newsletter on
intellectual freedom
IFC ALA

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'Congress shall make no law . . .'

By GERARD PIEL, publisher of Scientific American, *who presented these remarks in March to a meeting of the National Science Teachers Association.*

Philadelphia in 1976 is an appropriate place and time to recall that the Founders of our country were natural philosophers. Natural philosophy is, of course, what in the eighteenth century they called science. Benjamin Franklin, as early as 1743, founded the American Philosophical Society " . . . to be held in Philadelphia for promoting useful knowledge." Franklin and his contemporaries well knew that the pursuit of this kind of knowledge—that is objective, verifiable knowledge—is a revolutionary activity. The natural philosophers of our eighteenth century did not draw the timid contemporary distinction between the natural and the social sciences. They embraced the social revolutionary import of their commitment to the ethic of objective knowledge. As a scientist can know no authority but his own judgement and conscience, so the self-governing citizen can know no sovereign but himself.

Their revolutionary proposition contained in its premises the means to its fulfillment. Objective knowledge is useful, because it confers control; it becomes technology. Thomas Jefferson, the third president of the American Philosophical Society as well as of the United States, once wrote to a friend: "So long as we may think as we will and speak as we think, the condition of man must proceed in improvement."

By taking thought, men could make themselves free. The continuing improvement in the condition of man would ultimately bring all members of society, including the slaves and the indentured servants who made up such a substantial portion of the colonial labor force, into full citizenship.

We the People ordained the Constitution to unite thirteen independent states into one nation. No sooner had we done so than we amended the Constitution to reassert the sovereignty of the citizen. That is set out in the First Amendment, which reads:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

The plain injunction of the First Amendment has been made ambiguous in our time by rulings of our courts occasioned by issues arising from our country's engagement in the anarchy of nations. At the close of the First World War, in a majority opinion against the freedom of opponents of the draft law to advocate their opposition, Oliver Wendell

(Continued on page 130)

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

titles now troublesome

Books

Periodicals

Films

IFC reports to Council

At each midwinter meeting and annual conference of the ALA, the Intellectual Freedom Committee reports to the Council, the governing body of the Association. On July 21, Chairperson Florence McMullin delivered this report.

The Intellectual Freedom Committee has one action item to bring before the Council at this Centennial Conference. This item concerns the Foreign Agents Registration Act–an act with sweeping and ill-defined provisions which was adopted by the Congress at the eve of World War II.

In April of this year, Tricontinental Film Center, a New York distributor of Third World films, was notified by the U.S. Justice Department that it would be required to register under the Foreign Agents Registration Act [see Newsletter, July 1976, p. 88].

According to the provisions of this act, so-called foreign agents are required to label their materials as "propaganda," as well as to open all their records to the inspection of the Justice Department. Tricontinental Film Center protested the action, denying that their distribution of Third World Films represented "political activities in the interests of foreign principals."

In May, the Intellectual Freedom Committee was asked to review the effect of the Justice Department's order. Letters were received from ALA members, from the Educational Film Library Association, and from Tricontinental Film Center itself.

In response to these appeals, ALA's general counsel was asked to review the act and its implications for libraries, particularly in light of the Justice Department's order that Tricontinental Film Center register under the act.

The Justice Department was asked, for example, whether works which a library had purchased previously from Tricontinental would now require the "propaganda" label. The Department was also asked whether it had established any review procedures, and whether those review procedures included review by courts of competent jurisdiction.

When the IFC first convened at this conference, no answer had been received from the Justice Department. The Committee, therefore, requested our counsel to remind the Justice Department of the problems of libraries in a second letter.

At its first meeting, the IFC prepared a resolution on the action of the Justice Department under the Foreign Agents Registration Act. This resolution was submitted to the Council Resolutions Committee and was distributed as Council Document 60.

Further deliberations of the IFC at a second meeting, however, produced the conclusion that the resolution was too narrow in its scope. It treated merely a symptom, not the source of the problem.

As a consequence, you now have before you Revised

(Continued on page 133)

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the Supreme Court: 1975-76 in review

By HENRY R. KAUFMAN, legal counsel to the Freedom to Read Committee of the Association of American Publishers. This article is an expanded version of the author's report to the Intellectual Freedom Committee and the Freedom to Read Committee at their joint meeting in Chicago, July 20.

Supreme Court Justice Powell is said to have characterized the Court's 1974-75 term as a "dull" one.[1] Some might disagree. To publishers, the *Williams & Wilkins* library-photocopying standoff was a distressing loss.[2] To the organized bar, the Court's disapproval of minimum attorneys' fee schedules on antitrust grounds created more excitement than was bargained for.[8] And to those involuntarily confined in state mental institutions, it was a notable term indeed.[4]

But, certainly, if Justice Powell had freedoms of speech and press in mind his comment was not entirely without justification. For in 1974-75 the Court was in the middle of what has become a three-year hiatus in rulings concerning the standards for judging obscenity under *Roth* and *Miller*.[5] Even in the handful of instances where the Court chose to write First Amendment opinions, its decisions were not generally of "landmark" significance.[6]

But the 1975-76 term has been far from dull. As one commentator put it, after a "slow, plodding start, the Court gained momentum and crossed the finish line with a sprinter's speed."[7] The ho-hum 1974-75 term was eclipsed this term by the new activism of a conservative Court, shaped primarily by President Nixon, now confident of its ability to muster prevailing majorities from among six or seven conservative justices. A remarkable portion of the Warren Court's legacy was abandoned or rewritten in the dynamic term just ended.

For those concerned with the First Amendment there were some high points, but overall, much of the excitement we could have done without. With regard to prior restraints, political activities, commercial speech and criminal due process, the Court issued important decisions generally--although not unrestrainedly--acceptable to First Amendment advocates. But as to libel, invasion of privacy, zoning, picketing and speech in the military, the Court's landmark rulings were tough medicine indeed.

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Commercial speech

In a term so overloaded with important constitutional cases, it is a special challenge to choose the most significant First Amendment decision of the year. Since I am an advocate of free expression, my sentimental favorite is *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*,[8] not because the *Virginia* case is of great practical moment to publishers or librarians, but because if represents a rare--in these times--liberal extension of First Amendment principles to a type of expression previously excluded from constitutional protection. The case therefore stands in stark contrast to the lapses of constitutional coverage which so often concern us.

In *Virginia* the Supreme Court expressly overruled a thirty-five year old precedent, *Valentine* v. *Chrestensen*, and held that "commercial speech" is *not* wholly outside the protection of the First Amendment, thus making explicit the implications of the prior term's *Bigelow* decision.[9] Justice Blackmun, speaking for a seven judge majority, overturned Virginia's prohibition against competitive advertising of retail drug prices, reasoning that speech does not lose its constitutional protection simply because "it is sold for profit or because money is spent to project it." Contrast that position to the statement in *Miller* v. *California*, the landmark obscenity decision, that distinguished between the constitutionally sacrosanct "pure" interchange of ideas and what Justice Burger there vilified as "the public portrayal of hard-core sexual conduct . . . for the ensuing *commercial gain*."[10] I doubt, however, that the newly created protection for commercial expression will be used by this Court as a ground for reviewing twenty years of non-protection in the obscenity field. Indeed, an argument can be made that the *Virginia* case could, in the end, narrow First Amendment protection by evoking a greater willingness to "regulate" traditional forms of speech on the same basis as commercial expression.

Prior restraints

Probably the most extensively publicized ruling of the term, and perhaps the most beneficial from a practical point of view, was the decision in *Nebraska Press Association* v. *Stuart*,[11] the gag-order case. I know that many see foreboding elements in the way the majority decided the case, and in its affirmance of two related contempt citations against reporters. But it is difficult for me to read the *Nebraska* case without being struck by this conservative Court's substantially unanimous reaffirmance of the continuing *preeminence* of the vital rule against prior restraints. The decision reaffirms the analysis of *New York Times* v. *U.S.*[12] (the Pentagon Papers case) but is in at least one sense even more significant than that great decision. For in the Pentagon Papers case a number of the justices questioned the validity of the "national security" interests there said to justify the prior restraint; in the *Nebraska*

case, the rule against prior restraints prevailed over court "gag-orders" premised in unquestioned good faith on the express command of the Sixth Amendment. A five-judge majority of the Court indicated that they could at present envision no situation in which the danger of prejudicial pretrial publicity would be so clear and present as to justify a prior restraint on—that is, an injunction against—publication of information already obtained by the press regarding crimes or accused defendants even if said to threaten the right to trial by an impartial jury. It was the presupposition of a *unanimous* Court that in the critical process of balancing competing constitutuional rights, an ill-defined and unprovable fear that publication of information *may* by harmful to a defendant's Sixth Amendment rights cannot support setting aside equally critical First Amendment principles.

Political expression

Another First Amendment interest which received landmark protection this term, despite valid competing interests, was the right of candidates, citizens and associations to *spend* money without government-imposed limits in order to engage in and promote protected political expression. But *Buckley* v. *Valeo*[13] did approve the regulation, and the compulsory disclosure, of campaign *contributions* and expenditures, despite any incidental effect upon freedoms of association and expression. *Buckley* is truly pivotal as a case representing the Court's approach toward the balancing of competing interests and deserves the kind of detailed analysis impossible in a survey of this kind. Another political speech decision which deserves mention is *Elrod* v. *Burns*,[14] a case in which the Court ruled five to three that the discharge of public employees—at least lower level, non-policymaking employees—solely because of their partisan political affiliation or non-affiliation is a violation of the employees' freedom of association and belief.

Libel

In *Time, Inc.* v. *Firestone*[15] the Supreme Court took another giant step back from the premise of *New York Times* v. *Sullivan*—that the press must be free from the "chilling" fear of civil liability for defamation when discussing issues of public moment—so long as that discussion is conducted in good faith and *even if* the press report contains inadvertently false information. In the *Gertz*[16] case (decided two terms ago) the Court held that the *Times* and *Sullivan* privilege did not extend to news regarding "private" persons, even if the news is of arguable public interest. But in *Cox Broadcasting*[17] the Court had suggested that news of public court records or proceedings would always be considered privileged. Yet, in *Firestone*, the Court declined to make good on that promise. Instead, it defined the "private" person concept broadly to include certain aspects of otherwise public court proceedings, thus expanding the area within which the press may be held liable for defamation without proof of actual malice. *Firestone* is representative of a very noticeable tendency of the Burger Court to rely heavily on what can be called "states' rights" to experiment in constitutionally sensitive areas.[18] *Firestone* reaffirmed the *Gertz* ruling that states may define for themselves the appropriate libel standard to be applied to private persons. In *Miller* v. *California* the Court held that states may define "community standards" on obscenity.

This term, in *Virgil* v. *Time, Inc.*,[19] the Court refused to review a very important "invasion of privacy" decision which leaves the states free to apply local law potentially in

(Continued on page 133)

Supreme Court to hear Foundation case

Before the conclusion of its term last summer, the U.S. Supreme Court decided to review the case of *Smith* v. *U.S.*, an action in which the Freedom to Read Foundation supports the petitioner, Jerry Lee Smith, in order to challenge the federal government's employment of "local federal standards" on obscenity in Iowa.

Smith, who formerly ran a firm in Des Moines called Intrigue, was found guilty by a federal jury of placing "obscene" matter in the U.S. mails in Des Moines to be sent to his customers in Iowa (see *Newsletter*, May 1976, p. 56). Despite the fact that Iowa had decriminalized the dissemination of sexually explicit fare to adults, the federal jury was allowed to draw upon its own sense of Iowa community standards—standards which the Eighth Circuit Court of Appeals later called "inborn" and "often undefinable"—in convicting Smith.

In its petition to the Court asking for review of the case, the Foundation argued that the federal government had no interest in Smith's wholly intrastate distribution of materials that could justify a jury's nullification of the determination of the Iowa legislature to permit access to works with sexual themes.

The case will be heard by the Court in the fall.

Aid granted to Harry Reems

Another federal case coming to the attention of the members of the Foundation Board of Trustees resulted in their decision to grant both financial and legal help to the cause of Harry Reems, convicted in federal court in Memphis of conspiracy charges in connection with the distribution of *Deep Throat* (*see report elsewhere in this issue*). The Trustees voted to donate $500 to the Bill of Rights Foundation to support Harry Reems' defense, and to join in an *amicus* brief with other appropriate organizations.

(Continued on page 136)

the problem of federal obscenity prosecutions

Three years ago, in *Miller* v. *California* and its companion cases, the U.S. Supreme Court dismissed national First Amendment standards on sexually explicit materials as "unrealistic." "People in different states vary in their tastes and attitudes, and this diversity is not to be strangled by the absolutism of imposed uniformity," the Court's majority said.

In its elaborations upon the development of "local community standards," the Court strongly implied that the basic interests requiring the regulation of obscenity were *state* interests. "We emphasize that it is not our function to propose regulatory schemes for the states. That must await their concrete legislative efforts," the Court stated.

Despite the indication of the Court that the regulation of obscenity is a state matter to be determined according to "local standards," federal prosecutors around the country have been extremely active in using federal law to prosecute obscenity—a fact made apparent in reports on obscenity convictions in virtually every issue of the *Newsletter* (see "From the Bench") since 1973.

In at least one case, a federal prosecutor in Iowa imposed federal law upon activities in a state which had decriminalized the dissemination of so-called obscenity. Thanks to the Freedom to Read Foundation, this case, Smith v. *U.S.*, will be reviewed by the U.S. Supreme Court.

In other cases, federal prosecutors in Bible Belt communities and other conservative venues have indicted and convicted publishers and film distributors from New York, Los Angeles, and other comparatively cosmopolitan regions.

In Memphis

In one of the most publicized federal obscenity trials to date, determined Assistant U.S. Attorney Larry Parrish achieved the conviction of the producer and others connected with the film *Deep Throat* on charges of conspiracy to achieve its distribution. Amazingly, actor Harry Reems, whose connection with the film was ended when its filming was concluded, was also convicted of conspiracy charges. Prosecutor Parrish reasoned that if actors could be sent to jail on charges of distributing obscenity, the offensive products would never be made.

In Wichita

In June the New York-based editor and publisher of *Screw* magazine were convicted by a federal jury of sending obscene literature through the mail. The federal prosecutors in the case said that their convictions would serve to deter the distribution of pornography by encouraging trials of offenders at the point of delivery.

"This is the first time a major obscenity dealer has been held accountable at the district of receipt and under local standards of that community," Assistant U.S. Attorney Larry Schauf said.

During the trial of Alvin Goldstein and James Buckley, defense lawyers showed that postal inspectors in three Kansas towns used fictitious names to subscribe to *Screw.*

Perhaps a favorable sign

In an unexpected move in early July, the Justice Department urged the U.S. Supreme Court to order a new trial for theater operators convicted of showing *Deep Throat* in Newport, Kentucky on the grounds that the defendants were victims of a shift in court standards on obscenity.

(Continued on page 136)

editor wins ABA award

We are especially pleased to announce that Judith F. Krug, co-editor of the *Newsletter* and director of the Office for Intellectual Freedom, has received the Irita Van Doren Award in recognition of her efforts toward furthering the cause of the book in American life. The award, sponsored by the American Booksellers Association in memory of the editor of the literary supplement of the *New York Herald Tribune,* was presented in June during the ABA's annual convention in Chicago.

The citation, engraved on a silver bowl, states: "Irita Van Doren Book Award, 1976, to Judith F. Krug for her many contributions to the cause of the book as an instrument of culture in American life."

