Supreme Court found a First Amendment violation. In other cases, the court pointed out, teachers were punished for making public statements or other public communications on issues of public interest. In the current case, the court ruled, the teacher's statements did not come within the protection of the First Amendment. Reported in: *Higher Education and National Affairs,* September 12.

freedom of expression

Lynn, Massachusetts

A Lynn woman who says she will fight for her freedom of expression lost the first round in her battle with the city over whether she has the right to display political signs in the windows of her home. Frances Ferrari, in court for the first time in her sixty-six years, was fined $50 by Lynn District Court Judge Samuel Jaffe for refusing to remove the political advertisements as ordered by the city.

Ferrari and her two sons vowed not to give up what they regard as a crusade for basic First Amendment rights. Pending the outcome of the appeal planned in the case, Ferrari said she would not pay the fine nor remove the seventeen signs she had pasted on the inside of her windows facing the street.

"Why should I take them down?" Ferrari said, referring to signs supporting mayoral candidate Antonio Marino. "They're inside my house, and it's not right that they can tell me what to do in my house."

Lynn City Solicitor Edwin J. Casey said the political ads violated the city's ordinance prohibiting signs in residential districts.

John Reinstein, a lawyer for the Civil Liberties Union of Massachusetts, stated that in his opinion the case would become a test of how far zoning ordinances can go before

infringing freedoms guaranteed under the First Amendment. Reported in: *Boston Globe,* October 28.

Brooklyn, New York

Two Suffolk County police officers, found to have used "impermissible police coercion" in the arrest of a birth control advocate and a mother during a 1971 lecture, were fined $8,000 in U.S. District Court in late September.

Federal Judge Edward R. Neaher castigated officers John Hall and Fred Bruns and held that they must be punished as an example to set before other law enforcement officers.

"Police officers are not empowered to censor speech or speakers, however controversial or unpopular they may be," the judge ruled. "Having recklessly deprived the plaintiffs of important constitutional rights–which the defendants should clearly have recognized and protected–and wrongfully subjected them to the mental and emotional distress of being charged as criminal offenders and to the public humiliation which inevitably followed, the defendants must make compensation."

The judgment against the officers stemmed from the 1971 arrest of William Baird and Nancy Manfredonia, then the mother of a fourteen-month-old child, during a lecture on birth control given by Baird at the People's Town Hall in Huntington, Long Island. Manfredonia was accompanied by her child because she was unable to get a babysitter.

Although Baird's lecture was one that he had given hundreds of times at public gatherings around the country, the judge noted, the two officers arrested him on charges of endangering the welfare of an infant on the grounds that he "exposed" the baby to a lecture concerning birth control devices.

The officers contended that they had acted in good faith because they believed that Baird's comments about contraceptives would endanger the physical, mental, and moral welfare of several teenagers they observed in the audience. Reported in: *New York Daily News,* September 27.

advertising

Tacoma, Washington

In a decision handed down in November, a three-judge federal panel moved a major step forward toward bringing advertising under the umbrella of the First Amendment. The court's ruling struck down a Washington regulation against the use of any "dairy" words in the advertising of margarine.

Although regulations prohibiting the use of certain words in advertising margarine are widespread, Washington was one of the few states that rigidly enforced its rule, forcing margarine companies to cut the word "butter" from local and network television spots.

The suit against the Washington Department of Agriculture was brought by Standard Brands, Lever Bros., Kraftco Corp., and others, who argued that they had been forced to suppress ads for fear of prosecution and had spent more than $200,000 to alter national print and broadcast campaigns in Washington.

The panel, which consisted of Judges John F. Kilkenny, William East, and William Goodwin, ruled that the law was "per se violative of the plaintiffs' First Amendment fundamental immunities and privileges in that their individual rights of freedom of speech and the press are unnecessarily restricted and encroached upon." Reported in: *Variety,* November 12.

obscenity law

Montgomery, Alabama

The Alabama Supreme Court ruled in September that the state's nuisance law cannot be used to padlock motion picture theaters at which "obscene" films had been shown. The decision, whose holding was unanimously concurred in, was justified in these terms by Justice Reneau Allman: "[With regard to the] Constitutional prohibition against prior restraint of allegedly obscene expression without immediate judicial determination, any system of the regulation of obscene expression involving prior restraints comes to the court bearing a heavy presumption against its validity. . . . The decree of the trial court included an order closing the Fox Theatre for any purpose for one year. . . . Evidence of obscene conduct in the past did not justify enjoining future conduct which is protected by the First Amendment. . . . The padlocking of appellant's operation for one year constitutes prior restraint at its worst and is patently unconstitutional. . . .

"We are of the opinion that there was ample evidence for the trial judge to conclude that the motion pictures in question are obscene. But we also hold that even if one is guilty of maintaining an obscenity nuisance, it is not constitutionally permissible to deprive him prospectively of his First Amendment rights. . . .

"The requirements of the First Amendment are stringent and demanding–any regulatory scheme which impinges upon these most precious rights will be assured of close scrutiny." Reported in: *Huntsville Times,* September 26.

Columbus, Indiana

Bartholomew County Circuit Court Judge William Lienberger upheld the constitutionality of Indiana's 1975 obscenity law in a preliminary ruling in the case of the Columbus Modern Times Bookstore.

