Co-editors: Judith F. Krug, Director, and Roger L. Funk, Assistant Director,
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unusual Supreme Court confrontation

This special report was contributed by the FREEDOM TO READ COMMITTEE of the Association of American Publishers.

The handful of spectators in the United States Supreme Court (plus a few lawyers newly admitted to practice there) were treated to a doubly unusual spectacle one day last fall:

- The Solicitor General of the United States confessed error in two of three issues on which the Court was being asked to grant a new trial to a convicted exhibitor of sexually explicit films.
- Three justices of the high court upbraided the solicitor—the government's trial lawyer—for appearing before them in a position that essentially placed him—for the moment—in support of the alleged violator of federal obscenity statutes.

The case at issue was *Marks (and others)* v. *U.S.*, in which Stanley Marks, a Newport, Kentucky theater owner, was prosecuted and convicted in federal courts for showing the allegedly obscene *Deep Throat* and other films. His conviction was upheld by the U.S. Court of Appeals for the Sixth Circuit. But, in a move that in effect undermined the local U.S. attorney who had obtained the Marks conviction, the Justice Department in Washington joined the defendants in calling for a new trial because, it was claimed, the so-called *Miller* standard of obscenity used to convict them ("lacks serious literary, artistic, political or scientific value") was not in force at the time of Marks' alleged crime and arrest. The Supreme Court obscenity criterion used before the 1973 *Miller* decision was that the work "is utterly without redeeming social value." (AAP was in attendance at the *Marks* hearing to obtain a preview of things to come in the case of *Smith* v. *U.S.*, which was to be argued before the high court on December 8. Both AAP and ALA filed *amicus curiae* briefs in the *Smith* case, the only other obscenity appeal slated for argument before the Supreme Court this term.)

When Solicitor General Robert H. Bork—who normally backs up the actions of local federal prosecutors—appeared before the Supreme Court, he supported the plea for new trials because, he said, the defendants "were tried under a standard that gives the prosecutor less of a burden—considerably less of a burden—than the law provided at the time they acted."

Associate Justice William Rehnquist opened up. "Don't you think the Solicitor General has some responsibility under the adversary system, when there's a plausible

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

titles now troublesome

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federal judge says 'family hour' represents censorship

A landmark decision of U.S. District Court Judge Warren J. Ferguson, handed down in Los Angeles in November, ruled that television's "family hour" agreement, banning programs containing violence and sex between 7:00 p.m. and 9:00 p.m., was illegal because it violated First Amendment guarantees of free speech.

In a 223-page decision, Judge Ferguson declared that the agreement between CBS, ABC, NBC, the Federal Communications Commission, and the National Association of Broadcasters that established the family hour represented "closed-door," government- inspired censorship.

Judge Ferguson's opinion focused on congressional pressures on FCC Chairperson Richard E. Wiley:

"Based on the totality of the evidence accumulated in this case, the court finds that Chairman Wiley, acting on behalf of the Commission and with the approval of the commissioners, in response to congressional committee pressure, launched a campaign primarily designed to alter the concept of entertainment programming in the early evening hours.

"The court finds that Chairman Wiley, in the course of his campaign, threatened the industry with regulatory action if it did not adopt the essence of his scheduling of programs," the judge said.

Plaintiffs happy

Leaders of the groups that challenged the family hour predicted that their victory would hold up in the courts. David W. Rintels, president of the Western Division of the Writers Guild of America, said the family hour was merely a "p.r. gimmick for the networks and the FCC."

Producer Norman Lear called the court's decision a victory for all Americans. "Everybody won a victory today. We're happy to see that the sham is gone. What happens now, where we go from here with respect to violence and such things, is up to the networks."

Robert Aldrich, president of the Directors Guild of America, said that the family hour "is now totally discredited."

Chester Midgen, national executive secretary of the Screen Actors Guild, called for Wiley's resignation. "I think

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

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a geography of censorship:

a regional analysis of recent cases

By BRUCE A. SHUMAN, assistant professor at the graduate library school of Indiana University.

In the conventional wisdom, the censors are clearly identifiable. The President's Commission on Obscenity and Pornography found in their study that the typical censor confronting libraries today tends to be religious, politically conservative, middle-aged, generally family-centered, and pervaded with strong feelings that traditional and important human values are being eroded, that pornography and obscenity lead to crime and moral turpitude, and that it is long past the time when somebody should do something about the menace which threatens our communities. Libraries are viewed as threatening to the extent that they are perceived to purchase, publicize and circulate freely materials which further the erosion of such values as the family, chastity, patriotism, heterosexuality, and moderation.

One ingredient missing in the Commission's researches was geographical analysis. Questions about where pro-censorship groups or individuals live, what size community seems to spawn groups organized to "fight smut," and whether regionalism correlates with attitude, are of concern to those seeking to preserve freedom of speech and the right to read. Consequently, such questions as these were the starting point for the mini-study reported on here.

