newsletter on
intellectual freedom
IFC ALA

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no more midnight raids?

In a decision which librarians must view as one of the most important court actions of 1976, the U.S. Court of Appeals for the Sixth Circuit (Kentucky, Michigan, Ohio, and Tennessee) has ruled that school officials cannot go through a school library and arbitrarily ban books they dislike.

The appellate court overruled a 1972 school board decision that removed Kurt Vonnegut's Cat's Cradle *and Joseph Heller's* Catch-22 *from the Strongsville, Ohio high school library.*

The ruling of the court should help bring to an end raids on libraries during which school boards censor books which occasion their displeasure.

All pertinent portions of the decision (Minarcini *v.* Strongsville City School District, nos. 75-1467-69, 6th Cir.) *appear here in full.*

This case presents a vivid story of heated community debate over what sort of books should be 1) selected as high school text books, 2) purchased for a high school library, 3) removed from a high school library, or 4) forbidden to be taught or assigned in a high school classroom. The setting of this controversy is the high school in Strongsville, Ohio, a suburb of Cleveland.

This case originated as a class action . . . against the Strongsville City School District, the members of the Board of Education and the Superintendent of the school district by five public high school students through their parents, as next friends. The suit claimed violation of First and Fourteenth Amendment rights in that the school board, disregarding the recommendation of the faculty, refused to approve Joseph Heller's *Catch-22* and Kurt Vonnegut's *God Bless You, Mr. Rosewater* as texts or library books, ordered Vonnegut's *Cat's Cradle* and Heller's *Catch-22* to be removed from the library, and issued resolutions which served to prohibit teacher and student discussion of these books in class or their use as supplemental reading. . . .

I. The board's decision not to approve or purchase certain texts

It appears clear to this court that the State of Ohio has specifically committed the duty of selecting and purchasing textbooks to local boards of education. . . .

Clearly, discretion as to the selection of textbooks must be lodged somewhere and we can find no federal constitutional prohibition which prevents its being lodged in school board officials who are elected representatives of the people. To the extent that this suit concerns a question as to whether the school faculty may make its professional choices of

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

titles now troublesome

Books

Periodicals

Films

On stage

Broadcasting

Washington initiative killed

An initiative to ban adult theaters and bookstores in Washington was denied a place on the November ballot because the petitions supporting it did not have the required number of valid signatures.

The petitions, which were circulated throughout Washington by the Committee for Decency in Environment-Entertainment Today, were declared lacking by the secretary of state.

According to the initiative, a legal finding that an establishment operated as a "moral nuisance" would have permitted a court to close its premises to all operations for a year (see *Newsletter*, Sept. 1976, p. 128). Reported in: *Variety*, September 22.

S. 1 and tap law dead

Reports received by the Office for Intellectual Freedom in September indicated that S. 1, the controversial bill to revise the federal criminal code, and S. 3197, a wiretap bill, would die at the close of the 94th Congress.

Although the dangerous provisions of S. 1 were widely publicized, S. 3197 did not achieve a similar notoriety despite its repressive measures. Some attributed its acceptance to the fact that it was widely hailed as a bill to ban wiretaps without warrants and was supported by many liberal senators, including Edward Kennedy (D.-Mass.).

According to the provisions of the bill, a court must issue a wiretap warrant if an officer of the executive branch certifies that the target of the tap is a "foreign agent." This term includes U.S. citizens who, at the direction of a foreign power, undertake activities which a reasonable person would believe would harm the security of the U.S. But these activities need not involve violations of criminal law.

Under criminal law, a court cannot issue a wiretap warrant unless there is probable cause to believe that: a crime has been or is about to be committed by the target of the tap; the facilities to be tapped are likely to be used by the target; the conversations to be intercepted will pertain to the alleged offense; and other less intrusive investigative techniques have been tried and failed.

Under S. 3197, the court must find only that the target of the surveillance is an agent of a foreign power and that the facilities to be tapped will probably be used by the target. However, the court is without authority to question the government's assertion that information pertaining to foreign intelligence will be obtained.

Both S. 1 and S. 3197 will probably be introduced in the next Congress in substantially similar forms.

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the published word

a column of reviews

Human and Anti-Human Values in Children's Books: A Content Rating Instrument for Educators and Concerned Parents. Council on Interracial Books for Children, 1976. 280 p.

The double-edged sword of controversy between selection and censorship will further be whetted by this contribution from the Council on Interracial Books for Children. Utilizing the argument that books for children generally transmit the values of their creators, this "instrument" presents a report card-like checklist of criteria for evaluating the content of selected titles, which educators and parents are urged to examine for evidences of racism, elitism, materialism, conformity, escapism, ageism, and positive vs. negative images of females and minorities as they occur in children' books. Accompanying the checklist are reviews of 235 books published for children and young adults during 1975. Of these, thirty-nine percent were rated low for being racist, ageist, sexist, etc.

Consider the adaptation of a German folktale, *The Queen Who Couldn't Bake Gingerbread* by Dorothy Van Woerkom (Knopf), which is rated as sexist and elitist in language in its portrayal of the king's relationship to obedient servants. The criticism suggests that this updated version is still "pretty much the same old German fairy tale" without attempting to place it in the context of the mores or attitudes of a time past. Readers are likewise advised to avoid Beverly Clearly's books if *Ramona the Brave* is typical of her other books, although the reviewer concedes there is "humor and wit" in the writing. Further, the book is "racist by omission" (no "third-world" characters are mentioned), sexist, individualist and at the same time conformist, and definitely escapist.

One of the few perfect books cited is Paul Zindel's *I Love My Mother* (even though Father is away); while Laurence Yep's *Dragonwings* is considered flawed because of omission in placing "the blame on the economic system" which used non-whites for profit!

Paul Robeson, by Eloise Greenfield, is one of few favorably reviewed non-fiction titles. But no mention is made of the earlier scholarly biography by Virginia Hamilton. Indeed it is in the area of non-fiction that the comparative technique is missing so that a parent using this guide has no immediate access to alternatives or additional selections and a one-dimensional view of the entire spectrum of publications is given.

It is in the area of racism and sexism that both fiction and non-fiction receive the greatest demerits, and it is significant that reviews in these areas were written by members of the cultures described or portrayed in the books. Interestingly enough, concession is made that authors outside of a given culture could write objectively or at least produce anti-racist, anti-sexist books, but the observation that a "third world" writer may not "possess a . . . relevant perspective," and "oppressed people do not necessarily understand the mechanism of oppression," form the critical comments about Nicholosa Mohr's *El Bronx Remembered* (Harper & Row.)

Ignoring the fact that the current body of literature for children arose out of the emerging concept of children as people in their own right, with human needs related to that of adults, little cognizance is given to children's rights to share in the selection of their books to satisfy their informational needs or even for their enjoyment.

The development of children's literature began with the thrust towards didacticism, and children through the ages have not always accepted those books specifically intended or recommended for them.

Few could argue with the well-intentioned goal of this tool to help prepare for a society in which all "human beings have the true . . . opportunity to realize their full human potentials." No thinking professional who works with children would refuse selection of books which foster positive images or human values. While the current societal values which may subtly and unconsciously influence a writer to produce "objectionable" books, the yardstick for measuring undersirable elements in a book also varies in proportion to the evaluator's degree of sensitivity, awareness or knowledge of the child or the subject. Fortunately, children do not live in isolation and the rate of their absorption or social conditioning is also dependent on their psychological and physical growth, their exposure to media other than books, and the number or character of adults with whom they must share their world.

The Council on Interracial Books for Children has performed an admirable service, in the area of consciousness-raising, and in providing a broader market for third-world literary and artistic talent, but through this volume it continues to pursue a negative route for achieving positive goals and is guilty, as most well-intentioned guardians of

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Notice to our subscribers

We regret that the rising costs of materials, services, and postage has forced to raise our annual subscription rate. Effective January 1, 1977, our subscription price will be $8.00 per year.

Rates for five or more copies to the same address are available upon request.

First Amendment film in the making

A half-hour film celebrating the First Amendment and its protection of basic rights of belief and expression in America will be made by the ALA Intellectual Freedom Committee. A spring 1977 release is planned.

The final details of the film project were approved by the ALA Executive Board at the ALA Centennial Conference in Chicago last July. The board authorized the IFC to proceed in a joint venture with Vision Associates of New York, headed by filmmaker Lee Bobker.

The project has received a generous $12,000 grant from Beta Phi Mu, and through pre-release orders has been supported by more than a hundred libraries across the United States.

Inquiries about the film should be sent to the Office for Intellectual Freedom, 50 E. Huron St., Chicago, Ill. 60611.

federal sunshine law approved

A federal sunshine act, an open meetings law which applies to most meetings of federal agencies and commissions, was passed by the Congress at the end of August by a unanimous vote in the House and a voice vote in the Senate.

According to the measure, which President Ford has signed, closed meetings will be justified only under the exemptions enumerated in the law.

Prior to the enactment of the bill, no statute regulated the status of agency meetings. Virtually any agency could lawfully keep the public from its sessions.

The ten exemptions, many of which were insisted upon by federal agencies, allow closed discussions which touch upon such matters as: national defense information that is classified according to executive order; an agency's internal personnel policy; trade secrets; criminal accusations; information that, if prematurely released, would lead to financial speculation.

Meetings may also be closed when openness would result in "a clearly unwarranted invasion of personal privacy." Reported in: *Access Reports,* September 7.

doing violence to television

In a September editorial, *Variety* called attention to recent attempts of various advertising agencies and their clients to "boycott television programs containing excessive violence." Enthusiasm for such "public spirited sentiments" should be restrained, *Variety* claimed, until the boycotts are examined more closely.

Variety quoted the remarks of Archa Knowlton, General Foods' director of media services, at an *Advertising Age* seminar: "From a media marketing viewpoint, contributing to the culture of violence just doesn't make sense. . . . No matter what the rating points add up to, continuing to buy by the numbers, especially if you're buying violence, can eventually have disastrous impact on your effectiveness." Knowlton noted that a J. Walter Thompson study found that "objectionable programming can turn as many as twenty percent of your customers off your product."

The attitude of Knowlton, *Variety* said, puts the matter in perspective. While acknowledging that violence on television is a real problem, *Variety* argued that the basic problem is "cynical exploitation of violence to arrest viewer attention in the absence of genuine program values. . . . Network programming already is tailored to the needs of advertisers, not to the needs of viewers. It should be remembered that agency and advertiser pressure against violence is simply another attempt to streamline television as a merchandising vehicle."

South African press policies protested

Prior to the departure of Henry Kissinger's peace shuttle to southern Africa, the Newspaper Guild asked the secretary of state to protest the arrests of four South African journalists.