An attorney representing Thomas H. McKenzie, a bookstore employee charged with obscenity, argued that the Indiana law was vague, unconstitutional, and at odds with previous court decisions.

Among the grounds cited by the attorney for invali-

dating the law was its exemption of museums and schools from its provisions. The attorney, Louis Sirkin, argued that if it were legal to view obscene material in a museum, the law was discriminatory.

Judge Lienberger based his opinion on rulings of the U.S. Supreme Court and a ruling in which Indiana's previous obscenity law was voided. Reported in: *Columbus Republic,* September 24.

Baltimore, Maryland

A November decision by a Baltimore County District Court judge struck down as unconstitutional a county ordinance prohibiting outdoor theaters from showing *X*-rated movies on screens visible from public ways. The ruling by Judge William T. Evans dismissed charges against the owner of a theater charged with violating the controversial 1974 law.

Judge Evans said he followed the June 1975 ruling by the U.S. Supreme Court which voided a similar Jacksonville, Florida ordinance prohibiting drive-ins from showing films containing nudity on screens visible from public streets. "It is very seldom that a case comes before the court where there's a case exactly on point in a controversy like this," the judge said.

The assistant state's attorney who prosecuted the case said the state would appeal the ruling. Reported in: *Baltimore Sun,* November 6.

Reno, Nevada

The City of Reno won a battle against the movie *Deep Throat* when Washoe District Court Judge William Forman ordered an adult movie theater operator never again to show the film in Reno. But the city also lost when Judge Forman found Reno's obscenity ordinance in violation of the state constitution's requirement that laws be applied uniformly across the state.

Judge Forman said that Reno's law created a pocket within Nevada where pornography could be more easily prosecuted than elsewhere. Reported in: *Nevada State Journal,* October 31.

Nashville, Tennessee

In its first ruling on Tennessee's obscenity statute, the Tennessee Supreme Court upheld the law's validity. According to the opinion by Justice Ray L. Block, which was concurred in by the remaining four judges, the statute, which was enacted in 1974, follows the guidelines laid down by the U.S. Supreme Court in *Miller* v. *California* (1973).

In appealing to the high court, a Kingsport amusements company which had shown several sexually explicit films, including *The Devil in Miss Jones,* contended that the law was vague and failed to give adequate warning about what it prohibited.

The high court responded that the language attacked as vague was taken verbatim from the U.S. Supreme Court's opinion in *Miller.*

The state court also commented: "To render constitutional a statute which prohibits the exhibition or distribution of obscene materials, it is not necessary to require that a defendant know or believe that the material in question is legally obscene. It is sufficient to require that the defendant have knowledge of the contents or character of obscene material." Reported in: *Chattanooga Times,* October 21.

Richmond, Virginia

Richmond Commonwealth Attorney Aubrey M. Davis Jr. averted a contempt citation in U.S. District Court in September by admitting that he had "erroneously interpreted the law" when he ordered the seizure of an allegedly obscene movie last summer.

Federal Judge Robert R. Merhige Jr. said he would give Davis the "benefit of the doubt" and dismissed a show cause order against him. He said he was satisfied that Davis' violation of an injunction which Merhige issued in 1969 was "unintentional."

The federal injunction barred the seizure of allegedly obscene movies from the Lee Art Theatre in Richmond without a prior court hearing. Davis testified that he was aware of the injunction when he approved the seizure of the movie, but he added that he believed decisions by other courts since 1969 had modified the injunction and allowed seizure of the movie without a hearing. Reported in: *Richmond News Leader,* September 24; *Richmond Times-Dispatch,* September 24.

Salt Lake City, Utah

In an amazing opinion which upheld the convictions of three men convicted separately in an Ogden City court, the Utah Supreme Court ruled last September that the First Amendment applies only to the federal government.

In an opinion concurred in by Chief Justice F. Henri Henriod and Justice A.H. Ellett, Justice J. Allan Crockett wrote: "The rule which should be applied is that laws, and especially foundational laws such as our Constitution, should be interpreted and applied according to the plain import of their language as it would be understood by persons of ordinary intelligence and experience. Viewed in that light it is submitted that this provision [the First Amendment] is simply, solely, expressly and utterly, nothing more and nothing less than a limitation upon the Congress of the United States and the powers of the federal government."

In their trial, the convicted men virtually admitted that the materials they were charged with selling were obscene, but they contended that the statute under which they were convicted was in conflict with the First Amendment.

In his lengthy opinion, Justice Crockett wrote of the Utah statute, "It is our judgment that that statute is sufficiently specific and meaningful to meet the requirements stated above: that persons with an ordinary sense of decency and morality, desiring to know what the law is and abide by it, would have no difficulty in understanding what transgresses those requirements; and particularly, that these defendants would have no difficulty in understanding that the exhibits in this case are within that prohibition."

In a bristling dissent, concurred in by Justice R.L. Tuckett, Justice Richard J. Maughan wrote: "The history of the Fourteenth Amendment leaves little doubt that the intention of the framers of the clause was to convert all the ordinary rights of citizenship in a free government into rights of national citizenship, and thus, in effect, to accommodate their regulation by the national government. Thus the Fourteenth Amendment can protect the citizens against the state itself, and all of its agencies." (*Utah* v. *Phillips,* No. 13816, decided September 15.)

obscenity: convictions, acquittals, etc.

