newsletter on
intellectual freedom
IFC ALA

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free speech and the military

In May the Newsletter *reported the six-to-two decision of the U.S. Supreme Court (in* Greer *v.* Spock*) declaring that military base commanders have broad powers to bar political campaigning on U.S. installations. The reasoning of the Court and the dissents of Justices Brennan and Marshall deserve a full report here.*

Justice Stewart delivered the opinion of the Court, in which Chief Justice Burger and Justices White, Blackmun, Powell, and Rehnquist joined. Justice Stewart reasoned:

"In reaching the conclusion that the respondents [Dr. Benjamin Spock et al.] could not be prevented from entering Fort Dix for the purpose of making political speeches or distributing leaflets, the Court of Appeals relied primarily on this Court's *per curiam* opinion in *Flower* v. *United States,* 407 U.S. 197 (1972). In the *Flower* case the Court summarily reversed the conviction of a civilian for entering a military reservation after having been ordered not to do so. At the time of his arrest the petitioner in that case had been 'quietly distributing leaflets on New Braunfels Avenue at a point within the limits of Fort Sam Houston, San Antonio, Texas.' The Court's decision reversing the conviction, made without the benefit of briefing or oral argument, rested upon the premise that ' "New Braunfels Avenue . . . was a completely open street," ' and that the military had 'abandoned any claim that it has special interests in who walks, talks, or distributes leaflets on the avenue.' Under those circumstances, the 'base commandant' could 'no more order petitioner off this public street because he was distributing leaflets than could the city police order any leafleter off any public street.'

"The decision in *Flower* was thus based upon the Court's understanding that New Braunfels Avenue was a public thoroughfare in San Antonio no different from all the other public thoroughfares in that city, and that the military had not only abandoned any right to exclude civilian vehicular and pedestrian traffic from the avenue, but also any right to exclude leafleters– 'any claim [of] special interests in who walks, talks, or distributes leaflets on the avenue.'

"That being so, the Court perceived the *Flower* case as one simply falling under the long established constitutional rule that there cannot be a blanket exclusion of First Amendment activity from a municipality's open streets, sidewalks, and parks. . . .

"The Court of Appeals was mistaken, therefore, in thinking that the *Flower* case is to

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titles now troublesome

Books and curricular materials

Periodicals

Films

Television shows

the spirit of St. Louis

St. Louis' Lambert Field, it was revealed in May, has banned the human figure from all displays of art in its terminal building. A formal invitation to bid for an art gallery concession in the airport's new east wing noted that the winner would be entitled to sell only "paintings and prints of birds, flowers, animals, and natural objects." The specifications further stipulated that "no prints or paintings of people or man-made objects . . . may be sold."

The reasoning behind the restriction was explained by Andrew H. Creglow, manager of concessions for the airport director's office: "Primarily, we're concerned . . . well, you might get some naked women in there and that wouldn't be too good."

Creglow was also frank enough to admit that the specifications provided a glove-like fit to the products of Nature House Inc., an Illinois firm dealing in prints and paintings of wildlife which first proposed the concession in 1975. Reported in: *St. Louis Post-Dispatch*, May 20.

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the post-Miller battle continues

in the state legislatures

In Iowa, which in 1974 responded to the Supreme Court's 1973 *Miller* decision by decriminalizing sexually explicit materials for adults, the state Senate entered a battle in May in which it beat back, by a tie-vote of twenty-two to twenty-two, a proposal to restrict the rights of adults.

The battle against the obscenity measure was led by Senator Gene Glenn, who argued that censorship would be an invasion of adult rights. A ban for adults, he contended, would "invite widespread harassment of many citizens." Another senator, Steve Sovern, said, "I have faith in the people of Iowa to exercise good judgment and make a decision on their own."

The Iowa House had approved the measure to restrict the reading of adults, as well as a measure to ban nude entertainment. The ban on nude shows was also defeated by the Senate.

Idaho follows Miller standards

A new obscenity law in Idaho, signed March 18 and scheduled to go into effect July 1, follows the *Miller* guidelines of prurient appeal, patent offensiveness in the depiction of sexual activities, and the lack of serious literary, artistic, political or scientific value. Within the "scope of employment in bona fide school, college, university, museum or public library activities," librarians in Idaho are exempt from the law's provisions for adults. In special provisions governing the dissemination of materials to minors, which define "harmful to minors" in terms similar to the definition of obscenity in the provisions for adults, an affirmative defense is provided for librarians.

The new law also changes from a misdemeanor to a felony any "conspiracy of two or more persons" to disseminate obscenity.

New Kansas law signed

A bill signed by Kansas Governor Robert F. Bennett in March revised Kansas' obscenity law in accordance with the *Miller* guidelines. Under the provisions for adults, educational and scientific activities are provided an affirmative defense. In the case of distribution to minors, an affirmative defense is provided for materials "acquired by a public, private or parochial school, college or university," and for material distributed by "a teacher, instructor, professor or other faculty member or administrator" of a school.

Colorado fills void

After the Colorado Supreme Court overturned its state's obscenity law in January, the Colorado House and Senate battled back and forth to arrive at a compromise on a new law. Leaders in the House, who wanted a bill to protect only minors, for two months argued against the Senate leadership, which wanted a much "tougher" law.

The measure finally sent to the governor in May would require a minimum standard throughout Colorado prohibiting the promotion of obscenity to children, and in the case of adults would bar live sexual performances and live depictions of sado-masochism.

The bill would also permit municipalities to adopt standards for children and adults, but local ordinances could not be more strict than the state standard for minors. The bill would also authorize municipalities to zone adult theaters and bookstores to isolate them from the rest of the community.

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obscenity and conspiracy

"If there are still any citizens interested in protecting human liberty," Clarence Darrow once said, "let them study the conspiracy laws of the United States."

Through the use of conspiracy charges, anti-pornography zealot Larry Parrish, an assistant U.S. attorney, has collected scores of defendants in Memphis for trial. If a film shown in Memphis is found obscene, he argues, then anyone, anywhere in the country, who helped make or distribute the work may be charged with conspiracy to violate federal obscenity laws.

In early May, Parrish achieved the conviction of sixteen defendants and four corporations on charges of conspiring to distribute *Deep Throat.* Thanks to Parrish, sixteen persons were indicted for conspiring to distribute a movie called *School Girl,* and reportedly the actors and producers of *The Devil in Miss Jones* were next on the schedule.

The convictions in Memphis raise serious constitutional questions. Can any person who in anyway contributes to a movie or its distribution be reasonably tried on criminal charges based on standards in some obscure Bible belt town? The unfortunate answer, it appears, is yes.

In 1973, the U.S. Supreme Court said that national First Amendment standards are "unrealistic" and that obscenity could be policed according to "local community" standards. Yet Prosecutor Parrish and several other federal prosecutors around the country would impose on the entire nation the standards of their own districts.

Darrow was right.–RLF

the published word

a column of reviews

Freedom of the Press vs. Public Access. Benno C. Schmidt Jr. Praeger Publishers, 1976. $6.95 paper. $17.50 cloth.

In May 1976, the American Newspaper Publishers Association formed a committee to talk with judges and lawyers on how to deal with "gag orders" by judges restricting what newspapers can print about court cases. Columbia Law Professor Schmidt, once a law clerk to Chief Justice Warren, herein deals with almost exactly the other side of the coin, that the press *must* give access to opinions contrary to what it prints. (His study was backed initially by the National News Council, "an independent body dedicated to the preservation of the media's rights under the First Amendment, concerned with the public's confidence in the fairness and integrity of the media, providing a forum for ventilation for the public and the media, and opposing government regulation of the media." That description is from the foreword, written by NNC Chairman Stanley H. Fuld. The other sponsor of Schmidt's work is the Aspen Institute Program on Communications and Society, probably, since its 1971 beginning, the seminal group involved in such studies, with trustees ranging from Attorney General Edward H. Levi to Dr. Karl Menninger, from Robert S. McNamara to Mortimer Adler.)

At first encounter, the idea that the public is entitled to have its dissenting or differing opinions printed in a newspaper or magazine sounds most attractive. Surely free speech is not really free if only one side of a controversial topic is printed in the mass media. But let's see how this would work in a library milieu.

Suppose a public or academic library issued a booklist on a controversial topic, and that list did not enumerate all the possible books—even in that particular library—on the topic considered. Would the author of a book already in the library, but not in the published list, have the right to demand revision of the list to include *his* publication? This hypothetical situation is not really far removed from the *Miami Herald Publishing Co.* v. *Tornillo* Supreme Court decision to deny so-called "guarantee of access"—government-enforced—to individuals or groups.

Consider another—perhaps less hypothetical or unlikely—library-related "access" problem. Suppose the John Birch Society (or the Socialist Labor Party or the National Rifle Association or the Right to Life group), or any of these groups' members, insisted that a public or school or academic library *had* to accept gifts of publications of these highly partisan organizations and make them equally available to library patrons with the publications which were on the other side. Under *Miami Herald,* are you, as the librarian, now protected against such "guaranteed access"?

Surely libraries—just as well as newspapers, magazines, publishers, the electronic media—are promulgators, disseminators of information. Read Schmidt's thoroughgoing, readable, and fact-ful book for its own sake—but (and perhaps more usefully for the library profession) for its implications for the libraries and librarians of America. A similar study along the lines suggested just above might be of profound value to the profession. Any access-law-theory librarians around?

Those libraries stretching out a timid toe to step into the boiling waters of public cable television will benefit from Schmidt's chapter on this already quite important and potentially vital topic. As Schmidt says, "Since 1972, cable television has been the vehicle for the most ambitious and far-reaching access obligations yet attempted in the United States." The continuing debate on traditional broadcasting's access rights and obligations is—so far—a settled question in cable television. But there are many complications: for example, if a cable channel shows teleprinter type from the wire services or an operator holds up pages of printed books for telecast and viewing, does cable television then become a *print* medium, not bound under FCC regulations?

We are in a McLuhanatic world, whether we like it or not. The problems are complex, the solutions are certainly not simple—but read Schmidt for authoritative elucidation and valuable judgments. *Miami Herald* will not be the Supreme Court's last word on media-access—but, as Schmidt says, it may, oddly enough, bring "a commitment to journalistic responsibility," now that—with some qualifications—the media don't *have* to be responsible on a constitutional level. Professional morals and ethics may bring even better access for the public than enforcement by legal regulation.—*Reviewed by Eli M. Oboler, University Librarian, Idaho State University, Pocatello.*

No Crystal Stair: Black Life and the Messenger, 1917-1928. Theodore Kornweibel Jr. Greenwood Press, 1975. $13.50

No Crystal Stair, an extension of the author's dissertation (Yale University), is an investigation of a small, independent magazine, *The Messenger,* as "a point from which to examine the prospects for change and the reasons for the black community's failure to compel such transformation from the white community." The title derives from the Langston Hughes poem "Mother to Son," which the author felt was descriptive of this period which for blacks began with promise, became more difficult than expected, and

(Continued on page 101)

John Phillip Immroth
1936-1976

John Phillip Immroth, our friend and one of the American Library Association's most active members in the support of intellectual freedom in libraries, died of accidental asphyxiation on April 2 while attending a library meeting in Scranton, Pennsylvania. He was thirty-nine.

Dr. Immroth was a member of the ALA Intellectual Freedom Committee from 1972 to 1974, and was the founder and first chairperson of the Intellectual Freedom Round Table, which under his leadership became one of the most popular ALA round tables.

The breadth of his interest in the problems of librarianship, the depth of his devotion to their solution, and the skill and patient tolerance he could bring to bear in working with his colleagues in fashioning solutions to those problems, were uniquely combined. Those who labored and laughed with him cannot forget him, or ignore the loss.

At the time of his death, Dr. Immroth was an associate professor at the University of Pittsburgh's graduate school of library and information sciences. In a comment to *American Libraries,* Dean Thomas Galvin of his school said: "Dr. Immroth's tragic death represents a loss of incalculable magnitude for the school, the university, and the national and international library and information communities. He was a brilliant teacher, a dedicated, highly productive scholar, a national leader in his profession. . . ."

Dr. Immroth is survived by his wife, Barbara Froling Immroth, and two sons, Christopher and Andrew. Memorial gifts may be sent to his church, c/o the Rector's Fund, Church of the Redeemer, 5700 Forbes Avenue, Pittsburgh 15217 or to The John Phillip Immroth Fund, c/o The Dean, Graduate School of Library and Information Sciences, University of Pittsburgh, Pittsburgh 15260.

ACLU leader quits

Charles Morgan Jr., an Alabama lawyer who became active in the American Civil Liberties Union after the 1963 Birmingham church bombing in which four black girls were killed, resigned in April as director of the Washington office of the Union. The dispute which lay behind Morgan's decision to resign after four years in the ACLU's Washington office involved what he said was his right to voice his personal political views.