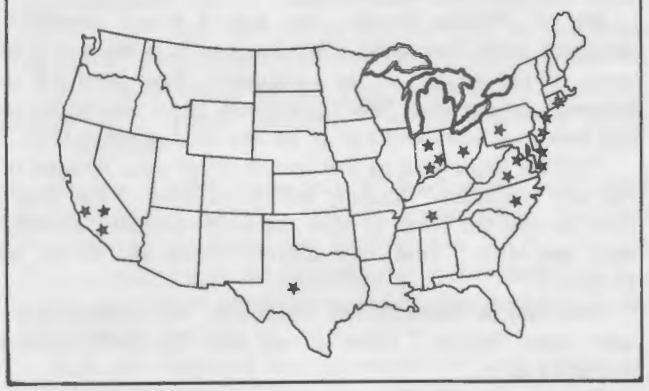
In an August 17 letter to Kissinger, Guild President Charles Perlik Jr. asked him to "inquire as to the reasons for these arrests . . . and protest them as an abridgment of freedom of the press." Perlik said the jailings "seemed . . . to be part of a pattern of repression and censorship . . . that can only give rise to fears that the government is attempting to silence the English-language press."

The arrests, which came after the South African government was unsuccessful in its efforts to quell political unrest in black townships, were made under the Suppression of Communism Act. Those jailed included David Rabkin, an editor of the *Cape Argus;* Patrick Weech, a copy editor of the *Rand Daily Mail;* Anthony Holiday, senior political reporter of the *Cape Times;* and Henry Mashabela, a black reporter for the *Johannesburg Star.*

During riots in the townships, Cornelius P. Mulder, the government information minister, implied that the English-speaking press was viewed as a problem. Mulder told the ruling Nationalist Party that the government attached great importance to press freedom, but added that a society had a right to expect loyalty and patriotism from newspapers.

Mulder said one of the restraints he had in mind was a requirement that all opinion writers be South African citizens competent in both English and Afrikaans, the Dutch-derived language of the dominant white group in South Africa. He said that such a policy would eliminate foreigners who could leave the country immediately if trouble erupted as a result of their writings. Reported in: *New York Times,* August 15; *Editor & Publisher,* August 28.

censorship dateline



libraries

Los Angeles, California

The Women Library Workers of Los Angeles announced in September that they had joined the California Coalition of Women Against Rape in urging libraries not to buy or use the film, *How to Say No to a Rapist and Survive.*

In its news release, WLW of Los Angeles said: "The film is being opposed by women everywhere who feel that the tasteless delivery–a series of jokes and suggestive remarks–is exceeded in offensiveness only by the content." The news release notes that the film's producer, Frederic Storaska, advises women to go along with the rapist until it is safe to escape. "Sounds good," WLW notes, "except for the fact that research indicates that the longer a woman does comply with an attacker, the more likely she is to be raped. James Selkin, in *Psychology Today* (Jan. 1975, p. 71) says that rape 'follows a predictable course, from isolating the victim to testing her docility to scaring her silent afterward. Best advice: resist loudly, firmly–and early.' "

WLW of Los Angeles recommended that libraries now owning the film follow the precedent of the Los Angeles County Sheriff's Department and return it to the distributor.

Baltimore, Maryland

In an August letter to the Baltimore County Public Library, the Catholic League for Religious and Civil Rights, headquartered in Milwaukee, rejected the library's claim that a comic book, *Abortion Eve,* is protected by the *Library Bill of Rights.*

"The League agrees," the letter said, "that 'library materials selected should be chosen for values of interest, information and enlightenment of all the people of the community.' We fail to understand, however, how the gross caricature of the Blessed Virgin on the cover of *Abortion Eve* protects and promotes the vales of information and enlightenment. Of course, it may be of some interest to certain people, just as Julius Streicher's gross caricatures of Jews in *Der Stuermer* was of interest to anti-Semites in Hitler's Germany. This type of interest, however, does not justify the placement of either type of defamation on public library shelves, especially since this forces the Catholic community to pay taxes to promote defamation of its sacred symbols."

In response to the library's refusal to attach an appendix to the work, the assistant executive director of the League, Lowell A. Dunlap, stated: "I have in front of me a number of volumes on controversial civil rights topics, many of which contain critical comments in the forward [sic] or in an appendix. If one were to follow your argument to its logical conclusion, all libraries should be eager to excise these portions of a book in order to prevent any hint of 'labeling.' "

In short, the League said, the library's insensitivity to publications containing "grossly defamatory caricatures of the sacred symbols of the Catholic community" represented "an abdication of responsible professional judgment on the part of the library staff."

Bergen County, New Jersey

School trustee William Buhr, who objects to "vulgar language" in Solzhenitsyn's *One Day in the Life of Ivan Denisovich,* threatened in August to use obscenities at all school board meetings until his fellow trustees aggreed to remove the book from the Mahwah High School library.

Buhr's objection to Solzhenitsyn's novel represented the first public attempt by a school trustee in Bergen County to have a book banned since Teaneck Board President Andrew Fraser failed in his 1972 campaign against *Down These Mean Streets.*

Trustee John Kraus characterized Buhr's position as "absolutely ridiculous." Kraus commented, "There is no need for this pettiness. Sometimes I wonder who needs help–the kids or the adults."

Trustee Harriet DuFault blamed Buhr for undermining the morale of the high school faculty and for threatening the quality of the program for which the book had been ordered.

"His swearing is not going to affect me one way or another," DuFault said, "because I'm totally against censorship." Reported in: *Hackensack Record,* August 10.

Pittsburgh, Pennsylvania

Parental complaints against John Jakes' historical novel *The Bastard* led in August to an order that the work be removed from suburban Montour High School.

Russell Cersosimo, the school board director who made the motion to ban the book, conceded that the seniors who would have been assigned the book were already acquainted with the language that he found objectionable. But he stated, "I don't believe that they have to be subjected to it in the classroom."

Despite Cersosimo's reasoning, the school board also

voted to reject the book as supplemental reading and refused to allow its placement in the high school library.

Don Bailey, head of libraries in the Montour district, described the work as a "thoroughly researched fictional historical novel." He added that "the whole issue disturbs me because it directly reflects on the right to read and freedom of choice."

Cecil Willis, president of the Montour Federation of Teachers, speculated that the entire controversy hinged on the title of Jakes' novel. Reported in: *Philadelphia Bulletin,* August 22.

schools

Sacramento, California

Legislation guaranteeing free expression in publications of students in public schools was defeated in August by the California Senate.

The measure, sponsored in the senate by John Dunlap, failed on vote of seventeen to twenty-one, with opponents questioning whether student journalists were responsible enough to publish newspapers without adult supervision.

Dunlap argued that censorship by school administrators had rendered some high school newspapers little more than "house organs of the school administration."

But Senator George Deukmejian argued that unsupervised publication of student newspapers would result in articles which are "extremely damaging to fellow students or teachers." Another opponent, Senator Newton Russell, contended that "young people have a desire to shock, titillate—things that border on the obscene." Reported in: *Modesto Bee,* August 12.

Cedar Lake, Indiana

The school board in this northwest Indiana community in September ordered all copies of the *American Heritage Dictionary* removed from the local high school because of parental complaints about various entries in the reference work. Superintendent Larry Crabb said parents complained about "seventy or eighty words" as obscene or otherwise inappropriate for high school students.

One of the more frequently criticized entries was "bed." Among the nine definitions listed are "a place for love-making" and "a marital relationship, with its rights and intimacies."

"We're not a bunch of weirdo book burners out here," explained one board member. "But we think this one goes too far." Reported in: *Chicago Sun-Times,* September 30.

Goshen, Indiana

The Goshen school board voted last summer to remove *The Catcher in the Rye* and *Brave New World* from the high school curriculum and attempted to transfer the English teacher who assigned the works. The teacher, Diane L. Cartwright, who successfully fought her reassignment, called the decision on the books "a very dangerous precedent."

School board members Carol Summy and Phillip E. Neff, who led the fight against the works, admitted that they had read neither book.

But F. Phillip Snyder, the school board president, disagreed with Cartwright. "It's not nearly as big a deal as some of the people in the community have been led to believe," Snyder said. "We're certainly in no way trying to ban books or burn books or go on any kind of witch hunt."

"It's the same idea as if someone asked your opinion of *Playboy* magazine," Summy said of *Catcher.* "You don't have to read the book to have the entire picture." Summy said she didn't find any literary value in "a lot of profanity."

Neff said he read *Catcher* "randomly" and scanned nineteen pages "before I came to one page that didn't have a profanity on it."

Cartwright said the school board, which had earlier voted to eliminate *Slaughterhouse-Five,* would cheat the students by offering "watered down" curricula.

Neff, responding to Cartwright, said the teacher "knows what kinds of books the board doesn't want to be used and she uses them anyway. To me that's insubordination." Reported in: *Louisville Courier-Journal,* July 23.

Rockville, Maryland

Responding to charges of the National Organization for Women that *The Dog Next Store and Other Stories* is riddled with sexism, the Montgomery County Board of Education voted in September to get rid of the work.

Specifically, the four-to-two vote of the board implemented a recommendation of Superintendent Charles M. Bernardo that no more copies of the book be purchased [in fact, the book is no longer published in its original form] and that no more copies of the book be rebound.

One board member, Thomas Israel, vociferously protested the action against *The Dog Next Store.* "If NOW's interpretation of the [school board's] evaluation criteria is upheld, the list of materials challenged will be endless," Israel warned. "I strongly suspect NOW's viewpoints on what constitutes sexism are far more extreme than the general population of women."

Despite the action of the board, NOW was disappointed with the response to its complaints. "They [the school board] still will not say publicly that the book is sexist," said NOW education task force member Lynette Reilly. She added, "I was extremely disappointed with the quality of the discussion. The only person who forcefully addressed the issue of sexism was Israel, and he was on the other side." Commenting on future actions of NOW, Reilly said that her organization would next file complaints against a second-grade text called *Special Happenings.* Reported in: *Washington Post,* September 15.

Rockville, Maryland

Nine parents, members of Parents Who Care, have asked the Maryland Board of Education to order the Montgomery

County School System to stop using sex education materials in classrooms.

The group cited an unauthorized showing in July of a sex education film—*A Child is Born*—to an English class at Northwood High School as an example of the school system's "clear violation of state and county regulations." According to the group, the film was intended for showing only in a senior elective, "Family Life and Human Development."

Eugene Smoley, principal at Northwood, and Steve Rohr, director of the school's professional personnel department, conducted an investigation of the charges. Rohr admitted that the film was shown, but explained that a "restricted use" label was pasted on the cannister of only one copy of the film.

Rohr also disputed the contentions of Parents Who Care that two children had become ill because of the showing. He charged that Parents Who Care over-reacted to the whole incident. Reported in: *Montgomery County Sentinel,* August 19.

Manchester, Tennessee

The Coffee County school board voted in September to remove *Drums Along the Mohawk* from an assigned reading list because it contains the words "hell" and "damn."