Orange County, California

Two officials of the Pussycat Theatre chain were acquitted of obscenity charges by a six-man, six-woman jury in Harbor Municipal Court at Newport Beach. The owner of the chain, Vincent Miranda, and Balboa theater manager Arlie Wood had been charged with exhibiting obscenity by showing the movies *Deep Throat* and *The Devil in Miss Jones.*

Jury foreman Buddy Bearbower noted that "there is redeeming social value in almost any artistic endeavor."

Deputy District Attorney Anthony Rackauckas said the acquittal would have "a heavy impact on our course of action in the future." He revealed that the district attorney's office had more than sixty other charges pending in various Orange County courts, including many against the Pussycat Theatre chain. Reported in: *Long Beach Independent,* October 13; *Long Beach Press-Telegram,* October 13.

Boston, Massachusetts

Jacqueline A. Thureson, the mother of seven children, was fined $2,000 when she was found guilty by a Middlesex Superior Court jury on charges of knowingly disseminating obscene material. During her trial, former Cambridge Police Officer John Gentile testified that he observed an obscene film at her bookstore in Cambridge in September 1974. Reported in: *Boston Globe,* October 30.

Ferndale, Michigan

The long campaign of Oakland County Prosecutor L. Brooks Patterson against the movie *Naked Came The Stranger,* shown at the Studio North Theatre in Ferndale, resulted in a mistrial in October. The four-man, two-woman jury which reviewed the work told Ferndale District Court Judge Montague Hunt that they were unable to arrive at a conclusion concerning its alleged obscenity.

During legal maneuvering over the film, which at one point involved virtually every level of the state and federal judiciary, a federal judge ordered Patterson to obtain a jury verdict against the film before further actions against the Ferndale theater. After Oakland County Circuit Court Judge William R. Beasley found the movie obscene in a preliminary hearing, the Michigan Court of Appeals lifted the temporary ban on the film pending the outcome of the jury trial. After the mistrial, it appeared that *Naked Came The Stranger* would have a long run in Ferndale. Reported in: *Detroit News,* October 15, 22, 30; *Oakland Press,* October 22, 26.

Morristown, New Jersey

The operators of the Roxbury Adult Bookstore were found guilty in October of possession and distribution of obscene materials. The convictions were the first since the New Jersey obscenity law was revived by state courts in late 1974.

A ten-man, two-woman Morris County jury deliberated six hours before determining that three films, one magazine, and two newspapers depicting various sexual acts were obscene.

Morris County Prosecutor Donald G. Collester Jr. said the verdict "establishes a community standard in this county." Reported in: *Paterson News,* October 17.

Newark, New Jersey

The owners of a Newark movie theater pleaded guilty in October to violating New Jersey's obscenity law by showing eight sexually explicit films. In exchange for their guilty plea, they received a promise that charges against a part owner of the theater and an employee would be dropped. Essex County Judge Richard B. McGlynn, before whom the plea was entered, said that he would probably accept the recommendation of the Essex County prosecutor's office on the negotiated plea in which charges against Irving Michels, former owner of the firm operating the Treat Theater in Newark, and employee Howard Farber were to be dropped.

During the trial, Judge McGlynn declared that he had no doubt that the eight films were obscene and in violation of the state law. Reported in: *Passaic Herald-News,* October 9.

Riverhead, New York

Three executives of a Long Island Publishing firm pleaded guilty to single counts of obscenity in an October appearance in Suffolk County Court. The three were named

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is it legal?

in the U.S. Supreme Court

The U.S. Supreme Court decided in October to take up the question of what a city can do to prevent the development of highly concentrated clusters of shops and theaters specializing in so-called adult entertainment. The Court will review a decision of the U.S. Court of Appeals for the Fourth Circuit which struck down as unconstitutional Detroit zoning regulations limiting the number of such establishments in any given area.

The two-judge majority of the appeals court found that the Detroit ordinance violated the equal protection guarantee because it treated certain businesses differently from others without an adequate showing that such different treatment was justified. The Court stated that the materials in question were presumptively protected by the First Amendment and that when First Amendment rights were at stake the measures must be shown to be both necessary and to have only an incidental effect on protected rights.

The dissenting judge, Anthony J. Celebreeze, argued that the First Amendment was "not intended to be the death knell of the cities." Reported in: *New York Times,* October 21.

Freedom of information

Arguments were presented to the Court in October in a case whose decision may offer guidelines for interpreting exemptions of the Freedom of Information Act concerning personnel and medical files. The case before the Court involved exemption 6 of the 1974 FoI amendments, which exempts personnel and medical files and similar files whose disclosure would constitute an unwarranted invasion of personal privacy.

The questions arose when the Air Force denied a request for access to adjudicatory hearing summaries prepared by the Air Force Academy's honor and ethics committees. The summaries contain information relating to Honor Code violation hearings, and are purported to be the only record of such hearings.

The request for identity-censored copies of the summaries was filed by a group of *New York University Law Review* researchers interested in publishing an article assessing the academy's disciplinary procedures. A lower court held that the files are not subject to mandatory disclosure.

Politics on military bases

In early November, U.S. Solicitor General Robert Bork told the Court that political rallies must be barred from military bases in order to remind soldiers that "when you come on a military base, you leave your political views behind you."