Morgan was quoted in a March issue of the *New York Times* as stating that Northern liberals were opposed to former Georgia Governor Jimmy Carter's candidacy for the presidency because "they don't have their hooks in him" and might not be able to influence him.

The article prompted a letter from Aryeh Neier, the ACLU's executive director in New York, who said: "At the March 12 executive committee meeting, a member of the committee asked me whether I would feel free to offer for publication views on political candidates of the sort attributed to you in the [*Times*] article. My response was, 'No.' I would add, though I did not do so at the time, that I think you should feel comparably inhibited."

Morgan replied that he did not feel "comparably inhibited." He said that when he was hired by the ACLU he was asked to surrender no First Amendment rights. "I am a citizen first, and a lawyer-corporate employee-bureaucrat someplace way down the line," Morgan commented.

Morgan also stated that he believed the ACLU must examine the right of employees to say things in public that their employers might not like. "I feel [the ACLU] has got to start thinking about rights inside corporations," Morgan said. "Say a sales manager for General Motors takes a position in favor of a presidential candidate. He ought not to have to run around worrying about what GM thinks, but he has to because he doesn't have any job rights. . . ."

In 1964 Morgan opened in Atlanta the ACLU's first Southern regional office. He ran that office until 1972, when he took charge of the ACLU's Washington office. Reported in: *Washington Post,* April 12.

DOD sets freedom of information record

In 1975 the Department of Defense led all other federal executive agencies in handling more than 44,000 Freedom of Information Act requests. Requests handled by the Departments of Justice and the Treasury totaled 30,000 each.

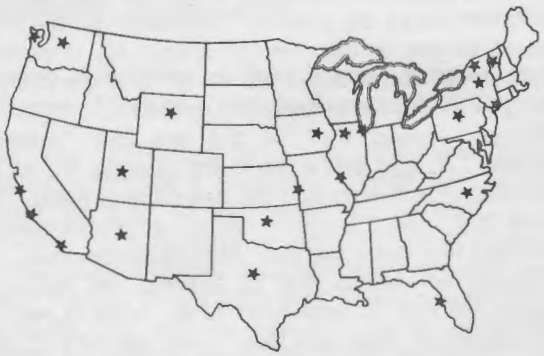
Predictably, the agencies complained about the burden imposed by the act. Deputy Attorney General Harold R. Tyler Jr. took the Justice Department's problems to Congress. He said the workload had an adverse effect on his department's ability "to carry out its traditional substantive missions."

In its preliminary analysis of requests filed under the act, *Access Reports* (May 4) found that Exemption 7, which protects "investigatory records compiled for law enforcement purposes," was invoked far more than any other exemption, and that approximately three-fifths of the uses of this exemption reflected efforts of the Justice Department to protect its records.

Access Reports also found that Exemption 7 was most frequently employed in appeals.

An analysis of fees collected revealed that the Department of Defense led all other federal agencies with a total of more than $234,000 for 1975. By contrast, the Justice Department collected $26,000. The Labor Department, which collected only $5,000, was lowest.

censorship dateline



libraries

Plant City, Florida

At the request of a local unit of the Florida Action Committee for Education (FACE), one book was removed from an eleventh-grade English class at Plant City High School and another was removed from the school library. The books, *Flowers for Algernon* and *Manchild in the Promised Land*, were supposedly the last that would be removed without the approval of the school's book review committee, according to Principal Glenn Evers. "We can't pull every book off the shelves," Evers commented. Reported in: *Tampa Tribune*, March 25.

Tempe, Arizona

Founders, a committee to form a gay campus organization at Arizona State University, charged in April that University Librarian Donald Koepp had censored gay opinion by ordering the destruction of the Hayden Library's back issues of the *Advocate* and cancelling its subscription to the gay-oriented newspaper.

In articles in the campus newspaper, the *State Press*, Koepp was quoted as stating that the newspaper "had little relevance to the curriculum of the university," and that factors of cost had prompted the cancellation of the subscription. Assistant Librarian Helen Gater told the *State Press* that the *Advocate* failed to meet the library's standards of "research value or literary merit."

Leaders of Founders, however, intimated that pressure from anti-gay state legislators influenced the decision.

Several professors on the campus protested the library's action. Willard Underwood, an assistant professor who teaches a course in strategies in speech communications, said he sent a letter to the library requesting continuation of the *Advocate* subscription. "I see a need for the paper because several of my students use it for research," Underwood commented.

Donald Wolf, a political science professor and advisor to the gay group, said he found the library's reasons for canceling the paper "rather strange."

In a statement to *American Libraries* (June 1976), Koepp revealed that the Hayden Library would offer current issues if the *Advocate* were received as a gift. He also said he would try to arrange access to back issues through the Center for Research Libraries. "The broad problem raised by the issue," Koepp told *American Libraries*, "is whether a library is obligated to collect noncurricular materials of interest to campus and off-campus groups."

Kansas City, Missouri

A movie entitled *About Sex* was in May temporarily withdrawn from general circulation by the Kansas City Public Library. Library Director Harold R. Jenkins reported that complaints against the movie were filed by Frances Frech, former president of the Missouri Citizens for Life, an anti-abortion group.

The twenty-three-minute film, produced for the Family Planning and Population Information Center of Syracuse University, is described by the library as "a frank and sensitive film, light-hearted in style, serious in content, featuring a mixed group of teenagers and their personable but knowledgeable young moderator."

Frech objected not only to a scene showing sexual intercourse, in which only the back of the male is clearly visible, but also to the movie's approach to the subject. Frech commented on the work, "Nothing is wrong, anything goes, sex is for fun, with never a word about love or real commitment or marriage."

Frech's strongest criticisms were directed toward the film's section on abortion: "Granted, abortion is legal now, [but] there are still large numbers of us who are not going to accept it as morally right, and we don't want our teenagers told that it's 'just so simple and safe' with never a word about the possibility that a human life is being destroyed or a single word warning about the risks to the girl herself, both physically and emotionally." Reported in: *St. Louis Post-Dispatch*, May 19.

Levittown, New York

Despite the prominent place of the question of book censorship on its agenda, the Island Trees School District board ignored the problem at its May meeting on the grounds that review of eleven "questionable" works was not yet completed.

The eleven works which the school board removed from the school library and held for review were *The Fixer*, *Slaughterhouse-Five*, *A Hero Ain't Nothin' But a Sandwich*, *Go Ask Alice*, *Best Short Stories by Negro Writers*, *Black Boy*, *Laughing Boy*, *The Naked Ape*, *Down These Mean Streets*, *A Reader for Writers*, and *Why I Am Not a Christian*.

The attitude of the school board toward the books (see

Newsletter, May 1976, p. 61) gained the Long Island district national attention and prompted controversy in the community. Parents who opposed the censorship threatened that the election of liberals opposed to current members of the board would result in future approval of any books now removed from the school library.

The local teachers' union filed a formal grievance against the board alleging that the censorship violated provisions of academic freedom in the union contract. School librarians and members of the teachers' union met in April and May with representatives of the New York Library Association to discuss alternative courses of action.

Lyons, New York

Three books on a sixth-grade teacher's preferential reading list for her students were removed from the shelves of the Lyons Elementary School library. Lyons School District Principal Earl Buchanan and School Board President Charles A. Boeheim said in April that *Mr. and Mrs. Bojo Jones, My Darling, My Hamburger,* and *Go Ask Alice* were banned at least temporarily because a complaint was received about their content from a parent whose daughter attends the sixth-grade class at the elementary school.

The pastor of the church attended by the parent addressed an April school board meeting and told the board that it had a responsibility to keep "obscene material" away from minors. "I don't think the community of Lyons should be like another Times Square where . . . obscene literature and pornography abound," the Rev. John Mlynar contended.

School board members acknowledged that the books appeared on a list recommended by the state education department, and that they were approved by many professional educators. Reported in: *Rochester Democrat and Chronicle,* April 14.

Tar Heel, North Carolina

At least twenty books, including three novels by Ernest Hemingway, were removed from the Tar Heel High School library following a directive by the county board of education that all school library books be screened for profanity and sexual references. The directive followed by several weeks an order by the board to ban William Burroughs' *The Wild Boys* from school libraries in Bladen County.

"It could happen that we won't have many books left on our library shelves," Tar Heel Principal Charles W. Tedder said. "Twenty books have been pulled for a review and there's a good chance now they will be permanently removed."

The books which awaited review in Tedder's office included *For Whom the Bell Tolls, A Farewell to Arms,* and *To Have and Have Not.*

Tar Heel High was the first in the county to announce the removal of books from library shelves. Reported in: *New York Daily News,* May 16.

St. Marys, Pennsylvania

The long struggle over children's access to library materials in St. Marys (see *Newsletter,* Nov. 1975, p. 169) reached a new stage in May when the public library board unanimously approved a restricted shelf policy.

According to the action of the board, all library materials for which signed complaint forms are received by the chairperson of the board will be held in restricted shelving behind the library charging desk.

The action of the board was opposed by Librarian Ted Smeal. Reported in: *St. Marys Daily Press,* May 21.

schools

Long Beach, California

Student reviews of "Mary Hartman, Mary Hartman" and the *R*-rated movie *I Will, I Will . . . For Now* caused a clash over press freedom between Lynwood High School student journalists and school officials.

The students charged that the reviews, which appeared in the *Castle Courier,* were censored by school officials. In addition, the students claimed that two editorial cartoons, two editorials, and a Bicentennial article were censored.

According to a staff member of the American Civil Liberties Union of Southern California, to whom the students appealed for help, Lynwood Principal Marvin McKown objected to the terms "sex-starved" and "VD" in the student reviews.

District Superintendent Hiram Loutensock said school officials had insisted on editing offensive parts of the reviews because "they carried sexual connotations" and "were contrary to the mores of the community."

"The community doesn't expect an official publication of the school district to present material that is contrary to the sensitivity of many people in the school district," Loutensock said.

The ACLU, which threatened legal action, appealed to the Lynwood school board to reverse the administrative decision in support of censorship of the paper. Reported in: *Long Beach Independent,* April 14.

Olympia Fields, Illinois

The editor of the student newspaper at Rich Central High School in Olympia Fields, Larry Bell, was removed from his position after he published an editorial praising the administration of Acting Principal William McGee and suggesting that Principal John Barryman, on one-year leave, "be reassigned to another job within the district or be assisted in finding employment elsewhere."

After the editorial appeared, McGee ordered the paper, *The Torch,* shut down for the remainder of the school year and the lock changed on the door of its office.

District Superintendent of Schools Wayne Riggs said the paper violated school board policy by printing the editorial without first showing it to the faculty sponsor, Carol

Glennon. Glennon said she approved a different editorial, although she wasn't sure of the subject matter. Reported in: *Chicago Tribune,* April 6.

Winnetka, Illinois

A group of black parents asked in May that New Trier East High School remove *Huckleberry Finn* from the English department's required reading list. In a statement to the School District 203 board, the parents maintained that the book's repeated references to "niggers" were "morally insensitive" and "degrading and destructive to black humanity."

Five years ago, according to a spokesperson for New Trier's two campuses, a faculty committee recommended removing the Twain classic from the required reading list. But the superintendent refused.

During the 1975-76 academic year, a faculty committee from the New Trier East campus resubmitted the recommendation. Final action on the work awaited a decision from the West campus.

Student editors of the *New Trier News* commented: "The faculty has misperceived this issue. It's undeniably important to show consideration for minority problems, but by voting to remove the book from the curriculum, the faculty has only superficially treated the problem."

Leonard Thigpen, a black parent, said black students had complained that they felt "singled out" during classroom discussions of Huck Finn and his friend Nigger Jim. "We certainly feel that to have a wholesome atmosphere, this book should not be taught as required reading," Thigpen said. Reported in: *Chicago Tribune,* May 16; *Chicago Daily News,* May 18.

Grinnell, Iowa

A controversial two-page feature on pornography in a March issue of *FYI,* the student newspaper at Grinnell-Newburg High School, prompted a new policy of "administrative review" which in turn caused the newspaper staff to refuse to publish further editions of the paper.

"I think [the subject of pornography] was handled journalistically and was done from a mature point of view," said the newspaper's faculty advisor, Chuck Friedman. "There was nothing shocking in the interviews." Students talked to an adult theater operator in Des Moines, the owner of a Grinnell newsstand who sells adult magazines, and a Grinnell College sociology professor.

However, Superintendent Michael Slusher did not accept the appropriateness of the article and ordered that all future issues of the newspaper be approved by the high school principal before going to the printer.

Friedman and students on the staff charged that Slusher's order amounted to censorship. Slusher countered that it was not censorship: "It is administrative review. All other teachers and their course curriculum are subject to administrative review."