Introducing our colleague to the ABA conventioneers, ABA President Dick Noyes said, "Judy Krug is a recognized champion of intellectual freedom and the right to read. Her credentials in librarianship, public service, and civil liberties are long and impressive. If her name is not a household word, her concerns and efforts have had repercussions for us all. Were it not for individuals like this one, people who truly care about our precious freedom to read . . . we'd all be losers."

A graduate of the University of Chicago's graduate school of library service, Judith Krug has served as director of the Office for Intellectual Freedom since 1967 and as executive director of the Freedom to Read Foundation since its establishment in 1969. Through the ALA intellectual freedom program, she has worked with the fifty state library associations, dozens of national organizations, and individual librarians and library trustees to encourage the fulfillment of First Amendment rights through libraries.

Congratulations, Judy!—RLF

the published word

a column of reviews

Censorship in Public Libraries in the United Kingdom during the Twentieth Century. Anthony Hugh Thompson. Bowker, 1975. 236 p. $15.95.

This book grew out of a master's thesis presented in 1972 to Queens University in Belfast. It could be characterized as a condensation of a mass of detailed notes from what must have originally been a rather unwieldy collection of references to public library censorship in Great Britain. The notes were obtained from newspapers, journals and the published words of some librarian-participants in censorship cases, or in what the author describes as "officious supervision" or "well-intentioned meddlesomeness."

The incidents discussed in this collection of cases occurred between 1900 and 1975. As presented, the cases form a juxtaposition of literary repression which clearly demonstrates that twentieth-century censorship in British public libraries has been widespread, having its origins in complaints from individual readers, organized groups, city council and library committee members, and librarians themselves. The book also demonstrates that contemporary repression of literary works in Great Britain has been met with considerable, although inadequate, opposition.

Readers who desire a comprehensive, in-depth examination of British public library censorship may be somewhat disappointed with this book. For example, the first chapter is comprised of only ten pages; however, it covers a period of four decades (1900-1939). In addition to the weakness of sketchiness, three-fourths of many of the book's chapters consist of lengthy quotes, particularly from newspaper accounts about censorship activities that originated in or were directed against public libraries. Despite these weaknesses, one would be hard pressed to locate in another single source a similar collection of references to public library censorship in Great Britian, or in any other country for that matter. (No similar collection relating to American library censorship has been published, for example.)

While many of the incidents reported here are centered around publications that might not be very familiar to librarians in the United States, the underlying issues of the cases—sex, violence, politics, and religion—will conjure up rather painful and familiar parallels in the United States.

In addition, the emotional pleas, condemnations and harangues that issued from censors will also be quite familiar to American librarians who have undergone attempts at repression. Although most American librarians will be unfamiliar with reports of controversial books such as *The Girl with X-Ray Eyes, Crazy Pavements,* or *Weekend at Zuydcotte,* they will recognize such titles as *Tom Jones, Mein Kampf,* the *Daily Worker,* and Sartre's *Age of Reason,* as well as the issues that surrounded these publications.

In the final chapter the author attempts to summarize censorship incidents and to structure generalizations about the nature of British literary repression since 1900. Mr. Thompson notes: 1) that sexual content formed the basis of the majority of local library censorship cases, 2) that the increased freedom of literary expression permitted by the *Lady Chatterley* acquittal and the passage of the Obscene Publications Act of 1959 brought on increased attempts to censor controversial books, and 3) that the early 1950s witnessed a rash of political censorship generated by a fear of communism. The author concludes:

> Pressure by individuals and by groups will no doubt continue to occur, but librarians should find it easier to resist. Problems and inconsistencies will arise, however, until there is a firm commitment to intellectual freedom by all librarians and until legislation makes it clear beyond doubt that censorship by library authority edict is contrary not only to the public library ideal but also to the law.

This work is timely and well documented. It also contains an index arranged according to subjects, persons, and places, all of which will be of value to scholars. Thompson's careful documentation and objectivity contribute to making this book a valuable overview of the nagging censorship issue which continues to plague scholars and librarians, even in our age of enlightenment and reason. The book is strongly recommended for all library school collections, as well as all libraries which attempt to develop comprehensive collections of materials about literary censorship.—*Reviewed by Charles H. Busha, formerly Associate Professor, Library Science/ Audiovisual Department, University of South Florida, Tampa.*

Dissent in the USSR: Politics, Ideology and People. Edited by Rudolf L. Tokes. Johns Hopkins, 1975. 453 p. $15.00.

The phenomenon of open criticism of the Soviet state and the Communist Party by Soviet citizens has been widely reported in the mass media of Western Europe and the U.S., and in recent years there has been an increasing awareness outside the USSR of the clandestine *samizdat* (literally, "self-published," but usually construed to mean "politically dissident") literature being disseminated in the nation, but the twelve essays in this volume constitute the first major attempt to analyze the nature and significance of this dissent. Taking the Sinyavsky- Daniel trial of 1965 and the expulsion of Solzhenitsyn in 1974 as boundary points, the contributors agree in identifying two groups of dissidents: a very small number of intellectuals, mostly scientists, historians, and writers (exemplified by

press censorship feared in developing world

Freedom House, a thirty-five-year-old group which monitors liberties around the world, charged in June that reports by two groups of experts brought together by the United Nations Educational, Scientific, and Cultural Organization had proposed new government controls on news media in developing nations.

In response, the UN organization termed the charge "totally unjustified." In a statement from its Paris headquarters, the organization said the charge was based on "personal opinions of experts never officially distributed by UNESCO."

The targets of the Freedom House attack were preparatory papers that emerged from meetings of sixteen experts from thirteen countries in July 1974 in Bogota, Colombia, and of nineteen experts from sixteen countries in June 1974 in Quito, Equador. Freedom House charged that the group which met in Equador had recommended governmental national news agencies as "the most suitable and apt policy."

In a news conference at the Freedom House headquarters in New York City, its vice-chairperson, Roscoe Drummond, a Washington columnist for the *Los Angeles Times,* charged that the papers revealed "a major new move by the third world and communist countries . . . to justify government control of the free flow of information."

Drummond said the aim of the papers was "to try to cloak [the move] with the moral backing of the United Nations," and he contended that "the large majority of member nations in UNESCO want to justify their own use of thought-control."

Freedom House leaders also asserted that the Soviet-led move began at a 1974 conference with a call for the formulation of "the fundamental principles governing the use of the mass media with a view to strengthening peace and international understanding and combatting world propaganda, racialism, and apartheid."

Freedom House also charged that the 1974 panel had proposed that states be considered "responsible for the activities in the international sphere of all mass media under their jurisdiction."

UNESCO'S acting office director in New York, Yemi Lijadu, a former official of the Nigerian government broadcasting service, said the criticisms were "untrue and misconceived." The experts' opinions were only their own, he said.

(Continued on page 136)

FCC broadens 'fairness'; proposes new 'obscenity' rule

In the first ruling of its kind under the so-called Fairness Doctrine, the Federal Communications Commission in June cited radio station WHAR of Clarksburg, West Virginia concerning the controversial issue of strip mining. The station was cited, not for giving an unbalanced treatment of the subject, but rather for ignoring it.

The action represented the FCC's response to a complaint by the Media Access Project on behalf of Representative Patsy Mink (D.-Hawaii), the Environmental Policy Center, and a Clarksburg resident. Mink, sponsor of an anti-strip mining bill, had written to the station and other broadcasters in July 1974 seeking air time for an eleven-minute tape regarding her proposal.

WHAR returned the tape to Mink saying that it would not broadcast it, and denying that it had broadcast a Chamber of Commerce program whose views on strip mining Mink wanted to refute.

During the FCC inquiry, the station insisted that it had broadcast "a significant amount of information" on the issue, although it had not originated any local programming on the controversy. The station also argued that even if the FCC were to determine that it had failed to cover the issue adequately, it was not answerable for the selection of issues to be aired.

The agency disagreed, insisting that a strict interpretation of the Fairness Doctrine encompassed an affirmative obligation to provide coverage of issues of public importance. Although the FCC insisted that it would not intrude on a station's day-to-day editorial decisions, it claimed that some issues are so critical that it would be unreasonable for a licensee to ignore them completely.

New obscenity guidelines

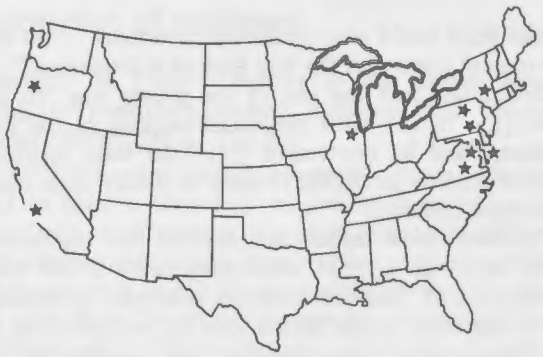
The FCC proposed legislation in June that would levy jail terms and fines for obscene and indecent material aired on broadcast stations and cable television, including access channels. At the same time, it attempted to clarify its rules to emphasize that cable operators will be held responsible for illegal program content.

The proposal, sent to Congress through the Office of Management and Budget, would levy a $10,000 fine or one-year prison term for obscene material, although "indecent" fare would be permitted if safeguards protected children.

The FCC defined "obscenity" in accordance with U.S. Supreme Court guidelines to mean patently offensive representations or descriptions of sexual acts which appeal to the prurient interest of the average person and lack serious value.

"Indecent" is defined as the representation or description of a human sexual organ or function that is patently offensive under contemporary community standards. Reported in: *Variety,* June 9, 16.

censorship dateline



libraries

Levittown, New York

The Island Trees School District board met at the end of July and voted to continue a ban on nine of eleven works which were removed from the district's junior high school libraries last spring. The board also directed that all potential library materials be examined in their entirety, and decided to hold librarians "personally responsible" for materials selected.

Works banned by the seven-member board were *Slaughterhouse-Five, The Fixer, A Hero Ain't Nothin' But a Sandwich, Go Ask Alice, Best Short Stories by Negro Writers, The Naked Ape, Down These Mean Streets, Soul on Ice,* and *A Reader for Writers.* The board decided to permit the circulation of *Laughing Boy,* and authorized the "restricted" circulation of *Black Boy* with explicit parental approval.

The action of the board in banning the books was unanimous on most of the titles. Richard J. Ahrens, chairperson of the board, told the audience that the board "will not answer any of the questions on the merits of the books." He said the board had read the books and those that were banned had been found "educationally unsound."

"It is not only our right but our duty to make the decision, and we would do it again in the face of the abuse heaped upon us by the media," Ahrens said. "We would not hesitate to take the same action again and again." Reported in: *New York Times,* July 30.

Gervais, Oregon

The removal of half a dozen books from the Gervais Union High School library by a committee appointed by the school board was protested at the end of May by the Oregon Library Association. The works removed from the library for examination of their "suitability" included *The Angry Hills, The Bird's Nest, The Dictionary of American Slang, The Man Who Loved Cat Dancing,* and *The Betrayers.*

In a letter to the superintendent of the Gervais Union High School District, the OLA Intellectual Freedom Committee said:

"The Oregon Library Association is concerned about the removal of any book from a school library without following a procedure which provides for an objective evaluation of the total worth of the book by a committee of professional educators and lay persons together. Hasty and arbitrary removal of library materials could open the door to all kinds of censorship, including that based on prejudice against religious beliefs.

"The Oregon State Department of Education has guidelines for school libraries which require that school districts have written selection policies and complaint handling procedures.... The retention of questioned material pending committee review and final action is recommended. 'During the interim period it is recommended that the school board accept the stand taken by the American Library Association. The Association holds that only the parent may restrict his or her child from having having access to specific instructional materials.'

"These guidelines are intended to safeguard the student's right to access to information and the integrity of the collection. If an individual or a group can have materials removed from libraries without careful, objective evaluation, whole collections of library materials could be destroyed...."

the press

Philadelphia, Pennsylvania

An article highly critical of Mayor Frank L. Rizzo was ripped out of 40,000 copies of *Hustler* scheduled for distribution in Philadelphia. The brief article, appearing in the August issue of *Hustler,* assailed Rizzo for "reputedly allowing" the blockade of the Philadelphia Inquirer Building on March 19 by members of the Philadelphia Building and Construction Trades Council.

After publisher Larry Flynt offered, in full-page newspaper ads, to send the missing page to Philadelphians requesting it, the general manager of the United News Company announced that he had ordered employees to remove the page.

"No one asked us to do it and no one suggested we do it," said Hugh Olbrich, referring to his decision to censor the article. "We figured it was in the best interest to do what we did, and we did it," he said. "And, frankly, I don't care to discuss it any further." Reported in: *Philadelphia Inquirer,* July 3, 9.

schools

Anchorage, Alaska

Despite a recommendation from a review committee of four parents and four school district staff members that the *American Heritage Dictionary* be retained in classrooms, the Anchorage School Board voted four to three in June to

remove it.

The review committee, which was unanimous in its recommendation in favor of the dictionary, was established by Assistant Superintendent Cliff Hartman, who responded to complaints from parents Marroyce Hall and Eileen Kramer, members of a conservative school watchdog organization called People for Better Education.

Definitions which the parents found offensive included those for "ass," "tail," "ball," "bed," "knocker," and "nut."

Hartman, who explained the recommendation of the committee, said that the ability of a child to look up "dirty words" helped diffuse excitement and curiosity about them. He also pointed out that the *American Heritage Dictionary* is an excellent resource for advanced students, especially for scientific terms.

Four members of the board, with a list of definitions in front of them, found that they could not accept Hartman's arguments. Reported in: *Anchorage News,* June 30.

Winnetka, Illinois

In June the board of New Trier High School voted to remove *Huckleberry Finn* from all required reading lists and to place the book on an optional list after a group of black parents complained about racially derogatory remarks in the book. The controversy over the work at the school, now more than five years old, erupted anew last spring (see *Newsletter,* July 1976, p. 87).

Franklyn S. Haiman, member of the American Civil Liberties Union of Illinois' executive committee, said school officials had "seriously undermined their greater obligation to academic freedom" in attempting to be sensitive to black parents. Responding to school board descriptions of the decision as a "good compromise," Haiman added, "If *Huckleberry Finn* . . . has in it archaic concepts or bad ideas, those should be singled out for criticism in classroom discussion—not either given silent approval or hidden away from general view by the device of an elective reading list."

The new policy was scheduled to go into effect in September. Reported in: *Chicago Daily News,* June 29; *Chicago Sun-Times,* June 29.

Montgomery County, Maryland

The Montgomery County National Organization for Women (NOW) has demanded the removal of *The Dog Next Store,* a second-grade reader, from classrooms in Montgomery County. NOW's education task force described the book as "thoroughly riddled with sexism."

NOW originally complained about *The Dog Next Store* a year ago. A committee reviewed the objections and found that the book was "sexist in part." Following the committee's decision, no more copies of the book were purchased until a new and improved edition was published.

NOW contends that the schools are still stocked with old editions of *The Dog Next Store* and is continuing to protest the work's presence in classrooms. NOW spokesperson Mary Ann Bertram said she would feel better about the book if she thought teachers were willing to discuss sexism in their classrooms. She believes, however, that "most teachers are not aware enough to know what is sexist with that book."

NOW said it would consider an appeal to the state board of education, a move which would place the group in an unusual alliance with Parents Who Care, a Montgomery County group which has waged a five-year battle with "atheistic educators who believe in world socialism." Reported in: *Washington Post* May 23.

Lewistown, Pennsylvania

The commissioners of three Bible Belt counties in central Pennsylvania voted in May not to renew the contract of Jo Ann Farr, psychologist and sex therapist, because of her use of the word "fuck" in some of her classes on sexuality. When called before the commissioners, Farr attempted to explain her use of the word, but was told they didn't care how she used it.