Bork defended a ban at Fort Dix, New Jersey on handbills and political speeches which was struck down by the U.S. Court of Appeals for the Third Circuit. The original challenge was brought by Dr. Benjamin Spock, who was denied permission by the post commander to stage a rally on the post for his 1972 Peoples Party presidential campaign.

Press "gag" rules

In the middle of October Justice Blackmun bruskly ordered the Nebraska Supreme Court to act swiftly on a major test case involving a gag order binding the press.

Shortly thereafter, in an interim order which did not set a binding precedent, Justice Blackmun ruled that the news media may be barred from reporting a defendant's confession and other incriminating evidence before trial even if the information was disclosed at a public hearing.

Blackmun acted at the request of Nebraska news organizations, which had pleaded with him to lift an order of a Nebraska county judge restricting press coverage of pretrial preceedings in the mass murder case of Irwin Simants, accused of killing six members of a Sutherland, Nebraska family in October.

Obscenity

In all, the Court faced one of its lightest obscenity loads in years. Ordinarily burdened with eighty or ninety cases upon the Court's return from the summer vacation, this fall the Court's docket contained only eight.

the press

Los Angeles, California

A $630 million libel suit against *Penthouse* magazine, filed by four individuals and four corporations, may prove to be the first major test of the 1974 public figure ruling handed by the U.S. Supreme Court in *Gertz* v. *Welch.* The

action—possibly the largest libel suit in U.S. history—stems from a story written by Lowell Bergman and Jeff Gerth which appeared in the April 1975 issue of *Penthouse.*

Entitled "La Costa: Syndicate in the Sun," the article alleged that the Rancho La Costa resort in Southern California was the project of racketeer Meyer Lansky and that it was financed by the International Brotherhood of Teamsters on highly questionable grounds.

Plaintiffs in the suit included Morris B. Dalitz, Allard Roen, Mervyn Adelson, and Irwin Molasky, all principal officers of the Rancho La Costa development.

Attorney Louis Nizer, retained to represent the Rancho La Costa owners, will argue that the officers are not "public figures" and thus retain a constitutional right of privacy under Supreme Court standards. If he loses that argument, Nizer will then have to prove that the authors of the article wrote their story "with malice," that is, with a reckless disregard for the facts or with knowledge of its falsehood. Reported in: *Editor & Publisher,* November 15.

San Francisco, California

In early October, seven newspapers became the target of a $15 million invasion-of-privacy suit filed by Oliver W. Sipple, the ex-marine who deflected Sara Jane Moore's pistol shot at President Ford in San Francisco on September 22.

Sipple alleged that the papers damaged his personal life by printing articles regarding his alleged homosexuality. His attorney reported that his family refused to speak to him and that it was necessary for him to enter a VA hospital because of depression suffered as the result of the stories.

The papers were the *San Francisco Chronicle,* the *Los Angeles Times,* the *Chicago Sun-Times,* the *Denver Post,* the *Des Moines Register,* the *San Antonio Express,* and the *Indianapolis Star.*

The day after the attempted assassination, *Chronicle* columnist Herb Caen wrote that leaders in San Francisco's gay community had identified Sipple as a homosexual. The *Times* printed more details the following day, which were picked up by the other papers. Reported in: *Editor & Publisher,* October 4.

Tallahassee, Florida

The Florida Supreme Court agreed in early November to consider a *Miami Herald* lawsuit challenging press restrictions in a land fraud trial. However, the ruling of the court refused to lift those restrictions immediately.

"Because of the importance of the question of law involved, we expect that this case will proceed to final determination even after disposition of the pending criminal trial," the high state court said.

The criminal trial referred to was the first on charges stemming from Comptroller Gerald Lewis' investigation of fraudulent schemes involving securities and land in southern Florida. Six defendents were accused of fraud, grand larceny, conspiracy, and selling unregistered securities.

Palm Beach Circuit Court Judge Russell McIntosh issued an order at the beginning of the trial, limiting press coverage to evidence presented to the jury or filed in public records. He forbad the reporting of testimony presented in open court during absences of the jury. He said the order was needed in order to assure a fair trial in the highly publicized case. Reported in: *Editor & Publisher,* November 15.

broadcasting

Los Angeles, California

The Writers Guild of America, the Directors Guild of America, the Screen Actors Guild, several independent production companies, and numerous individuals filed suit in U.S. District Court in Los Angeles last fall to challenge the constitutionality of television's new family viewing hour.

The suit charged the Federal Communications Commission, ABC, CBS, NBC, and the National Association of Broadcasters with intervention in programming in violation of the First Amendment. The suit contended that the networks and the NAB adopted the "prime time censorship rule" under pressure from the FCC and labeled this action "prior censorship" in violation of Section 326 of the Communications Act of 1934, which prohibits censorship by the FCC.

The suit also charged that the rule violated the Administrative Procedure Act, which requires the FCC to publish a notice of proposed rules in the *Federal Register.*

A spokesman for NBC said in response, "We believe the public interest will be served if the family viewing rules are given a fair chance to work." CBS said it considered the suit without merit, and ABC had no comment.