Friedman said the controversial article had a mixed reception among faculty members, some of whom were concerned about "the bad timing in light of last year's book controversy." In that embroglio, a Grinnell minister objected to several books in the high school library, including *The Exorcist* and *The Summer of '42.* Reported in: *Des Moines Tribune,* April 1, May 11.

Austin, Texas

Several Fort Worth and Burleson mothers appealed in May to a committee of the State Board of Education to halt showings of several films made available to Texas public schools through regional educational service centers.

The committee of the state board, headed by Mrs. Ronald Smith, viewed *The Lottery* and expressed "concern and alarm" over the work. Board member William N. Kemp said after seeing the film, "This shocks me. . . . I just can't believe what I just saw. I can see no earthly reason for that to be shown in public schools. . . . "

The committee was told that *The Lottery* and at least one other film, *Merry-Go-Round,* had been banned by the Fort Worth Independent School District.

Five films were criticized by the parents as encouraging disrespect for adults and parental authority: *Mom Why Won't You Listen?, Can a Parent Be Human?, The People Next Door, I Just Don't Dig Him,* and *Ivan and His Father.* Reported in: *Fort Worth Star-Telegram,* May 8.

King County, Washington

A dispute between the Northshore School Board and

protecting the children

"The kids know they are being cheated," said George A. Weeks, children's book editor for the *New York Times,* in a comment on censorship to protect children.

"Don't fool yourself. They use four-letter words themselves. You can't just pretend it doesn't happen. Their stories should portray what really goes on in their lives.

"You don't find the members of a gang who have failed at robbing a Safeway store go away saying, 'Aw shucks.' And you don't find a child who witnesses the killing of his parents in a concentration camp saying, 'Oh golly.' "

The journalist, who has been the children's book editor for thirteen of his twenty-four years with the *Times,* spoke in Las Vegas as a participant in a panel on censorship presented by the Clark County Library District and the Friends of the Southern Nevada Libraries. Reported in: *Las Vegas Review-Journal,* April 13.

teachers over the use of *Catch-22* in a high school English class (see *Newsletter,* May 1976, p. 62) was resolved "amicably" in April when the school board agreed to permit the work on a suggested reading list and the Northshore Education Association withdrew its support of a request that the novel be made required reading. Bothell High School teacher John Jacobs had planned to use portions of the book in a pre-college English class.

Bob DeLange, president of the teachers' association, said, "Obviously, it's not going to be used in the classroom." District Superintendent Lee Blakely said the association and the board would work with the district's instructional materials committee to establish definitive guidelines for screening material that might be controversial. Reported in: *Seattle Times,* April 6; *Seattle Post Intelligencer,* April 7.

Cheyenne, Wyoming

The controversy over *The Learning Tree* which began when Leo Breeden, assistant superintendent of Laramie County School District No. 1, ordered the book removed from the junior high schools, cooled off in May when Breeden accepted the recommendation of a fifteen-member advisory committee composed of eleven educators chosen by Breeden and four parents who had filed complaints against the book.

After hearing the recommendations of the committee, Breeden announced that the book would not be restricted in senior high schools or removed from any school libraries.

Breeden was the focus of the controversy (see *Newsletter,* May 1976, p. 63) because he failed to follow school guidelines when he issued his original order to remove the book from the schools.

Commenting on the advisory committee's recommendation, which resulted in the book's removal from junior high classrooms, Breeden asked the press not to use the word "banned" in relation to the book. Reported in: *Cheyenne Eagle,* May 5.

universities

St. Louis, Missouri

A list of films that students at St. Louis University wanted to view during the 1975-76 school year was slimmed considerably by the university's Jesuit president, the Rev. Daniel C. O'Connell.

The president told members of the Student Government Association in April that all movies rated *X* by the Motion Picture Association of America or *C* ("condemned") by the National Catholic Office of Motion Pictures would be barred from the university.

Among the movies banned from the campus by the president's order were *Shampoo* and *Straw Dogs.* Reported in: *St. Louis Post-Dispatch.* April 7.

Trenton, New Jersey

After a lengthy, rambling debate, the New Jersey Assembly in April passed a resolution calling for an investigation into the showing of *X*-rated films on campuses of state colleges. The resolution, which was approved forty-five to fifteen, was prompted by screenings of *Deep Throat* and *The Devil in Miss Jones* at the student center of Glassboro State College.

The resolution called on the state chancellor of higher education, Ralph A. Dungan, to launch an investigation into movies shown in places under his jurisdiction.

"We'd better close that cotton-pickin' college down until those liberal yahoos understand that's not what they're there for. We're not here to support state colleges that destroy our young people," said Assemblyman Robert E. Littell, one of the more vocal proponents of the resolution.

The resolution was introduced by Assemblyman Robert P. Hollenbeck, who said taxpayers should not be required to support pornographic film festivals. Reported in: *Philadelphia Bulletin,* April 9.

cable television

New York, New York

Manhattan Cable Television, owned by Time Inc., announced in May that it would no longer permit its cable channels in Manhattan to be used for programs that "exhibit a regular pattern" of obscenity. The company said the move immediately affected "Midnight Blue," a one-hour program that frequently featured nudity and explicit sexual conversations.

Manhattan Cable said it banned the show because the company was caught in a "whipsaw" between federal and local regulations which bar it from controlling program content and which at the same time require it to prohibit "obscene" material.

The company said it hoped the move would contribute to a "dispassionate examination" of the issues involved in cable television problems. Reported in: *Wall Street Journal,* May 14.

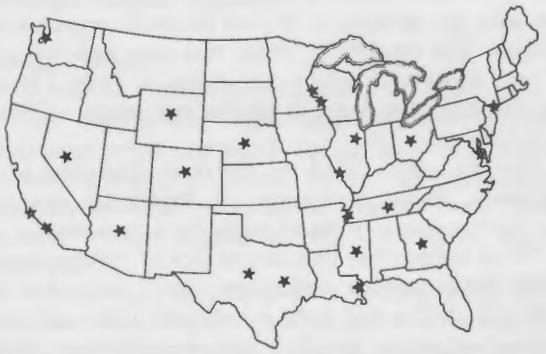
film distribution

New York, New York

A dispute between a New York film distributor and the U.S. Department of Justice was set off in April when the department's Internal Securities Section informed Tricontinental Film Center that it was "engaged within the United States in political activities for or in the interests . . . of foreign principles" and thus "required to register pursuant to the Foreign Agents Registration Act."

(Continued on page 97)

from the bench



U.S. Supreme Court rulings

In a sweeping opinion which struck down a Virginia law banning the advertisement of prescription drug prices, the U.S. Supreme Court in May abandoned its previous rule, laid down in 1942, that "commercial speech" falls completely outside the protection of the First Amendment.

The Court's seven-to-one opinion, written by Justice Blackmun, held that although commercial speech may be regulated by standards different from those applicable to noncommercial speech, it is nonetheless protected free speech.

The Court's opinion also established a new doctrine that those receiving information, as well as those conveying it, have a right to challenge infringements of free speech.

"People will perceive their own best interests if only they are well enough informed," Justice Blackmun said. "The best means to that end is to open the channels of communication rather than to close them."

The opinion continued: "So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions . . . be intelligent and well-informed."

In his dissent, Justice Rehnquist complained that the Court "elevates commercial intercourse between a seller hawking his wares and a buyer seeking to strike a bargain to the same plane as has been previously reserved for the free marketplace of ideas."

The Court rejected claims by Virginia that the advertising of drug prices would result in unprofessional conduct. The Court responded that the state's power to license and regulate practices would ensure professional conduct. However, the Court specifically noted that its ruling might not apply straightforwardly to advertising regulations governing such professions as medicine and law, which the Court said "may require consideration of quite different factors."

It was expected that the ruling would have a sweeping effect. According to the Federal Trade Commission, at least thirty-four states have regulations restricting or banning the advertisement of prescription drug prices. (*Virginia Pharmacy Board* v. *Virginia Consumer Council,* no. 74-805)

Freedom of information

Ruling on efforts of the Air Force to prevent access to the Air Force Academy's Honor Code files, which were sought under the Freedom of Information Act by editors of the *New York University Law Review* researching disciplinary systems at the military service academies, the Supreme Court refused contentions of the Air Force that would have resulted in broad constructions of the exemptions of the Freedom of Information Act.

The editors of the law review were denied access to case summaries of honor and ethics hearings, with personal references and other identifying information deleted, which are maintained in the Air Force Academy's files, although the academy's practice was to post copies of such summaries on squadron bulletin boards throughout the academy and to distribute them to academy faculty and administrative officials.

The exemptions before the Court state that the FoI Act does not pertain to matters that are: "(2) related solely to the internal personnel rules and practices of an agency"; and "(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

The opinion of the Court, delivered by Justice Brennan and concurred in by Justices Stewart, White, Marshall, and Powell, held that Exemption 2 "is not applicable to matters subject to such a genuine and significant public interest." According to the Court, "the general thrust of the exemption is simply to relieve agencies of the burden of assembling and maintaining for public inspection matter in which the public could not reasonably be expected to have an interest."

The case summaries, the Court said, "are not matter with merely internal significance. They do not concern only routine matters. Their disclosure entails no particular administrative burden."

Exemption 6, the Court declared, "does not protect against disclosure every incidental invasion of privacy—only such disclosures as constitute 'clearly unwarranted' invasions of personal privacy."

The Court reasoned that the request of the law review editors for access to summaries with personal references and other identifying information deleted respected the interests of confidentiality embodied in Exemption 6. (*Department of the Air Force* v. *Rose,* No. 74-489)

Obscenity

On May 3 the Supreme Court declined to review an Oregon Court of Appeals decision which upheld Oregon's obscenity law. At issue were the convictions of two men

found guilty of selling obscene films in Portland in 1974. They contended that the law was too vague and violated their First Amendment rights.

The Oregon Supreme Court had rejected the appeal from the Court of Appeals decision last year. The Court of Appeals itself had held that while the law under which the men were charged pertained both to obscene material and prostitution, "the provisions were germane to and had a natural connection with the general subject of criminal conduct in the area of sex and its depiction."

Justices Brennan, Stewart, and Marshall would have reviewed the case. Brennan iterated the view he has held for several years—that in the absence of distribution to juveniles or unconsenting adults, government is barred by the First Amendment from attempting to suppress sexually explicit material—and charged that the Court was undermining earlier decisions on individual liberties without acknowledging the nature of the course of its action.

The newest justice, John Paul Stevens, said that he had independent views on the subject, but he added that it was "pointless" to hear more obscenity cases given the current alignment on the issue. He added that "there is no reason to believe that the majority . . . is any less adamant than the minority."

"Regardless of how I might vote on the merits after full argument," Stevens stated, "it would be pointless to grant [review] in case after case of this character only to have [the Court's 1973 decisions] reaffirmed time after time." In a sarcastic reference to Brennan's dissents, Stevens said that "in the interest of conserving scarce law library space" he would not give an explanation every time he casts a vote on the subject.

Wiretapping

On April 19 the Supreme Court refused to decide whether government officials who act in "good faith" when authorizing a wiretap that proves to be illegal must pay damages to the wiretap targets.

The Court let stand an appellate court decision which suggested that officials may escape paying damages if they can demonstrate that they had sincerely believed the wiretap to be proper.

The issue arose in a suit brought by members of the Jewish Defense League against former Attorney General John Mitchell and employees of the Federal Bureau of Investigation. The U.S. Court of Appeals for the District of Columbia ruled that the wiretaps on the Leagues' office in New York in 1970 and 1971 were illegal because Mitchell had authorized them without obtaining a court warrant.

The court said that warrants must be obtained before the government may tap domestic organizations—even where foreign affairs and national security are involved—when the domestic organization is neither the agent of nor acting in collaboration with a foreign government. (*Barrett* v. *Zweibon,* No. 75-1046; *Zweibon* v. *Mitchell,* No. 75-1056; *Mitchell* v. *Zweibon,* No. 75-105)

On April 5 the Supreme Court refused to grant certiorari in a case concerning implementation of the "minimization" requirement of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which requires that every order authorizing electronic surveillance "shall contain a provision that the authorization to intercept shall be . . . conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter."

In the long dissent from the refusal to grant the writ, Justice Brennan, who was joined by Justice Marshall, concluded: "The Court has consistently refused, and today persists in that refusal, to confront a case presenting the minimization question and the abuse that emanates from the seizure of 'every communication that came over the wire.' Indeed, the refusal is even more troubling since certiorari has been granted in *United States* v. *Donovan,* a case in which the Solicitor General requests that we dilute even further the standard enunciated in *United States* v. *Kahn* [415 U.S. 143 (1975)] for naming the subjects of proposed surveillance. I fail to comprehend how, in light of . . . *Kahn,* the Court can undertake that analysis without concomitantly addressing the contours of the minimization requirement. Inaction can only continue evisceration of the statutory mandate and require that Congress take a further and clearly unnecessary step of enacting more legislation to give concrete content to [the proviso on minimization]." (*Scott* v. *U.S.,* no. 75-5688)

Privacy and the press

Over the dissents of Justices Brennan and Stewart, the Court declined to review a decision of the U.S. Court of Appeals for the Ninth Circuit permitting a privacy suit against Time Inc. to proceed. Time wanted the Court to decide the limits of First Amendment protection of truthful disclosure of private details of a person's life.