"She is an educated person," said Mifflin County Solicitor Francis Searer. "She should be able to use other words in the course."

According to Farr, participants in some of her classes were asked to list terms for sexual intercourse and then discuss why the words were used and in what context.

Despite support from members of her classes and her superiors, the commissioners refused to review their decision. Edwin Barber, head of the Mifflin County Association for Retarded Citizens, supported the commissioners' decision, stating, "We don't feel that human sexuality should be a high priority in this area. There are more important things, like transportation for the retarded." Reported in: *Philadelphia Inquirer,* May 28.

Fairfax County, Virginia

When Fairfax County parents objected to the institution of the new sex education program in 1975, a task force of school officials was appointed to review the program and present a revised plan. Parental opposition to the initial sex education program was so strong that the task force pared it down, eliminating discussions of birth control and homosexuality, as well as some information on venereal disease.

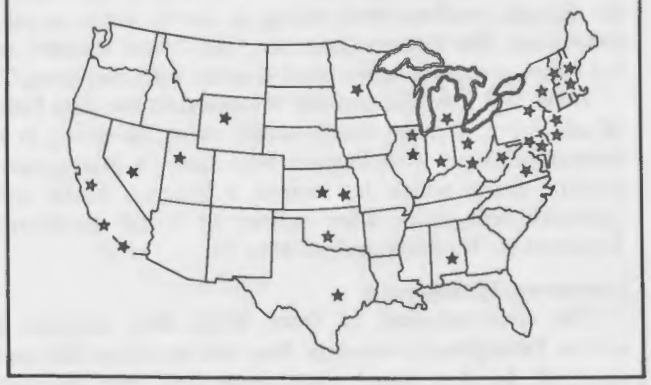
According to Barry Morris, associate superintendent for school services, the revised program is "not intended to be progressive in terms of the genre of modern sex education, of adopting the latest thinking of sex educators." He went on to say, "It's getting to be pretty obvious that residents of Fairfax County, at least the more vocal ones, don't care to take that [progressive curriculum] on."

Parents who object to their children's presence in any sex education classes will be provided with alternative hygiene instruction during the same class period.

Before the school board votes on the new plan in December, county-wide public hearings will be held. If it is

(Continued on page 126)

from the bench



U.S. Supreme Court rulings

In what was clearly one of its most important free press decisions of recent years, the U.S. Supreme Court unanimously decided that a pretrial ban on news coverage of a mass murder case in Nebraska was unjustified (see *Newsletter,* March 1976, p. 29).

The opinion of the Court, handed down June 30, was delivered by Chief Justice Burger, who was joined by Justices White, Blackmun, Powell and Rehnquist.

Referring to the famous trial of Aaron Burr in 1807, Chief Justice Burger noted that "Chief Justice Marshall's careful *voir dire* inquiry into the matter of possible bias makes clear that the problem [of pretrial publicity] is not a new one."

In rejecting prior restraint in the Nebraska case, Chief Justice Burger observed that there were several alternatives available to the trial judge: change of trial venue to a place less exposed to publicity; postponement of the trial to allow public attention to subside; use of searching questioning of prospective jurors "as Chief Justice Marshall did in the Burr case"; and use of emphatic and clear instructions on the sworn duty of jurors.

In a separate opinion concurred in by Justices Stewart and Marshall, Justice Brennan wrote:

"I unreservedly agree with Mr. Justice Black that 'free speech and fair trials are two of the most cherished policies of our civilization, and it would be a trying task to choose between them.' . . . But I would reject the notion that the choice is necessary, that there is an inherent conflict that cannot be resolved without essentially abrogating one right or the other. To hold that courts cannot impose any prior restraint on the reporting of or commentary upon information revealed in open court proceedings, disclosed in public documents, or divulged by other sources with respect to the criminal justice system is not, I must emphasize, to countenance the sacrifice of precious Sixth Amendment rights on the altar of the First Amendment." The newest justice, Justice Stevens, concurred in the judgment:

"For the reasons eloquently stated by Mr. Justice Brennan, I agree that the judiciary is capable of protecting the defendant's right to a fair trial without enjoining the press from publishing information in the public domain. . . . Whether the same absolute protection would apply no matter how shabby or illegal the means by which the information is obtained . . . is a question I would not answer without further argument. . . . I do, however, subscribe to most of what Mr. Justice Brennan says and, if ever required to face the issue squarely, may well accept his ultimate conclusion." (*Nebraska Press Association* v. *Stuart,* No. 75-817)

Patronage firings voided

In a case involving patronage dismissals from the Cook County, Illinois sheriff's department, the Supreme Court ruled five to three that the First Amendment safeguards political beliefs and prevents political firings of state, county, and local workers below the policy-making level.

Writing for himself and two other justices of the majority, Justice Brennan said:

"Our concern with the impact of patronage on political belief and association does not occur in the abstract, for political belief and association constitute the core of those activities protected by the First Amendment. Regardless of the nature of the inducement, whether it be by the denial of public employment or . . . by the influence of a teacher over students, 'if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.' "

The dissenters said the Court was striking down "a practice as old as the republic" and predicted that the ruling would "terminate almost completely the contributions of patronage hiring practices to the democratic process."

The suit was filed in 1971 in U.S. District Court by four former sheriff's employees who claimed they were fired by Democratic Sheriff Richard J. Elrod because they had joined the office under his Republican predecessor. The suit was thrown out of U.S. District Court, but was reinstated by the U.S. Court of Appeals for the Seventh Circuit on the basis of an opinion written in 1972 by now-Justice John Paul Stevens. Stevens disqualified himself from the Supreme Court Case. (*Elrod* v. *Burns,* No. 74-1520)

'Adult zones' approved

Ruling on the validity of Detroit's attempt to control the location of adult bookstores and theaters through zoning regulations, the Court decided that sexual expression, even though it may not be obscene, is entitled to less protection by the First Amendment than the expression of "ideas of social and political significance." (*Young* v. *American Mini Theatres,* No. 75-312)

(For further remarks on the Court's decision in Young, *see AAParagraphs and comments elsewhere in this issue.)*

In other action, the Court:

• Declined to examine a contempt order against Los Angeles reporter William Farr, who refused to reveal a source of a 1970 story concerning the Sharon Tate murder. Farr, free since January 1974 on an order by Justice William O. Douglas, became liable for a five-day jail term and a $500 fine imposed by California Superior Court Judge Charles Older.

• Refused to review a lower court decision setting aside a libel award won by a Maryland high school principal who objected to a newspaper article in which he was described as "unsuited." The principal had sued the owners of the paper, the *Montgomery County Sentinel,* as well as the editor and the reporters who authored the article, one of whom was Bob Woodward, now with the *Washington Post.*

freedom of the press

Los Angeles, California

In June the California Supreme Court refused to hear the appeal of KPFK general manager Will Lewis, who was cited for contempt for refusing to surrender a purported "communique" from the Symbionese Liberation Army.

The radio station received the message in October 1975 and in February was told by a Los Angeles Superior Court to release it to a grand jury. Lewis, who said he battled the courts on grounds of principle, conceded that he would probably give up the message, which he now suspects is not genuine. Reported in: *Variety,* June 9.

Los Angeles, California

U.S. District Court Judge Harry Pregerson refused in June to ban the publication of details of an alleged affair between President John F. Kennedy and Judith Exner. Exner's attorney had requested a temporary restraining order against the *Star,* a national weekly newspaper, which published purported excerpts from a book written by Exner.

Exner's attorney, Richard C. Leonard, contended that the *Star* had violated her "common law copyright," and that the newspaper knew it had used a "purloined manuscript."

Judge Pregerson told Leonard, "I'm not going to impose any prior restraint on the press. If your clients have been wronged, there are other remedies." Reported in: *New York Daily News,* June 6.

San Diego, California

In a May ruling California Superior Court Judge Douglas R. Woodworth upheld a San Diego ordinance banning street newsstand displays of materials depicting nudity and sexual activity. "What we are talking about here is continuous exposure of lurid, salacious pictures on the front pages of papers on newsracks. [The law] is a reasonable exercise of police power," Woodworth said.

Woodworth, who refused to grant a motion for summary judgment filed by the American Civil Liberties Union of Southern California, indicated that he would have declared the ordinance invalid if he had believed that it infringed freedom of the press.

An attorney for the ACLU allowed that the ordinance was designed to control sexually explicit publications, but he argued that the city could use the law to control other content. Reported in: *San Diego Tribune,* May 31.

Chicago, Illinois

Chicago police agreed in U.S. District Court in June not to interfere with the circulation of a magazine containing two articles critical of police activities. The magazine, *Keep Strong,* published by a community group known as the Intercommunal Survival Committee, criticized Town Hall District Police Commander Thomas M. Hanley for harassing Uptown-area youths with unwarranted arrests. The magazine also criticized the police department's beat representative program.

A suit filed by the community group against the police department charged that police had arrested one person for selling the magazine without a peddler's license and had threatened others with arrest unless they stopped selling it. The suit said municipal ordinances requiring peddlers to obtain city licenses do not apply to persons selling newspapers and magazines, whose freedom is guaranteed under the First Amendment.

In the hearing in federal district court, police lawyers agreed that an order would be issued by teletypewriter to all police districts instructing officers not to arrest persons selling the magazine.

In an interview with the press, Commander Hanley accused the magazine of printing "complete lies" and called its publishers "vicious people." Reported in: *Chicago Daily News,* June 8, 10.

Macomb County, Michigan

Ruling on the basis of the First Amendment, a Macomb County Circuit Court judge in July dissolved an order which had temporarily blocked the publication of a political leaflet. The order against the leaflet was obtained by James Scandirito, a Mt. Clemens attorney who sought the Democratic nomination to Congress from Michigan's 12th District.

The leaflet was prepared by the Suburban Alliance, a group of thirty-seven private individuals which sometimes endorses Macomb County political candidates. Scandirito charged that he was duped by the group into participating in rating interviews which he said were "biased and unfair."

William Ross, attorney for the Suburban Alliance, argued that the Constitution allows the unfettered publication of political opinions, and "any prior restraint on expression comes to [the courts] with a heavy presumption against its constitutional validity."

Judge Raymond Cashen agreed with Ross, and dissolved

the restraining order. Reported in: *Detroit Free Press,* July 7.

New York, New York

Le Mistral, a French restaurant on New York's East Side, was awarded $250,000 in punitive damages from CBS, plus $1,200 in compensatory damages, on a trespassing charge arising from a CBS-TV news team's appearance at the restaurant and its subsequent filming of patrons on July 6, 1972.

The jury which made the award heard evidence that the CBS crew, filming for a story on a Board of Health citation of unsanitary equipment at the restaurant in April, entered the establishment over objections from owner Jean Larriaga. The footage was aired on the station July 6, one day after the Board of Health had conducted a follow-up inspection and found the violations corrected.

CBS, which claimed that it did not know that its Board of Health information was incorrect, insisted its crew was entitled to enter the restaurant under First Amendment protection. An attorney for the restaurant claimed his client's right to privacy outweighed the privilege of the press.

CBS said it would ask the court to set aside the verdict because the charge to the jury was so worded that any reporter could have been subjected to a trespassing violation merely by entering the restaurant for any purpose other than eating. Reported in: *Variety,* June 9.

New York, New York

The U.S. Court of Appeals for the Second Circuit refused in June to uphold the order of a federal judge in Brooklyn that excluded both the press and spectators from a $5 million negligence trial involving the suit of singer Connie Francis against Howard Johnson Motor Lodges.

Francis, who was raped at the Howard Johnson Motor Lodge in Westbury, Long Island, claims in her suit that the chain's unit there was not "adequately protected or safe."

The judge presiding over the trial excluded the press and the public after Francis' lawyer charged that press coverage was creating "a carnival atmosphere" and "arousing prurient interest." In overturning the order, the appeals court said that the public and the press cannot be barred from a civil trial except under the "most extraordinary circumstances."

Speaking for Judges James L. Oakes and J. Joseph Smith, Judge Walter R. Mansfield said that an exclusionary order requires "a showing of compelling reasons involving the safety of a witness or some other reason outweighing the public interest in the quality of justice being dispensed." Reported in: *New York Times,* June 11; *New York Daily News,* June 15.

Columbus, Ohio

In two cases involving court orders excluding the press from criminal trials, the Ohio Supreme Court in June ruled in favor of the *Akron Beacon Journal* and Dayton Newspapers Inc. (see *Newsletter,* March 1976, p. 47). The decisions, written by Chief Justice William C. O'Neil, declared:

"The majority of this court is of the opinion that where the constitutional right of a criminal defendant to a fair trial can be protected by the traditional methods of voir dire, continuance, change of venue, jury instructions or sequestration of the jury, the press and public cannot be excluded from a criminal trial or hearing and no order can be made which prohibits the publishing of news reports about statements made or testimony given during such proceedings.

"An order not to publish cannot be considered unless the circumstances are imperative, and it appears clearly in the record that defendant's right to a fair trial will be jeopardized and that there is no other recourse within the power of the court to protect the right or minimize the danger to it." Reported in *Editor & Publisher,* June 19.

Richmond, Virginia

The U.S. Court of Appeals for the Fourth Circuit ruled in July that the sealing of all court papers in connection with the corruption trial of Maryland Governor Marvin Mandel was an "unnecessary prior restraint on freedom of the press." News organizations in the Washington area had asked the appeals court to force U.S. District Court Judge John H. Pratt to lift his order making secret pretrial proceedings in the prosecution of the governor.

Judge Pratt's order was considered unusual because it required the sealing of all the papers, rather than a few documents that might have been considered sensitive. The order was viewed as unusual also because it was initiated by the judge and not by the prosecution or any of the plaintiffs.

In a brief filed with the appeals court, Attorney Joseph A. Califano Jr. said that "under our system of government neither [Judge Pratt] nor any of his brethren in the district court have the constitutional right, much less wisdom, to determine the difference between 'necessary' and 'unnecessary' publicity about a major criminal trial." Reported in: *Washington Post,* June 30; *New York Times,* July 22.

libel

Washington, D.C.

A July ruling by the U.S. District Court for the District of Columbia dismissed a $15 million libel suit filed against the *Washington Star* by a major defense contractor. Martin Marietta Corp. brought the suit last fall against reporter Peter Gruenstein, the Capitol Hill News Service, and the *Star* after the newspaper published an article which Martin Marietta termed a false account of a stag party allegedly attended by Pentagon officials at a Maryland hunting lodge.

The suit against Gruenstein and the Capitol Hill News

Service remained in court. Reported in *Chicago Sun-Times,* July 27.

Oklahoma City, Oklahama

Ruling on a presumption of malice in Oklahoma's libel and slander statutes, the Supreme Court of Oklahoma concluded that malice may not be assumed from the mere fact of publication. According to the statutes, a plaintiff had only to prove that injurious material was published or spoken by the defendant concerning the plaintiff. The court also found unconstitutional a statutory provision requiring a minimum judgment of $100 plus costs, with no proof of loss or damage required. Reported in: *West's Judicial Highlights,* July 15.

freedom of information

Washington, D.C.

Freedom of Information Act suits filed in U.S. District Court by Tom Hayden and Eldridge Cleaver received different responses to requests for information compiled by the Federal Bureau of Investigation on their civil rights and anti-Vietnam war activities.

The Justice Department's request for a four-year delay to process Hayden's inquiry was denied and the department was told to make all releasable material available by September 1. Judge William B. Bryant rejected the agency's arguments that exceptional circumstances existed and that—in the language of the FoIA—it had exercised "due diligence" in responding to Hayden's request.