The National Association of Broadcasters said in Washington that it viewed writers' complaints of losses of residuals as "logical" but still debatable. Writers complained that family viewing would reduce the market and result in losses to writers. Reported in: *Advertising Age,* November 3; *Variety,* November 5.

Washington, D.C.

Illinois Governor Dan Walker filed a complaint in October with the Federal Communications Commission to protest the refusal of Chicago's three network-owned television stations to accept his paid commercials. The ads were part of the state leader's eventually successful effort to prevent a legislative override of his veto of school aid bills.

Walker forwarded copies of his complaint to the Justice Department and the Federal Trade Commission, asking those agencies to determine whether CBS, ABC, and NBC violated any trust laws in allegedly putting up a common front against him.

"Any dog food manufacturer can go on television and no one tells him no," Walker said. "Companies selling deodorants, soap, and furniture buy commercials, but the television networks won't permit a governor to give the facts about an issue to the people of the state through a commercial."

The governor added that he did not dispute the refusal of WGN to accept his commercials because he said he understood the locally owned station's long-standing policy not to accept political or special interest commercials of less than five minutes. Reported in: *Chicago Daily News,* October 21.

Washington, D.C.

The Federal Communications Commission began in October to consider a ban of all advertising for over-the-counter drugs on television between six in the morning and nine in the evening. The proposal, prompted by a petition signed by seventeen state attorneys general, seeks the ban on the grounds that such advertising has led to drug abuse among children.

The petitioners claimed that the frequency of drug-related advertising on the air has reached the ratio of one in every eight television commercials.

The leader behind the action was reportedly Francis X. Bellotti, Massachusetts Attorney General. He contended that such heavy drug advertising creates "a new demand for drugs which heretofore have not generally been recognized as needed by the consuming public." Reported in: *Editor & Publisher,* October 25.

Lansing, Michigan

The Federal Communications Commission began hearings last fall into allegations that the owner of a Lansing television station blacked out local politicians and suppressed news stories in order to further his own business interests. The questions before the commission included whether Harold F. Gross, the station owner, blacked out politicians who opposed his getting a cable television franchise in Lansing and whether he ordered his news staff not to cover stories concerning certain businesses because they did not pay past-due accounts or because they did not advertise on his station.

The commission began its investigation after a series of articles in the *Detroit Free Press* raised the allegations. A complaint raising similar charges was filed by the Lansing chapter of the American Civil Liberties Union.

Gross and his attorneys maintained that the hearings attacked his freedoms guaranteed by the First Amendment. Reported in: *New York Times,* November 9.

students' rights

Holtville, California

A U.S. District Court judge issued a temporary restraining order in October preventing the Holtville school board from stopping publication of a newspaper by a fourteen-year-old student. Judge Edward J. Schwartz issued the order after an attorney representing the student and her father filed a $1.6 million suit against the school board charging violations of freedom of speech and the press.

Reportedly, the student, Lisa Pliscou, was removed from an assistant editor's job at the high school's newspaper, the *Saga,* in an alleged restructuring of a journalism course. The suit stated that Pliscou, an honor student and president of the school's journalism honorary society, then attempted to publish her own campus paper, the *First Amendment.*

According to the suit, the school's principal refused to allow distribution of the *First Amendment* and was backed by the school board. Reported in: *San Diego Union,* October 19; *San Diego Tribune,* October 20.

prisoners' rights

Reno, Nevada

In late October, U.S. District Court Judge Bruce Thompson received final briefs in lawsuits filed by two Carson City Jail inmates to test the constitutionality of the jail's mail censorship regulations. The suits, filed by Howard Floyd Tucker and the Rev. James A. Brown, charged that the mail policy adopted by the sheriff's office last July violated their constitutional rights.

Under the jail policy, mail is divided into the categories of "privileged," involving correspondence with attorneys and judges, and "unprivileged." Privileged mail cannot be opened by prison personnel. Other mail may be opened and censored if it contains obscenities, contraband, incitement to riot, or a threat to the operation of the jail.

Tucker alleged that his right to correspond with the press had been interfered with. Brown said the sheriff's employees had interfered with letters to his parishioners, which he said should be privileged.

Carson City Chief Deputy District Attorney Lou Doescher argued that the mail classification was reasonable and that under the rulings by the U.S. Supreme Court prison officials have wide discretion in dealing with religious correspondence and with contacts with the press. Reported in: *Carson City Appeal,* October 29.

legislation on obscenity, etc.

Lansing, Michigan

A bill to outlaw dissemination of sexually explicit materials to minors will be introduced in the Michigan legislature in January, the head of the House Judiciary Committee indicated in October.

Persons who provide youths under seventeen years of age with such material could be jailed for a year and fined

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success stories

Burlington, Iowa

The Burlington school board voted in September to accept the recommendation of a library review committee to retain *The Sting* in the Oak Street Middle School library. The Rev. Charles Stevens requested removal of the book after reading the first three pages which he said contained ethnic slurs and objectionable language.

Charles Hahn, superintendent of schools, said that while he supported retention of the book, he was not without reservation. In his opinion, *The Sting* would be just as interesting without the allegedly objectionable words, but he said that as long as students read contemporary literature they will be exposed to similar language.

Des Moines, Iowa

The Iowa Department of Public Instruction acted in October to uphold rulings by local and county school officials that allowed three controversial books to remain on the shelves of the Grinnell High School library.