In its ruling against Time, the Court of Appeals upheld the right of a California body surfer to recover damages from the company for disclosing, in a *Sports Illustrated* article on body surfing, bizarre details concerning his private life and exploits.

Although the surfer had initially cooperated in interviews which preceded the article, he later withdrew permission for use of his name and picture, claiming that he had initially thought the article would concern only body surfing.

The appellate court found that the spirit of the Bill of Rights does not "require that individuals be free to pry into the unnewsworthy private details, and that the truth of matters so published is no defense to a suit for wrongful invasion of privacy." (*Time Inc.* v. *Virgil,* no. 75-1174)

In other action, the Court:

• Followed the suggestion of U.S. Solicitor General Robert H. Bork in declining to review a ruling of the U.S. Court of Appeals for the District of Columbia that the

Federal Communications Commission has no authority to require the Corporation for Public Broadcasting to provide "objectivity and balance" in the programs its funds and supplies to noncommercial stations. Accuracy in Media, which initiated the legal action, insisted that the law creating the CPB required the FCC to apply a more stringent fairness standard than is applied to commercial broadcasters. The law governing the corporation requires objectivity and balance in controversial programs, but the FCC had contended, and the lower court had agreed, that it was for Congress rather than the FCC to oversee the work of the CPB. (*Accuracy in Media* v. *FCC,* No. 75-977)

• Refused without dissent to consider whether the federal district judge who presided over the Lynette Fromme trial had acted properly in prohibiting showings of the documentary film *Manson* in twenty-six counties until a jury was selected and sequestered for Fromme's trial on charges of attempting to assassinate the president. The judge had enjoined exhibitions of the film at Fromme's request on the grounds that she was portrayed in it and exhibition of it in the area from which her jury was to be picked "could so increase the difficulty of selecting a fair and impartial jury that there is a high probability that [the defendant] could be denied her right to both a fair and speedy trial." Those who appealed the case had intervened as defendants in the proceedings before the district court and had asked the court to reconsider its ruling, which it refused to do. The U.S. Court of Appeals for the Ninth Circuit subsequently dismissed the case as moot. (*Evans* v. *Fromme,* No. 75-957)

• Declined to review for "want of a substantial federal question" a lower court ruling upholding the constitutionality of an Illinois statute making it a crime to mutilate the American flag. The American Civil Liberties Union, which represented three women who were convicted under the statute for burning a flag as a protest against the Vietnam war and the Kent State University shootings, had sought to challenge the law as an unconstitutional limit on free speech. Justices Brennan, Marshall and Stevens would have heard oral arguments.. (*Sutherland* v. *Illinois,* No. 75-898)

• By a vote of seven to one struck down as unconstitutionally vague an Oradell, New Jersey ordinance which required anyone who wanted to go from house to house for a charitable or political cause to first give written notice to the local police. (*Hynes* v. *Mayor of Oradell,* No. 74-1329)

news media

Denver, Colorado

Rocky Mountain News reporter Frank Moya was cited for contempt of court and sentenced to thirty days in jail on May 7 for his refusal to disclose how he obtained a transcript of secret grand jury testimony about the murder of a Denver businessman. The sentence was ordered by Denver District Court Judge Robert Fullerton.

An article by Moya in the *Rocky Mountain News* included excerpts from testimony given to a grand jury which indicted three men for the murder of Hal Levine, who was shot to death in 1975.

When Moya was summoned before the court to reveal the source of his news information, an attorney for the *News* argued that Moya could not be compelled to testify by the court because the confidential relationship between a reporter and his source is protected by the First Amendment.

The *News* announced its intention to appeal the contempt citation to the Colorado Supreme Court. Reported in: *Editor & Publisher,* May 15.

St. Paul, Minnesota

The Minnesota Supreme Court unanimously ruled in May that the public and the news media cannot be excluded from the jury selection process in a murder trial. The high court's declaration invalidated an order filed by Jackson County Court Judge Harvey Holtan; the justices concluded that "the kind of showing to support an order of this kind has not been made."

Justice George Scott told attorneys representing the judge: "We are talking about an important concept in American democracy–freedom of the press. We don't take this lightly. Trials are always open. Your order would have tremendous impact."

Holtan's order was issued April 14. An immediate appeal was brought by Lew Hudson of the *Worthington Daily Globe,* radio station KWOA, the Minnesota Newspapers Association, and the Minnesota Broadcasters Association. Reported in: *Editor & Publisher,* May 8.

Jackson, Mississippi

Ruling in a case involving a Mississippi newspaper's story on public school special education classes for mentally retarded children, the Mississippi Supreme Court held that it is an actionable invasion of privacy to publish photographs and names of children who are labeled as "retarded" or "trainable mentally retarded." Stating that it is "difficult to conceive that any information can be more delicate or private in nature than the fact that a child has limited mental capabilities," the court held that the simple act of enrollment in a public school did not make a child a public figure who as such is not entitled to privacy. Reported in: *West's Judicial Highlights,* April 15.

New York, New York

Ruling that nothing contained in a WABC-TV videotape depicting conditions in a Staten Island children's home would justify a prior restraint of its broadcast, the Appellate Division of the New York State Supreme Court in April affirmed the station's right to show it.

The court's four-to-one decision rejected the request for an injunction to prohibit the tape's broadcast which was

sought by St. Michael's Home, a childcare agency run by Catholic Charities for young adolescents who are wards of the state.

Gerald E. Bodell, the home's attorney, said an appeal to the Court of Appeals, New York's highest court, was likely. In his argument before the five-member Appellate Division bench, Bodell contended that freedom of the press was used by WABC-TV as a guise to invade the children's constitutional right to privacy.

In a separate concurring opinion, Associate Justice Harold Birns said WABC-TV had intruded upon the children's privacy, but he held that this fact was insufficient to bar the broadcast and that, under existing law, there could be no prior restraint. Reported in: *New York Times*, April 6.

Austin, Texas

Neither Texas law nor the U.S. Constitution requires police to make available to the press "complete records" sought by the *Houston Chronicle,* the Texas Supreme Court ruled in April. The high court refused the newspaper's plea to see all police records, including "offense reports" and "rap sheets."

A Texas appellate court had specified that reporters could look at the front page of a police offense report, which includes the alleged offense, location, identification and description of the complainant, premises, time, a description of the offense, weather, and names of the investigating officers. But the court ruled that the remainder of the report, including synopses of reported confessions, officers' speculation about the guilt of a suspect, etc., remained off limits. Reported in: *New York Times*, April 29.

privacy, libel, etc.

Los Angeles, California

Following guidelines established by the U.S. Supreme Court in a ruling on Mary Alice Firestone's suit against *Time* magazine for alleged misreporting of her 1968 divorce decree (see *Newsletter*, May 1976, p. 65), California Superior Court Judge Thomas W. LeSage held that libel charges brought by two men and a corporation against *Penthouse* magazine must go to trial. However, he did dismiss libel charges filed by two men whose names have been linked to organized crime.

Judge LeSage held that Morris B. Dalitz and Allard Roen were public figures in a legal sense and had failed to show that *Penthouse* and writers Jeff Gerth and Lowell Bergman had displayed malice in an article that described the two men's role in the development of a Southern California resort, Rancho LaCosta. However, referring to the Supreme Court's ruling in the Firestone case, LeSage said there were triable issues to resolve in the cases of Mervyn Adelson and Irwin Molasky, two officers of LaCosta, and the LaCosta Corporation.

The suit may be the largest libel action in the nation's history. The four men and the corporation originally sought a total of $630 million in damages from the magazine. Reported in: *New York Times*, April 11.

Olympia, Washington

In *Gertz* v. *Welch* (1974), the U.S. Supreme Court in effect invited the states to define for themselves the standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a person who is neither a public figure nor an official. Responding to the invitation, the Washington Supreme Court adopted the rule that a private individual may recover actual damages for a defamatory falsehood, concerning a matter of general or public interest, where substantial dangers to reputation are apparent.

According to the court's rule, a plaintiff must show that in publishing the statement the defendant knew or should have known that the statement was false or would create a false impression in some material respect. The high state court also commented that presumed damages will be awarded in Washington only in cases where actual malice is found, and that punitive damages will never be allowed. Reported in: *West's Judicial Highlights*, April 15.

broadcasting

Washington, D.C.

On April 12 the U.S. Court of Appeals for the District of Columbia upheld the right of the Federal Communications Commission to relax its equal-time rules to permit broadcasters to air news conferences held by candidates for the presidency.

The FCC liberalized its equal-time rules in September 1975 in order to permit broadcasters considerable latitude in deciding what constitutes a genuine news event. The ruling overturned a 1962 court decision that debates between politicians could not qualify as on-the-spot bona fide news under 1959 amendments to the Communications Act.

The FCC's September decision was challenged by the Democratic National Committee, Representative Shirley Chisholm, and the National Organization for Women. The presence of the DNC among the plaintiffs reflected the widely held belief that President Ford would be the principal beneficiary of the FCC's relaxation of rules. Reported in: *Variety*, April 14.

freedom of information

Los Angeles, California

Investigatory records compiled for law enforcement purposes on the basis of confidential sources, whether they are people or government agencies, are exempt under the Freedom of Information Act, according to an April ruling

by U.S. District Court Judge Warren J. Ferguson.

The case before the court involved a suit brought by the Church of Scientology against the U.S. Department of Justice and the Drug Enforcement Administration. The Scientologists sought disclosure of confidential information supplied to the DEA by foreign, state, and local law enforcement agencies. Reported in: *Access Reports,* May 17.

New Orleans, Louisiana

The U.S. Court of Appeals for the Fifth Circuit ruled in April that final investigative reports on unfair labor practice charges, prepared by a National Labor Relations Board regional staff, are exempt from disclosure under the Freedom of Information Act. The appellate court found that the material fell within the attorney work-product privilege.

The court emphasized, however, that it did not maintain that all investigative reports of NLRB regional offices are always wholly within the work-product privilege. In a closer case, the court said, the trial court might have to consider whether portions of the record could be disclosed. Reported in: *Access Reports,* May 17.

New York, New York

Attorneys' fees and other costs of litigation may be awarded to parties that bring Freedom of Information lawsuits even when their actions become moot due to disclosure of the material sought, according to recent federal court rulings.

In one case, an individual filed Freedom of Information requests with the Federal Reserve Board for certain documents relating to activities of the Equimark Corporation. These requests were honored with one exception, which involved a letter which the Federal Reserve Board claimed was exempt under the FoI Act.

Later, the contents of the letter were disclosed when Equimark pleaded guilty to an indictment alleging that the firm had illegally acquired another company's assets. The Reserve Board immediately claimed that revelation of the letter made the FoI suit moot and opposed claims for attorneys' fees because the plaintiff had not "substantially prevailed." Judge Robert L. Carter of the U.S. District Court for Southern New York disagreed.

A similar position on attorneys' fees in cases rendered moot was taken by Judge Thomas A. Flannery of the U.S. District Court for the District of Columbia in a suit brought by the Communist Party against the Federal Bureau of Investigation. Reported in: *Access Reports,* May 17.

students' rights

Los Angeles, California

Superior Court Judge Norman R. Dowds refused in April to enjoin faculty censorship of articles and use of the American flag in the Antelope Valley Union High School paper, the *Sand Paper.* He said the student plaintiffs, who filed a class action, had failed to establish a litigation class. Under a ruling of the California Court of Appeal, the judge stated, no preliminary injunction can be issued in a class-action suit until members of the class are notified and the class is defined.

Three seniors had claimed that their First Amendment right to freedom of the press was violated when, first, an article that parodied the school dress code was censored by the vice principal and the journalism teacher; when, next, a commentary on freedom of expression was forbidden and disclosure in the paper of the censorship was prohibited; and when, finally, a picture of the American flag on an otherwise blank editorial page was prohibited.