School Superintendent James G. Jarrell said the unanimously approved action was sponsored by board member Jesse Garner, a Baptist minister, who labeled the 1936 book "obscene." Jarrell explained that the book would remain in school libraries but could not be assigned to students. Reported in: *New York Daily News,* September 17.

Austin, Texas

Three books offered for high school "free enterprise classes" are filled with "socialist diatribe" about environmental problems, a representative of the Daughters of the American Revolution told the Texas Textbook Committee in August.

Drusilla Bearden of San Angelo devoted more than three hours to a critique of the American Book Company's *Fundamentals of the Free Enterprise System,* a set of three paperback volumes on economics. Bearden said that sections of the works on environmental problems contain "too much 'voice of doom' philosophy."

Complaining about a section on action against community problems, Bearden said the works urge students to "harass the businessman" in a way that "reflects the thoughts of Chairman Mao." She also contended that the works contain a "pro-union" bias. Reported in: *Dallas News,* August 19.

Fairfax County, Virginia

Responding to complaints from parents of several students at Annandale High School, the Fairfax County School Board voted last summer to restrict the use of *The Lottery,* a film based on a short story by Shirley Jackson, to junior and senior classes.

The parents who objected to the film contended that the work is violent and lacks value, and charged that it was shown to students without adequate explanation of its meaning. The parents said the film had been shown to seventh and eighth graders.

The decision to restrict the film was based on a recommendation from a curriculum materials review committee consisting of parents, students, teachers, and curriculum specialists. Reported in: *Fairfax Journal,* July 29.

universities

Hayward, California

Eight editors of the student newspaper at the Hayward campus of California State University have resigned because they were ordered by the university's publication board to offer free space to the United Farm Workers next to any paid adverisements for Gallo wines.

The issue of Gallo ads has become a controversy throughout California, generating demonstrations, threats of violence, and the theft of thousands of copies of newspapers carrying Gallo ads. Dan Solomon, Gallo communications director, commented that the imbroglio transcended Gallo advertising and struck at the heart of First Amendment freedoms.

Solomon revealed that newspapers at campuses in the East, including the *Harvard Crimson,* had told Gallo that they would refuse the company's ads until the United Farm Workers won a contract, regardless of the outcome of Agricultural Labor Relations Board hearings to review challenges to ballots in an election apparently won by the Teamsters.

Prior to the resignations of the Hayward editors, an editorial in the campus *Pioneer* stated: "While this paper in no way endorses Gallo's policies or product, we do not believe we have the right to ban Gallo ads from the paper because [the Gallo firm] has chosen an unpopular course. Reported in: *Modesto Bee,* August 12.

New Haven, Connecticut

The Organization of American Historians began in August a poll of its 12,000 members to determine whether it should conduct an investigation of the Yale University history department. At issue was a charge that the department "may have damaged the reputation of a member of the profession" in opposing the appointment of Herbert Aptheker as a visiting lecturer. Aptheker, who was scheduled to give a seminar on the life and works of W.E.B. DuBois, is literary custodian of the DuBois papers and a well known Communist.

The accusation against the department, signed by five nationally known historians, was carried in a newsletter of the Organization of American Historians. The newsletter

said the department had refused to make public its reasons for opposing Aptheker and suggested that he was discriminated against for political reasons.

In responding to the charges, John Hall, chairperson of the Yale history department, said the department had abided by regular professional standards in rejecting Aptheker, but he added that the department would cooperate with an investigation if it were ordered. Reported in: *New York Times,* August 22.

Bloomington, Indiana

The student presidents of ten dormitories at Indiana University moved in September to oppose a proposed university policy that would ban the showing of *X*-rated films in dormitories as fund-raising projects. The exhibition of *X*-rated films became a controversy at the university when one residence hall showed *Deep Throat* in 1975 and drew an estimated 5,000 students to six showings.

Admission proceeds from the screenings of *X*-rated fare are used to finance activities of various student groups. After hearing complaints from parents and alumni, particularly against the showing of *Deep Throat,* Indiana University administrators drafted a policy scheduled for revelation in October.

The student leaders said that a ban on the showing of sexually frank films on campus would deny students the right to decide for themselves what they should view. Reported in: *Variety,* September 8.

broadcasting

Los Angeles, California

In September a federal court in Los Angeles turned down a lawsuit which sought to restrain ABC from airing a documentary, "New Religions: Holiness or Heresy?"

The suit was initiated by the Church of Scientology, which claimed that ABC was committing an invasion of its privacy. Marlene Sanders, director of ABC documentaries, said the Scientologists had also sent telegrams to the network's affiliates warning them that their federal licenses might be "jeopardized" if they carried the program.

After the program was aired, on September 2, the church group contended that the Federal Communications Commission's "fairness doctrine" required that they be given equal time on ABC. Reported in: *New York Post,* September 3; *Variety,* September 8.

Washington, D.C.

A fifty-five-second radio spot for *Equus,* playing at the National Theatre in Washington, was censored by two of five radio stations after they received calls from irate listeners. A line in the advertisement suggested a sexual liaison in fantasy between the listener and a horse.

WMAL, one of the two stations that edited the spot, said that it probably would not have been aired if it had promoted an *R*-rated movie at a drive-in. "It doesn't turn me off," said commercials director Vicki Garrett, "but it certainly does a lot of people in our audience."

The controversial ad was composed of lines taken from the script of Peter Shaffer's psychological drama. Reported in: *Variety,* September 22.

on stage

New York, New York

Involved in a dispute over a ballet in which two women are nude from the waist up, the Utah Repertory Dance Theater moved a September performance from Marymount Manhattan College to the Manhattan School of Music.

The conflict between the dance company and Marymount was a result of reaction to advance publicity given to the partially nude performance. Marymount's president, Sister Collette Mahoney, told the company they could not perform the ballet in Marymount's theater. The dance, "Lost and Old Rivers," was then shifted to the school of music.

The company offered to perform the work fully clothed. but the college would not agree to that, according to Bouce Beers, the company's manager. Beers said he was amazed that a piece which had been performed in Salt Lake City would be rejected in New York. Reported in: *New York Post,* September 21.

New York, New York

A new policy of the League of New York Theatres and Producers, unanimously passed at a special meeting called at the end of August, opposes the presentation of so-called sex shows on Broadway.

The resolution specifically cited *Let My People Come* and *Oh! Calcutta* as presentations which are "antithetical" to the league's position. However, Lester Osterman, operator of the theater showing *People,* and Norman Kean, co-producer of *Calcutta,* voted for the resolution.

The league stated that it seeks to "upgrade the physical appearance of the theatrical district; to eliminate sex-related businesses . . . from the theater district; and to generally improve the urban environment in the midtown area." Reported in: *Variety,* September 1.

etc.

Washington, D.C.

A decision of the chief chaplain of the Veterans Administration to remove a "sacrilegious" hymn from 15,000 newly purchased VA hymnals (see *Newsletter,* Sept. 1976, p. 126) was denounced in August by officials of the United Church of Christ and the American Baptist Churches.

The unconventional hymn, "It Was On A Friday Morning," stirred a sharp dispute in church circles.

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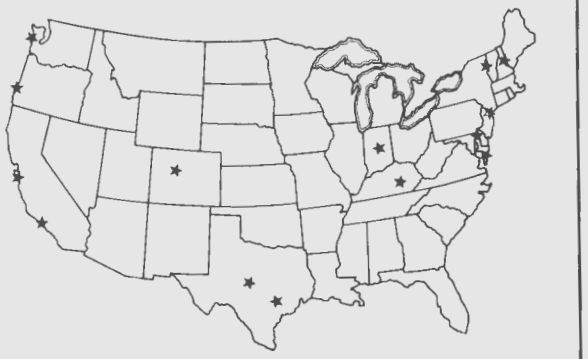
from the bench



news media

Washington, D.C.

Journalists have no special right to stop examination of records of their long distance telephone calls by law enforcement agencies, according to an August ruling handed down by U.S. District Court Judge June Green. The judge declared that telephone companies and federal investigators are not required to notify reporters when their phone records are subpoenaed by investigative and law enforcement agencies.

Forty plaintiffs in the case, including the Reporters Committee for Freedom of the Press, alleged that the practice of subpoenaing toll records not only revealed reporters' confidential sources, but also resulted in an invasion of personal privacy.

Judge Green argued that the Supreme Court's decision in *Branzburg* v. *Hayes* (1972) denied First Amendment protection to reporters' sources. In *Branzburg,* which involved the refusal of a reporter to testify before a grand jury in a criminal investigation, the Supreme Court held that a reporter was not entitled to any privileges not enjoyed by an ordinary citizen.

Also cited in the ruling was another Supreme Court decision, *U.S.* v. *Miller* (1976), in which the Court established that records maintained for the convenience of a company are not the private papers of a plaintiff. Reported in: *Access Reports,* August 23.

Fresno, California

Four members of the *Fresno Bee* staff served five-day jail sentences in September for refusing to disclose a news source, saying they were "firmly proud" of their defense of a basic press freedom. They began their sentences after the California Supreme Court decided in a unanimous vote not to hear arguments that open-ended sentences in their cases were unfair.

The four were William Patterson and Joe Rosato, *Bee* reporters; James Bort, the paper's ombudsperson; and George Gruner, the paper's managing editor.

The four were held in contempt for refusing to disclose the source of material published in 1975 from a grand jury transcript concerning bribery indictments returned against a member of the Fresno city council and two other persons. Judge Denver Peckinpah of Fresno County Superior Court had ordered the transcript sealed.

In June the U.S. Supreme Court refused to review the contempt convictions. On the day in which the four began their jail sentences, Supreme Court Justices Rehnquist and Brennan refused separate requests to free them. Reported in: *New York Times,* September 4.

Los Angeles, California

An attempt by the City of Los Angeles to ban newsrack displays of nudity and material allegedly harmful to minors was struck down in August by the California Court of Appeal.

The appellate ruling invalidated a 1974 amendment to Los Angeles' newsrack ordinance. At the time the provision was adopted, City Attorney Burt Pines expressed doubts about its constitutionality.

The Court of Appeal ruled that the amendment was invalid on two counts. First, its prohibition against any depiction of nudity violated the First Amendment. Second, its attempt to regulate so-called harmful matter invaded a field preempted by state law. Reported in: *Los Angeles Times,* August 24.

Seattle, Washington

The Washington Supreme Court has approved a change in judicial ethics that will allow news cameras and broadcast microphones inside courtrooms during trials. The order, signed by all the justices, took effect September 20.

The change, which lifted previous restrictions prohibiting the use of microphones, television cameras, and still photography in courtrooms, was the result of experiments in recent years which demonstrated that the devices were not disruptive.

Under the revision, individual trial judges retain discretionary powers. If a trial judge permits the devices, media personnel may not distract participants or impair the dignity of the court. Furthermore, witnesses or other parties to a trial who express prior objections to a judge may bar broadcast of their testimony and may halt photography. Reported in: *Variety,* August 4.

broadcasting

San Francisco, California

California Superior Court Judge John A. Ertola in September dismissed a $22 million damage suit against NBC which claimed that the network's screening of "Born Innocent" incited sexual attacks on two young girls.