Specifically, this investigation sought to answer such questions as, Is there a correlation, and, if so, what kind, between where a person lives and how he or she feels or acts with regard to censorship of library materials? With no particular desired result, the investigator sought to trace patterns of behavior, where present, and to discover if stereotypical notions of conservative and moderate parts of the country had, at least within present parameters, any basis in reality.

The subject population consisted of 208 censorship incidents reported in the pages of the *Newsletter on Intellectual Freedom* over the past three years. (A total of 213 cases was counted, but five were removed from consideration due to lack of specificity in location or, in one case, provenance in Alaska, not part of the continental U.S.) The nation was then divided into four geographical regions and regional comparisons were made; additionally, population size of community was explored as a further variable, with arbitrary size groupings dividing cases into classes.

Some generalized findings

Of the 208 cases arising and reported in the *Newsletter* between March 1973 and March 1976, it was found that virtually the same number occurred each year:

March 1973 through February 1974 . . . . 69 cases
March 1974 through February 1975 . . . . 70 cases
March 1975 through February 1976 . . . . 69 cases

Lack of change in the number of cases reported in the *Newsletter* leads to the cautious conclusion that censorship cases in America have neither increased nor abated in recent years. At least those called to the attention of the Intellectual Freedom Committee, and deemed worthy of publication, are static and stable in number. It may be pointed out, of course, that the IFC relies upon contributing informants and published sources, and that more of both tend to reside in populous areas than in rural communities.

Of all the cases, 187, or 89.8%, pertained to school or school library problems, while only 21 cases (10.2%) represented experiences of public libraries. Conclusion: suppression or removal of library materials would appear to be almost nine times more likely in school libraries than in public libraries, in recent years.

The Eastern and Northcentral regions, taken together, accounted for two-thirds of all cases in the three-year period. These regions represent just over half the nation's population but account for almost 67% of total cases reported. The South, stereotypically the most conservative and intolerant of regions, accounted for only 20.7% of censorship battles in the time period, despite accounting for 31.1% of the population. The Western region, with 16.7% of the total population, experienced 12.5% of the cases. These findings are not easily explained, as a high (or low) ratio of population to cases may be the result of any number of variables at work on the problem. A bewildering array of social causes, ranging from general apathy through tolerance of others' viewpoints to the presence of fewer newspapers reporting incidents may account for frequency of reported disputes in a state or region. Some librarians perform a prior screening of all materials considered for purchase and thus avoid controversy by refusing to buy controversial materials. Other cases are resolved in one satisfactory manner or another before they are considered worthy of publication in newspapers or report to the Intellectual Freedom Committee. Any attempt to explain variation in such cases would, necessarily, meet with defeat. The reader is therefore invited to read the statistics and draw his or her own conclusions.

There is evidence that censorship disputes are twice as likely to grow up in large cities (with over 100,000 residents) than in small communities, having fewer than 2,500 residents. Large cities are also 50% more likely to spawn such cases than are either middle- sized or small urban communities. High-incidence states (those with at least seven cases in three years) are likely to be populous, Eastern,

urbanized and industrial, with the partial exception of California and Texas, which meet all but the regional criteria. No unifying threads whatsoever could be found in medium-incidence states (having from three to six cases in the time period). Those 23 states which had two cases or fewer, including six states which have escaped censorship reports altogether, tend to be rural, Southern or Western, and generally agrarian and non-industrial.

Regional analysis

The following discussion and analysis are based upon several assumptions, which must be listed at the outset:
1) It is possible to group the 48 contiguous states into regions.
2) States within a region may be said to have more in com-

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Tabular summary

Eastern Region (11 states; 68 cases)

24.2% total population	28.4% in cities over 100,000	89.6% in schools
32.2% of censorship cases	16.4% in cities 25,000 to 100,000	10.4% in public libraries
	35.8% in cities 2,500 to 25,000	
	19.4% in cities under 2,500	
High incidence states	Medium incidence states	Low incidence states
MD 17	CT 5	NH 2
NY 14	MA 4	ME 1
NJ 9	VT 4	DE 0
PA 9	RI 3	

Northcentral Region (13 states; 71 cases)

28.0% total population	34.6% in cities over 100,000	90.3% in schools
34.6% of censorship cases	25.0% in cities 25,000 to 100,000	9.7% in public libraries
	25.0% in cities 2,500 to 25,000	
	18.1% in cities under 2,500	
High incidence states	Medium incidence states	Low incidence states
MI 19	MN 6	KS 2
IA 9	IN 4	KY 2
IL 8	MO 4	NE 1
OH 7		ND 1
WI 7		WV 1

Southern Region (12 states; 43 cases)