The books–*The Godfather, The Summer of '42,* and *The Exorcist*–had been called "obscene, vulgar . . . and inappropriate education materials" by Ben See, a Grinnell minister who filed a protest against the books last year (see *Newsletter,* March 1975, p. 41).

After the local school board had voted to retain the books, See appealed the decision to county officials, who upheld the local board, and then to the Iowa Department of Public Instruction.

In a ruling signed by Robert Benton, state superintendent, the hearing panel did not deal with the question of obscenity or the inappropriateness of the works as educational materials.

"The determination of the appropriateness of educational material for use in schools is primarily the responsibility of the school district board of directors," the ruling said.

See said he was not surprised by the ruling, and added that he was considering taking the issue to the courts. "So far, this has been an exercise in futility," See stated. "It is the law that I had to go through channels–through the county school board and then the department of public instruction–yet, after the time, trouble, and expense, they say it's a local problem. . . . "

See commented that he had the backing of his congregation at the Lakeside Church of Christ and others in Grinnell whom he called the "silent majority." "As a minister, I can't back off; I must take a stand on a moral issue like this," he said. Reported in: *Des Moines Tribune,* October 9.

Baton Rouge, Louisiana

The Louisiana State Board of Elementary and Secondary Education refused to ban textbooks opposed by the Concerned Citizens and Tax Payers for Decent School Books, a group of citizens who prompted the review of books in the East Baton Rouge school system (see *Newsletter,* Nov. 1975, p. 170). In East Baton Rouge, their complaints eventually resulted in the institution of a system-wide search for "offensive" books and materials.

Members of the state board voted six to three with one abstention on the motion to accept all of the books recommended for the state texbook list. Reported in: *Baton Rouge Morning Advocate,* September 26.

DeSoto, Missouri

The DeSoto school board voted in October to deny a request from a parent that *Go Ask Alice* be removed from the local high school library.

The board announced that it based its decision on favorable reviews by a faculty committee and the school librarian. Sue Mueller, the librarian, told the board that the book had been in the library since 1971 and that the complaint she was asked to act upon was the first.

"To me, if it saves one student from taking drugs it is worthwhile," Mueller commented. Reported in: *St. Louis Post-Dispatch,* October 22.

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biased "against the church, religion, and morality" by another in written complaints to the sponsor, the National Council of Catholic Laity.

After the American bishops' administrative board objected at its spring meeting to the book, the twenty-four-member board of the lay organization decided to withdraw it.

Bishop James S. Rausch, secretary to the bishops, said the bishops did not arbitrarily suppress the book, but advised against continuing its distribution.

"Nonsense," charged William Sandweg of Washington, president of the National Council of Catholic Men. "Why

else was the book withdrawn?"

Among the passages cited as objectionable by the bishops were these:

• "But what about the suffering the church has failed to relieve, or even acknowledge, and the suffering it has itself brought into the world; Just to focus on the last half century, where was the church when Fascism and Nazism were on the rise in Eurpoe? . . ."

• "The rigidity of the churches on sexual morality in general and on contraception, abortion, and divorce in particular may have done more to discredit their moral authority than any other factor. . . ."

The *National Catholic Reporter,* an independent weekly published in Kansas City, first reported the withdrawal of the book in October, stating that John Cardinal Krol of Philadelphia and Archbishop Francis Furey of San Antonio were among the influential bishops raising the complaints. Reported in: *Washington Post,* November 5.

Elmwood Park, New Jersey

After District Court Judge Gerald E. Monaghan ordered the closing of an Elmwood Park bookstore, two-thirds of the community's residents expressed support of the decision because of their objection to the sexually explicit materials sold at the store. Mayor Richard A. Mola, one of the borough officials who called for the store's ouster, said he was surprised at even the small support which the store received.

Judge Monaghan, who reported that he had twelve children, commented, "I don't care what the person down the street thinks. . . . No one in their right mind can look at these magazines and believe for one second there has not been a violation of the [New Jersey Obscenity] statute."

The owners of the store indicated that they would probably forego an appeal and close the store for good. Reported in: *Hackensack Record,* October 16.

Rocky Mount, North Carolina

The directors of a mental health center in Rocky Mount recalled from patients a book on female sexuality after a local physician protested its use. Lloyd Bailey, an ophthalmologist, claimed that the book, *Our Bodies, Our, selves,* defies moral and religious teaching. "The only thing that book is good for is for girls working in a house of ill repute," he commented.

The book, which Bailey characterized as "trash," had been loaned to three adult patients, according to Helen Cleveland, acting area director of the Edgecombe-Nash Mental Health Center.

Bailey said he learned of the center's use of the book from the parents of an eighteen-year-old girl whom he had treated. "They feel they have lost their daughter," he said. He alleged that employees of the health center gave her the book and told her to "make up your own mind."

Bailey also charged that the work is pornographic. Sections of it, he explained, deal with "love affairs or sexual affairs with two or three or more people in a variety of acts." Reported in: *Charlotte Observer,* October 18.

Philadelphia, Pennsylvania

Five paintings depicting male and female nudes were removed from an exhibition in the Galleria at Centre Square on the day the show opened. The paintings by Ira Upin were ordered taken down by the manager for Centre Square, Tom Davis, after he received "a dozen complaints" from the office building's tenants.