Judge Bryant said: "The court is unable to square the bureau's request for a four-year suspension of the act with any concept of ['due diligence']." He added that "the legislative history of the 1974 amendments [to the FoIA] leaves no doubt that the bureau's request is not even remotely compatible with the act or the intent of Congress. The section on which the bureau relies . . . is not intended to convert the federal courthouse into a haven of refuge from the time pressures of the act. . . . "

In the case of Cleaver, who sought material which would be useful in his trial in California on state criminal charges, Judge June Green accepted the government's arguments that unforseen difficulties had resulted in unavoidable delays in processing the request.

Cleaver's request was filed in February 1976, and because of the trial, he had asked that the request be expedited. The FBI refused, stating that it could not have predicted the volume of FoIA queries it had received and that it was faced with a backlog of more than 6,000 cases. Reported in: *Access Reports,* June 14.

Washington, D.C.

In a ruling by U.S. District Court Judge John Lewis Smith Jr., the Justice Department was directed to supply a more detailed index of its material on the Church of Scientology than it had previously compiled. The judge noted that the first index did not conform to requirements outlined by the U.S. Court of Appeals for the District of Columbia in its decision in *Vaughan* v. *Rosen.*

The suit was filed by the church after the Justice Department refused to release materials sought in the church's FoIA request relating to the church, its founder, Ron Hubbard, and to all the church's affiliates.

The Church of Scientology has been one of the largest users of the FoIA to obtain government information. At the time of Judge Smith's ruling, the church pursued ten separate suits in District of Columbia courts alone. Reported in: *Access Reports,* July 2.

Chicago, Illinois

Chicago, Illinois

The Federal Bureau of Investigation was ordered in July by U.S. District Court Judge Alfred Y. Kirkland to produce information relating to FBI surveillance of J. Robert Oppenheimer in 1953 and 1954. The information was requested under the Freedom of Information Act by the *Chicago Sun-Times* in connection with the preparation of a story on that surveillance.

In 1975 a *Sun-Times* story disclosed how the FBI wiretapped conversations between Oppenheimer and his lawyers. Oppenheimer, widely known as the developer of the atomic bomb, was accused of being a security risk in charges drawn up in 1953 by Harold P. Green, then a lawyer for the Atomic Energy Commission.

Judge Kirkland also ordered the FBI to "provide detailed justification, itemization, and indexing" of any documents for which it claimed an exemption under the provisions of the Freedom of Information Act. Reported in: *Chicago Daily News,* July 2.

Burlington, Vermont

U.S. District Court Judge James S. Holden refused in March to grant legal fees to a plaintiff in a suit filed under the Freedom of Information Act when the government supplied the bulk of requested material after the litigation had begun. The decision ran counter to opinions expressed by judges in two other districts, who ruled that government concessions which render a case moot before a final opinion is entered represent no bar to the awarding of fees (see *Newsletter,* July 1976, p. 93).

Judge Holden refused to grant the Vermont Low-Income Advocacy Council's request for reasonable attorneys' fees on the grounds that "there has been no judicial action to establish the plaintiff as the prevailing party." To hold otherwise, the judge argued, "would tend to discourage voluntary compliance after judicial review is taken. Such a course would work against the policy of the [FoI] Act."

The Vermont council, a nonprofit corporation, sought access to Labor Department records relating to Vermont apple growers' attempts to recruit domestic labor in the summer of 1975. The records were initially denied to the group on the basis of Exemption 5, concerning inter-and

intra-agency memoranda. Approximately five weeks after the council filed suit, the Labor Department turned over most of the requested records. Reported in: *Access Reports,* June 14.

academic rights

San Francisco, California

In what was believed to be the first ruling of its kind, U.S. District Court Judge Charles B. Renfrew decided that a Harvard professor need not disclose information obtained confidentially in the course of academic research. The decision was announced in June by Harvard General Counsel Daniel Steiner, who said, "As far as we know, this is the first case involving a university scholar where a court has provided protection for research data."

Interviewed by the press, Steiner commented that the case was important because "a fair amount of academic research, especially in the social sciences, involves confidential relations between a researcher and his sources."

Judge Renfrew's decision stemmed from the refusal of Marc J. Roberts, a professor of political economy in the Harvard School of Public Health, to produce his research notes in a civil case.

Attempts to obtain Roberts' data, which he claimed were protected by the First Amendment, were made by Richards of Rockford Inc., an Illinois-based supplier of environmental equipment, which sought details of Roberts' interviews at Pacific Gas and Electric Company in California.

Roberts interviewed employees of Pacific Gas in 1974 as part of a research project investigating the manner in which utility companies make environmental decisions. In return for permission to make the interviews, he pledged confidentiality to the California utility. Later, Richards of Rockford filed a breach-of-contract suit against Pacific Gas seeking final payment for the design, manufacture, and delivery of equipment to the power company for use in its plants.

Judge Renfrew said: "Society has a profound interest in the research work of its scholars, work which has the unique potential to facilitate change through knowledge. Compelled disclosure of confidential information would without question severely stifle research into questions of public policy. . . . " Reported in: *Washington Star,* June 8; *New York Times,* June 13.

Kansas City, Missouri

The refusal of the University of Missouri-Columbia to grant recognition to Gay Lib as a bonafide campus organization was upheld in June by U.S. District Judge Elmo B. Hunter. The judge found that the university and its curators had not violated the First Amendment or the Twelfth Amendment in their refusal to grant the recognition.

At stake was the organization's right to hold meetings on campus and receive an allotment from student activities fees.

Judge Hunter's thirty-nine-page opinion declared: "Certainly it is the law that the university, acting here as an instrumentality of the state, has no right to restrict speech or association simply because it finds the views expressed to be abhorrent.

"However, the First Amendment does not require that the university sanction and permit the free association of individuals as a campus organization where, as the court finds from the evidence, that association is likely to incite, promote, and result in acts contrary to and in violation of the sodomy statute of the state of Missouri." Reported in: *St. Louis Globe-Democrat,* June 30.

Elkins, West Virginia

Joan Rypkema, a Berkeley Springs, West Virginia high school teacher fired over a controversial book, last spring won a tenured teacher's contract and $15,000 in damages in a settlement with the school board which was approved in U.S. District Court. Rypkema had charged in court that nonrenewal of her contract for the 1973-74 academic year violated her rights of free speech, academic freedom, and due process.

In 1973 Rypkema provided her eleventh-grade English classes with an optional list of paperbacks for possible purchase, including *The Little Red School Book,* which deals candidly with aspects of young people's lives ranging from relationships with parents to sex.

Rypkema informed her students that the book might be considered controversial, and that an order should not be placed if parents would object. The school board, however, later refused to renew her contract on the basis of rumors about parental complaints against the book, although it gave her no notice of the meeting during which the rumors were discussed nor any chance to refute them. Reported in: *DuShane Fund Reports,* April 30.

Cheyenne, Wyoming

A former Cheyenne teacher and former president of the Cheyenne Federation of Teachers last spring won a free speech decision from the Wyoming Supreme Court, which upheld a lower court ruling that a school board could punish a teacher only if activities outside the school disrupted or impaired discipline in the teaching process or substantially interfered with requirements and discipline in the school's operation.

The teacher, Sydney Spiegel, was brought before the Cheyenne school board in 1973 and accused of having an "educational philosophy" that differed from the board's. Although he had taught in Cheyenne schools for nineteen years, the board refused to renew his contract.

"We acknowledge it to be the law that a teacher has the right to criticize his or her employers," the Supreme Court said. "The contract teacher may not be deprived of employ-

ment contract renewal without cause." Reported in: *American Teacher,* June 1976.

students' rights

Los Angeles, California

California Superior Court Judge Norman R. Dowds ordered in May that Lynwood High School student Daniel St. Ledger be reinstated as editor of the school paper, the *Castle Courier.* Dowds refused, however, to order faculty advisers to print the articles that had prompted his demotion from editor to reporter.

The dispute arose in April when student reviews of "Mary Hartman, Mary Hartman" and an *R*-rated movie, *I Will, I Will . . . For Now,* were withheld from publication by a journalism instructor, Mark Deering (see *Newsletter,* July 1976, p. 86). Deering prohibited publication of the reviews, because he felt they "advocated pornography."

Following the decision, St. Ledger and other students involved in the incident appealed to the American Civil Liberties Union of Southern California for assistance. When the ACLU and the students were unable to achieve reversal of the decision by appealing to the school board, they sought redress in the courts.

In his decision ordering St. Ledger's reinstatement, Judge Dowds stated that he believed St. Ledger had been demoted from editor to reporter because of his disagreement with the censorship of the articles and thus must be reinstated. He refused, however, to order publication of the contested articles, saying:

"I think it might be possible at a trial to show the student newspaper was the only feasible way to express opinion or to discuss a particular subject and the refusal to permit articles to appear in the student newspaper would infringe on the First Amendment. But I think at this time there hasn't been sufficient showing that the faculty of the school had relinquished to the students the authority to decide what should go in the limited space of the student newspaper." Reported in: *Los Angeles Times,* May 19.

Montgomery County, Maryland

Parents of tenth-grade students at Potomac's Wootton High School failed in June to obtain a court order to stop the school from showing a sex education program to their children. Ruling the parents' request for legal action, Montgomery County Circuit Court Judge Phillip M. Fairbanks advised that the case should be taken to the Maryland Board of Education.

The slide program, scheduled to be shown to 302 tenth graders, roused the objections of parents who said that it had not been properly approved, and that its content was out of date and misleading.

John P. O'Hara, the father of a tenth-grade student and the attorney for the parents, emphasized that his group did not object to sex education at the school. "These are not just a bunch of mothers sticking their heads into the sand," he said. Another parent added, "My objection is that the material going to be shown is not current, not correct, and that [the school] did not follow the correct procedures."

Principal James Coles responded that the slide program was approved by the county's department of curriculum. "There's nothing in the bylaws that says the parents have to review the program," he said.

Parent Martha Verme contended that the program, "Family Planning: Decisions and Methods," "does not warn that no contraceptive device, except the condom, protects against veneral disease." Reported in: *Washington Post,* June 8.

GIs' rights

Washington, D.C.

A Marine Corps regulation prohibiting the distribution of "political literature" on Marine bases without the approval of commanders was invalidated as unconstitutional by U.S. District Court Judge Barrington D. Parker. The May ruling was handed down in a case filed on behalf of three Marines who were arrested for distributing such literature without permission at the Marine Corps Air Station in Iwakuni, Japan.

Although the Supreme Court had recently decided that military personnel do not have the full range of First Amendment rights afforded civilians, Judge Parker said that the ruling did not apply to the case before him because there was "no demonstrated need which justifies military restrictions on free expression."

Judge Parker cited rulings of other judges who have questioned the Supreme Court's ruling, and added: "Perhaps encouragement of more freedom of thought would have sparked recognition of unlawful orders in the Vietnam war and prevented atrocities such as the massacre of civilians at My-lai."

The political literature in the case consisted of a copy of a copy of the Declaration of Independence with attached comments. Judge Parker observed that the disapproval of the distribution was based "on the content of the petitions and leaflets rather than legitimate military security requirements." Reported in: *Washington Post,* May 22.

freedom of expression

St. Paul, Minnesota

Arguing that nude nightclub dancing is "in the same category as Margot Fonteyn" under the Constitution, a St. Paul Municipal Court judge dismissed charges against dancer Linda Henderson, who was accused of violating Minnesota's indecent exposure law and St. Paul's nudity ordinance in her act at the Payne Reliever Bar.

"It is not for the courts to enforce the cannons of good taste," the judge said. He noted that there was no evidence that Payne Reliever customers found the dancer's act either "repulsive or obscene," and added that "only actual or simulated ultimate sex acts" could be considered obscene.

However, Judge Summers noted that the city could constitutionally prohibit the sale of liquor in establishments where nude dancing is offered. Reported in: *Variety,* July 7.

obscenity law

Montgomery, Alabama

The conviction of a newsstand operator for selling obscene literature in Montgomery was overturned in June by the Alabama Court of Criminal Appeals on the grounds that remarks made to the jury by Circuit Court Judge Frank Embry were improper.

The appeals court noted in its decision that Embry said to the jury in his charge: "You will have with you the complaint in this case and you will have with you during your deliberation the exhibits that have been offered in evidence. This is a sordid case, filthy in the view of the court, and I think it would be in the view of you jurors."

In an opinion written by Judge Aubrey Cates and concurred in by the rest of the court, the judges said, "Unlike England and our federal jurisdiction, Alabama does not let a judge sum up the evidence on his own motion."

The court said that Embry's comment invaded the jury's province "in practically telling the jury how to decide the obscenity of the proferred material" and "cannot be cosmetized by the application of the harlmess error doctrine." Reported in: *Montgomery Journal,* June 3.

Los Angeles, California

A sharply divided California Supreme Court ruled in June that law enforcement officers in California may not use public nuisance laws to close bookstores and movie theaters displaying sexually explicit material. The court declared that whereas such laws may be used to ban display of obscene materials, they cannot be employed against books, magazines, and films not yet found obscene in a full court hearing.

Shutting down bookstores and theaters in such cases or enjoining display of material not yet found obscene would constitute an "impermissible prior restraint," the court said.

The court's ruling amended a March 4 decision which upheld the use of injunctions under state public nuisance laws to prevent the display of obscene magazines and films (see *Newsletter,* May 1976, p. 68). Reported in: *Los Angeles Times,* June 3.

Hartford, Connecticut

In a May ruling a three-judge state panel upheld the constitutionality of Connecticut's obscenity law. The unanimous opinion of Superior Court Judges David M. Shea, Leo Parskey, and Maurice Sponzo rejected arguments that the law is too vague.

The judges affirmed the conviction of the operator of the Smut Hut in Danbury, but they invalidated three counts of his conviction because they related to a single package containing four magazines.

The court argued that the prosecution could not use each magazine of a transaction to charge separate violations. They said that if each magazine could be considered as the basis of a separate count, a person could also be charged on the basis of each photograph or article in a magazine. Reported in: *Hartford Courant,* May 26.

Chicago, Illinois

Illinois' obscenity laws were overturned in June by a unanimous three-judge federal panel. U.S. Court of Appeals Judge Walter Cummings and U.S. District Court Judges Hubert Will and Joel Flaum found that the Illinois statutes were too vague.

The ruling came in a suit filed against the laws by Eagle Books Inc., owner of two Rockford bookstores charged with illegally selling obscene materials. The judges declared that the laws did not "satisfy the requirements of the federal Constitution and decisions of the U.S. Supreme Court concerning specific definitions of obscenity."

The federal panel also ordered the return of records and equipment to the stores and forbad further arrests at them under the state laws.

Judge Flaum, who wrote the unanimous decision, declared that the Illinois General Assembly and the Illinois Supreme Court had had numerous opportunities to define specifically what constituted obscenity but had failed to do so. He noted that on four occasions the state's high court had upheld the statutes but had failed to include any precise definitions, although the U.S. Supreme Court had declared in 1973, in *Miller* v. *California,* that such definitions were required. Reported in: *Chicago Tribune,* June 2; *New York Times,* June 6.

Joliet, Illinois

Will County Circuit Court Supervising Judge Michael Orenic refused in June to dismiss a 1974 obscenity indictment against a former Lockport theater owner. Judge Orenic's refusal denied a claim that invalidation of Illinois' obscenity law by a three-judge federal panel required that the indictment be voided.

Judge Orenic agreed with State's Attorney Ira Goldstein, who said: "The Illinois Supreme Court has found that a federal district court decision isn't binding on a state court. The trial court should look to Illinois law. The only binding law on the trial court would be [a U.S. Supreme Court ruling]." Reported in: *Joliet Herald-News,* June 1.