After viewing the program, which showed an attack on a

girl by four others in a shower room of a school for delinquents, Judge Ertola dismissed the suit on First Amendment grounds. Richard Hass, an attorney representing NBC, argued that if broadcasters were held accountable for the acts of disturbed persons, they could not show even the news.

The plaintiffs claimed they were sexually assaulted by three older girls four days after the broadcast. It was alleged that all the attackers had seen or heard of "Born Innocent."

The plaintiffs' attorney, who called the judge's decision "shocking," announced that an appeal would be filed. Reported in: *Variety*, September 22.

Washington, D.C.

A radio station owned by the family of Lyndon B. Johnson was admonished in August by the Federal Communications Commission for censoring the contents of a political candidate's campaign advertisements.

The FCC's action against KLBJ in Austin, Texas was taken in response to a complaint filed in April on behalf of Lane Denton, then a candidate for Texas Railroad Commissioner. He accused KLBJ of "unfairness, censorship, and discrimination" by refusing to broadcast a sixty-second announcement in connection with his campaign.

KLBJ told the FCC that it believed its objections to certain portions of the announcement did not constitute censorship because Denton's voice was not heard during those portions. Rather, his voice was heard only during the portion of the ad which identified its sponsorship, the station said.

The FCC advised KLBJ that the law prohibits any form of censorship of a "use" of a broadcast station by a candidate. Reported in: *Washington Post,* August 26.

teachers' rights

Portland, Oregon

A school board order banning political speakers from Molalla Union High School violated teachers' First Amendment rights, U.S. District Court Judge James M. Burns ruled in September. The judge found that the intent of the board's order "was to placate angry residents and taxpayers."

Judge Burns' ruling was handed down in a suit filed by student Vera Logue and teacher Dean R. Wilson against five school board members..

The suit contended that the board banned all political speakers from the school after a controversy arose over the appearance of Anton Krchmarek, a member of the Communist Party, who was one of several political speakers invited to appear before Wilson's junior and senior classes last year.

While noting that freedom of expression may be restricted under certain circumstances in the schools, Judge Burns ruled that Wilson's teaching "medium" was protected under the First Amendment.

"The [school board] order exists to silence absolutely the expression of an unpopular political view, solely out of the fear that some will listen. This the government, acting through the school board, cannot do," Burns stated. Reported in: *Oregon Journal,* September 3.

prisoners' rights

Houston, Texas

Ruling on a complaint filed by a Texas prisoner, U.S. District Court Judge John V. Singleton in September approved revised mail regulations submitted by officials of the Texas Department of Corrections.

The new mail rules abolished a regulation stipulating that writing or receiving mail is a privilege that can be removed by the prison administration; increased the number of letters prisoners may write from five to forty a week; and permit prisoners to write to new media representatives.

An attorney representing the prisoner said that further legal action would result from inmates' desires to abolish regulations that allow inspection of outgoing mail to attorneys and censorship of mail to news media representatives. Reported in: *Houston Chronicle,* September 9.

freedom of information

Knoxville, Tennessee

A federal mediator has ruled that a union, as the legal representative of employees, can have access to all management records that are available to individual employees. The decision came in a dispute between the Department of Housing and Urban Development and a local of the American Federation of Government Employees which involved a confrontation between the principles of the Privacy Act and those of the Freedom of Information Act.

Representatives of HUD argued that such records should be exempt under the FoIA because they relate solely to internal personnel practices and procedures. Furthermore, HUD contended, their release would violate employees' rights under the Privacy Act.

The union successfully maintained that it had a right to the information as the representative of the employees. Although the union contended that it could use the FoIA to gain access, Arbitrator T. Warren Butler noted that his decision was made solely on the basis of collective bargaining agreements. Reported in: *Access Reports,* September 7.

obscenity law

Denver, Colorado

Relying on an analysis of Denver's new obscenity ordinance which led to a temporary injunction against it in May, District Court Judge Harry E. Santo in July ruled that

the law was unconstitutional because it was vague and overbroad.

Santo also ruled that the ordinance was invalid because it conflicted with a state law which went into effect July 1.

The suit against the ordinance was filed by the American Civil Liberties Union and the Colorado Media Coalition, a group sponsored in part by the Colorado Library Association. Reported in: *Denver Post,* July 22; *Rocky Mountain News,* July 22.

New York, New York

A procedure used by the government to confiscate allegedly obscene materials at U.S. ports was declared unconstitutional in August by a federal judge in Manhattan.

The decision, issued by U.S. District Court Judge Marvin E. Frankel, favored a photographer who fought against the government's seizure of a magazine which had been mailed to him from Germany.

The case before Judge Frankel involved a procedure carried out under a federal law designed to prevent "penetration of our shores by obscene materials."

"Customs personnel at our various ports staff this bulwark," the judge said. "They spend their time opening mail and packages, having evidently learned what to suspect. Materials found to be of the forbidden kind are turned over to the U.S. Attorney for the district in which the port lies.

"The addresses receive notice that their mail has been opened and potentially condemned and that they are entitled to claim it. Most ignore the notices, and their things are consigned by default to be destroyed."

Judge Frankel's eighteen-page decision ruled that the procedure under the statute unconstitutionally deprived the plaintiff before him of material that might be acceptable in his own community. Reported in: *New York Times,* August 29.

Nashville, Tennessee

A September ruling of the Tennessee Supreme Court invalidated a provision of the Tennessee obscenity law which allowed local prosecutors to conduct mass searches of adult bookstores and movie theaters. Attorneys said the ruling could affect virtually every pending obscenity case in Tennessee and would have a major impact on the way evidence is gathered in future obscenity cases.

The ruling on the law came in a Memphis case in which the Shelby County District Attorney's office had confiscated nearly fifty films and all records of shipments of those films to local theaters.

An independent magistrate "must specify what is to be seized" in issuing search warrants for any allegedly obscene materials, the high court held. Under the invalidated law, a search warrant could authorize a law enforcement officer to seize one example "of each piece of matter which is obscene in the opinion of the district attorney general or his designated representative."

The court's ruling upheld a decision by Shelby County Circuit Court Judge John R. McCarroll Jr., who had declared unconstitutional "an on-the-spot determination of what is obscene."

The Supreme Court's ruling stated: "It is too well settled to require citation of authority that the Fourth Amendment [to the U.S. Constitution] requires that an impartial magistrate, rather than the prosecutors or the police officers, make the determination, not only whether or not a warrant shall issue, but also the specification of the articles to be seized and the places to be searched." Reported in: *Nashville Tennessean,* September 8.

Dallas, Texas

The movie *Behind the Green Door* is obscene and therefore not entitled to copyright protection, U.S. District Judge Robert Hill ruled in September.

The judge's decision denied relief to the Mitchell Brothers and Jartech Inc., makers and distributors of the film, who claimed that the Cinema Adult Theater in Dallas infringed upon their copyright by showing the film without permission.

After finding the film obscene, Hill ruled: " 'Sacrificial days' [i.e., time] devoted to the production of works which do not advance the public interest or welfare are not entitled to the rewards provided for in the Copyright Act and to judicial protection." Reported in: *Dallas News,* September 3.

Rutland, Vermont

An effort by Rutland to outlaw the sale of sexually explicit materials to adults was invalidated in August by a Chittenden County Court ruling.

Superior Court Judge William C. Hill found that a new Rutland ordinance conflicted with state law, which permits the sale of sexual fare to adults. Noting that Rutland has only the authority granted to it by the legislature because a municipality "is a creature of the legislature," he ruled that Rutland could not adopt an ordinance which conflicted with a state statute or affected a field which the state had preempted.

The judge continued: "This [Rutland ordinance] is a criminal statute and the legislature has determined in the field of obscenity that it is only criminal to sell to minors and that it is not criminal to sell to adults."

The ruling permitted the Napro Development Corporation to keep its adult bookstore in Rutland. Reported in: *Rutland Herald,* August 14.

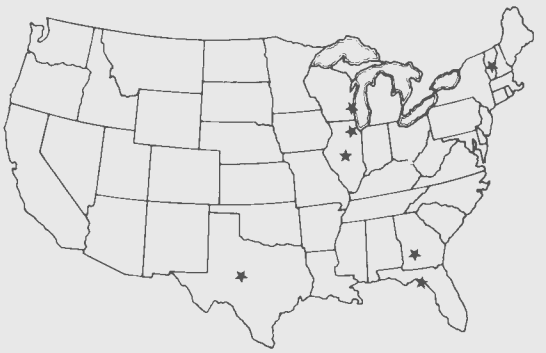
obscenity: convictions and acquittals

Indianapolis, Indiana

In the first attempt in Marion County to enforce Indiana's 1975 obscenity statute, a clerk at the Belmont

(Continued on page 154)

is it legal?



in the U.S. Supreme Court

In September the Freedom to Read Foundation filed its brief with the U.S. Supreme Court in the case of *Smith* v. *U.S.* The Foundation supports Petitioner Jerry Lee Smith in order to challenge the federal government's employment of "local federal standards" on obscenity in Iowa, which has decriminalized so-called obscenity for adults (see *Newsletter*, Sept. 1976, p. 111).

The Foundation brief argues that a state legislature has the authority to establish liberal "contemporary community standards" within its borders, and that the decision of the Iowa legislature to permit the dissemination of sexually explicit fare to adults is binding on all jurors, state and federal, in Iowa.

It is contrary to the basic principles of our system of law, the brief continues, to permit federal jurors to "rewrite" the standards established in Iowa through representative government. In 1954, the Supreme Court itself declared that "when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive," the brief notes.

ALA-ILA brief

In an *amici* brief filed on behalf of the American Library Association and the Iowa Library Association, the Foundation contends that no criminal prosecutions on charges of obscenity should be permitted until there has been a prior judicial determination in a civil proceeding that the material in question is legally beyond the pale. Under a scheme of prior civil proceedings, criminal prosecutions are restricted to acts of dissemination which occur after the judicial finding.

A primary fault of obscenity laws, the Foundation contends, is their vagueness. As a consequence, the knowledge that one must have to be convicted of engaging in illegal conduct,- i.e., guilty knowledge, or knowledge that what one did was prohibited by law, becomes highly problematic.

The Foundation maintains that the problem of vagueness can be largely eliminated through mandatory civil proceedings. The value of such proceedings was recognized by both Chief Justice Burger and Justice Douglas in their 1973 opinions in *Miller* and its companion cases.

> The Chief Justice said: "Such a procedure [the Georgia civil procedure] provides an exhibitor or purveyor of materials the best possible notice, prior to any criminal indictments, as to whether the materials are unprotected by the First Amendment and subject to state regulation."
>
> Justice Douglas said: "My contention is that until a civil proceeding has placed a tract beyond the pale, no criminal prosecution should be sustanied."