The seniors—John Gilbert, Frank Pryor, and Ned Underwood—sued on behalf of all students interested in the *Sand Paper,* thus making their lawsuit a class-action. Reported in: *Los Angeles Times,* April 7, 8.

prisoners' rights

Macon, Georgia

Last spring U.S. District Court Judge Wilbur D. Owens Jr. joined other federal judges in California, Alabama, and Florida who have upheld the right of prisoners to law library services. In the absence of other suitable provisions or legal assistance, Judge Owens declared, prison officials must make an adequate law library available as an aid in the preparation of prisoners' habeas corpus and civil rights petitions. Although he deferred specification of the exact legal materials to be included in such a library, Judge Owens stated that "essential tools in such an endeavor include relevant annotated state and federal laws and modern state and federal cases." Reported in: *West's Judicial Highlights,* May 15.

obscenity law

Oceanside, California

Commenting that "it may not be a popular decision, but it's my duty," California Superior Court Judge Louis M. Welsh ordered the city of Oceanside to grant a license to the operator of Nasty's Bookstore.

The bookseller, Joseph Jeffrey, originally obtained a business license to operate his store on January 5. However, the city council two days later passed a law that in effect revoked his license on the basis of his "unfitness." In the hearing before Judge Welsh, Assistant City Attorney Pete Yeomans said that Jeffrey's past convictions on charges of pandering and a pending charge of pandering made it inappropriate for the city to permit him to open an adult bookstore.

The city of Oceanside filed a notice of appeal with the Fourth District Court of Appeal in San Diego in an effort

to overturn Welsh's ruling. Reported in: *San Diego Union,* April 24.

Denver, Colorado

In the first ruling on Denver's new obscenity ordinance, approved in April, District Court Judge Henry E. Santo issued a preliminary injunction on May 20 to halt enforcement of the law against a university bookstore.

Judge Santo held that the law was vague and overbroad and that it made unreasonable demands on booksellers.

The law was challenged by Janice Pierce, book department manager for the University of Colorado at Denver. She was represented by Peter Ney, a lawyer acting in cooperation with the American Civil Liberties Union and the Colorado Media Coalition, an organization of librarians, teachers, booksellers, and others interested in intellectual freedom in Colorado.

Ney said that he and members of the ACLU and the Coalition felt compelled to challenge the ordinance immediately because it made mandatory a thirty-day jail sentence for any conviction. Ney also stated that it was "impossible to determine under the ordinance which material can be legally sold in Denver."

Attorney Arthur Schwartz, who represents many of Denver's adult bookstores, said he disagreed with Ney's move. Schwartz said he would have preferred an appeal to the Colorado Supreme Court of a case resulting from arrests under the ordinance's provisions. Reported in: *Denver Post,* April 20, May 21.

Denver, Colorado

The battle of Adams County law enforcement officials against nude dancing in nightclubs was interrupted when County Court Judge Howard J. Otis declared unconstitutional a section of Colorado's public indecency statute that the county sheriff had been using against dancers at a Denver club, the Aloha Beach.

Otis ruled that the law was too vague, stating that "obscenity statutes must be written with the greatest of specificity so as to apprise citizens of precisely what is and what is not legal."

The invalidated law prohibited "lewd exposure of the body done with the intent to arouse or satisfy the sexual desire of any person." Reported in: *Rocky Mountain News,* April 21.

St. Louis, Missouri

Federal obscenity cases involving the mails should be tried in the area to which the challenged material was sent, the U.S. Court of Appeals for the Eighth Circuit ruled in May. The appellate court reasoned that its ruling was required by the Supreme Court's authorization of the use of "local community standards."

The court vacated an order by a judge in Sioux City, Iowa, who had transferred to California criminal charges against five Los Angeles men accused of mailing unsuitable films to Iowa.

In overruling the district court judge, who said the trial should be held in California because the defendants and most of the evidence and witnesses were there, the appeals court said that in obscenity cases prosecutors ordinarily may choose where to hold trials.

In seeking to hold the trial in Iowa, the Department of Justice told the appeals court that the defendants were contending "that they had the right to pander their objectionable material across the nation so long as they are brought to trial on their behavior at their convenience in their home jurisdiction." Reported in: *St. Louis Post-Dispatch,* May 14.

Omaha, Nebraska

District Court Judge James Buckley declared an Omaha bookstore a "public nuisance" under Nebraska's obscenity law and ordered the store's operators to cease selling sexually explicit materials.

Specifically, Buckley enjoined Downtown Books from selling or distributing twenty items previously found obscene by juries; some 700 other items which Buckley reviewed and found obscene; as well as "any other similar" materials.

An attorney representing Downtown Books said the order would be appealed to the Nebraska Supreme Court. The attorney argued that Buckley's order represented an unconstitutional prior restraint on conduct which is protected by the First Amendment.

Buckley, however, stated that the prior restraint question does not apply because juries had found in eighty-three percent of the cases involving Downtown Books that their materials are obscene, and because Buckley himself found ninety-eight percent of the store's stock obscene. Reported in: *Omaha World Herald,* April 14.

Nashville, Tennessee

Tennessee's highest court ruled in March that the movie *Deep Throat* is legally obscene and refused to invalidate the convictions of two employees of a Clarksville adult theater. A state's attorney commented that the decision of the court would have the effect of banning the movie throughout Tennessee.

The case of the two employees stemmed from their guilty pleas to violations of Tennessee's obscenity law only forty-two days before it was declared unconstitutional by the Tennessee Supreme Court in February 1974.

The court's majority opinion, written by Justice William J. Harbison, said the defendants waived their right to appeal the constitutionality of the obscenity statute by the agreed settlement of their case. Justice Joseph W. Henry, the only dissenter from the ruling, said the majority "sacrificed justice upon the altar of procedural technicalities" and called for invalidation of convictions. Reported in: *Nashville Tennessean,* March 23.

obscenity: convictions, acquittals, etc.

Phoenix, Arizona

In what was believed to be the first case in Arizona involving a felony conviction and prison sentence for an obscenity violation, a Phoenix man was sentenced to two to three years in prison for showing obscene movies. Richard Jay Navarette was convicted after Maricopa County Superior Court jurors spent several days viewing Navarette's films, which included *Love Riders* and *John Holmes, Playboy.* Reported in: *Tucson Star,* April 10.

Fremont, California

A six-woman, six-man municipal court jury refused in March to find the movies *Deep Throat* and *The Devil in Miss Jones* obscene and declared a theater owner innocent of two counts of showing obscene films. Defense attorney Lloyd Haines, representing theater owner Raymond Lakin, called two expert witnesses, a Methodist minister and a psychiatric nurse, who testified that the films were used extensively in counseling people with sexual problems. Reported in: *San Jose Mercury,* March 25.

Belleville, Illinois

In March an East St. Louis Circuit Court found Larry Kimmel, owner of Larry's Magazine Shop, and Cathleen Morgan, a clerk in the shop, guilty of a total of ten violations of Belleville's obscenity ordinance. The two were arrested in February after selling *Playboy, Playgirl, Viva, Gallery, Dapper, Playboy Love Games,* and *Penthouse Loving Couples* to Belleville police officers (see *Newsletter,* March 1976, p. 48).

Associate Judge D.W. Costello ruled the magazines obscene following a hearing which included testimony on the literary and artistic merit of the magazines from executives of Playboy Enterprises and two faculty members from Southern Illinois University.

Kimmel and Morgan, who said they would appeal the ruling, continued to sell "obscene" magazines. In May, Morgan was charged with display of obscene material when she declined to sell a police officer *Playgirl Erotic Fantasies–Collector's Edition* after he refused to show her his identification card. Reported in: *East St. Louis Metro-East Journal,* March 19, April 23, May 19.

Minneapolis, Minnesota

Describing the contents of *Snuff* as "masochistic butchery acts that go beyond the First Amendment," Minneapolis Municipal Court Judge Neil Riley ruled in April that the film is obscene. The magistrate issued a warrant authorizing seizure of the film if it appeared in Minneapolis again. Exhibition of the film at the Franklin Theatre was ended before the conclusion of the legal discussion of its status under the First Amendment. Reported in: *Variety,* April 14.

Las Vegas, Nevada

A U.S. District Court jury found two Nevada men guilty of interstate shipment of obscene materials after reviewing evidence showing that the men were responsible for shipping films from Philadelphia to Las Vegas in April 1974.

Commenting on their review of the films for obscenity, the jurors said that the question of scientific value gave them the most trouble. An expert witness, a professor of obstetrics and gynecology at the University of California, testified that the films had scientific and educational value in sex therapy due to their illustration of sexual conduct and their usefulness in stimulating discussions of human sexuality. Reported in: *Variety,* May 19.

Columbus, Ohio

A California man accused of mailing obscene gay-oriented advertisements to a Columbus woman was acquitted of all charges in May by U.S. District Court Judge Robert M. Duncan, who said the prosecution had failed to link Lloyd Richard Spinar to the actual mailing of the materials.

Spinar's attorney argued that the government had neglected to introduce evidence naming the person that paid for the postage for the materials. Reported in: *Columbus Dispatch,* May 4.

Memphis, Tennessee

Sixteen defendants, including actor Harry Reems and four corporations, were found guilty in U.S. District Court of conspiracy to distribute *Deep Throat* across state lines. The jury of eight women and four men, who heard nine weeks of testimony in the courtroom of Judge Harry W. Wellford, also found the film "obscene."

During the trial, which concluded April 30, the jury heard expert testimony from Harold Voth, a senior psychiatrist and psychoanalyst at the Menninger's hospital, who testified that "group sex, homosexuality, and voyeurism" are "perverse in our society."

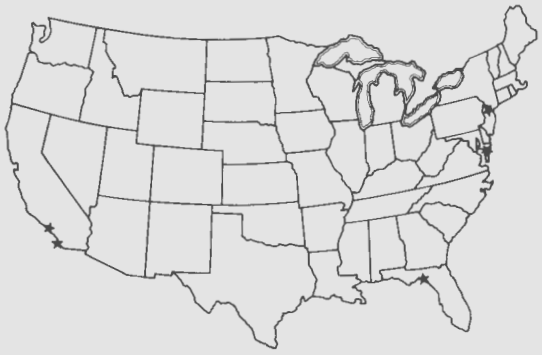
Another witness, the Rev. Ted McIllvenna, an ordained Methodist minister from Los Angeles, testified that *Deep Throat* has "definite serious value and is not harmful to the public welfare." McIllvenna, co-director of the National Sex Forum, testified that he had shown *Deep Throat* to more than 400 people in his work as a sexologist. Reported in: *Variety,* April 21, 28, May 5.

Houston, Texas

A county criminal court-at-law jury in May sentenced an adult bookstore clerk to thirty days in jail and a $1,000 fine for selling an obscene film to a Houston vice squad officer. The jury had earlier convicted the clerk of the misdemeanor charge of commercial obscenity. Maximum penalty for the violation is a $1,000 fine and six months in jail. Reported in: *Houston Chronicle,* May 14.

(Continued on page 99)

is it legal?



in the U.S. Supreme Court

Lawyers representing many of the nation's news organizations appeared before the Supreme Court in April to urge the high bench to prohibit judges from imposing gag orders limiting press coverage of criminal cases on the grounds that the orders violate the First Amendment and are ineffective in assuring fair trials. Opposing lawyers representing the state of Nebraska and Nebraska Judge Hugh Stuart contended that press restrictions are necessary to assure defendants in criminal actions a fair trial. They maintained that some cases can be so sensational that prospective jurors must be shielded from publicity about them even if First Amendment rights are compromised.

The case before the Court involved a dispute stemming from a gag order imposed by Judge Stuart, who restricted all pre-trial news coverage of the mass murder case of Erwin Charles Simants (see *Newsletter,* March 1976, p. 29).

When the Supreme Court was asked to lift the order on an emergency basis last year, Justices Brennan, Stewart, and Marshall voted to suspend it, while Justice White voted to lift it to the extent that it forbad publication of information disclosed in public hearings.

Those who voted to sustain the gag order were Chief Justice Burger and Justices Blackmun, Powell, and Rehnquist.

The decision of the Court, expected before the end of the Court's 1975-76 term, appeared to depend upon Justice Stevens' tie-breaking vote.

Pornography zoning

In March the Supreme Court heard arguments on whether cities may establish zones to restrict the operations of adult theaters and bookstores.

The case, *Gibbs* v. *American Mini Theatres Inc.* (No. 75-312), will test whether the city of Detroit may require that erotic emporia be located at least 1,000 feet apart. Similar laws are in effect in other U.S. cities, but the Detroit ordinance was overturned by the U.S. Court of Appeals after it was upheld by a Michigan court.

An attorney representing the city of Detroit, Maureen Reilley, told the court that the city's rules are a legitimate exercise of its powers to control land use to promote values important in urban areas. She said the regulations resulted from public concern over property values, criminal activities, and police protection.

The petitioners, Stephen Taylor and John Weston, argued that the rules should be viewed as an attempt to censor content, since the city is in effect regulating their businesses because of the content of the material shown.

news media

Washington, D.C.