"I have to react to my tenants' opinions," Davis commented. "This is a public building. The tenants pay a heck of a lot of rent. From our point of view, I have to protect them."

Amazingly, Davis agreed with Upin's opinion that there was nothing objectionable in his works. "There is not one picture down there I wouldn't bring my own kids to see," Davis revealed. Reported in: *Philadelphia Bulletin,* October 7.

(From the bench . . . from page 19)

in an indictment handed down in 1972 that contained 207 charges of obscenity.

According to Suffolk County Assistant District Attorney Brian Stone, the firm was a major national distributor of "pornographic literature." Reported in: *Newsday,* October 28.

Charlotte, North Carolina

After adult bookstores in Charlotte reported to newspapers that investigators had stopped attempts to interfere with their operations, the office of the Mecklenburg District Attorney confirmed it was no longer interested in prosecuting obscenity cases.

District Attorney Peter Gilchrist III said, "With the amount of time involved in the prosecution of obscenity cases, and the other more pressing problems of violent crime, there has been a shift in priority to emphasize the violent crimes.

"An obscenity case can tie you up for a week and there is difficulty in finding a number of people who would agree on what is obscene," Gilchrist added. "A prosecutor has to look at the work load and decide what is pressing. The way things are now, it will be awhile before I prosecute another obscenity case." Reported in: *Charlotte News,* October 18.

Tulsa, Oklahoma

A Tulsa bookstore operator was sentenced to seven years in prison and fined $7,000 in September after a Tulsa District Court jury convicted him of selling a copy of the

newspaper *Screw* on September 4, 1973.

The store operator, Al Hanf, was convicted and fined $15,000 in 1974 on another count involving the same publication, but the Oklahoma Court of Criminal Appeals reversed the conviction and remanded that case for a new trial, which was pending at the time of his sentencing. Reported in: *Tulsa World,* September 17.

Memphis, Tennessee

Last September the federal government began what it termed "a nationwide effort to wipe out motion picture smut" in trials in U.S. District Court in Memphis. During the weeks of arguments and exhibitions of films, jurors heard conflicting testimony. Psychologist Victor Cline said deviant behavior could be caused by impressions left on the brain by sexual stimulation resulting from pornographic movies. Psychologist Robert Byron Athansiou said that watching one erotic film after another causes, not sexual stimulation, but "just boredom."

In the first convictions handed down, Carl Carter of Memphis and Donald Davis of Los Angeles were found guilty on twenty-one counts of shipping obscene films across state lines. A mistrial was declared by U.S. District Court Judge Harry Wellford in the case of Allen Glen Bratcher of Los Angeles, a mail order film distributor. Reported in: *Memphis Press-Scimitar,* September 23, October 17, 21; *Variety,* October 29, November 12.

Salt Lake City, Utah

A Salt Lake City Court judge in October handed down a maximum sentence to a theater operator convicted of obscenity charges for showing *Deep Throat.* Judge Paul G. Grant sentenced the proprietor of the Palace Theatre to six months in jail, most of which was suspended, and ordered him to make "public restitution" in the amount of $5,000. Judge Grant said the "restitution" would be contributed to a charity approved by the court. Reported in: *Salt Lake City Tribune,* October 23.

etc.

Sacramento, California

In October U.S. District Court Judge Thomas McBride issued an order banning the showing of a film on the Manson clan in twenty-six California counties, arguing that the movie could deny Lynette Fromme a fair and speedy trial.

Fromme, accused of trying to kill President Ford in Sacramento on September 5, was a follower of convicted mass murderer Charles Manson.

Judge McBride issued the order against distribution of the film after viewing the ninety-minute documentary in private.

One scene of the film, shot by two Southern California film makers, shows Fromme holding a rifle and saying: "You have to make love to it. You have to know every part of it so that you could pick it up at any second and shoot." Reported in: *Chicago Daily News,* October 17.

Chicago, Illinois

The U.S. Court of Appeals for the Seventh Circuit upheld in October a lower court ruling which dismissed a $250,000 damage suit brought last year by a filmgoer who claimed that the *PG* rating for Allied Artists' *Papillon* misrepresented the picture's content.

The suit thrown out by the district court was filed by Paul Bernstein, who had taken his three daughters to see *Papillon* at a Highland Park theater in March 1974. The court declared that the *PG* label was not misleading because Bernstein was "accurately put on notice that he should exercise caution in letting children view this movie and he failed to do so." Reported in: *Variety,* October 29.

Minneapolis, Minnesota

Minneapolis' fight to deny James Sparks of Omaha a license to operate the Parkway Theater was dealt a blow when Hennepin County Court Judge Andrew Danielson ruled that the city had acted in an "arbitrary and capricious" way in delaying action on Sparks' application.

Judge Danielson rejected arguments that the city could deny a license on the grounds that the theater would be used to show obscene films. "While the court understands and sympathizes with the concerns of citizens in a case like this," Judge Danielson stated, "the rights guaranteed by our Constitution are sacred and must be protected even though the effect in a given case may reap reward for a few and be unpopular with many. Any alternative is unacceptable as the effect would be progressive, leading to censorship of the news media and of individual citizens."