North Carolina's obscenity law was modified following the Supreme Court's decision in *Miller,* and the revised statute states: "No person, firm or corporation shall be arrested or indicted for any provisions of [the statute] until the material involved has first been the subject of an adversary determination under the provisions of this section . . . wherein such material has been declared by the court to be obscene . . . and until such person, firm or corporation continues, subsequent to such determination, to engage in the conduct prohibited by a provision of the sections hereinafter set forth."

At least six other states now require mandatory prior civil proceedings.

news media

Washington, D.C.

In September newspaper columnist Jack Anderson filed a $22 million damage suit accusing former President Nixon and nineteen subordinates of conducting a concentrated five-year campaign to destroy his credibility and take away his First Amendment rights as a journalist. Lawyers for Anderson said the suit was the first of its kind.

The civil suit, filed in U.S. District Court, alleges seventeen separate incidents of harassment, investigation, and surveillance by the White House unit known as the Plumbers and the Central Intelligence Agency.

Describing the campaign against him, Anderson said, "This is probably the first time in the history of the U.S. there has been such a concentrated effort to destroy a single newsman."

Others named as defendants were Secretary of State Henry A. Kissinger, former CIA Director Richard Helms, former White House aide Charles W. Colson, former FBI Director L. Patrick Gray, and former Attorney General John N. Mitchell. Reported in: *Chicago Sun-Times,* September 28.

Chicago, Illinois

After the Illinois Commerce Commission barred the cameras of WBBM-TV from public hearings on tow truck

legislation, the CBS station filed suit in U.S. District Court charging violation of its First Amendment rights. The case was assigned to Judge James Parsons, who issued an immediate temporary injunction against the commission.

CBS contended that "television reports, including film and videotape, can provide the public with an understanding and perspective of events of general public interest that cannot be provided by any other news media." The network further argued that the actions of the hearing examiners were "arbitrary and capricious" and served "no legitimate governmental interest."

In response to the temporary injunction against it, the commission delayed its hearings. Reported in: *Chicago Tribune,* August 7; *Variety,* August 18.

commercial speech

Atlanta, Georgia

A Georgia consumer group called upon the Georgia Board of Pharmacy in August to remove restrictions on the advertising of drug prices.

The student-financed Georgia Public Interest Research Group said a survey of pharmacies in the Atlanta and Athens areas showed that a drug could cost more than three times as much in one pharmacy as in another, and that it is difficult for consumers to compare prices.

"This secrecy endorsed by administrative regulation [by the Board of Pharmacy] thwarts a consumer's desire to comparison shop for the best price and service mix. . . . Certain groups, such as the elderly and poor who have fixed incomes, and those who require a large variety of continuing medication, are particularly injured by the inability to comparison shop," the research group report said.

At the end of its 1975-76 term, the U.S. Supreme Court ruled in favor of a Virginia consumer group which challenged Virginia rules prohibiting advertisement of prices of prescription drugs. Reported in: *Atlanta Constitution,* August 20.

FCC 'fairness doctrine'

Washington, D.C.

Lawyers representing NBC, ABC, and a D.C. television station told the Federal Communications Commission in September that a Texaco advertisement was not controversial and that therefore broadcasters could not be required to grant equal time to a group that wants to break up the major oil companies.

The broadcasters responded to a complaint filed with the FCC by the Energy Action Committee, a D.C. group which contends that the Texaco spot represented an attempt to lobby the public and Congress in opposition to legislation that would force the oil companies to restrict their activities to one phase of the business: production, refining or marketing.

The disputed Texaco commercial used the motif of a jigsaw puzzle to show that many steps are required in the production of oil products, and that a company like Texaco can produce products more efficiently by engaging in all phases of the oil business.

The Action Energy Committee contended that the ad was not designed to boast Texaco's efficiency, but was aimed against divestiture legislation.

Traditionally, the FCC has been reluctant to apply its "fairness doctrine" to commercial advertising. The first time it did so was in 1967 when it ruled that cigarette advertising touched on a controversial and important issue. It ordered broadcasters to make time available for anti-smoking announcements if they continued to broadcast cigarette commercials. (Congress has since forbidden cigarette advertising on television.) Reported in: *Washington Star,* September 2.

school libraries

Washington, D.C.

In congressional action on the Education Amendments of 1976 (S. 2657) the Senate, but not the House, amended ESEA Title EV-B by requiring that libraries purchase "non-sex-biased" materials. This amendment, sponsored by Senator Charles Percy (R.-Ill.), was adopted by a voice vote on the Senate floor during debate on the bill. Percy's measure, which was not in the original Senate Labor and Public Welfare Committee bill, was opposed by the ALA Washington Office working in conjunction with the Office for Intellectual Freedom. Efforts were made to revise the language so that it would not violate the *Library Bill of Rights.*

In a letter to a member of the House-Senate Conference on the bill, Richard L. Darling, dean of Columbia University's library school and president of the Freedom to Read Foundation, contended that the amendment "is contrary to other federal education legislation which prohibits federal government officers from exercising control over selection of library resources (General Education Provisions Act, sec. 432)."

The authority envisioned by the amendment, Darling continued, "would create an undesirable and possibly unconstitutional federal intrusion into what has traditionally been the responsibility of state and local educational authorities."

teachers' rights

Milwaukee, Wisconsin

A suburban Greenfield woman filed suit in county court in August against the Greenfield School Board for permitting the showing of a film she considers obscene. The parent, Ruth Melnick, charged that her right to educate her children in morality and the use of drugs was usurped by an

exhibition of the film *Night at the Sunset.*

Also named in the suit were Barbara Thompson, state superintendent of public instruction, and Robert Szymanski, the teacher whose class saw the film. The suit seeks $1 million in damages and a permanent injunction against future exhibitions of the work. Reported in: *Milwaukee Sentinel,* August 7.

prisoners' rights

Tallahassee, Florida

In a petition to Florida's Administrative Hearing Division, three Florida State Prison inmates in August challenged state rules which limit the magazines and newspapers they can receive.

The prisoners asked that the Department of Offender Rehabilitation be required to list the periodicals they cannot receive rather than those which are approved. "Such a listing would properly put the burden of proof where it belongs, on the prison administration," the petition stated.

One of the prisoners, Wayne Brooks, who describes himself as "a jailhouse lawyer," objected specifically to the refusal of prison authorities to approve *Guild Notes* and *Midnight Special,* journals of the National Lawyers Guild. Ray Geary, general counsel for the Department of Offender Rehabilitation, responded: "Copies I have seen are inflammatory" and are aimed at "generating inmate unrest with the criminal justice system." Reported in: *Pensacola Journal,* August 21.

obscenity

Belleville, Illinois

In September attorneys for Larry Kimmel and Cathleen Morgan, convicted of violating Belleville's obscenity ordinance on charges of selling copies of *Viva, Penthouse,* and other magazines, filed briefs with the Illinois Court of Appeals. Attorneys for *Penthouse* also petitioned the court for permission to file a brief as a friend of the court in support of Kimmel and Morgan's case.

Kimmel and Morgan maintain that the Belleville obscenity ordinance is unconstitutional because it is overbroad and vague and fails to advise persons of the conduct prohibited by it. Reported in: *Belleville News Democrat,* September 16.

Chicago, Illinois

In September a subcommittee of Judiciary Committee II of the Illinois General Assembly conducted hearings in Chicago on two bills to revise Illinois' obscenity statutes. Illinois' laws on sexually explicit fare were voided in June by a three-judge federal panel which found that they lacked the specificity now required by the U.S. Supreme Court.

Although Illinois observers expected no legislative action on obscenity before the General Assembly's 1977 session, the lack of a valid law in Illinois seemed to make a flood of bills in January an inevitability.

New laws in Illinois were opposed by the American Library Association and the American Civil Liberties Union.

Dallas, Texas

Lawyers for an adult movie theater and an adult bookstore filed suit in federal court in August to bring a halt to the Dallas police department's policy of taking the names of customers who visit adult establishments.

The Continental Theater, the Dallas Literary Shop, and several individuals filed suit in U.S. District Court alleging harassment by police in raids on the two establishments.

The plaintiffs asked U.S. District Court Judge Robert Porter to permanently enjoin Dallas police from taking customers' names, from warrantless arrests, and from making multiple seizures of the same film.

D. L. Burgess, commander of the Dallas police vice control division, said in a hearing on a temporary restraining order that it was police policy to take the names of customers because they might serve as witnesses in obscenity prosecutions. Burgess said that the practice of taking names began "four or five months ago" on his orders. Reported in: *Dallas News,* August 8.

Vermont

The smart money in Vermont appears to be betting that the state's assistant attorney general, Benson Scotch, will introduce tough legislation on obscenity when the state's legislature convenes in January. Newly opened adult bookshops in Berlin, Williston, and Rutland have produced a stream of complaints, but current Vermont law regulates only the dissemination of sexually explicit works to minors and prohibits the adoption of stricter laws by local units of government. Reported in: *Boston Globe,* August 1.

U.S. census

Washington, D.C.

Plans by the U.S. Census Bureau to ask citizens about their religious preferences in the 1977 census brought strong protests from the head of Americans United for Separation of Church and State, a national organization devoted to maintenance of the principles of church-state separation.

"Such a question would be improper government interference in the sacred area of religion and raises serious constitutional objections," said Andrew Leigh Gunn, executive director of the group.

"The government is prohibited from legislating in the realm of religion and thus cannot inquire into the religious persuasion of American citizens," Gunn contended. In a letter to Vincent Barabba, director of the census, he stated: "A religious question would . . . infringe upon the tradi-

tional right of privacy accorded to American citizens and could constitute a dangerous precedent of government snooping into the personal political or social views of our people." Reported in: *Chicago Tribune,* August 7.

(Censorship dateline . . . from page 147)

The Rev. Leon A. Dickinson Jr., an executive of the United Church of Christ, accused the VA chaplain of having "crumbled before the petty religious opinions of the politically powerful." Dickinson pointed out that the book of hymns was "prepared by an authorized committee of chaplains from the three military services" and was "financed by tax money in its publication by the U.S. Printing Office."

The Rev. James A. Christison, an executive of the American Baptist Churches, also complained to the VA: "We can't allow government officials to censor books like this—particularly a book prepared to answer the needs of a number of faiths." Reported in: *Washington Post,* August 27.

Baltimore, Maryland

Allied Artists, distributor of *Manson's Massacres,* agreed in August to censor the film in order to receive the approval of the Maryland Board of Censors to show the film in Maryland theaters. The work was at first banned by the censor board after legislators and community leaders watched the film at a special showing and complained about its gory contents. Reported in: *Baltimore Sun,* August 30.

Baltimore, Maryland

Nicholas A. Panuzio, the federal commissioner of public buildings, in August scheduled a hearing in Baltimore to determine if an abstract sculpture by George Sugarman, an internationally known artist, could be placed in the plaza of a new federal courts building.