Evansville, Indiana

A Vanderburgh County Superior Court judge in June declared Indiana's obscenity law unconstitutional because it makes too many arbitrary distinctions.

The law "contains an unreasonable and unconstitutional classification," Judge Morton Newman ruled. "Many persons and organizations are exempt from the operation of

the statute, although their exemption bears no reasonable relationship to the public's right to protection."

The state law to which Judge Newman objected was enacted in 1974 to replace a statute which was invalidated because it failed to meet standards established by the U.S. Supreme Court in *Miller* v. *California* (1973).

It was expected that Judge Newman's ruling would be appealed to a higher Indiana court. Reported in: *Gary Post-Tribune,* June 9; *Evansville Courier,* June 10.

Topeka, Kansas

Kansas' new law on obscenity (see *Newsletter,* July 1976, p. 82), adopted to bring Kansas statutes into conformity with rulings of the U.S. Supreme Court, was declared valid by Kansas Attorney General Curt Schneider.

Schneider's ruling, handed down in June, was formulated in response to a request from Ernestine Gilliland, state librarian, who had inquired about the law's applicability to libraries.

"Clearly, the Kansas statutory definition conforms with that approved most recently by the U.S. Supreme Court, and is not unconstitutionally vague or defective in any other fashion," Schneider said.

He advised Gilliland that public libraries are not denied equal protection of the law because the legislature omitted them from the statutory defense made available to schools and universities in cases of lawsuits. Although libraries were not given the affirmative defense, Schneider said he could not rule that the omission makes the law patently arbitrary, or that it constitutes denial of equal protection of the laws. Reported in: *Kansas City Times,* June 9.

Highland, New York

In a ruling against Ulster County Prosecutor Francis J. Vogt, the Appellate Division of the Third Judicial Department of the New York Supreme Court declared in June that projectors, film, and other materials owned by theaters showing explicit sexual fare may not be seized under sections of the New York penal code. The judges found that statutes permitting the seizure of film equipment and allegedly obscene films lacked the specificity required by the U.S. Supreme Court in *Miller* v. *California* (1973).

The judges said: "Pursuant to section 410.00 of the Penal Law, any state peace officer may seize any equipment [used to show pictures defined] . . . as 'motion pictures showing acts of sexual intercourse or acts of sexual perversion.' Plainly, this definition is overly broad and does not conform to the criteria established by the U.S. Supreme Court."

Harrisburg, Pennsylvania

A temporary injunction granted in Westmoreland County Common Pleas Court which halted the sale of allegedly obscene material at an adult bookstore was overturned by the Pennsylvania Supreme Court in May. The high court's six-to-one decision cited two cases in which sections of the law allowing judges to halt the sale of allegedly obscene material were declared unconstitutionally vague.

Marjorie Matson, the attorney who represented the bookstore, commented, "It's out, dead, gone, finished. There is no obscenity law in Pennsylvania." Reported in: *Latrobe Bulletin,* May 18.

Dallas, Texas

U.S. District Court Judge Carl B. Rubin declared in June that *Last Tango in Paris* is not obscene and can be shown legally in an Oakwood, Texas theater.

Judge Rubin's order barred the city of Oakwood from interfering with exhibitions of the film and ordered it to return to the owner of the Cinema South a print of the film which it had seized in December 1975.

Judge Rubin said his decision was based on a 1974 ruling by U.S. District Court Judge Timothy S. Hogan in Cincinnati. In the 1974 case, Judge Hogan ruled against Hamilton County Prosecutor Simon L. Leis in declaring the movie "not obscene." Reported in: *Dallas Daily News,* June 23.

obscenity convictions

Baltimore, Maryland

In the first Baltimore jury case involving the distribution of obscene materials, a clerk in a Baltimore bookstore was fined $500 for selling a lewd magazine to a police detective. During the trial, a defense attorney said that the magazine, *Linda Lovelace, The Star of Deep Throat,* was no more offensive than material found in *Playboy, Playgirl, Penthouse, Hustler,* and *Oui,* which were described as readily available in Baltimore. Reported in: *Baltimore News American,* June 30.

Malden, Massachusetts

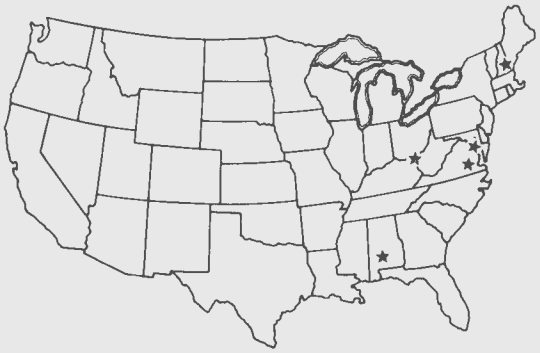
A June ruling by a Malden District Court judge declared *Penthouse* Magazine obscene and resulted in a $500 fine for the news dealer who sold it. Judge Louis H. Glaser said articles in the June edition served only to camouflage "patently offensive sexual conduct." Attorneys who represented the magazine said it was the first time *Penthouse* had been challenged on obscenity grounds in the United States. It was expected that the ruling would be appealed. Reported in: *Washington Star,* June 12.

Las Vegas, Nevada

Two men convicted in May of charges of interstate transportation of obscene films were fined $10,000 each and sentenced to jail by U.S. District Court Judge Robert D. Foley. Jack Tupper, of Reno, was ordered to pay the fine and serve two concurrent five-year prison terms; Bernard Haft, of Las Vegas, was fined and ordered to serve two concurrent sixty-day jail sentences and a five-year period of

(Continued on page 127)

is it legal?



in the U.S. Supreme Court

In June the Supreme Court agreed to review—at the request of New Hampshire's Attorney General—a lower federal court decision which voided a state statute prohibiting motorists from obscuring the motto "Live Free or Die" on auto license plates. The lower court found that the statute infringed First Amendment rights. (*Wooley* v. *Maynard,* No. 75-1453)

Obscenity standards challenged

In one of the few obscenity cases accepted during its 1975-76 term, the Supreme Court agreed to examine the issue of "community standards," in particular, whether federal obscenity standards may be applied in a state which has decriminalized the distribution of sexually explicit fare to adults.

The appeal in the case, *Smith* v. *U.S.* (No. 75-1439), was supported by the Freedom to Read Foundation. *(See report elsewhere in this issue.)*

freedom of the press

Washington, D.C.

The *Washington Post* refused in July a request from the Justice Department to interview two of its reporters who broke the story of the Elizabeth Ray-Wayne Hays affair.

Reportedly, investigators from the Justice Department reached "a serious stumbling block" in trying to determine whether there was misuse of public funds by the Ohio representative. They were anxious to interview the reporters, Rudy Maxa and Marion Clark, in order to help corroborate the allegation by Ray that she was hired by Hays only to provide sexual services.

Parties to the dispute were under a gag order filed by Chief Judge William B. Jones of the U.S. District Court. Allegedly, investigators were planning to ask Attorney General Edward H. Levi for permission to subpoena the reporters—a move that could cause a major confrontation between the *Post* and the government. Reported in: *Washington Star,* July 23.

commercial speech

Washington, D.C.

It was revealed in June that the U.S. Justice Department had prepared a suit against the American Bar Association and the bar groups of each of the fifty states in order to end their traditional prohibitions against advertising by lawyers.

Although the American Bar Association moved last spring to ease its restrictions by authorizing some advertising in the Yellow Pages and in legal directories and listings, officials of the Justice Department made apparent their displeasure with the failure of the ABA to adopt more significant changes.

Deputy Assistant Attorney General Joe Sims told the Arizona State Bar in an April speech that the changes "demonstrate an extremely disappointing continuation of a now fifteen-year history of stubborn refusal to accept reality."

"I daresay that if such a code were adopted by almost any other occupation in the country, that occupation would be subject to serious antitrust risks, if only because agreements among competitors to limit or restrict price advertising are generally considered per se violations of the antitrust laws," Sims stated. Reported in: *Washington Post,* June 17.

students' rights

Baltimore, Maryland

After lying dormant for more than a year, the question of censorship of student newspapers in Baltimore County schools rose to the surface in May when a federal court approved new county guidelines.

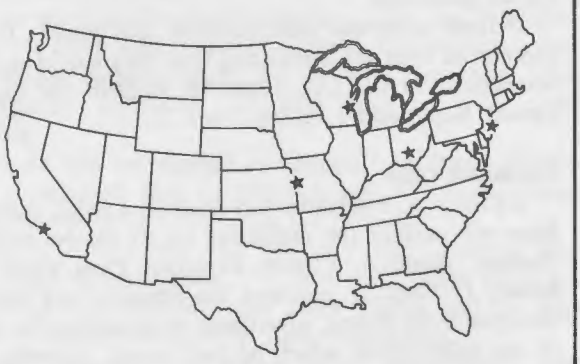
Attorney Barbara Gold, who represents the student plaintiffs in the case, said the step-by-step appeals process established by the policy was "too protracted" to be acceptable.

The censorship controversy began in 1973 when three students at Woodlawn Senior High appealed county school system regulations which permitted prior review of student newspapers by administrators. At that time the students contended that officials could prescribe only the time, manner, and place of distribution of student publications (see *Newsletter,* September 1974, p. 122; July 1975, p. 110).

In April 1975 the U.S. Court of Appeals for the Fourth Circuit rejected previous school regulations as unconstitutionally "vague and overbroad." After the regulations were struck down, attorneys for the school system worked to develop new guidelines which would be

(Continued on page 127)

success stories



Los Angeles, California

At the recommendation of County Librarian Carol E. Moss, the Los Angeles County Board of Supervisors has approved a new policy to open county library meeting rooms to political gatherings.

Moss sought the change to bring the county's policy into line with the *Library Bill of Rights,* which states: "As an institution of education for democratic living, the library should welcome the use of its meeting rooms for socially useful and cultural activities and discussion of current public questions. Such meeting places should be available on equal terms to all groups in the community regardless of the beliefs and affiliations of their members, provided that the meetings be open to the public."

Kansas City, Missouri

Librarian Harold R. Jenkins, head of the Kansas City Public Library, announced in a May memorandum to the Kansas City Board of Education, which is responsible for the library, that the film *About Sex* would be released for public use. The movie was temporarily withdrawn from general circulation after complaints against it were filed by Frances Frech, former president of Missouri Citizens for Life, an anti-abortion group (see *Newsletter,* July 1976, p. 85).

After withdrawing the film from circulation, Jenkins had announced that an advisory committee would be formed to review the film. However, he reported in his memo to the board that "I have decided an advisory committee would serve to confuse the situation. We have had two years of use of the film, and the film has already been exposed to the best possible review with only one negative response."

Jenkins added that his staff had considered the question and was "satisfied the film properly meets the needs of the community." Reported in: *Kansas City Star,* May 27.

West Orange, New Jersey

The director and the board of the West Orange Public Library refused last spring to bow to pressures from the New Jersey Policemen's Benevolent Association to remove *Inner City Mother Goose* from library shelves (see *Newsletter,* July 1976, p. 102). At its annual conference in Atlantic City, May 6-7, the New Jersey Library Association unanimously passed a resolution praising the West Orange institution:

"Be it resolved, that the New Jersey Library Association unequivocally support the right of the board of trustees and the director of the West Orange Public Library to have in the library's collection copies of Eve Merriam's *The Inner City Mother Goose,* and their determination, under attack, to keep this book on the library's shelves; and

"Be it further resolved, that the New Jersey Library Association urge all boards of trustees and library directors to follow the example set by the West Orange Library board and director in similar situations."

The PBA became aware of the book when a police department secretary accompanied her sixth grade daughter to the library for a school project on urban literature.

Dayton, Ohio

The Mad River Township School Board voted in June to retain *A Tea Cup Full of Roses,* by Sharon Mathis, in the curriculum of an eighth grade communication arts course.

Earlier in the year, parents had objected to the novel, which depicts black life and drug addiction in inner city slums. Reported in: *Dayton News,* June 11.

(Censorship dateline . . . from page 116)

approved, the program will be implemented in February. Reported in: *Washington Post,* July 9.

Milwaukee, Wisconsin

After the film *Night at the Sunset* was viewed by a class of juniors and seniors at Greenfield High School, parents raised objections to its depictions of "teenage drinking, pot smoking, dirty talking, and sex." Ruth Melnick, a Greenfield parent, arranged a showing of the film for parents and other citizens at her own expense in order to afford them an opportunity to determine whether it was an appropriate film for educational use.

During the heated discussion which followed the presentation, one of the viewers, Beverly Karpfinger, mother of eight, stated, "I'm more worried about censorship and people telling me and my children what we can read than I am about things you may think are immoral." In response Melnick argued that parents should "withhold their children or tax dollars until the school gets cleaned up." Reported in: *Milwaukee Sentinel,* June 25.

etc.

Washington, D.C.

The chief chaplain of the Veterans Administration has ordered a "sacrilegious" hymn removed from 15,000 newly

purchased hymnals. VA Chief of Chaplains James Rogers sent a directive to all chaplains in July stating that "Hymn No. 286 shall be removed from all new Books of Worship within twenty-four hours."

The Book of Worship for the United States Forces was published in 1974 as a multi-faith hymnal. The controversial hymn, "It Was on a Friday Morning," expresses the bitterness of one of the thieves crucified with Jesus. Its critics have taken exception to the refrain in which the thief, in his dying anguish, says:

It's God they ought to crucify
Instead of you and me,
I said to the carpenter
A-hanging on the tree.

Rogers said the decision to order the hymn removed was entirely his own. "There were no pressures," he insisted.

Rogers commented that the hymn was removed because "we do not think it's a proper hymn to be sung in a hospital where there are sick people. . . . It is sacrilegious."

The hymn became a target for conservative Christian groups, who organized letter-writing campaigns to Congress and Armed Forces chaplains. A number of congressional wives, including the wife of C. Melvin Price, head of the Armed Forces Services Committee, were prominent in protesting the hymn. Reported in: *Washington Post,* July 20.

Santa Barbara, California

A float carrying revolutionary war slogans critical of the government was barred in June from a Bicentennial parade in Santa Barbara.

The American Revolutionary Bicentennial Committee, in charge of the parade, turned down a request from the People's Bicentennial Committee to enter a float in a July 4 parade in honor of basic freedoms. The float quoted famous patriots who criticized government institutions and warned against government excesses.

"Our group stands for the good points of the nation," parade coordinator Ward Jenks said, adding that the People's Bicentennial Committee was "trying to put out that the profit system and these things are wrong."

Jenks said one of the objectionable placards quoted Thomas Jefferson's remark that a revolution every few generations would be good for the nation. Another Jeffersonian quote asserted that banking establishments were a bigger threat to the nation than a standing army.

One of the forbidden quotations was a remark by James Otis: "It is the duty of every good citizen to point out what he thinks is erroneous in the commonwealth." Reported in: *Los Angeles Times,* June 30.

(From the bench . . . from page 124)

probation.

The men were found guilty by an eight-woman, four-man jury which determined that four 8mm films shipped from Philadelphia to Las Vegas in 1974 were obscene under federal guidelines.

Defense attorneys Alan Andrews and Burton Jacobson announced after the sentencing that they would appeal the convictions to the U.S. Court of Appeals for the Ninth Circuit. Reported in: *Variety,* June 23.

Cincinnati, Ohio

A Cincinnati bookstore was declared a public nuisance in June and nine of the magazines on its shelves were ruled obscene. Hamilton County Common Pleas Court Judge Robert L. Black Jr. enjoined the operator and owners of the store from selling, advertising or possessing for sale any of the publications which he had found "patently offensive." He also barred use of the premises of the store for any purpose for one year. Reported in: *Cincinnati Enquirer,* June 22.