New York Times reporter Hedrick Smith, acting "to further the cause of a free press," in May filed suit in U.S. District Court against former President Nixon, Secretary of State Henry Kissinger, former Attorney General John N. Mitchell, former White House aides H.R. Haldeman and John D. Ehrlichman, various FBI officials, and the Chesapeake and Potomac Telephone Company.

Smith alleges that his phone was tapped for a total of eighty-nine days in 1969. He did not ask the court for specific damages, but left the settlement up to the court. Smith said he does not want to profit from the lawsuit, and that any awards would be used for expenses and for the cause of "a free press." Reported in: *Washington Post,* May 11.

Tallahassee, Florida

Attorneys for a *St. Petersburg Times* reporter in March asked the Florida Supreme Court to declare that journalists have a right to protect confidential news sources. In a fifty-six-page brief, filed on behalf of reporter Lucy Ware Morgan, the lawyers asked the court to shield reporters from "anything less than the absolute need of a criminal investigation. . . ."

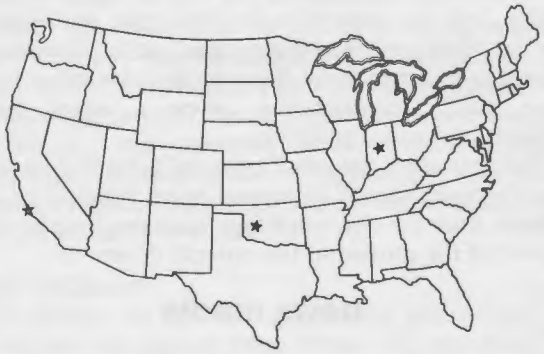
The attorneys argued that no compelling interest of criminal justice existed when a circuit court judge ordered Morgan jailed for ninety days for her refusal to tell a grand jury how she had learned what they had decided in secret, an offense which her lawyers aver was no crime at all. Reported in: *Editor & Publisher,* April 3.

Trenton, New Jersey

The New Jersey Supreme Court agreed in March to hear an appeal filed by the *Trenton Times* asking that the high court overturn an order by Mercer County Trial Judge Harvey S. Moore which barred publication of testimony heard outside the presence of the jury in the murder trial of

(Continued on page 99)

success stories



San Jose, California

In May the San Jose City Council refused to acquiesce in demands for restrictions on children's access to library materials and stood by its earlier adoption of the *Library Bill of Rights.* Reading from a letter from City Librarian Homer Fletcher, Mayor Janet Gray Hayes said: "It is the parents—and only the parents—who may restrict their children, and only their children—to access to library materials and services."

The decision of the city council responded to a request from Irene de Haydu, a San Jose mother of four, who asked the council to declare certain library materials off limits to children.

To illustrate what she claimed was a need for censorship, Haydu played for the council a segment of *Cheech and Chong's Wedding Album,* a record which features, among other things, the sounds of a televised wrestling match and a young couple making love.

In response to Haydu's plaint that parents cannot always control their children's behavior at libraries, Councilman Al Garza insisted that a parent could expect to be obeyed.

Councilwoman Susanne B. Wilson, who said she had investigated the matter, told Haydu that "there are places where your son and other children can find things on the streets that are even more offensive" than *Cheech.* Reported in: *San Jose Mercury,* May 5.

Merrillville, Indiana

In early May the board of trustees of the Lake County Public Library System voted unanimously to accept a library staff recommendation to retain Janet Noel's *The Human Body* in the children's sections of the system's libraries.

The Human Body, a physiology book for fifth grade and up, was challenged a month before the decision by parents who disliked a six-page section dealing with body development and reproduction. In over 140 separate requests for reconsideration, parents sought the book's transfer to the adult sections of the system. In response, the library board noted that shelving the work in adult sections would make it inaccessible to the very age group for which it was written. Reported in: *Gary Post-Tribune,* April 29, May 5; *Hammond Times,* May 7.

Oklahoma City, Oklahoma

The implementation of a February 19 decision by the Oklahoma County library commission to issue restricted access library cards to patrons under fifteen-and-a-half years (see *Newsletter,* May 1976, p. 62) was delayed after commissioners had second thoughts about the legality of the decision. In April, the commission reversed itself and voted six to three not to place any restrictions on access to materials in the library system.

The decision ended a four-month controversy that arose after a resident complained about the presence of *Boys and Sex* in the children's sections of the county libraries. Following the February decision in favor of restrictions, the commissioners received a petition from 400 residents requesting that the freedom to read not be limited. Members of the library staff also petitioned the commission to withstand attempts to "change your long-standing policy allowing free and open use of the public libraries."

Commissioner Ralph Adair, a proponent of restricted access, was disgruntled by the final decision not to restrict access and called for the Oklahoma legislature to change the method of appointment of library commission members. He also threatened to call for a November vote to abolish the county-wide system. Reported in: *Daily Oklahoman,* April 15, April 20; *Oklahoma City Times,* April 16.

(Censorship dateline . . . from page 88)

The registration act, a catch-all bill approved in 1938 and widely used during the years of anti-communist hysteria, would require Tricontinental to label all of its films as "propaganda" and keep extensive records of recipients of its films for examination by the Justice Department.

Tricontinental, which has distributed such films as *Blood of the Condor, The Promised Land, Memories of Underdevelopment,* and *Lucia,* claimed it would be put out of business by the act's requirements.

According to *Variety* (April 28), about a dozen film distributors have been required to register under the act. However, they are either directly sponsored by a foreign government or are paid to do public relations work for foreign interests. Tricontinental claims that its activities are totally unlike those of a foreign agent.

Both the American Library Association and the Educational Film Libraries Association began efforts in May to get the Justice Department to take a second look at the Tricontinental case.

prisons

San Diego, California

The San Diego County Sheriff's Department announced in April that it would stick by its jail policy of prohibiting gay-oriented publications.

Jim McCain, public information officer for Sheriff John Duffy, said "the sheriff believes he has the authority and the responsibility under state law to prohibit certain publications from going to inmates of the jail." McCain added that the sheriff would not allow certain gay publications because he considered them obscene. He explained that the sheriff has the power to block the entry of reading material that "would incite violence and cause significant trouble."

McCain's comments responded to a memo from County Supervisor Jack Walsh, whose bid for reelection was opposed by the sheriff.

McCain charged that the county supervisor's action was meant to harass the sheriff. "We have a library in the jail which has a large amount of material, " McCain said. He added that the material "is middle-of-the-road stuff, which won't hurt the sensitive jail situation." Reported in: *San Diego Tribune,* April 29.

'obscene' and 'harmful' matter

Los Angelos, California

An intensified effort to eliminate "newsrack blight" was announced in late March by Los Angelos City Attorney Burt Pines. He stated in a news conference that he would send a letter to publishers and distributors outlining a four-point program to consist of stepped up activities to eliminate newsracks that fail to meet the city's standards on placement and operation; prosecution of persons who distribute "harmful matter" to children from newsracks; support for legislation introduced by Assemblyman Julian Dixon which would prohibit the sale of "harmful matter" through unattended newsracks accessible to children; and a registration fee for newsracks to offset the cost of enforcing the law governing them.

Pines said his office had received numerous complaints concerning the availability of pornographic publications to minors.

In late 1974, a California Superior Court declared unconstitutional sections of Los Angeles' newsrack ordinance which provided that no person could keep "harmful matter" in newsracks on public sidewalks unless adults were present to prevent its purchase by minors. The decision was appealed to the California Court of Appeal. Reported in: *Los Angeles Times,* March 30.

Chicago, Illinois

In May the Chicago City Council approved an ordinance to prohibit youths under eighteen from viewing movies with "excessive violence." Only two aldermen, both independents, voted against the amendment to the city's Film Censorship Code when it came before the council.

According to the ordinance, a film is "harmful when viewed by children" when its "theme or plot is devoted primarily or substantially to patently offensive deeds or acts of brutality or violence, whether actual or simulated, such as but not limited to assaults, cuttings, stabbings, shootings, beatings, sluggings, floggings, eye gougings, brutal kicking, burning, dismemberments, and other reprehensible conduct to the persons of human beings or to animals and which, when taken as whole, lacks serious literary, artistic, political or scientific value."

Testimony against the ordinance was presented by the American Library Association and the American Civil Liberties Union, which challenged its constitutionality.

Orem, Utah

Orem, which in 1973 established a nine-member obscenity commission to review the activities of local movie theaters and stores selling books and magazines, continues to remain one of America's "cleanest" towns. Scenes from many films, most recently *Mandingo,* have been cut by theater managers in compliance with recommendations of the commission. One store, the Record Bar, took copies of the *National Lampoon* off its shelves after the magazine was reviewed by the commission and the city prosecutor for possible legal action.

Although similar review commissions in other cities, including Salt Lake City, have been declared unconstitutional by the courts, the validity of Orem's commission has not yet been challenged. Reported in: *Salt Lake City Deseret News,* May 15.

Montpelier, Vermont

Apparently acting in response to pressures from local community leaders, Vermont Attorney General M. Jerome Diamond announced in May that his office was preparing a revision of Vermont's obscenity statute to present to the legislature in 1977. Diamond's measure would revise Vermont's 1974 statute, which covers only the dissemination of works to minors, to include the dissemination of materials to adults.

In a thirty-five page opinion released to the press, the attorney general, while not ruling out the right of towns to enact their own obscenity laws, said local ordinances concerning adults would face tough challenges in the courts, and that they might conflict with state law.

Diamond added, however, that the ultimate weapon against the sale of obscene materials through Vermont's three adult bookstores would be the refusal of Vermont citizens to purchase them. "Voluntary action is still a most effective weapon against pornography. Vermonters can choose to close adult bookstores by not walking through the front door. The right to read includes the right not to

read," he said.

Diamond's opinion was sent to Williston officials, who requested it, and to the Vermont League of Cities and Towns. Reported in: *Barre Times-Argus,* May 14.

Seattle, Washington

After a Seattle hearings examiner ruled that the showing of *X*-rated films at a theater in the city's Greenwood district could not serve as a basis for denial of a movie license, members of the community threatened to step up their pressures against *X*-rated fare in the neighborhoods.

Representatives of various neighborhoods supported proposed zoning legislation which was approved in April by the city council's planning committee. The legislation would restrict sexually explicit movies to Seattle's downtown area.

In addition, the Greater Greenwood Community Council said it might sue the city if it failed to take action against sexually explicit films in residential neighborhoods. The council called for regulations which will "protect and promote the public health and safety, morals, and welfare. . . . " Reported in: *Variety,* May 5.

(From the bench . . . from page 95)

Cheyenne, Wyoming

Ted Karadenes, Wyoming disc jockey and former employee of radio station KMTN-FM in Jackson, was convicted in April of federal charges of using obscene language in a Christmas broadcast.

The jury which found Karadenes guilty heard testimony that he used language which resulted in his nearly immediate arrest by police who rushed to the station. Reported in: *Cheyenne State Tribune,* April 17.

(Is it legal? . . . from page 96)

two Trenton men.

Acting under emergency rules of the Supreme Court, Chief Justice Richard J. Hughes temporarily lifted the order pending review by the full seven member court.

The *Trenton Times* published the disputed testimony after the ban was lifted by the high state court. The murder trial itself ended in a hung jury. Reported in: *Editor & Publisher,* April 3.

broadcasting

Hollywood, California

Testifying in a federal suit agains television's "family hour" (see *Newsletter,* May 1976, p. 72), a witness subpoenaed by the Writers Guild of America and other plaintiffs testified that he never saw any pressure exerted to bring the family programming into effect.

A lawyer for one of the defendants, NBC, cross-examined former Federal Communications Commission aide Barry Cole: "Now I ask the last question: In all the meetings and conversations you have described . . . did Chairman Wiley or any other member of the commission staff or you ever threaten or attempt to coerce or intimidate or arm-twist any network representatives?"

Over the objections of plaintiffs, U.S. District Court Judge Warren Ferguson allowed Cole to answer. "In my opinion, the answer is no," Cole responded.

In contrary testimony, former FCC Commissioner Nicholas Johnson said the pressure put on networks to come up with the "family hour" amounted to "an unprecedented totality of force brought to bear on the industry."

Johnson pointed particularly at FCC Chairman Richard Wiley's unusual "summons" to network presidents to come to Washington to discuss solutions to what members of Congress considered a problem of sex and violence during prime time. Johnson said the executives must have been "frightened and concerned."

Johnson compared the visit of network heads to Washington to former FCC Chairman Dean Burch's notorious telephone calls to network chiefs about news coverage. "If there was that much hullabaloo over a phone call, you can imagine what the reaction would be" to a personal summons to Washington, Johnson said.

obscenity

Los Angeles, California

An ordinance banning the opening of any new bookstores in Bellflower was challenged in California Superior Court on the grounds that it violates rights guaranteed by the U.S. Constitution and California law. The ordinance was adopted by the Bellflower City Council last November as a zoning measure aimed at keeping adult bookstores out of the community.