The controversial sculpture, a massive arrangement of brightly colored aluminum pieces, incurred the wrath of the federal judges who will occupy the building along with 600 other federal employees.

The judges, who first complained that the design was not in keeping with the purpose of the modern courts building, subsequently charged that the sculpture was a dangerous hazard—a place where radicals might give speeches or throw bombs, or where hoodlums might hide to pounce upon unsuspecting passers-by. Reported in: *Baltimore Sun,* August 14.

New Bern, North Carolina

Responding to the demands of hundreds of local citizens, the New Bern Board of Aldermen pledged in August to "purge" the city of obscene "materials and activities." The action of the board came after a large group of citizens filled a city hall courtroom to voice support of a petition signed by 500 persons favoring strict regulation of obscenity.

Reading from a prepared statement, Mayor Charles Kimbrell told the group that "I stake myself out proudly" in support of the control of obscenity.

"Without wishing to sound melodramatic or pious," Kimbrell continued, "I say that our lifestyle as we've known it for so many years is on the brink of disaster. We find ourselves being governed by interpretation of the law by pseudo-intellectuals rather than the common sense interpretations of and stated purposes of our laws and dogmas."

The petition was presented to the board by the Rev. Sigbee Dilda of the Ruth's Chapel Free Will Baptist Church. Dilda said, "We're not talking about the eyes of a man, or the ears of a man or a boy or a girl. We're talking about souls." Reported in: *New Bern Sun-Journal,* August 18.

Columbus, Ohio

A book on televised election coverage, published by the Ohio State University Press, will appear with six pages deleted because the author could not obtain permission from the three major networks to use the necessary quotations.

The book, Richard Hofstetter's *Bias in the News: Network Coverage of the 1972 Election Campaign,* is described by the university press as "a very methodical, impartial, well thought-out, well researched scholarly monograph." Noting that only 1,500 copies were printed, the press said the book was not intended "to be a pot-boiler."

Reportedly, NBC sent a letter to the author specifically denying approval for use of excerpts from any of its newscasts, although a network lawyer later contended that NBC had been misunderstood.

In the case of CBS, the network first sent a letter approving publication of excerpts providing that no portion published reflected "unfavorably" upon CBS or any person identified with it. However, the network relented after CBS News President Richard Salant became aware of the situation. But, according to the university press, the letter arrived too late to meet the publication deadline.

ABC never replied to Hofstetter. Reported in: *Washington Star,* August 31.

(From the bench . . . from page 150)

Adult Musuem in West Indianapolis was convicted of obscenity for selling three "hard core" magazines to a vice squad detective. Reported in: *Indianapolis Star,* July 28.

Manchester, New Hampshire

Luv's Inc., a firm operating a health and beauty store in Manchester, was fined $5,000 in Manchester District Court

after being found guilty in August by Judge William J. O'Neil of selling obscene material.

The complaint against Luv's Inc. was based upon a sale of the July 1976 issue of *Penthouse* to a Manchester police officer. Reported in: *Manchester Union-Leader,* August 10.

Newark, New Jersey

An Essex County jury of eight men and four women acquitted the corporate owners of the Trent Theater in Newark of twenty-eight counts of violating New Jersey's obscenity law by exhibiting the Mitchell Brothers' feature, *Sodom and Gomorrah.*

County Court Judge Joseph Walsh told the jury that to return a conviction they would have to find that the picture "tends to excite the average contemporary person in diseased, unhealthy sexual activity."

Judge Walsh ruled that "the mere fact that a film portrays sexual activities which may be considered by some to be unhealthy is not sufficient to sustain a conviction."

The film was described by the defense as a humorous "science fiction satire." Reported in: *Passaic Herald-News,* July 29; *Variety,* August 4.

Portland, Oregon

John R. Tidyman, reportedly the owner of several adult entertainment establishments in Portland, was sentenced to ninety days in jail and fined $1,000 in September for disseminating obscene material. He was charged with showing an adult film at his Star Theater in March. Reported in: *Portland Oregonian,* September 8.

(Midnight raids . . . from page 140)

textbooks prevail over the considered decision of the Board of Education empowered by state law to make such decisions, we affirm the decision of the District Judge in dismissing that portion of plaintiffs' complaint. In short, we find no federal constitutional violation in this Board's exercise of curriculum and textbook control as empowered by the Ohio statute. . . .

II. The removal of certain books from the school library

The record discloses that at a special meeting of the Strongsville Board of Education on August 19, 1972, according to the official minutes, the following motion was made and adopted:

> Dr. Cain moved, seconded by Mr. Henzey, that the textbook entitled *Cat's Cradle* not be used any longer as a text or in the library in the Strongsville Schools. Discussion.
>
> Dr. Cain moved the question.
>
> Mr. Henzey requested the Clerk to call for the vote.
>
> Roll call: Ayes: Dr. Cain, Mr. Henzey, Mrs. Wong
> Nays: Mr. Woollett
> Motion carried.

Similarly at a meeting of the Strongsville Board of Education on August 31, 1972, the following action was recorded in the minutes:

> Mr. Wong moved, seconded by Dr. Cain, that the textbook *Catch-22* be removed from the Library in the Strongsville Schools.
>
> Roll call: Ayes: Mr. Ramsey, Mrs. Wong, Dr. Cain
> Nays: Mr. Woollett
> Motion carried.

In his opinion the District Judge held that "the novels *Catch-22* by Joseph Heller, *God Bless You, Mr. Rosewater* and *Cat's Cradle* by Kurt Vonnegut Jr., are not on trial in this proceeding." Further he stated, "Literary value of the three novels [has] been conceded by the parties . . ." and that "obscenity as defined in the Supreme Court's pronouncements is eliminated as an issue herein by agreement of counsel." These holdings do not appear to be disputed on this appeal, and we accept them.

The District Judge, in dismissing the complaint concerning removal from the library of Heller's *Catch-22* and Vonnegut's *Cat's Cradle,* relied strongly upon a Second Circuit opinion in *Presidents Council, District 25* v. *Community School Board No. 25,* 457 F. 2d 289 (2nd Cir.), *cert. denied,* 409 U.S. 998 (1972). In that case, after noting, as we have above, that some authorized body has to make a determination as to the choice of books for texts or for the library, the Second Circuit continued by discussing a parallel right on the part of a board to "winnow" the library:

> The administration of any library, whether it be a university or particularly a public junior high school, involves a constant process of selection and winnowing based not only on educational needs but financial and architectural realities. To suggest that the shelving or unshelving of books presents a constitutional issue, *particularly where there is no showing of a curtailment of freedom of speech or thought,* is a proposition we cannot accept. (Emphasis added.)

The District Judge in our instant case appears to have read this paragraph as upholding an absolute right on the part of this school board to remove from the library and presumably to destroy any books it regarded unfavorably without concern for the First Amendment. We do not read the Second Circuit opinion so broadly (*see* qualifying clause underlined above). If it were unqualified, we would not follow it.

A library is a storehouse of knowledge. When created for a public school it is an important privilege created by the state for the benefit of the students in the school. That privilege is not subject to being withdrawn by succeeding school boards whose members might desire to "winnow" the library for books the content of which occasioned their displeasure or disapproval. Of course, a copy of a book may wear out. Some books may become obsolete. Shelf space alone may at some point require some selection of books to be retained and books to be disposed of. No such rationale is involved in this case, however.

The sole explanation offered by this record is provided by the School Board's minutes of July 17, 1972, which read as follows:

> Mrs. Wong reviewed the Citizens Committee report regarding adoption of *God Bless You, Mr. Rosewater.*
>
> Dr. Cain presented the following miniority report:
>
> 1. It is recommended that *God Bless You, Mr. Rosewater* not be purchased, either as a textbook, supplemental reading book or library book. The book is completely sick. One secretary read it for one-half hour and handed it back to the reviewer with the written comment, "GARBAGE."
> 2. Instead, it is recommended that the autobiography of Captain Eddie Rickenbacker be purchased for use in the English course. It is modern and it fills the need of providing material which will inspire and educate the students as well as teach them high moral values and provide the opportunity to learn from a man of exceptional ability and understanding.
> 3. For the same reason, it is recommended that the following books be purchased for immediate use as supplemental reading in the high school social studies program:
>
> *Herbert Hoover,* a biography by Eugene Lyons; *Reminiscences of Douglas McArthur.*
>
> 4. It is also recommended in the interest of a balanced program that *One Day in the Life of Ivan Denisovich* by A. I. Solzhenitsyn, be purchased as a supplemental reader for the high school social studies program.
> 5. It is also recommended that copies of all of the above books be placed in the library of each secondary school.
> 6. It is also recommended that *Cat's Cradle,* which was written by the same character (Vennegutter) who wrote, using the term loosely, *God Bless You, Mr. Rosewater,* and which has been used as a textbook, although never legally adopted by the Board, be withdrawn immediately and all copies disposed of in accordance with statutory procedure.
> 7. Finally, it is recommended that the McGuffy Readers be bought as supplemental readers for enrichment program purposes for the elementary schools, since they seem to offer so many advantages in vocabulary, content and sentence structure over the drivel being pushed today.

While we recognize that the minute quoted above is designated as a "minority report," we find it significant in view of intervenor Cain's active role in the removal process and the fact that it offers the only official clue to the reasons for the School Board majority's two book removal motions. The Board's silence is extraordinary in view of the intense community controversy and the expressed professional views of the faculty favorable to the books concerned.

In the absence of any explanation of the Board's action which is neutral in First Amendment terms, we must conclude that the School Board removed the books because it found them objectionable in content and because it felt that it had the power, unfettered by the First Amendment, to censor the school library for subject matter which the Board members found distasteful.

Neither the State of Ohio nor the Strongsville School Board was under any federal constitutional compulsion to provide a library for the Strongsville High School or to choose any particular books. Once having created such a privilege for the benefit of its students, however, neither body could place conditions on the use of the library which were related solely to the social or political tastes of school board members.*

The Supreme Court language said: "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing conditions upon a benefit or privilege." *Pickering* v. *Board of Education,* 391 U.S. 563, 568 (1968); *Keyishian* v. *Board of Regents,* 385 U.S. 589, 606 (1967); *Douglas* v. *California,* 372 U.S. 353 (1963); *Griffin* v. *Illinois,* 351 U.S. 12 (1956).

A public school library is also a valuable adjunct to classroom discussion. If one of the English teachers considered Joseph Heller's *Catch-22* to be one of the more important modern American novels (as, indeed, at least one did), we assume that no one would dispute that the First Amendment's protection of academic freedom would protect both his right to say so in class and his students' right to hear him and to find and read the book. Obviously, the students' success in this last endeavor would be greatly hindered by the fact that the book sought had been removed from the school library. The removal of books from a school library is a much more serious burden upon freedom of classroom discussion than the action found unconstitutional in *Tinker* v. *Des Moines Independent Community School District,* 393 U.S. 503 (1969).