San Antonio, Texas

A San Antonio man whose club was raided several times for showing *Deep Throat* was convicted in June of charges of commercial obscenity and fined $900 by County Court at Law Judge Carolyn Spears.

The convicted man, Gary Rape, tried unsuccessfully to halt the raids with a federal court injunction, but U.S. District Court Judge John Woods denied all motions for relief two days before the final raids at the club. Reported in: *San Antonio News,* June 24.

Salt Lake City, Utah

The owner of Salt Lake City's Gallery Theatre was sentenced in July to serve six months in the Salt Lake City-County Jail following his conviction of charges of showing an obscene film, *Memories Within Miss Aggie.*

The sentencing judge, Peter F. Leary, denied motions for a new trial and for an arrest of judgment. However, Judge Leary kept under advisement an order to show cause why Assistant Utah Attorney General Robert B. Hansen should not be held in contempt of court for possible jury tampering. Hansen was asked to explain why he made comments to a television reporter on how the jury was expected to vote, and was criticized by the judge for conduct unbecoming a prosecutor. Reported in: *Salt Lake City Tribune,* July 9.

(Is it legal? . . . from page 125)

acceptable to the U.S. District Court, to which the appeals court had remanded the case.

The new policy also prohibits distribution of any obscene, libelous or disruptive publications, bans "disruptive" distributions, and permits circulation of nonofficial school publications only with the approval of principals. Reported in: *Baltimore Sun,* June 14, July 15.

obscenity law

Birmingham, Alabama

Although a Jefferson County jury ruled last year that the movie *Deep Throat*, is not obscene, Birmingham police chief James Parsons announced in June that those who subsequently exhibited the film may be subject to penalties.

Parsons said he received an opinion from Birmingham's legal department that exhibitors could be arrested even though one jury ruled the movie not pornographic.

Parsons commented that the city had obtained two convictions against persons for showing a movie which he considered less offensive than *Deep Throat* and for that reason planned to arrest *Deep Throat* exhibitors.

"This is part of a new effort against pornography," the police chief said. "We have been advised by our legal department that they will assist us in eradicating the problem." Reported in: *Birmingham Post-Herald,* July 1.

Cincinnati, Ohio

Hustler publisher Larry Flynt and other owners and officers of the magazine were indicted in May by a Hamilton County Grand Jury on charges of pandering obscenity in the Cincinnati area and engaging in organized crime.

Carol Trimble, public relations director for the magazine, said the indictments were "simply more harassment from the Hamilton County Prosecutor's office." She contended that the magazine's officers and employees were innocent of the charges and was confident that they would be cleared. "It is amazing to us," she said, "that, out of a world-wide distribution, the only place we have problems is in Cincinnati."

Publisher Flynt called Hamilton County Prosecutor Simon Leis Jr. paranoid and questioned the "sexuality" of both Leis and his first assistant, Fred Carolano. Reported in: *Cincinnati Enquirer,* May 21, 22; *Cincinnati Post & Times Star,* May 21.

Rutland, Vermont

The authority of a Vermont town to draw up its own obscenity laws received a legal setback in June when Superior Court Judge William C. Hill temporarily suspended enforcement of a new ordinance adopted by Rutland in efforts to close an adult bookstore opened on Rutland's main street.

In a challenge to the law, Vermont's first local obscenity ordinance, an attorney representing the adult bookstore told Judge Hill that the measure conflicted with the Vermont obscenity law and breached his client's constitutional rights. Reported in: *Rutland Herald,* June 6.

Washington

A petition circulated throughout Washington State by the Committee for Decency in Environment-Entertainment Today will appear on the Washington ballot in November. Known as Initiative No. 329, the measure would allow the closing of "lewd" establishments.

According to the measure, "lewdness" includes obscenity and "all those meanings which are assigned to it under the common law." It would define as "moral nuisances" any places showing lewd films or which are occupied for the sale of lewd publications or other "purposes of lewdness."

Under the initiative, a legal finding that an establishment was operated as a "nuisance" would permit a court to close its premises to all operations for a year.

Brazil censors Declaration of Independence

Brazilian government censors in July forbad the editors of a Brazilian weekly to print the full text of the American Declaration of Independence.

"The federal police said that, according to the general instructions on censorship received from the Ministry of Justice, they had to cut parts of the Declaration of the American revolutionaries of 1776, but found that inappropriate and preferred to cut the whole text," the editors of the weekly, *Movimento,* said in a statement.

The government censors had no comment. Reported in: *Chicago Tribune,* July 6.

Toronto 'Show Me' proceeds

Parents need the sex education book *Show Me!* to help them overcome feelings of anxiety, shame, and guilt, Toronto psychiatrist Robert Pos told a Canadian court hearing in June.

Testifying on behalf of Macmillan Co. of Canada, charged with possession of obscene material for distribution, Pos said the public good would be served by the book's being published in Canada. "My personal bias is that parents need it first of all," said Pos, formerly chief of psychiatry at Toronto General Hospital and the author of several papers on psychiatric research.

In an appearance to contradict the statement of Marshall McLuhan that the book was "straight out of Nazi Germany," Rabbi Gunther Plaut said the book would not have been written in Germany. Plaut, who lived under Hitler from 1933 to 1935, said that if it had been written, it would not have been published, and if somehow it had been published, it would have been banned.

"The Nazis would have found it highly objectionable to their morality," Plaut said.

In his testimony, McLuhan compared the book to the propaganda of Hitler and Goebbels and said, "It is inconsistent with the survival of private identity." Reported in: *Toronto Globe and Mail,* June 22.

psyching Douglas' vote

AAParagraphs

A Supreme Court case with First Amendment implications on which one is not certain how former Justice Douglas would have voted? Unthinkable—or at least unlikely. But so in fact ran a *Washington Post* comment on the Detroit zoning case that went to the Court as *Gribbs* (then Detroit's mayor) v. *American Mini Theatres,* and came down last summer as *Coleman Young* (present mayor) vs. the same defendants.

In the five-to-four decision, one of the first written by the newest, Ford-appointed justice, John Paul Stevens, the Court upheld a zoning ordinance that prohibits "adult theaters" from locating within 1,000 feet of any two other "regulated uses," or within 500 feet of a residential area. A lower court had held the 1972 ordinance unconstitutional as a prior restraint on protected expression and a denial of equal protection. Essentially, the decision gives cities the green light to use zoning to protect the character of neighborhoods, whether they choose to spread out adult establishments, as Detroit did, or to concentrate them in well-defined areas, as do, for example, Baltimore and Boston.

AAP's Freedom to Read Counsel has analyzed the Young decision, terming it significant in that it marks the first time the Court has explored the implications of zoning ordinances on First and Fourteenth Amendment guarantees of freedom of expression.

Perhaps the single worst feature of Stevens' opinion was what lawyers characterize as "obiter dicta": a judge's opinions, so incidentally related to the case that they do not become binding. In these, Stevens seems to envision two tiers of expression subject to First Amendment protection, one less protected than the other: ". . . there is surely a less vital interest in the uninhibited exhibition of material that is on the border line between pornography and artistic expression than on the free dissemination of ideas of social and political significance," Stevens wrote in introducing his rejection of the claim that the ordinance is vague.

Again: ". . . though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate that inspired Voltaire's immortal comment." (It was Voltaire who said: "I disapprove of what you say but will defend to the death your right to say it.")

And finally: ". . . few of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theaters of our choice. Even though the First Amendment protects communication in this area from total suppression, we hold that the State may legitimately use the content of these materials as the basis for placing them in a different classification from other motion pictures."

But, as with the traditional ill wind, the decision blew some good. First, there was genuine concern for freedom of expression in the concurrence of Justice Powell, often considered a "swing" justice on First Amendment issues: "At most the impact of the ordinance on [freedom of expression and viewing] is incidental and minimal. Detroit has silenced no message, has invoked no censorship and has imposed no limitation upon those who wish to view [adult movies]," Powell wrote. To him, the case was merely "an example of innovative land-use regulation, implicating First Amendment concerns only incidentally." He even mentioned books, fleetingly, noting that past cases reveal that "the central concern of First Amendment in this area is that there will be a free flow from creator to audience of whatever message a film or a book might convey."

Another plus: Justice Harry Blackmun, a Nixon appointee generally found in the Court's "Burger majority," became a dissenter in this case, declaring the ordinance unconstitutionally vague. The film exhibitor is given no guidance, he wrote, on how to determine whether films he shows are or are not covered under the ordinance, and he could be transformed into an unwitting offender if a nearby establishment were to add a "regulated use" without notice.

Furthermore, Blackmun did not dissociate himself from the Court's three traditional liberal dissenters—Justices Stewart, Brennan and Marshall—when, with Stewart writing for them, they angrily took issue with Stevens' "marching our sons and daughters" argument:

The Court "invokes a concept wholly alien to the First Amendment," the four dissenters declared. "Since 'few of us would march our sons and daughters off to war to preserve the citizen's right to see "Specific Sexual Activities" exhibited in the theaters of our choice,' the Court implies that these films are not entitled to the full protection of the Constitution. This stands 'Voltaire's immortal comment' on its head. For if the guarantees of the First Amendment were reserved for expression that more than a 'few of us' would take up arms to defend, then the right of free expression would be defined and circumscribed by current popular opinion. The guarantees of the Bill of Rights were designed to protect against precisely such majoritarian limitations on individual liberty."

Concluding, the minority said: "The Court must never forget that the consequences of rigidly enforcing the guarantees of the First Amendment are frequently unpleasant. Much speech that seems to be of little or no value will enter the marketplace of ideas, threatening the quality of our social discourse and, more generally, the serenity of our lives. But that is the price to be paid for constitutional freedom."

The *Washington Post* Supreme Court correspondent is

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

entitled to his opinion that it is "not clear" how Justice Douglas (whom Stevens replaced) would have voted in this case. Perhaps he was thinking of a 1974 decision, written by Douglas, that upheld a zoning ordinance that seemed to restrict First Amendment rights of association. But it strains the imagination to think he could have failed to associate himself with such ringing rhetoric.

(Congress shall make . . . from page 108)

Holmes Jr. propounded the test of "clear and present danger." That test "balances" the citizen's freedom of speech against the Federal government's concern for national security. Although Holmes, in the dissents for which he is famous, tried later to redress the balance in favor of free speech, his original ruling places the sovereignty of the citizen in jeopardy.

We should not be discouraged that the outcome of our attempt at self-government remains still in doubt. The very idea is flawed by a paradox—the paradox of citizenship which says to each of us that we are at once the rulers of and, at the same time, the subjects ruled by our government.

We owe to the clear insight of Alexander Meiklejohn the resolution of that paradox. When, as citizens ruled, we pursue our self interest, we are properly subject to governmental authority; our freedom then is defended by the "due process" clause of the Fifth Amendment. It is only when we act as rulers concerned with the public business, with the purposes of society and with the direction of the government—when we are engaged in the attempt to advance the common welfare—that we have a right to liberty. The First Amendment makes that right absolute.

The relevance of the First Amendment to education has been understood, at least implicitly, from the beginning of our country's history. Education closes the feedback loop of self-government. It is the process that forms the citizen that forms the government.

The wary citizens of the young republic frustrated their first president in his dearest ambition; that was to establish a national univeristy in the District of Columbia. Americans have always reserved education to the weakest and smallest units of government capable of conducting it at the various stages from elementary to higher education, or to private institutions. Rulings of the courts from generation to generation have construed the First Amendment to keep the government out of the classroom. Felix Frankfurter, that exponent of judicial restraint, in a case involving the rights of a Vassar College professor under inquisition by the House Committee on Un-American Activities, extended the immunity of the citizen to the university; he did so on the ground it is there that the citizen conducts the increase and dissemination of knowledge, especially useful knowledge. In effect, he declared the university to be the seat of our sovereignty.

Now, if the celebration of our Bicentennial has been a bleak affair to date it is not only because the highest offices of our Federal government have been disgraced by corrupt officials but also, I think, because the essential premises of self-government are not widely understood in our society. In fact, they are not embraced in the popular consensus. Clear and present danger is generally accepted as a limit on our political freedom. We suffer a corresponding confusion about the relationship between government and education. The independence of our great universities has been seriously compromised by their new dependence upon financial support from the Federal government. All of you assembled in this gathering confront a crisis closer to home. It is a crisis in the relationship of the Federal government to our schools, brought on by a nationwide controversy over the teaching of science.

"The crisis in education thus engages the most precious values in our heritage"

It is well, at this point, to put the crisis in its historical setting, because it does engage the fabric of our society. The question is still open: whether the ideals and institutions formulated in an agrarian commercial republic remain valid in the modern industrial state. The self-sufficient, omnicompetent yeoman and artisan have been succeeded by employees stretched in the web of interdependence set up by the division of labor. The market economy, which relied upon the benign guidance of the unseen hand to find harmony in the resolution of contending private interests, has given way to the managed economy dominated by concentrations of economic power in great corporations outside the government and even beyond the control of government. The extended kinship family, living in mutual support in small towns and small urban communities, has yielded to the nuclear family, an evanescent institution in time as well as in space, living in the isolation of our sprawling conurbations. Schools that once had the limited assignment of teaching rudimentary skills are now burdened with functions abdicated by the waning of the family. Universities that once could teach a common body of understanding about a world accessible to our unaided senses are now fragmented by the high specializations that place society in command of cosmic forces. Control of education by the town meeting has given way to the consolidated school district and the upstream drift of power to state governments and the Federal government. The crisis in education thus engages the most precious values in our heritage and the deepest-running stresses exerted by the evolution of our society.

The Federal government had no part whatever in education until the most recent times. In full, revealing expression of the current phase of our country's evolution, it was national security that brought the government into the schools. In 1957 Congress adopted the National

Defense Education Act and, of greater interest to us here tonight, made its first appropriations, through the National Science Foundation, to the support of the science curriculum reform movement. As you will all recall, these actions by our Federal government, breaking nearly two centuries of precedent, were brought on by the inaudible, taunting signals from Sputnik overhead.

It ought to be recalled also, however, that the science curriculum reform movement began before Sputnik. Jerrold Zaccharias and his colleagues at Massachusetts Institute of Technology, joined by concerned high school teachers, had already set out to do something about the deplorable preparation in physics with which our students were then entering college and to bring their instruction abreast of the rapid advance in physics. This action by a volunteer group of citizens was in itself a reflection of the fact that the market process has not served our schools well. The inertia implicit in the decentralization of our school system and the tight margins of the highly competitive textbook industry have worked together to keep the content of curricula in our schools down to a safely mediocre level, slow always to respond to the advance of knowledge. The organization of the Physical Science Study Committee set off what we now, in retrospect, can see has been one of the major movements in the history of American education; it ultimately brought reform of the curricula in all of the sciences in our elementary and secondary schools.

The science curriculum reform movement was never a government enterprise. It was an enterprise of the voluntary initiative of university professors and school teachers. They originated the ad hoc groups that set up the curriculum project in each field. They had to seek the funding they needed from the National Science Foundation, but that agency had been created by Congress to support education as well as research in the sciences. At every stage in the development of each curriculum, the peer review procedures that have insulated the independence of scientists in our universities from the government granting agencies served to decouple the control of the content of the new courses from the authority of officials in the National Science Foundation. Peer review groups monitored the development of the courses, reviewed the classroom tests and ultimately signed off the curricula for release to the market.