31.1% total population	51.2% in cities over 100,000	95.4% in schools
20.7% of censorship cases	18.6% in cities 25,000 to 100,000	4.6% in public libraries
	20.9% in cities 2,500 to 25,000	
	9.3% in cities under 2,500	
High incidence states	Medium incidence states	Low incidence states
VA 10	FL 6	OK 2
TX 9	GA 6	SC 2
	NC 4	AL 1
		LA 1
		MS 1
		TN 1
		AR 0

Western Region (12 states; 26 cases)

16.7% total population	34.7% in cities over 100,000	80.7% in schools
12.5% of censorship cases	26.9% in cities 25,000 to 100,000	19.3% in public libraries
	19.2% in cities 2,500 to 25,000	
	19.2% in cities under 2,500	
High incidence states	Medium incidence states	Low incidence states
CA 11	OR 4	AZ 2
	CO 3	MT 1
	ID 3	NV 1
		UT 1
		NM 0
		SD 0
		WA 0
		WY 0

in review

Literature, Obscenity and Law. Felice Flanery Lewis. Southern Illinois University Press, 1976. 297 p. $12.50.

The title of *Literature, Obscenity and Law* is well suited to represent concisely the content of an interesting and important new contribution to the study of the history of censorship in the United States. But there has been no shortage of works that have promised to provide a definitive discussion of the development of this phenomenon in our culture, so we must ask how Lewis's contribution furthers our knowledge of the subject.

The most important new ground broken here is in the area of content analysis. None of the previous commentators has attempted to furnish a detailed and systematic examination of the kinds of materials to which censors have taken objection over the years. These include, of course, blasphemy, sedition, and erotica.

Available evidence suggests little in the way of concerted censorship action against sexual expression until after the Civil War. Even then, a period of almost thirty years passed before there was a substantial record of judicial judgments. In the 1890s persistent efforts were begun to censor suspect fiction, including important literary contributions. Initially, the most popular candidates for censorship were lusty classics ranging from the *Decameron* and the *Arabian Nights* to *Tom Jones*. The content that was found objectionable in these works was frequently scatalogical, and references to "deviant activity" abounded, but these matters were always treated subtly and often with humor.

By the turn of the century a new concern over content was displayed. The new targets for the censor were the themes of prostitution and adultery, even though these themes were still expressed in extremely circumspect language. Attacks on *Mrs. Warren's Profession* provide one notable example of this particular concern. At about the same time, the growing popularity of the naturalistic school of expression raised inevitable objections among those who had appointed themselves guardians of society's moral purity.

Though World War I is frequently regarded as a watershed in censorship matters, it is Lewis's contention that what we actually witness is a regular progression based on earlier developments in literature and the reaction to them. After the war there was a gradual movement toward language that was more frank, with use of words like "brothel," "slut," "bitch," and "whore," and works as disimilar as *Jurgen* and *Women in Love* were the targets of legal attack.

By the 1930s, sexual themes in American fiction had moved from depicting isolated individuals in violation of the moral code to presenting a more generalized attitude of permissiveness, though the sort of explicitness found in *Ulysses* was not to become typical for a number of years. And, during this period, aggressive promotion of ficition through lurid cover art complicated the issue.

Post-World War II literature showed a movement to language that was still more frank, and more detailed descriptions of sexual relationships were introduced. Novels now depicted marital infidelity as a societal norm rather than a deviation.

Finally, during the decade following the *Roth* decision of 1957, court victories for works like *Fanny Hill*, *Tropic of Cancer*, and *Lady Chatterley's Lover* suggested that the fight against censorship of the written word was over. But the advent of the Burger Court and its new guidelines of 1973 have left the issue in doubt.

The treatment of judicial decisions in *Literature, Obscenity and Law* covers less new ground than does its discussion of content, but the juxtaposition of the two considerations provides insight into legal reactions to works prosecuted in the courts. Lewis puts forward evidence to support the idea that there is a correlation between convictions and the size of a work's audience and its character. She demonstrates that the tendency of judicial decisions over time has been toward greater liberalization, but she argues that this is not necessarily a reflection of a more enlightened judicial system. It likely represents nothing more than changes in the prevailing mores of the society to which those making the decisions belong. Further, Lewis detects an incapacity on the part of many officers of the courts to understand the credo of the artist, that a portrayal of a particular view of reality may demand a form of expression that is offensive to some elements of society.—*Reviewed by Jerold Nelson, University of Washington.*

alternative library publications

A directory/catalog of alternative library publications has been prepared by the Task Force on Alternative Library Publications of the ALA Social Responsibilities Round Table. Used at the First Annual Midwestern Writers' Festival and Book Fair (St. Paul) and the Rhode Island Library Association's 1976 Annual Conference, the directory lists more than thirty items and sources.