Further, we do not think this burden is minimized by the availability of the disputed book in sources outside the school. Restraint on expression may not generally be justified by the fact that there may be other times, places, or circumstances available for such expression. *Southeastern Promotions, Ltd.* v. *Conrad,* 420 U.S. 516, 556 (1975); *Spence* v. *Washington,* 418 U.S. 405, 411 n.4 (1974); *Schneider* v. *State,* 308 U.S. 147, 163 (1939). *Cf. Cox* v. *New Hampshire,* 312 U.S. 569 (1941).

A library is a mighty resource in the free marketplace of ideas. See *Abrams* v. *United States,* 250 U.S. 616 (1919) (Holmes, J., dissenting). It is specially dedicated to broad dissemination of ideas. It is a forum for silent speech. *See*

*On the other hand, it would be consistent with the First Amendment (although not required by it) for every library in America to contain enough books so that every citizen in the community could find at least some which he or she regarded as objectionable in either subject matter, expression or idea.

Tinker v. *Des Moines Independent Community School District, supra; Brown* v. *Louisiana,* 383 U.S. 131 (1966).

We recognize, of course, that we deal here with a somewhat more difficult concept than a direct restraint on speech. Here we are concerned with the right of students to receive information which they and their teachers desire them to have. First Amendment protection of the right to know has frequently been recognized in the past. *See Procunier* v. *Martinez,*416 U.S. 396 (1974); *Kleindienst* v. *Mandel,* 408 U.S. 753, 763 (1972); *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367, 386, 390 (1969); *Stanley* v. *Georgia,* 394 U.S. 557, 564 (1969); *Lamont* v. *Postmaster General,* 381 U.S. 301 (1965); *Thomas* v. *Collins,* 323 U.S. 516, 534 (1945); *Martin* v. *Struthers,* 319 U.S. 141, 143 (1943). Nonetheless, we might have felt that its application here was more doubtful absent a very recent Supreme Court case. In *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumers Council, Inc.,* 44 U.S.L.W. 4686, 4688 (May 24, 1976), Mr. Justice Blackmun wrote for the Court:

> 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." And in *Procunier* v. *Martinez,* 416 U.S. 396, 408-409 (1974), where 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 of noninmates to whom correspondence was addressed. There are numerous other expressions to the same effect in the Court's decisions. [Citations omitted.] If there is a right to advertise, there is a reciprocal right to receive the advertising, and it may be asserted by these appellees.

We believe that the language just quoted, plus the recent cases of *Kleindienst* v. *Mandel, supra,* and *Procunier* v. *Martinez, supra,* serve to establish firmly both the First Amendment right to know which is involved in our instant case and the standing of the student plaintiffs to raise the issue.

As to this issue, we must reverse.

III. Academic freedom claims

Plaintiffs-appellants contend that the Board also violated the First Amendment by prohibiting teachers from referring to any of the three books under consideration in classroom discussion. As to this issue the District Judge entered the following finding of fact: The procedure thus

> The procedure thus adopted was openly implemented and faculty members were not foreclosed or limited either formally or informally, directly or indirectly, to utilize individual teaching methodology or from discussing any subject of a review in the course or classroom instruction. No faculty member was intimidated, reprimanded, discharged or threatened with such action as a result of circumstances here involved. . . .

As to this issue we have examined the record carefully. We have no doubt that the two School Board resolutions we have already dealt with would have had a somewhat chilling effect upon classroom discussion. If so, the invalidation of these resolutions should be an adequate remedy. What the testimonial record does not support is a holding by this court that the just quoted finding of fact from the District Judge is clearly erroneous. The testimony does not clearly establish that the Board ever directed the faculty (or directed the principal to direct the faculty) not to refer to any particular books in classroom teaching. For these reasons we affirm the District Judge upon this issue. . . .

Schorr not cited by House panel

The House Ethics Committee refused in September to recommend that CBS television reporter Daniel Schorr be prosecuted for his refusal to give the panel his copy of the classified House Intelligence Committee report, as well as his failure to name the person who gave it to him. The committee voted six to five against the motion by Representative Edward Hutchinson (R.-Mich.) to cite Schorr for contempt of Congress.

The committee also defeated by a seven-to-four vote a motion by Representative Thad Cochran (R.-Miss.) to recommend that Schorr be denied the use of House broadcast galleries for the remainder of the session of Congress.

The committee's actions apparently doomed any efforts to bring legal proceedings against Schorr for his having provided the copy of the intelligence report that was published in the *Village Voice.*

In his opening statement before the House committee, Schorr said:

"For a journalist, the most crucial kind of confidence is the identity of a source of information. To betray a confidential source would mean to dry up many future sources for many future reporters. The reporter and the news organization would be the immediate loser. I would submit to you that the ultimate losers would be the American people and their free institutions."

Following his "acquittal" by the House committee, Schorr resigned from CBS. Reported in: *New York Times,* September 16; *Chicago Tribune,* September 23, 29.

AAParagraphs

AAP and ALA—amici indeed

Another chapter has been written in the long chronicle of cooperation between the Association of American Publishers and the American Library Association. This time it is an *amicus curiae* (friend of the court) brief filed by AAP at ALA's request in the case of *Smith* v. *U.S.* The case is one in which ALA has borne the major burden of the defendant's litigation—and has also filed an *amicus* brief.

The issues and ALA's principal role in *Smith* are related elsewhere in this *Newsletter.* Here will simply be outlined the major argument of the brief on which AAP's new legal counsel, Henry Kaufman, and several colleagues did voluminous research and burned quantities of midnight oil. AAP was joined in its brief by five other association-members of the informal "umbrella" group known as the Media Coalition, which concerns itself with opposing censorship of books, periodicals and films.

The principal argument of the joint brief is that, while most of the six organizations publicly did and do disagree with the landmark 1973 *Miller* decision of the Supreme Court on obscenity, Smith's conviction in federal courts in Iowa flies in the face of *Miller* and ensuing Supreme Court declarations. Signers of the brief argue that where a state legislature chooses to permit the dissemination of sexually explicit materials to willing adults—as Iowa's has done—federal prosecutors should not "nullify" that policy by invoking more stringent standards. All of the allegedly obscene materials mailed by Jerry Lee Smith were sent within the confines of the State of Iowa where some of the addressees proved to be federal postal inspectors.

Thus, the joint brief contends that Smith's conviction, which was subsequently upheld in the Eighth Circuit U.S. Court of Appeals, "runs squarely against both the letter and the spirit" of the *Miller* line of cases, which did not require the states to cut back on constitutional protection but accorded them the freedom to define the standards of obscenity within the constitutional limits defined in Miller.

For the Supreme Court to affirm the district and appellate court decisions, the AAP-coalition brief argued, "would negate the considered legislative judgment of Iowa as well as a substantial and growing number of other states that have found it appropriate to provide a greater standard of protection to sexually explicit expression than [the Supreme] Court has so far held to be constitutionally required." Such affirmation would amount to "nullification" of the permissive policy expressed by the Iowa legislature and would run counter to the "federalist" principles set forth in *Miller* and ensuing cases, the brief contends.

The joint brief points out that Congress has neither defined obscenity nor asserted any federal interest in controlling the obscenity standards to be used in federal prosecutions.

In what may well be the most comprehensive survey of state legislative actions made since the *Miller* case, the brief catalogues legislative reforms in a total of twenty nine of the states, noting that:

- Eight have opted, since *Miller,* not to regulate availability of sexually explicit material to consenting adults.
- Seventeen have adopted, under *Miller,* statewide obscenity standards "which may lessen the inconsistency and confusion inevitable in the application of literally thousands of potentially divergent local standards." Ten states have accomplished this by legislation, seven by court decisions.
- Nine have to some degree pre-empted local power to legislate controls on obscenity.
- Sixteen states, seeking to avoid "the inevitable uncertainty implicit in subjective judgments as to whether particular materials are obscene or not" and the resulting "chill of protected expression"—use a procedural safeguard requiring or permitting a civil determination that material is obscene before criminal sanctions may be invoked.

The brief concludes that "these many salutary legislative initiatives would be for naught if . . . they could be circumvented by federal prosecution of activities now permitted within those states," as was the case of the prosecution of Smith under U.S. postal statutes.

The six organizations joining in the brief point out that their members "too often find themselves faced with federal, state or local censorship which, [they] believe, exceeds the constitutional limits of governmental action and abridges the freedom of speech and of the press." Even when not subjected to coercive legal action, they contend, "the ever-changing and often inscrutable standards for determining the parameters of First Amendment protection in this area have subjected them to the more subtle pressures that lead to self-censorship—a result equally inimical to free expression."

The organizations joining AAP in contesting Smith's conviction under federal postal statutes are the American Booksellers Association, the Council for Periodical Distributors Associations, the International Periodical Distributors Association, the Motion Picture Association of America, and the Periodical and Book Association of America.

(Published word . . . from page 142)

childhood, of narrowly defining children and childhood, by ignoring the individual differences of children, their peculiar differences in development and depth of understanding, and their dominance by adults even as we speak of our more child-oriented society.

Were one to follow this checklist carefully as a parent,

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

one would conclude there are few books worth purchasing or sharing with today's child. Educators would clamor for the rewriting of practically everything, or constant supervision of reading assignments; while writers given the constraints outlined would conceivably produce according to formulae a new brand of racially, sexually, socio-economically acceptable Dick-and-Jane type books. Creativity and imagination, albeit conditioned by the individual's background, stand to suffer. What about the children? Is the prime goal of reading books to produce more morally liberated adults or to promote and encourage *more reading* in order to develop, particularly in childhood, discriminating tastes and judgment?

This "rating instrument" does include definitions of terminology and a good introduction to the criteria used. A summary entitled "Findings" and an index of titles, authors, illustrators, and subjects are appended. The volume is sure to find a place on many professional shelves if only to add to the body of controversial literature on children's book selection.–*Reviewed by Barbara Rollock, Coordinator of Children's Services, New York Public Library.*

COINTELPRO: The FBI's Secret War on Political Freedom. Nelson Blackstock. Vintage, 1976. 216 p. $2.95.

In the past few years, we have witnessed high government officials doing all in their power to prohibit free thought and expression. To most Americans the sight and sound of the President of the United States resigning from office due to an erosion in his "power base" was unbelievable. But what was more unbelievable, at least to me, was that the top law enforcement officials in the country were partners in the whole ugly mess.

When one has been brought up, as I had been, to think that laws and their enforcement in America are based on justice and not on trickery and deceit, the events of the last years have been an embarrassment to my naivete.

The FBI to me had always symbolized a professional and lawful approach to public safety, the prevention of crime, and the swift capture of criminals. Myths propagated by books, movies, and television lulled me into an assurance the "G-Man" was doing his job, and that I had nothing to fear. When the stories about the FBI began to emerge in the Watergate years, I still clung to the picture of Efram Zimbalist Jr. arresting hardened criminals on Sunday night and J. Edgar Hoover "deputizing" me as a Crime Stopper. But the day L. Patrick Gray admitted breaking the law and resigned in humiliation, my mind opened and my former naivete was shattered.