In sum, the work was conducted by the self-governing democracy of science. For the National Science Foundation it should be said that, in keeping with our traditions, it was careful to keep itself out of questions of content in the development of the new courses. It delegated to the developers of curricula the finding of a publisher in each case and required the selection of publishers by competitive bidding. In every other way, the National Science Foundation sought to maintain its neutrality and to insulate the schools from any compromise of what the National Science Foundation itself has called the "total responsibility" of the local school district for the content and substance of what is taught in the schools. By this cautiously contrived partnership, voluntary initiative and Federal funding ultimately got fifty-three different curriculum reform projects under way.

Out of the cumulative one billion dollars spent on these projects by the National Science Foundation over the past twenty years, about half went to what, in bureaucratic jargon, is called the "implementation" of the courses. Implementation funds set up "teacher institutes" that brought teachers back to college to catch up with their fields of learning as well as to make acquaintance with a new curriculum.

"The vigilante committees have enrolled . . . a surprising group of fully articled scientists and engineers"

There can be no doubt about the success of this enterprise. Beyond the curricula developed explicitly under National Science Foundation grants, the ground-breaking and market-creation accomplished by those curricula opened up new opportunities to the textbook industry; publishers responded quickly with the rewrite and update of all the science instruction material they offer to the schools. Within five years of the launching of the Physical Science Study Committee curriculum, the colleges had to update their freshman physics courses to overtake the preparation with which high school students were now entering college. By the "Hawthorne effect," at the very least, this enterprise made the teaching of science in our schools competitive in quality with that of any other country in the world. People who have been watching the performance of students in the "Science Talent Search" and in the high school science fairs during this period report that their sophistication and command of their subjects has gone soaring above the level at which they started at the end of the Second World War.

No one until recently has called into question the value of this enterprise or the propriety of the novel arrangements by which it teamed up Federal authority with volunteer citizen initiative. The controversy over the new science curricula, that now breaks out like grass fires in community after community across the country, turns on the content of the biology and social science courses. The authors of this controversy are citizen vigilante committees described by Dorothy Nelkin, a sociologist at Cornell University, as "textbook watchers." They have not only raised again the familiar Scopes trial denunciations of evolution but also the charge that the teaching of science in our schools amounts to the propagating of an irreligious "secular humanism."

The vigilante committees have enrolled, along with the familiar political-cartoon Appalachian fundamentalist in his wool hat, a surprising group of fully articled scientists and engineers, largely employed in the arms industries of the

new "sun belt" in Texas and California. These people evince a total failure to appreciate the values of science in its relation to self-government. They attribute to science the same kind of absolutism they attach to the metaphysical absolutes in which they find their peace of mind. They attribute to the self-governing polity of science a hierarchical authoritarianism that matches the authority they claim over the souls of their children. They see their parental authority threatened by a remote government and by scientific "elitists." As Professor Nelkin observes, they are not alone concerned with the content of the courses but are seized, as are so many other citizens, by a sense of personal helplessness induced by the centripetal drift of power in our society away from local control.

The mathematics and the physics courses did not attract the particular notice of these troubled people. Those disciplines approximate more closely the popular holding that science is "value free." Those disciplines carry also, of course, the sanction of their utility in our domestic and military technology.

In the biological and social sciences, however, the relevance of objective knowledge to human identity and purpose is inescapable. As a result, we hear a crescendo of protest at the introduction into our schools of "value-laden" curricula that teach "evolution as a fact rather than as a theory" and inculcate our children with notions of "cultural relativism" and "situational ethics"—all, they say, offensive to "our traditional Judeao-Christian ethics." The objection to content proceeds to the charge that the awesome power of the Federal government has been enlisted to bring these subversive ideas into the schools.

The textbook vigilantes have carried their protests into the classroom, intimidating individual teachers, into proceedings before local school boards and state education authorities, into the courts and, in the late months of 1974 in the violent events in the Kanawha Valley of West Virginia, into the streets. Last spring, they managed to carry their agitation to the floor of the Congress. There they may have succeeded in bringing to a halt the science curriculum reform movement.

The agitation in the Congress turned on "Man, a Course of Study," a junior high school social studies curriculum created at the same Educational Development Center in Massachusetts which launched the original Physical Science Study Committee curriculum. MACOS, to call the curriculum by its inelegant Washington acronym, explores the identity of man through the disciplines of comparative psychology and anthropology. The course features several hours of documentary film about animal behavior and the life-cycle of the Netsilik Eskimos. It is denounced by the vigilantes as propounding such immoral practices as wife-swapping, infanticide, senilicide, bestiality and cannibalism. (One Massachusetts child, responding to the charge about wife-swapping, wrote a letter to a newspaper cogently setting out the differences between Eskimo customs and the wife-swapping that goes on in suburbia.)

Amendments introduced by John B. Conlan of Arizona and Robert E. Bauman of Maryland would have placed a congressional veto on the content of curricula, and even on the content of research projects, sponsored by the National Science Foundation. Neither of these amendments was enacted into law, although one of them passed the House and had to be killed in the House-Senate conference committee. Implementation funding was suspended, however, for the current fiscal year. The fact that implementation funding was suspended on all of the National Science Foundation courses does not mitigate the evil that the action was occasioned by the desire of a few Congressmen to censor one course. The restoration of those funds remains in doubt. The National Science Foundation has put implementation back in its appropriation request this year but on a modest scale compared to past outlays for this useful activity. Worse yet, the National Science Foundation has promulgated onerous second-guessing review procedures that are intended to anticipate and avert controversy in future curricula; they are bound to discourage the kind of volunteer enterprise that fired up the science curriculum reform movement. Worst of all, these procedures promise to burden a Federal agency, the

Pentagon to phase out press censorship

An order from William Greener, assistant secretary of defense for public affairs at the Pentagon, is expected to phase out the last of the Defense Department's military press censorship operations on September 30. Approval of the order by the Joint Chiefs of Staff and Secretary of Defense Donald H. Rumsfeld was expected.

The Army's Field Press Censorship operations carried out censorship that the Army has practiced in every war involving the United States since the Civil War. Army censors were responsible for approving the copy of war correspondents to assure that information potentially valuable to an enemy was not published.

But with advances in the media, the free movement of correspondents in war zones by air, and the growing "freedom-of-information environment," Greener said, the FPC had become obsolete.

Greener acknowledged that some of the arguments against closing the FPC were valid, but he stressed, "If we decide they are needed, we can always phase them back in. I can't envision a war springing on us so fast that we don't have time to train a new group."

Boyd Lewis, a war correspondent for United Press International during World War II, called the termination of the FPC "sheer idiocy." Reported in: *Washington Post,* July 16.

National Science Foundation, with responsibility that it should not have for the content and substance of the curricula it finances.

The vigilante textbook watchers have thus brought to pass that violation of our tradition and institutions they claimed they were protesting. They have brought the intrusion of the Federal government into the content of what is taught in the nation's schools. We can find no comfort in evidence that the agitators speak for a minority of the electorate and have won the support of no more than a handful of Congressmen. Their success on such slim resources is a measure of the weakness of science in our popular culture. The injury done to the teaching of science argues the urgent relevance of the teaching of science to the sanity of American society. Against the power of the Federal government, against the ascendance of demagogues in local school politics and even, as well, against the authority some parents claim over their children's souls, the teacher who embraces the ethic of objective knowledge must nurture the intellectual competence and defend the moral autonomy of tomorrow's citizens. Your National Science Teachers Association must embrace, as a professional obligation, the political action required to assert again the primary teaching of natural philosophy. That is set out in the plain language of the First Amendment, the injunction that "Congress shall make no law" places beyond the reach of government the liberty of citizens engaged in the sovereign enterprise of teaching and learning by which we shape the ends of our existence and set the course of government.

(IFC Reports . . . from page 109)

Document 60, which, in the view of the IFC, addresses itself to more basic concerns.

We believe that the act itself must be revised to remove its exceedingly dangerous provisions. We do not believe the government's virtually unchecked authority under the act is consistent with the fundamental right of citizens to receive information and ideas without the prior restraint which government-imposed labels represent.

The revised resolution is addressed to responsible committees and members of Congress who have the constitutional authority to change the act. [The resolution was adopted by the Council.]

Respectfully submitted, Joseph J. Anderson, Richard L. Darling, Robert F. Delzell, Phyllis M. Land, Minne R. Motz, H. Theodore Ryberg, Elliot L. Shelkrot, Karl Weiner, Ella G. Yates, Florence McMullin, Chairperson.

resolution on Foreign Agents Registration Act

Whereas, The Foreign Agents Registration Act requires that the informational and literary materials of some countries be labeled as "propaganda" when distributed in the United States but does not require the labeling of comparable informational and literary materials of other countries; and

Whereas, The Act appears to require that persons registered under the Act label all their material as "propaganda" regardless of its actual content; and

Whereas, The Act provides no procedure whereby the label "propaganda" may be removed from materials which do not satisfy the statutory definition; and

Whereas, The Act appears to jeopardize the tax-exempt status of any library or educational institution which purchases literary materials from persons registered under the Act; and

Whereas, By requiring selective labeling of informational and literary materials as "propaganda" when they are not and by not requiring the labeling of materials which are propaganda if they are disseminations of countries determined by the President, the Act operates as an instrument in support of governmental propaganda programs; and

Whereas, The American Library Association is opposed to all attempts to label informational and literary works in order to inhibit, prejudice or impair their dissemination; and

Whereas, The American Library Association believes the freedom to read guaranteed by the First Amendment includes the freedom to let films, books, periodicals, and other works speak for themselves without the prior restraint of labeling; now therefore be it

Resolved, That the American Library Association record its objections to the Foreign Agents Registration Act, as enacted, to the extent it operates as a prior restraint on the freedom to read; and be it

Further Resolved, That the appropriate officers of the American Library Association be and they hereby are authorized and directed to bring this resolution to the attention of the responsible members and committees of Congress and seek amendments to cure its adverse effect on the right of Americans to read, learn and know.

(Supreme Court: 1975-76 . . . from page 111)

conflict with First Amendment rights. In the *Virgil* case, the Ninth Circuit Court of Appeals declined to read constitutional, First Amendment limits into a private civil damage claim for an alleged violation by the press of an individual's privacy. Therefore, unlike the law of libel, which is subject to the shrinking, but important constitutional limitations set forth in *N.Y. Times* v. *Sullivan,* a tort claim for invasion of privacy can be brought regardless of its chilling effect on the discussion of important social and political issues. If *Virgil* remains good precedent (there is still a chance that the Supreme Court will review the case at a later stage of the proceedings), civil claims for invasion of privacy could supplant defamation actions as a major threat to full press freedoms.

In another privacy case, *Paul* v. *Davis,*[20] the Court refused five to three to rule that a public official's alleged defamation of a private person (in this case the alleged defamation involved accusations that the plaintiff was a "known criminal") gives that person a *federal* claim for relief under the Civil Rights Act (section 1983). The claim must be brought under state law, if at all. The Court also ruled that the constitutionally implied "right to privacy" does not extend to protection from defamatory statements, holding that the so-called right to privacy is not "fundamental" or "implicit in the concept of ordered liberty" in a way that mandates constitutional protection. The right to be free from slander was thus distinguished from other constitutionally protected rights such as the right to practice birth control and a woman's right to an abortion.[21] The Court thus cast grave doubt on a developing body of "privacy" law which limited the government's right to disseminate an individual's arrest record and other newsworthy but potentially damaging information.

Obscenity

The Supreme Court's decision in the Detroit zoning case, *Young* v. *American Mini Theatre,*[22] is among the most disheartening major developments of the year from the point of view of filmmakers, theaters, publishers and booksellers, and perhaps for librarians as well. In *Young,* the Court upheld a "zoning-out" ordinance designed to be used against bookstores and theaters which feature so-called offensive—although non-obscene—books and movies dealing with sexually explicit subjects. The Supreme Court reversed a Sixth Circuit Court of Appeals decision which invalidated the ordinance on the grounds that is constituted an improper "prior restraint" and that it represented a violation of the equal protection clause of the Fourteenth Amendment.

But the *Young* case has potentially even more far reaching, negative implications because of the ground upon which a four judge plurality of the Court decided the case. The plurality rejected Justice Powell's diplomatic (although perhaps dissembling) concurring opinion which argued that the Detroit ordinance was nothing more than a permissible experiment in land use planning with only incidental effects upon constitutionally protected activities; and they simply ignored a scathing dissent by Justice Stewart, joined by liberals Brennan and Marshall. Instead, the plurality chose to follow the most dangerous possible course, suggesting that sexually explicit expression, although protected by the First Amendment when not obscene, is a less significant form of expression entitled only to a lesser degree of protection by the State. In *obiter dictum* which may return to haunt our newest Justice—as it now surely haunts us—John Paul Stevens, writing for the prevailing plurality, observed:

> Whether political oratory or philosophical discussion moves us to applaud or to dispute what is said, every schoolchild can understand why our duty to defend the right to speak remains the same. But few of us would march our sons and daughters off to war to preserve the citizen's right to see "Specified Sexual Activities" exhibited in theaters of our choice.[23]

The presumption in favor of free speech is thereby turned upside down. And the rule against regulation of non-obscene materials *based on content* (exemplified by *Erznoznick*) is therefore considerably weakened, if not eliminated.[24] Justice Powell refused to concur in this part of Steven's opinion and Justice Stewart lashed out at Steven's First Amendment myopia in an eloquent statement which requires no further elaboration:

> This case does not involve a simple zoning ordinance, or a content-neutral time, place, and manner restriction, or a regulation of obscene expression or other speech that is entitled to less than the full protection of the First Amendment. *The kind of expression at issue here is no doubt objectionable to some, but that fact does not diminish its protected status. . . .*
>
> *By refusing to invalidate Detroit's ordinance the Court rides roughshod over cardinal principles of First Amendment law,* which require that time, place and manner regulations that affect protected expression be content-neutral except in the limited context of a captive or juvenile audience. *In place of these principles the Court invokes a concept wholly alien to the First Amendment. Since "few of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theaters of our choice," the Court implies that these films are not entitled to the full protection of the Constitution. This stands "Voltaire's immortal comment" [that is, "I disapprove of what you say, but I will defend to the death your right to say it"] on its head. For if the guarantees of the First Amendment were reserved for expression that more than a "few of us" would take up arms to defend, then the right of free expression would be defined and circumscribed by current popular opinion. The guarantees of the Bill of Rights were designed to protect against precisely such majoritarian limitations on individual liberty.*[25] [Emphasis added.]

In another significant obscenity ruling, *McKinney* v. *Alabama,*[26] the Supreme Court, speaking through Justice Rehnquist, did recognize that procedural due process must be accorded in the determination of obscenity and held that a criminal defendant not present at, and not given notice of, a prior civil proceeding at which the materials he sold were ruled obscene may not be bound by the civil determination, but is entitled to an independent review of the obscenity of the materials. However, Justice Rehnquist's grudging and quite narrow recognition of this principle of "First Amendment Due Process" prompted broader concurring opinions from the four *Young* dissenters Blackmun, Stewart, Brennan and Marshall.

Other significant decisions

Two other cases, not of immediate concern to us, do deserve mention because they continue parallel trends toward cutting back on free expression. In *Greer* v. *Spock*[27] (the baby doctor, again), the Court extended its landmark *Parker* v. *Levy*[28] ruling by holding that the military is in large measure immune from the strictures of the First Ammendment– even in peacetime–and that, therefore, a *military post* may be totally cut off from live debate of public issues.

In *Hudgens* v. *NLRB*,[29] the Supreme Court finally expressly overruled the landmark *Logan Valley*[30] case, which had applied the First Amendment to picketing at a privately-owned shopping center where the public was otherwise freely and unrestrictedly allowed access. *Hudgens* suggests that this Court will not reach out in an effort to create broad *private* acceptance of the principles of free speech and expression which apply to government actions.