In addition to delay on the part of the city council's consumer services committee in acting on the application from Sparks, citizens in the neighborhood of the Parkway Theater had asked the city council to undertake an environmental impact study (see *Newsletter,* Nov. 1975, p. 181).

Danielson's decision did not directly order the city to approve the transfer of the theater's license to Sparks, but the judge hinted that stronger court action would be forthcoming if the city failed to act promptly. Reported in: *Minneapolis Tribune,* September 25; *Variety,* October 8.

(Is it legal . . . from page 22)

$10,000 under the proposal filed by Rep. Paul Rosenbaum. Michigan's current law provides for a fine of $1,000 and one year in jail.

Rosenbaum said the bill would be the first part of a three-step drive to control sexually explicit works. The

second and third parts, according to Rosenbaum, would control distribution of pornography to non-consenting adults and the display of sexually explicit movies in drive-in theaters.

Rosenbaum said that one purpose of the prefiled measure would be to assure uniform statewide standards governing the dissemination of materials to minors. He said his measure would be "far less confusing to all concerned parties." Reported in: *Lansing Journal,* October 30.

Minneapolis, Minnesota

City Council President Louis DeMars, who said he was disturbed by the "burgeoning" Minneapolis pornography industry, called in October for an ordinance to establish what would be an *X*-rated districted in the city.

As DeMars described it, the purpose of the ordinance would be to keep theaters and bookstores specializing in sexually explicit materials out of the family neighborhoods.

Part of the controversy addressed by DeMars was caused by the Capri Theater's switch from family films to sexually explicit fare. Minneapolis Park Board Commissioner Benjamin Berger, who owns the theater, said his business "couldn't make it" as a family-oriented enterprise. Reported in: *Minneapolis Tribune,* October 16.

Lee's Summit, Missouri

An ordinance prohibiting the public display of sexually explicit materials was approved in October by the Lee's Summit City Council. The ordinance was drafted after several council members received complaints from residents about sexually explicit materials on display where minors could see them, Mayor William R. McKee said.

Under the ordinance, it is unlawful to display materials that are obscene or any material that depicts nudity, sexual conduct, sexual excitement, or sado-masochistic conduct.

O.C. Roberts, Lee's Summit police chief, commented that it would not be difficult to enforce the law. He said that federal courts had ruled that local governments "are responsible for stating what is pornographic in their areas." Reported in: *Kansas City Star,* October 8.

Buffalo, New York

In October the Buffalo Common Council passed an ordinance regulating the public display of magazines with pictures of nude or partially nude persons. News dealers are required to keep them out of the sight of persons under seventeen.

The regulation also requires merchants to control the display of materials with descriptions of sexual activity which are "harmful to minors." Reported in: *Chicago Tribune,* October 5.

Fairfax County, Virginia

The Fairfax County board of supervisors voted in October to place restrictions on bookstores and theaters exhibiting sexually explicit materials. The ordinance regulates bookstores and theaters seating fewer than fifty persons and requires that they be located in shopping centers away from residential areas.

The measure was sponsored by Supervisor Alan H. Magazine, who complained about the "influx" of adult stores and theaters into Fairfax County. Magazine said the board of supervisors considered the stores and theaters "a very serious problem." He added that they would bar them if they could find a legal way to do so. Reported in: *Washington Post,* October 30.

(World of intelligence . . . from page 3)

South Vietnamese President Diem, was killed through the cooperation of ABC newscaster Howard K. Smith with Nixon aides Charles Colson and Henry Kissinger.

In a letter to *Variety,* Smith said he had "never, repeat never, prevented any ABC news correspondent's story from going on the air." In a reply to Smith, Bill Gill contended that litigation in process would reveal the facts. He stated to *Variety* that "attorneys are preparing evidence to show that ABC News, with the knowledge and approval of top management, did place the network and some of its personnel at the disposal and service of the Central Intelligence Agency and its executives. Reported in: *Variety,* October 8, 15, November 12.

National Security Agency

In its first report on Project Shamrock, operated for thirty years by the National Security Agency, the Senate Intelligence Committee disclosed that as many as 1.8 million international telegrams were illegally examined each year by the NSA. According to the Senate committee, Project Shamrock began in 1947 with the approval of President Truman and his top advisers, and involved the cooperation of three international telegraph companies–RCA Global, ITT World Communications, and Western Union International. In a comment on the operation, Attorney General Edward H. Levi told the committee that the NSA's ability to eavesdrop on overseas communications might be subject to the Fourth Amendment ban on unreasonable searches of American citizens. Reported in: *Chicago Tribune,* November 7.

Internal Revenue Service

In its investigation of the IRS, the Senate committee discovered that more than 11,000 individuals and organizations were carried on the rolls of the agency's Special Services Staff, which was established in 1969 as a "special compliance group . . . to receive and analyze all available information on organizations and individuals promoting extremist views and philosophies," according to an IRS

memo cited by the committee.

Among the organizations included on the list were the American Library Association, the Ford Foundation, the University of North Carolina, the American Civil Liberties Union, and the National Association for the Advancement of Colored People.

Among the persons on the list were columnist Joseph Alsop, former Sentators Charles Goodell and Ernest Gruening, Coretta King, Joan Baez, Jimmy Breslin, Norman Mailer, and Linus Pauling. Reported in: *Chicago Sun-Times,* October 3.

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intellectual freedom bibliography

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