"COINTELPRO" is FBI slang for the Bureau's counter-intelligence program against the citizenry. Over the past twenty years, the FBI has admitted using this division to protect us from "certain subversive political groups that would jeopardize our freedom." But instead of protecting our freedom, it turned against it. The FBI conducted covert and illegal investigations involving individuals such as Dr. Martin Luther King Jr. and groups such as the Socialist Workers Party, which brought a lawsuit against the FBI that led to the disclosure of a continued and illegal harassment by the Bureau over the last ten years.

Nelson Blackstock, an editor with the Socialist Worker's Party weekly *The Militant,* has brought into focus many of the details surrounding the break-ins at the party's offices in Detroit, New York, and Denver. In fact the Denver office has been broken into once every six weeks for the last five years by the FBI's Cointelpro. Much of Blackstock's book examines in detail the FBI documents: memoranda ordering infiltration, disruption, and harassment; the actual "anonymous letters" and leaflets fabricated by the Cointelpro; and the subsequent memoranda to cover those devices. The comments at the beginning of each chapter act as a guide to what the documents contain and how the Bureau interpreted them. Of particular current interest is the chapter dealing with the FBI's role in the character smear and the eventual assassination of Dr. King.

Professor Noam Chomsky, the eminent sociologist, linguist, and political critic, offers in his introduction to the book, a hard look at the Bureau and a myth-shattering view of its function in the political process. His introduction is a good preparation for Blackstock's hard-to-believe but well documented revelations.

I wish that I could say I was not surprised to learn of Cointelpro's offenses, but I was. My outlook had changed since the L. Patrick Gray debacle, but this book soured my taste for the FBI as well as firing up by belief that all people in power are suspect and should be under constant scrutiny by a free press and individual criticism.–*Reviewed by Stephen J. Cogil, Assistant to the President, Ingram Book Company, Nashville, Tennessee.*

India relaxes foreign press rules

In a gesture of good will toward foreign correspondents working in India, the government of Indira Gandhi announced in September that it was withdrawing the censorship regulations which it tried to impose on the foreign press for more than a year. However, there was no indication that rules over the domestic press would be removed.

Although it was apparent that the removal of India's censorship guidelines would have little practical effect, since most Western reporters had ignored them from the beginning, the meeting of the press with Information Minister V.C. Shukla was conciliatory and friendly.

Asked about the British Broadcasting Corporation, which in August decided to close its office in New Delhi to protest government censorship, Shukla said: "If they make a request, we shall certainly consider it. BBC went out of this place on their own; we didn't throw them out." Reported in: *New York Times,* September 19.

info on library confidentiality wanted

In a letter sent to library periodicals in September, the House Subcommittee on Government Information and Individual Rights revealed that it had been informed that a representative of the Central Intelligence Agency had made "an unsolicited visit to a major university library in this country, in an attempt to determine, without subpoena, what library materials were being used by a U.S. citizen who resided in the area."

The subcommittee wishes to be informed of similar incidents involving the Central Intelligence Agency or "any other federal, state, or local intelligence or police entity." Readers should write to the Subcommittee on Government Information and Individual Rights, B-349-C Rayburn House Office Building, Washington, D.C. 20515.

Carbons of letters to the subcommittee would be appreciated by the Intellectual Freedom Committee, 50 E. Huron St., Chicago, Ill. 60611.

ABA urges new gag procedures

At its annual meeting in August the American Bar Association adopted a controversial regulation recommending that judges give the press and the public warning before they conduct secret court hearings, seal documents or issue orders restricting lawyers from talking to the press.

Specifically, the ABA proposal recommends that:

- News organizations and other interested parties be given an opportunity to be heard before a court enters an order concerning pre-trial and trial publicity of criminal proceedings.
- The court set forth facts and reasons to explain the necessity for secrecy.
- Expedited judicial review of restrictive orders be conducted before the issues become moot.
- The standards of conduct for disclosure of information be in the form of guidelines not enforceable by contempt powers.

Although ABA resolutions are not binding upon judges, they often give great weight to such ABA actions. Reported in: *New York Times,* August 11.

fund drive for reporters dies

A campaign intended to raise a $2 million endowment fund for the Reporters Committee for Freedom of the Press collapsed last summer following long administrative delays and a controversy over a promise of funds from publication of the House Intelligence Committee report.

"It really expired on its own. . . . The thing got so bogged down in administrative stuff," maintained Jack Landau, executive director of the committee.

The effort to raise an endowment was announced nearly two years ago as a means to provide some financial security for the legal aid and research group. The campaign was headed by Arthur Taylor, president of CBS, who declined to continue last summer, citing repeated delays in getting started. However, CBS did contribute $50,000 to the committee, Landau said.

The controversy involving the House Intelligence Committee report began in February when it was announced that the committee would share in the proceeds earned by the *Village Voice* through publication of the report.

Landau said the committee would continue as before through solicitation of contributions for its operating budget, which last year was nearly $100,000. Reported in: *Washington Star,* August 31.

film boycott urged

The Archbishop of Westminster, Cardinal Basil Hume, appealed in September to British actors and financiers to boycott a proposed film about the sex life of Jesus. The cardinal described the proposed film by Danish director Jens Jorgen Thorsen as "sensational, pornographic, and in terms of truth, entirely speculative."

The film project, which was chased out of Denmark, Sweden and France, was also denounced by British lawmaker Patrick Wall. However, the U.K. Home Office announced that it could not keep the Danish director out of the country. Because Denmark and the U.K. are both members of the European Economic Community, Thorsen as a Danish subject has an automatic right of entry to the U.K. for a minimum six-month period. Reported in: *Washington Post,* September 2; *Variety,* September 8.

CBC denies European censorship

Replying to charges that the publicly owned Canadian Broadcasting Corporation's Radio Canada International censored its broadcasts to Eastern Europe, CBC president Albert Johnson declared in August that "there is no such censorship policy and never has been."

Johnson denied "having had pressure from the Soviet Union," but he conceded that "two Soviet journalists did visit some of our employees in Radio Canada International and did comment critically upon certain programs broadcast to Eastern Europe. But to suggest that CBC has bowed to Soviet pressure is palpably untrue. We are not about to bow to pressure from any source to twist or distort the

principles which guide us in our news and current affairs programming."

In related developments, a member of the Canadian Parliament, Tom Cossitt, Accused Canada's External Affairs Department with "blatant meddling" in the affairs of the RCI. In support of his charges, Cossitt revealed two CBC internal memoranda from Carroll Chapman, RCI's Eastern European programming director, to Allan Brown, RCI's chief, and two External Affairs officers.

The memo to Brown relayed External Affairs' concern about "an anti-Soviet content" in RCI programming, but added that the department "understands very well that we have a journalistic imperative." Reported in *Variety,* September 1.

ousted Mexican editor to try again

In the midst of controversy in intellectual circles throughout Mexico, the former editor of the Mexican newspaper *Excelsior,* who was removed last summer with the apparent encouragement of the government, announced plans to launch an independent weekly magazine before President Echeverria's retirement on December 1.

The editor, Julio Scherer Garcia, and his associates, who abandoned the *Excelsior* building in July when faced with the possibility of a violent confrontation with right-wing members of the cooperative that owns the paper, also planned to begin publication of a liberal newspaper in 1977.

Echeverria's administration, which strongly denied any involvement in Scherer's removal or the occupation of the Excelsior building, placed no immediate obstacles in the way of Scherer's new ventures.

Echeverria's heir-apparent, Jose Lopez Portillo, reportedly tried to prevent Scherer's ouster and endorsed his new projects, apparently seeking to counterbalance the influence of a group of thirty-seven papers recently acquired by Echeverria and several of his aides. Reported in: *New York Times,* August 22.

'zoning' of obscenity spreads

After the U.S. Supreme Court gave its stamp of approval to Detroit's efforts to "control" obscenity through zoning regulations, zoning rules for adult bookstores and theaters have been adopted or considered by cities around the country, including Baltimore, Dallas, Dayton, Fort Wayne, and Atlanta.

In a surprising controversy over proposed zoning regulations in Atlanta, Fulton County Criminal Court Solicitor General Hinson McAuliffe claimed that zoning rules would "hinder our efforts" to enforce obscenity laws.

"Since [Georgia] state law proscribes the distribution of obscene materials and pornography, there is nothing the city can do to regulate those business operations," McAuliffe said.

In its June ruling on zoning, the U.S. Supreme Court said that cities could control the locations of so-called adult emporia, even if their sexually explicit fare is entirely legal (see *Newsletter,* Sept. 1976, p. 134). Reported in: *Variety,* August 25; *Atlanta Constitution,* September 12.

New Jersey rejects local standards

After a long and heated debate, the New Jersey Senate ended its summer session by rejecting an anti-pornography measure that would have permitted each of the state's 567 municipalities to decide for itself what is obscene. The measure fell six votes short of the number required for passage.

The bill's sponsor, Senator Joseph A. Maressa, said he "could not understand people not wanting to clean up this mess," which another senator described as "the dirty, rotten filth that now exists."

Those who opposed the measure argued that such authority in the hands of hundreds of small municipalities in New Jersey would result in great variances in the definition of obscenity and violations of First Amendment rights. Reported in: *Hackensack Record,* August 13; *Philadelphia Inquirer,* August 13.

'Front' gets PG despite 'sex talk'

In the second move of its kind, the appeals panels of the Motion Picture Association of America's rating board has decided that "sexually explicit language" is acceptable in a film with a *PG* rating.

The appeals panel voted to change the original *R*-rating given *The Front,* which stars Woody Allen and concerns the blacklisting of show business personalities in the 1950s. The film was originally rated *R* because the dialogue includes a single use of the expletive "fuck."

The earlier case involved *All the President's Men,* which was originally rated *R* because it includes a number of usages of "fuck." Reported in: *Variety,* August 4.

Freedom Expression Church raided

In a move against what the Boston police called "one of the most unusual devices to show *X*-rated films, "the city's vice squad closed the Freedom Expression Church, arrested two employees, and seized a print of *Deep Throat.*

The newly chartered nonprofit organization opened in

July in a room formerly occupied by a restaurant lounge. Its pastor, the Rev. Shirley Bourgeois, said the church of 200 members included in its mission the serving of free beer and the screening of *Deep Throat.*

The articles of incorporation of the Freedom Expression Church state that it was established "for religious, educational, and scientific purposes . . . and to hold surveys and conduct research programs to determine the desires and standards of the average person in Massachusetts, regardless of religion, morals and ethics."

The Boston police charged the church with illegally exposing alcoholic beverages and disseminating obscene matter. Reported in: *Variety,* August 4.

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I certify that the statements made by me above are correct and complete.

Roger L. Funk

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