The suit against the ordinance was filed in the name of Ronald K.L. Collins, a Loyola University Law School graduate. In his complaint, Collins alleges that the ordinance violates the rights of free speech and free press. He commented, "I disapprove of the expenditure of public monies to enforce an ordinance which so broadly sweeps away the liberties guaranteed under the Bill of Rights." Reported in: *Long Beach Press-Telegram,* April 2; *Los Angeles Times,* April 2.

(Free speech . . . from page 80)

be understood as announcing a new principle of constitutional law, and mistaken specifically in thinking that *Flower* stands for the principle that whenever members of the public are permitted freely to visit a place owned or operated by the Government, then that place becomes a 'public forum' for purposes of the First Amendment. Such

a principle of constitutional law has never existed, and does not exist now. The guarantees of the First Amendment have never meant 'that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please.' *Adderley* v. *Florida,* 385 U.S. 39, 48. 'The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.' *Id.,* at 47. See also *Cox* v. *Louisiana,* 379 U.S. 559, 560, 564. Cf. *Pell* v. *Procunier,* 417 U.S. 817.

"The Court of Appeals in the present case did not find, and the respondents do not contend, that the Fort Dix authorities had abandoned any claim of special interest in regulating the distribution of unauthorized leaflets or the delivery of campaign speeches for political candidates within the confines of the military reservation. The record is, in fact, indisputably to the contrary. The *Flower* decision thus does not support the judgment of the Court of Appeals in this case. . . . "

Justice Brennan, who was joined by Justice Marshall, dissented:

"Only three years ago, in a summary decision that presented little difficulty for most members of this Court, we held that a peaceful leafleteer could not be excluded from the main street of a military installation to which the civilian public had been permitted virtually unrestricted access. Despite that decision in *Flower* v. *United States,* the Court today denies access to those desirous of distributing leaflets and holding a political rally on similarly unrestricted streets and parking lots of another military base. In so doing, the Court attempts to distinguish *Flower* from this case. That attempt is wholly unconvincing, both on the facts and in its rationale. I, therefore, dissent.

"According to the Court, the record here is 'indisputably to the contrary' of that in *Flower.* But in *Flower,* this Court relied on the following characterization of Fort Sam Houston—the military fort involved there—and its main street in holding that a peaceful leafleteer could not be excluded from that street.

> There is no sentry post or guard at either entrance or anywhere along the route. Traffic flows through the post on this and other streets twenty-four hours a day. A traffic count conducted on New Braunfels Avenue on January 22, 1968, by the Director of Transportation of the city of San Antonio, shows a daily (twenty-four hour) vehicular count of 15,100 south of Grayson Street (the place where the street enters the post boundary) and 17,740 vehicles daily north of that point. The street is an important traffic artery used freely by buses, taxi cabs and other public transportation facilities as well as by private vehicles, and its sidewalks are used extensively at all hours of the day by civilians as well as by military personnel. Fort Sam Houston was an open post; the street, New Braunfels Avenue, was a completely open street. [Citations omitted.]

"Fort Dix, at best, is no less open than Fort Sam Houston. No entrance to the Fort is manned by a sentry or blocked by any barrier. The reservation is crossed by ten paved roads, including a major state highway. Civilians without any prior authorization are regular visitors to unrestricted areas of the Fort or regularly pass through it, either by foot or by auto, at all times of the day and night. Civilians are welcome to visit soldiers and are welcome to visit the Fort as tourists. They eat at the base and freely talk with recruits in unrestricted areas. Public service buses, carrying both civilian and military passengers, regularly serve the base. A 1970 traffic survey indicated that 66,000 civilian and military vehicles per day entered and exited the Fort. Indeed, the reservation is so open as to create a danger of muggings after payday and a problem with prostitution. There is, therefore, little room to dispute the Court of Appeals' finding in this case that 'Fort Dix, when compared to Fort Sam Houston, is a *a fortiori,* an open post.' *Spock* v. *David,* 469 F.3d 1047, 1054. . . . "The inconsistent results in *Flower* and this case notwithstanding, it is clear from the rationale of today's decision that despite *Flower,* there is no longer room, under any circumstance, for the unapproved exercise of public expression on a military base. The Court's opinion speaks in absolutes, exalting the need for military preparedness and admitting of no careful and solicitous accommodation of First Amendment interests to the competing concerns that all concede are substantial. It parades general propositions useless to precise resolution of the problem at hand. According to the Court, 'it is "primary business of armies and navies to fight or be ready to fight wars should the occasion arise," *Toth* v. *Quarles,* 350 U.S. 11, 17,' and 'it is consequently the business of a military installation like Fort Dix to train soldiers, not to provide a public forum.' But the training of soldiers does not as a practical matter require exclusion of those who would publicly express their views from streets and theater parking lots open to the general public. Nor does readiness to fight require such exclusion, unless, of course, the battlefields are the streets and parking lots, or the war is one of ideologies and not men. . . . "

Justice Marshall also stated:

"While I concur fully in Mr. Justice Brennan's dissent, I wish to add a few separate words. I am deeply concerned that the Court has taken its second step in a single day toward establishing a doctrine under which any military regulation can evade searching constitutional scrutiny simply because of the military's belief—however unsupportable it may be—that the regulation is appropriate. We have never held—and, if we remain faithful to our duty, never will hold—that the Constitution does not apply to the military. Yet the Court's opinions in this case and in *Middendorf* v. *Henry,* holding the right to counsel inapplicable to summary court-martial defendants, go distressingly far toward deciding that fundamental constitutional rights can be denied to both civilians and servicemen whenever the

military thinks its functioning would be enhanced by so doing.

"The First Amendment infringement that the Court here condones is fundamentally inconsistent with the commitment of the Nation and the Constitution to an open society. That commitment surely calls for a far more reasoned articulation of the governmental interests assertedly served by the challenged regulations than is reflected in the Court's opinion. The Court, by its unblinking deference to the military's claim that the regulations are appropriate, has sharply limited one of the guarantees that makes this Nation so worthy of being defended. I dissent."

Finally a clue developed. H. M. Woggle-Bug, T.E., Dean of the Royal College of Athletic Science, reported that the librarian of the Temple of Learning, Ozbert Pentstone, had seen a stranger shortly after his arrival and had given him a pill. It must be explained here that all efforts by Ozians of college age were devoted to intercollegiate sports, and all academic subjects were taught by the ingestion of Knowledge Pills. Thus, librarians in Oz needed two degrees, one in library science and one in pharmacy.

"What was the subject of the pill?" the Wizard asked.

"The Complete and Total History and Geography of Oz."

"Then after taking it, he'll know everything there is to know about this land and everyone in it, making it all the easier for him to hatch some nefarious plot to steal the royal jewels. Why did the librarian give him the pill—didn't he realize it could be dangerous?"

"I asked that and he gave me a long and stern lecture on intellectual freedom."

"I've always been suspicious of that fellow," said the Wizard.

—From Jon L. Breen's new short story, "The Flying Thief of Oz," published in Ellery Queen's Mystery Magazine, *April 1976.*

(The published word . . . from page 83)

ended without a realization of their goals. Kornweibel develops this premise in seven chapters which relate *The Messenger* to various facets of black life. His preface provides a description of the period 1917-1928, and an epilogue evaluates *The Messenger.*

The Messenger was founded by A. Philip Randolph and Chandler Owen, who were characterized as socialist radicals who tried every known method to change the status of their race. Randolph, who organized the Brotherhood of Sleeping Car Porters shortly before the demise of *The Messenger,* is now the celebrated "Elder Statesman." Owen tired of the magazine in 1923, left New York, and died shortly thereafter.

According to Kornweibel, *The Messenger* was the "participant and mirror" of "all issues and opportunities to the race" during its existence. Opposing views were presented, but the editors tried to persuade their readers to accept their own point of view. Their position was radical at first, but then it gradually became more moderate. The magazine is considered important by the author because it was a stronger medium than any contemporary newspaper or periodical related to an interracial protest organization.

Kornweibel identified the current issues of the period as: government repression of racial military and civil rights; cultural pluralism and nationalism; Africa and internationalism; unemployment and labor unions; establishment politics; and black leadership. Hope for change, in 1917, was related to the "Great Migration" from the South to the North, expanded job opportunities created by World War I, new racial militancy, greater participation in national politics, and the articulation of a distinctive black culture. Kornweibel classifies leadership groups as noncommunist black radicals, the bourgeois establishment, Garveyites, and Communists.

The refusal of whites to accept blacks despite their wartime contributions created many obstacles. On the other hand, the author notes that blacks made tactical mistakes, were predisposed against radical solutions or perspectives, and did not develop a program which was American, or black oriented, or which gave priority to economic advancement. "Black radicalism" is stressed to the extent of being repetitious. The Harlem Renaissance, classified as "cultural nationalism," was the "only promising manifestation of the new era," in Kornweibel's view.

The relations between Randolph and Owen and other black leaders are detailed in the last three chapters. Sharpest criticism is given to the editors' participation in "The Garvey Must Go Campaign" and the failure of the conservative "nonpolitical, bourgeois black leadership class" to provide solutions to the many problems of the era.

No Crystal Stair gives an interesting interpretation of black life in 1917-1928 and brings to mind a variety of questions and issues of contemporary concern. What magazine gives such a varied picture of black life today? Can the black radical of 1976 accept Kornweibel's conception of Randolph as a radical and DuBois as a moderate and poor leader? Would middle-aged blacks understand better than Kornweibel some of Randolph and Owen's hostility toward Garvey, who could remind whites that he was "a British citizen"? Recent events such as the death of Paul Robeson, the Broadway hits *Me and Bessie* and *Bubbling Brown Sugar,* union responses to affirmative action during this period of high unemployment, current efforts for economic advancement through PUSH, and the recommendations of the Charlotte meeting of Black Democrats,

described by the press as the best such statement to date, remind us of the goals yet to be achieved.

Kornweibel closes with the idea "that there was no way out for black people" then or now. The reviewer would end with an earlier statement of "belief in the ultimate success of struggle" which *is* continuing and which Hughes stresses in "Mother to Son."–*Reviewed by Annette L. Phinazee, Dean, School of Library Science, North Carolina Central University.*

police fire at 'Goose'

Eve Merriam's *Inner City Mother Goose,* the object of intense controversy after it was first published in 1969, may in 1976 face a police fusillade.

In May the ALA Office for Intellectual Freedom learned that police officers in New Jersey, Illinois, and perhaps Washington had taken a renewed interest in the work. In New Jersey, the State Policemen's Benevolent Association (PBA) attacked the West Orange Public Library for circulating "an anti-police book."

In a widely distributed letter, the president of the West Orange branch of the PBA said: "After reviewing this book, I find it to be the most disgusting piece of literature that I have ever read. This book is not only anti-police, anti-black, and anti-Puerto Rican, it also glorifies crime and the criminal element. . . ."

the author comments

Responding to the decision of a Long Island school board to remove his own *Slaughterhouse-Five* and other books from the Island Trees School District High School library, Kurt Vonnegut Jr. told the *New York Times* (March 28):

"Here is how I propose to end book-banning in this country once and for all: Every candidate for school committee should be hooked up to a lie-detector and asked this question: 'Have you read a book from start to finish since high school? Or did you even read a book from start to finish *in* high school?'

"If the truthful answer is 'No,' then the candidate should be told politely that he cannot get on the school committee and blow off his big bazoo about how books make children crazy. . . .

"From now on, I intend to limit my discourse with dim-witted Savonarolas to this advice: 'Have somebody read the First Amendment to the United States Constitution out loud to you, you goddamned fool!' "

textbook display largely ignored

The Howard County, Maryland public school system's first public display of textbooks, held in February and March, attracted scarcely any attention from parents and students.

John A. Soles, assistant director for curriculum for Howard County schools, said only sixty-two people turned out to review the 400 books which were on display for almost six weeks.

At its meetings to review parental complaints filed during the public display, the Howard County school board followed the recommendations of teachers and voted to retain nine controversial works and to drop two.

The board voted to strike from the approved list new editions of the *Galaxy* series of reading materials and a sixth-grade social studies book.

The work which received the largest number of complaints from parents, a series entitled *Windows of Our World,* was retained despite contentions that it presented a confusing and subjective examination of social and political issues in the United States.

The board followed the recommendation of a teachers' committee that advised retention of the series for all intended grades except kindergarten, where "possible misuse of the teaching suggestions as given in the teachers' manual" was feared. Reported in: *Baltimore News American,* April 1; *Baltimore Sun,* May 12.

meanwhile, down in Washington

In May excerpts from works of Vonnegut, Bernard Malamud, Langston Hughes, and other authors were refused a place in the *Congressional Record.* The excerpts had been submitted by Representative Norman F. Lent (R.–N.Y.), who defended removal of the works from the Island Trees School District library as consistent with the school board's responsibility to determine what is taught in its schools.