The 1976-77 term

What's in store for the First Amendment next term? We know that the Court will dip its toes back into the swirling currents of *Roth* and *Miller.* Certiorari was granted in the case of *Smith* v. *U.S.*,[31] a federal obscenity prosecution in Iowa, being defended with the help of ALA's Freedom to Read Foundation. In *Smith,* the Court is called upon to decide whether the federal mail statutes can be used to apply "local" standards to circumvent a state statute that decriminalizes the distribution of sexually explicit materials to willing adults.

The Court has also granted certiorari in *Marks* v. *U.S.*,[32] another obscenity case, this one concerning the notorious film *Deep Throat,* raising still more refined issues concerning the application of *Miller* and the definition of local community standards.

Whatever the outcome of *Smith* and *Marks* we can quite confidently predict (with fervent hope of contradiction) that this Supreme Court is not about to rewrite *Miller* or to expand First Amendment protection of sexually-explicit materials. I look for more censorship, not less, in the coming year. St. Martins Press' controversial sex education book *Show Me!,* for one, about to be released in paperback, may yet draw publishers directly back into the rigors of obscenity prosecutions from which they have for the most part been spared–at least of any ultimate finding of criminal liability–since one of our number, Doubleday & Company, was convicted in 1948 for publishing Edmund Wilson's (yes, Edmund Wilson, one of our greatest American literary critics) at-times erotic *Memoirs of Hecate County.*

On the somewhat lighter side, we also know that the Court will decide in *Wooley* v. *Maynard*[33] whether New Hampshire may compel its drivers to display on their license plates the state's brave motto–"Live Free or Die"!

Beyond this, I leave further prognostication to the more courageous–or foolhardy.

1. Opening remarks at the Judicial Conference of the Fourth Circuit, June 27, 1975 quoted in 89 Harv. L. Rev. (1975).
2. *Williams & Wilkins Co.* v. *United States,* 487 F.2d 1345 (Ct. Claims 1974) aff'd by an equally divided Court without opinion 420 U.S. 376 (1975).
3. *Goldfarb* v. *Virginia State Bar Association,* 421 U.S. 773 (1975).
4. *O'Connor* v. *Donaldson,* 422 U.S. 563 (1975).
5. Only *Erznoznick* v. *City of Jacksonville,* 422 U.S. 205 (1975), broke the Court's silence on obscenity. In *Erznoznick* the Court overturned (6-3) a Jacksonville ordinance that prohibited the showing of films containing nudity on drive-in movie screens visible to the public. But, as I discuss below, developments this term suggest that *Erznoznick* may represent an approach toward regulation of non-obscene, sexually-explicit materials which will not be further expanded.
6. In *Bigelow* v. *Commonwealth of Virginia,* 421 U.S. 809 (1975), the Court held (7-2) that the First Amendment affords a qualified protection to speech that appears in the context of a commercial advertising. But the significance of *Bigelow* has been eclipsed this term by the outright reversal of the venerable rule that purely "commercial speech" is not protected by the First Amendment. *Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469 (1975), upholding (8-1) the First Amendment right to make truthful reports concerning public records as against an asserted right to privacy, was also in effect superceded in the present term, this time by a much less favorable ruling in the libel field. In *Southeastern Promotions, Ltd.* v. *Conrad,* 420 U.S. 546 (1975), the Court (5-4) ruled that a municipal theatre could not refuse to stage a production of the musical *Hair* if its decision does not accord procedural safeguards and provide an opportunity for judicial review. The *Hair* case, hardly a momentous decision, does have interesting implications for states' proprietary actions in fields such as textbook adoptions and the selection processes of public libraries.
7. See 45 U.S.L.W. 3009 (July 20, 1976).
8. 44 U.S.L.W. 4686 (1976).
9. See footnote 6.
10. 413 U.S. 15, 35 (1973).
11. 44 U.S.L.W. 5149 (1976).
12. 403 U.S. 713 (1971).
13. 44 U.S.L.W. 4127 (1976).
14. 424 U.S. 1 (1976).
15. 44 U.S.L.W. 4262 (1976).
16. *Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323 (1974).
17. See footnote 6.
18. This trend toward states' rights also advances the Burger Court's efforts to limit its expanding caseload by narrowly construing Supreme Court jurisdiction.
19. 527 F.2d 1122 (9th Cir. 197), *cert. den.,* 44 U.S.L.W. 3665 (1976).
20. 44 U.S.L.W. 4337 (1976).
21. *Palko* v. *Connecticut,* 301 U.S. 319 (1937); *see also Griswold* v. *Connecticut,* 381 U.S. 497 (1965), *Roe* v. *Wade,* 410 U.S. 113 (1973), *Doe* v. *Bolton,* 410 U.S. 179 (1973).
22. 44 U.S.L.W. 4999 (1976).
23. 44 U.S.L.W. at 5005.
24. See footnote 5.
25. 44 U.S.L.W. at 5009-10.
26. 44 U.S.L.W. 4330 (1976).
27. 44 U.S.L.W. 4380 (1976).
28. 417 U.S. 733 (1974).
29. 44 U.S.L.W. 4281 (1976).
30. *Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc.,* 391 U.S. 308 (1968).
31. 44 U.S.L.W. 3738 (June 21, 1976).
32. 44 U.S.L.W. 3493 (March1, 1976).
33. 44 U.S.L.W. 3733 (June 22, 1976).

(obscenity prosecutions . . . from page 112)

The department, Solicitor General Robert H. Bork reasoned, was in error in its method of prosecuting the case. The obscenity standard used was based on the Supreme Court's 1973 guidelines, but the alleged violations took place prior to that ruling, Bork said.

In Memphis, prosecutor Larry Parrish called Bork's action "deplorable" and said it could easily "wipe out" twenty weeks of courtroom work.

U.S. District Court Judge Harry Wellford, assigned to the Memphis *Deep Throat* trial, unleashed a furious blast in open court and bluntly stated that "the U.S. Solicitor General is just throwing in the sponge in this case."

Judge Wellford, who presided over the trial for more than nine weeks, admitted that he was "shaken considerably" by the Solicitor General's confession of error. "This is most unfortunate and most regrettable in the waste of time, money, and effort in this case," the judge said.

Clearly, what is "most regrettable" is the failure of the federal government to remove itself from the anti-obscenity business.–RLF

> Freedom of speech presupposes a willing speaker. But where a speaker exists, as is the case here, the protection afforded is to the communication, to its source and to its recipients both. This is clear from the decided cases. In *Lamont* v. *Postmaster General,* 381 U.S. 301 (1965), the Court upheld the First Amendment rights of citizens to receive political publications sent from abroad. More recently, in *Kleindienst* v. *Mandel,* 408 U.S. 753, 762-763 (1972), we acknowledged that this Court has referred to a First Amendment right to "receive information and ideas," and that freedom of speech " 'necessarily protects the right to receive.' " And in *Procunier* v. *Martinez,* 416 U.S. 396, 408-409 (1974), where censorship of prison inmates' mail was under examination, we thought it unnecessary to assess the First Amendment rights of the inmates themselves, for it was reasoned that such censorship equally infringed the rights on noninmates to whom the correspondence was addressed.–*Justice Blackmun, delivering the opinion of the U.S. Supreme Court in* Virginia State Board of Pharmacy *v.* Virginia Citizens Council, *in which the Court decided, in May, that a ban on advertising prescription drug prices is not constitutionally permissible.*

(the published word . . . from page 113)

Solzhenitsyn, Sakharov, and the Medvedev brothers), and a substantially larger but less identifiable body of religious/ethnic minorities (the Jews are of course the most conspicuous, but there are others).

The intellectuals are essentially a loyal opposition, most considering themselves Marxist-Leninists, who seek to change the policies of the Soviet government but not its structure, while some of the ethnic minorities appear to have nationalist aspirations. The Soviet state, however, because of its inherently monolithic structure, has to regard all dissent as subversive, and though there is little likelihood of a return to the savage purges of the Stalin era, genuine freedom of expression for Soviet citizens in the near future is even less likely: persons who are too outspoken risk imprisonment, exile or confinement to mental hospitals (a Tsarist device recently revived by the Marxists). There is less consensus on the prospects of long-term change, but most of the essayists are not optimistic.

As is inevitable in an anthology, there is some repetition and a considerable variation in style, but all the essays are accessible to the non-specialist; while all are written as objectively as possible, it is apparent that their authors' sympathies lie with the dissidents, not the Soviet state.–*Reviewed by Paul B. Cors, University of Wyoming, Laramie.*

(press censorship . . . from page 114)

In July, representatives of fifty-eight developing countries met in New Delhi to form a pool of their press agencies, most of which are governmentally controlled. This pool of government news, which would represent official versions of events in each country, would then be substituted for the coverage that is now circulated by such Western news agencies as the Associated Press, United Press International, Reuters, and Agence France-Presse.

A draft constitution of the new pool was approved at the New Delhi conference, and its conclusions were scheduled for ratification in August at a meeting of the heads of state of third world countries in Colombo, Sri Lanka.

The move toward "developmental journalism," or controlled journalism in developing countries, was viewed as a situation of "extreme gravity," in the words of George Beebe, associate publisher of the *Miami Herald* and chairperson of the executive committee of the Inter-American Press Association and of the World Press Freedom Committee.

Gerald Long, managing director of Reuters, said: "We welcome anything that would increase the flow of information within regions of the world and between those regions. If the idea behind these projects is to increase the flow of information, then we welcome them.

"I think it is a pity that each time these countries meet to discuss these projects some of the participants, usually the same ones, begin by attacking those organizations which already distribute information around the world.

"I consider these attacks to be largely rubbish. It is said that existing world news organizations are poisoning the minds of the nonaligned countries." Reported in: *New York Times,* July 1, 19.

E.B. White throws web over Xerox

E.B. White, children's author and long-time contributor to the *New Yorker,* has singlehandedly persuaded the Xerox Corporation to abandon its plans for underwriting magazine articles. The seventy-six-year-old author, living in Maine, began a controversy when *Esquire* magazine published a Xerox-sponsored article by Harrison E. Salisbury last February.

"He stopped us in our tracks," said David J. Curtin, vice president of communications for Xerox, which had planned two similar projects with writers. "We have enormous respect for Mr. White and if this was unsettling to him, it was just not worth continuing it." Under the arrangement which White criticized, Xerox paid *Esquire* to commission Salisbury to write "Travels in America," for which Salisbury was paid $40,000 plus $15,000 in expenses. In turn *Esquire* received a one-year advertising contract from Xerox.

The agreement stipulated that Xerox would not interfere with the content of any article, and that if the corporation did not like any essay, *Esquire* would be free to publish it without returning Xerox money and without identifying it with Xerox in any way.

"Buying and selling space in news columns becomes a serious disease of the press," White said. "If it reached epidemic proportions it could destroy the press.

"I don't want IBM or the National Rifle Association providing me with a funded spectacular when I open my paper. I want to read what the editor and publisher have managed to dig up on their own—and paid for out of the till." Reported in: *New York Times,* June 15.

copyright sought for federal documents

During its deliberations in July, the House subcommittee on copyright added an amendment to the copyright revision bill which would broadly expand the federal government's power to copyright its documents.

The amendment, introduced by Thomas F. Railsback (R.-Ill.) at the request of the Commerce Department, was attacked by both publishers and librarians as a departure from current law requiring unrestricted public access to government documents.

Under current law, the federal government cannot copyright its publications. The Railsback amendment, however, would allow the National Technical Information Service, the publishing arm of the Commerce Department, to copyright and control the distribution of the 70,000 research documents it publishes annually.

NTIS Director William T. Knox said in an interview that he estimated his service would request a copyright for only about one hundred of the 70,000 reports that it publishes each year. Knox explained that the amendment would increase NTIS revenues and restrict the free dissemination of U.S. government reports overseas.

Knox argued that foreign publishers are the prime beneficiaries of the prohibition against government copyright. "In Japan, for example," Knox said, "we sold $144,000 worth of documents last year. From those, $3 million worth of documents were copied and sold by the Japanese." Reported in: *Washington Post,* July 29.

AMA warns against television violence

Assembled in Dallas for its 125th annual convention, the American Medical Association labeled television violence "a risk factor to health" and an "environmental hazard" and voted for research to determine the full effects of dramatized mayhem upon viewers. The AMA's resolution, aimed at curbing video violence, was accepted by the group's 256-member house of delegates, the AMA policy-making body.

It was claimed by one delegate that the average American child views 15,000 hours of television by the time he or she is graduated from high school (compared to only 11,000 hours of school instruction), and that "during this viewing the child will have witnessed 18,000 murders and countless incidents of robbery, arson, beating, torture, and rape."

An article by Dr. Michael Rothenberg of the University of Washington School of Medicine appearing in an AMA journal called television violence "a national scandal" and recommended specific steps which the house of delegates supported:

- Full funding of research by the National Institute of Mental Health to measure television violence and its effects on children.
- Efforts by physicians to emphasize to parents their responsibility in taking an interest in their children's viewing habits.
- Attempts by television networks and independent stations to use indexes of violence in deciding program content and scheduling. Reported in: *Variety,* July 7.

FBI 'dirty tricks' revealed

Documents acquired last spring in a Freedom of Information Act suit revealed that the Federal Bureau of Investigation took steps in the mid-1960s to prevent the authors of a book about Julius and Ethel Rosenberg, executed as atomic spies, from discussing their work on television interview programs. In a memorandum written in 1965, William C. Sullivan, then an assistant director of the Bureau, reported to his superiors that Walter and Miriam Schneir, authors of *Invitation to an Inquest,* had approached "a leading television man in Chicago" with a

request to discuss their book on his program.

Sullivan reported that he had contacted an intermediary, a Chicago lawyer, "to instruct" the television personality "not to permit the Schneirs to go on his television program for no good would accrue from it."

In describing the broad goal of the FBI, Sullivan said in his memo: "As I see it, the first thing we should do in this matter is to take careful steps to secure the cooperation of friendly television stations and prevent this subversive effort from being successful. It should be kept off television programs and smothered and forced out of the public eye thereby."

Sullivan also recommended that a letter be sent to all FBI field officers "so they can learn in advance of efforts to put this book and its authors on television programs and be prepared to take steps to prevent it." Reported in: *New York Times,* June 2; *Variety,* June 2.

British court permits Thalidomide story

In June 1976 the *Sunday Times* of London published a six-page account of the tranquilizer Thalidomide. The story, which appeared under the headline "Thalidomide, the Story They Suppressed," came fifteen years after the drug was withdrawn by the British government after 451 children were born with seriously crippling deformities.

As a result of the deformities, more than 300 damage suits were filed in British courts against the drug's distributor, Distillers Co. (Biochemicals) Ltd., which denied all negligence and made it clear that it regarded any comment or inquiry bearing on the parents' claims as contempt.

In June, at the request of the attorney general, the Queen's Bench Division of the High Court lifted an injunction barring a full account of the story of the drug–an action some legal experts interpreted as an attempt on the part of the attorney general to improve his position before the European Commission on Human Rights, to which the *Sunday Times* appealed the injunction in 1974.

The European Commission accepted and is currently examining the newspaper's complaint that the law of contempt, as applied to the *Sunday Times* case, is a violation of freedom of expression.

After the claims for compensation had gone through a decade of delayed legal actions, Harold Evans, editor of the *Sunday Times,* decided in 1972 to campaign more forcefully and directly against drugs by publishing a series of investigative stories and editorials. The efforts were heralded as a classic example of the power of the press in that Distillers subsequently increased its compensation offer to the parents from 3.5 million pounds to nearly 20 million. Reported in: *Editor & Publisher,* July 24.

intellectual freedom bibliography

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