The *Congressional Record* said: "The Joint Committee on Printing, after reviewing the excerpts submitted, has refused to reprint the same. The general rules governing the *Record* prohibit the inclusion therein of profanity, obscene wording or extreme vulgarisms."

Representative Wayne L. Hays (D.–Ohio), chairperson of the joint committee, said the decision had been made in actuality by the committee's staff in conformity with "an ancient rule."

Representative Lent said he felt the joint committee's action supported his position. "I made my point better without putting the excerpts in the *Record,"* he said. Reported in: *New York Times,* May 11.

AAParagraphs

censorship gets a southern exposure

Although many diverse problems confronted them as they gathered for their three-day annual meeting in Florida, members of the Association of American Publishers were not allowed to forget censorship.

Reminders extended from the first morning of the gathering of more than 200 AAP members–when a school publisher termed the wave of protests over textbook content "a very serious and costly problem for our industry"–to the convention's closing moments–when a well-known television correspondent urged the AAP to hop into the trenches alsongside their brethren of the news media to resist excessive "lawyerization" of the communications world.

The television newsman was Fred Graham, CBS law correspondent. After delivering reassurances that S.1, the deceptively innocuous-seeming "recodification" of federal criminal laws, was dead "for the time being"–a report he recognized as possibly a mixed blessing–Graham undertook the more distressing burden of his message. Under title of "The Washington Climate for Intellectual Freedom," the former *New York Times* correspondent said:

"When I started in journalism about fifteen years ago, there was almost never a legal angle to whether or not to print a story, how soon to print it, or talk of prosecution before printing it." But today, he observed, "more and more, the things I do in reporting to you depend on and involve decisions by lawyers." Although this consideration of legal implications of all that is publicly communicated has affected print and electronic news media first and, so far, principally, Graham told the book publishers, "Your turn is coming." He traced the ominous trend to the 1971 Supreme Court Pentagon Papers decision which ostensibly favored those journals that published the controversial documents. Actually, however, it meant that those publications had been "permitted" to print something by a court decision, rather than being governed by the independent judgment of their editors.

Thereby was created, Graham asserted, "the precedent that, under any colorable (i.e., seemingly genuine) legal claim that an item should not be made public, the person raising that claim now only goes into court, the judge issues a temporary restraining order and there is no publication until maybe a month, maybe years later when the factual allegations are all hashed out in the slow, agonizing, exasperating way that lawyers do it." In the five years since the Pentagon Papers decision, said Graham–himself a lawyer–more than 200 "gag orders" of various kinds (not all direct restraints on the press) have been issued by judges.

Similarly, Graham continued, with libel: once only a dim concern prior to publication, its mere threat has now been used to justify prior restraint of publication or broadcast.

And as for privacy–which Graham branded "a bad word with a nice ring to it"–the concept is increasingly being used to deny the public information that traditionally–and necessarily in an open, democratic society–was freely available. This refusal to reveal individuals' past records and connections–often by denying their very existence–amounts, according to Graham, to "official rewriting of history." Furthermore, added the newsman, the recent trend of Supreme Court decisions and non-decisions, by effectively narrowing the definition of a "public figure" less subject to defamation, leaves publishers considerably and perilously more vulnerable to libel suits. In this case, Graham suggested, the remedy–if any–probably lies in individual state legislatures, which have authority to enact broader protections for communications media than those enunciated by the Supreme Court.

The school publisher's lament, liberally illustrated and couched in wistful witticisms by President John Williamson of Silver Burdett Company, dealt with proliferating pressures from women's and minority groups. Cited as typical were charges of sexism brought against: a storybook that showed elephants in tutus, a male fetus *in utero* (in subsequent editions replaced by a mouse fetus), and a character, intended to make math palatable for the young, whose sexuality was unmistakably denoted by his name, "Count Muchmore."

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In lieu of an oral report at the annual meeting on its 1975-76 activities, the Freedom to Read Committee has prepared a flier, "The Free Reader," available on request from either AAP office (One Park Avenue, New York City 10016, or 1707 L Street, N.W., Washington, D.C. 20036).

'Donald Duck' held at customs

In its report on the status of basic liberties in the U.S. in 1975, the Center for Constitutional Rights revealed that a minor classic, *How to Read Donald Duck: Imperialist Ideology in the Disney Comic*, was detained by the Commissioner of Customs on the grounds that the illustrations appearing in the work may constitute infringements of copyrights owned by Walt Disney Productions.

The work was written by two professors at the University of Chile during the short-lived reign of the Popular

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

Unity Government in that country. The work has gone through one Italian and fifteen Spanish editions since 1971. It was translated into English in 1975.

Lawyers at the Center for Constitutional Rights believe that the illustrations, which acknowledge the Disney copyright, are a classic case of "fair use" of copyrighted material, and that the seizure of the book represented an attempt to suppress political dissent and unpopular opinions. The Center filed extensive arguments in favor of the admissibility of the book with the Commissioner of Customs, and threatened to take action in court if necessary.

FoI fails in New York

New York State's Freedom of Information Law is "a failure" and "in great need of overhaul," according to the New York Public Interest Research Group.

In a study of the law's effectiveness, the research group, a nonpartisan research and advocacy organization financed by students in colleges around the state, found that in thirty-one cases out of eighty, access was denied to records of state and local government agencies, records which the law specifically mentions as open to public scrutiny. Among the files denied to the research group were police blotters, budget documents, employee lists, and instructions to agency staffs.

Robert Freeman, executive director of the Committee on Public Access to Records, the state body that oversees compliance with the Freedom of Information Law, stated that "the statute is clear with regard to the records sought [by the research group], so the problem seems to be the attitude of the public officials involved." Freeman added that the law "is not as strong as perhaps it could be." Reported in: *New York Times,* May 23.

Justice bars Blanco visa

Pathfinder Press, publisher of Peruvian author Hugo Blanco, revealed in April that the U.S. Justice Department had barred the writer's admission to the U.S. for a lecture tour after the State Department had finally agreed to a visa for him.

At the 1976 Midwinter Meeting in Chicago, the ALA Council supported Blanco's admission to the country, citing Article 19 of the United Nations' Universal Declaration of Human Rights, as well as the First Amendment to the U.S. Constitution, which the Council said guarantees U.S. citizens access to information. At the time of the Council action, it was the State Department that objected to Blanco's admission to the U.S.

no 'experts' in Britain

Psychiatric witnesses and other experts on pornography will be barred from giving testimony in British courtrooms in cases of alleged obscenity in published works, a three-judge appellate court ruled in April. The decision will apply to cases involving works covered by the Obscene Publications Act, which may soon be extended to cover motion pictures as well.

The appellate court described the opinions of experts on pornography as "irrelevant." The judges held that it is the jury, and only the jury, which can decide obscenity cases. Reported in: *Variety,* April 7.

Sometimes, headlines alone can tell a remarkable tale

"FBI turns up 'lost' papers of '68 candidate"–*Chicago Tribune* April 25.

"College profs spy for CIA: probers"–*Chicago Tribune,* April 27.

"CIA still mum on media-hiring list"–*Variety,* April 28.

"FBI is accused of trying to manipulate news media"–*New York Times,* April 29.

"IRS involved in illegal taxpayer probes, report claims"–*Chicago Sun-Times,* May 12.

"CIA finds on file million more letters it opened"–*Chicago Tribune,* May 21.

Daley joins PTA fight against violence

One day after a committee of the Chicago City Council approved Mayor Richard J. Daley's plan to censor film violence (see report in "Censorship Dateline"), the mayor pledged $50,000 to a nationwide PTA campaign against violence on television.

"It will be private funds," Daley said at a press conference where he expressed strong support for the proposed crusade by the seven-million-member Parent-Teacher Association.

National PTA President Carol K. Kimmel disclosed that her group would sponsor hearings on the problem in cities across the country where experts on child psychology would join parents, teachers, and others in testifying on the effects of violence on children.

The goal is to stir "pressure at the grass-roots" for limits on "the number and percentage of programs on violence," the PTA president said. Stations which do not respond to the appeal will face PTA-led efforts to revoke their operating licenses. Reported in: *Chicago Sun-Times,* May 5.

Oboler wins Downs Award

Eli M. Oboler, university librarian at Idaho State University, has been named the recipient of the 1976 Robert B. Downs Award for outstanding contributions to intellectual freedom in libraries. It is an award richly deserved.

When racial segregation was an undiminished blot upon American society, Eli Oboler was courageously outspoken in his defense of the rights of all people, and in his opposition to segregation in libraries and within the American Library Association. His singular efforts led to a study of attitudes among librarians toward segregation, a study which he headed, and ultimately to the inclusion of "race" in Article 5 of the *Library Bill of Rights,* which condemns discrimination in library service.

During the decade from 1965 to 1975, Eli Oboler contributed to the intellectual freedom program of the American Library Association as a member of the Intellectual Freedom Committee and as a trustee of the Freedom to Read Foundation.

During his tenure on these bodies, he achieved the status of our unofficial gadfly by ensuring the discussion of all sides of issues brought before us by promoting that point of view which appeared to be held by a minority of his colleagues. His keen observations, as well as suggestions for more daring action, led to many of the activities now considered commonplace by ALA members. Among these is the Program of Action for Mediation, Arbitration and Inquiry, which he drafted in its original form as the Program of Action in Support of the *Library Bill of Rights.*

For more than two decades Eli Oboler's name has appeared over innumerable articles and reviews in such journals as *Library Trends, Library Journal,* and *American Libraries.* He is, as all our readers know, a frequent contributor to this *Newsletter.* In 1974 his book *The Fear of the Word: Censorship and Sex* was published by Scarecrow Press.

In addition to his work on behalf of the ALA intellectual freedom program, he has chaired the Intellectual Freedom Committee of the Idaho Library Association. He has also served as that association's president, and as president of the Pacific Northwest Library Association. He has been university librarian at Idaho State University since 1949.

As a winner of the Downs Award, Eli Oboler joins the ranks of his friends and former IFC members Alex P. Allain, Everett T. Moore, and the late LeRoy C. Merritt.–JFK, RLF

Canada's high bench to review 'Tango' case

In early May the Supreme Court of Canada agreed to rule on a province's authority to censor or ban films. It granted Nova Scotia's attorney general leave to appeal a decision of the Nova Scotia Supreme Court, which declared that censorship is beyond provincial jurisdiction because "fundamental freedoms can be constrained only by federal legislation."

The dispute started in 1975 when the Nova Scotia Amusements Regulations Board banned *Last Tango in Paris.* Lawyers representing Nova Scotia maintain that the provinces may control "obnoxious matter" because they already have that power in cases of libel and slander. Reported in: *Variety,* May 5.

Schorr probe begins

In May the chairperson of the House ethics committee, John Flynt (D.–Ga.), announced that the investigation of CBS reporter Daniel Schorr's leak of the House Intelligence Committee's CIA report was well under way, and that the committee would consider broadcasting its open hearings on the unofficial release of the document.

Flynt also revealed that his committee's staff had interviewed more than 125 people, but he refused to state who

had been interviewed, or whether Schorr was among them.

At an appearance before an audience at the University of Illinois in early April, Schorr stated that neither he nor his lawyer had been contacted by the House committee or by the Justice Department in connection with the leak.

Schorr, much in demand on the college lecture circuit, stated that the most extreme act of Central Intelligence Agency behavior revealed by the intelligence investigation was the "casualness" with which agents tested unknowing individuals with LSD and then covered up the testing and the resultant suicide of one man for more than twenty years. Reported in: *Champaign-Urbana News-Gazette,* April 6; *Variety,* May 19.

Brazil censors fail screening test

After suffering years of bewildering patterns of censorship, Brazilians were not surprised when it was disclosed in April that twenty-one of ninety government censors had failed a required psychological screening test.

Facing the loss of their jobs, the twenty-one censors appealed to the courts to rule on the validity of the test, and to publicize their plight in the hope of arousing public sympathy.

Censorship in Brazil—which has included within its sweep televised performances of the Bolshoi Ballet, Henry Miller's *Sexus,* Picasso's erotic prints, and films by Stanley Kubrick and Michelangelo Antonioni—was instituted in the aftermath of the coup which brought the armed forces to power in 1964. The military, convinced that subversion would spread throughout the cultural life of the nation, purged universities, newspapers, and broadcast stations, all of which were brought under government control.

The government party, ARENA, which has a majority in both legislative houses, has generally supported the censors. "I am not concerned about ballet because it is art for the elite," said Jose Bonifacio, the majority leader in the Chamber of Deputies. He added, however, that he would have protested if the censors had prohibited the telecast of a soccer match because "then we would be talking about a national passion." Reported in: *New York Times,* April 3.

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