Copies will be sent free to anyone who requests them. Write to: Sanford Berman, Hennepin County Library, York Avenue South at 70th, Edina, Minn. 55435.

UNESCO rebuffs Soviets on Israel, press freedom

The Soviet Union suffered a double diplomatic setback in November when delegates to the nineteenth general conference of the United Nations Educational, Scientific, and Cultural Organization voted to repudiate a Kremlin project on international press freedom and to restore Israel to the European regional section of UNESCO.

By its vote on the press measure, which was seventy-eight to fifteen with six abstentions, a UNESCO political committee sent the proposed declaration to a negotiating and drafting commission for complete revision.

The press measure would have made all states "responsible for the activities in the international sphere of all mass media under their jurisdiction." Communist bloc backers of the measure argued that the major news agencies, which are concentrated in Western nations, employ reporters and editors who are culturally biased against the Third World, and that the reporters dwell on sensational or superficial aspects of the problems of developing countries.

Spokespersons for the major international news agencies and news organizations in the U.S., however, strongly opposed the press resolution because it would have enabled censors in each country to excise undesirable news items from international wire services.

Israel receives strong support

The move to restore Israel to full status as a member of the European regional group was especially embarrassing to the Soviets, whose position was overwhelmingly rejected.

In November 1974, the general conference of UNESCO, in votes dominated by Arab and communist countries, decided to exclude Israel from the European group and to deny it cultural aid. That move was strongly condemned by many American organizations, including the American Library Association.

The future of UNESCO

The actions of the nineteenth general conference, meeting in Nairobi, may have saved UNESCO–at least temporarily–from self-destruction. The future of the organization had been clouded by political disputes which were intensified when Israel was barred from participation in the European group.

The move against Israel led the U.S. Congress to halt payments of America's share–twenty-five percent–of UNESCO's expenses. UNESCO's quickly accumulated $38 million deficit would have crippled the organization had not oil-rich Arab countries supported it with interest-free loans.

Senator Dick Clark (D.-Iowa), during a visit to Nairobi, predicted that U.S. funds would be restored as a result of the votes of the general conference, but a late conference resolution condemning Israel's policies in occupied Arab territories intensified doubts in some quarters. Reported in: *New York Times*, October 24; *Wall Street Journal*, October 26; *Chicago Tribune*, November 5, 7, 10, 14, 19, 23.

more 'porno zoning' ahead

In the wake of the U.S. Supreme Court's decision upholding Detroit's plan to force adult entertainment enterprises into a "combat zone," cities around the country have begun to explore similar zoning plans as a solution to citizen complaints about adult establishments in their neighborhoods. Herewith, some examples:

• In Flint, Michigan, the planning commission announced in October that it would hold hearings to respond to letters and calls complaining about *X*-rated businesses. One Flint planning commissioner, Michael McManaman, said he received twenty calls a week complaining about obscenity, despite the fact that his telephone number was unlisted.

• In Colorado, the Colorado Springs City Council directed its legal department to examine the use of zoning to control new adult establishments. Members of a business club had complained that the adult enterprises would bring "undesirable elements" into areas where they are trying to attract new customers.

• In Madison, Wisconsin, Mayor Paul Soglin announced that he would recommend zoning to control adult bookstores and other adult entertainment establishments. "For some time I've thought that zoning regulations were a reasonable way to handle this problem," Soglin declared. "If we can have zoning regulations on things like gas stations, fast food operations, and bars, there should be a procedure within city government to deal with adult bookstores and massage parlors."

• In New York City, where plans have often been announced to "clean up" the Times Square area, Mayor Abraham Beame has outlined a tough new program. A proposed zoning ordinance would prohibit all "prurience oriented" businesses in residential areas and within 500 feet of them. In areas zoned as commercial, only three such operations would be allowed within a 1,000 foot radius.

If the New York plan is adopted, only ten adult establishments would be permitted in the Times Square area. Virtually all adult establishments on Eighth Avenue would be eliminated because the area immediately west of Eighth Avenue to the Hudson River is zoned as residential. Reported in: *Colorado Springs Gazette-Telegraph*, September 30; *Flint Journal*, October 27: *Madison Capital Times*, October 22: *Variety*, November 17.

censorship dateline

libraries

Hutchinson, Kansas

Complaints from the parents of a student at Hutchinson High School led to censorship of two works in the high school library at the beginning of the fall term. *Such Good Friends* and *Necessary Objects,* both by Lois Gould, were banned by administrators who said the books contain sexually explicit material and are not suitable for a high school collection.

Saved from condemnation, however, was *The Reincarnation of Peter Proud,* which a panel of administrators approved. Principal George Madelen said the book, whose main character dreams of reincarnation, "does not revolve around sex" and does not contain unacceptably explicit sexual material. Reported in: *Hutchinson News,* September 23.

Allentown, Pennsylvania

Salisbury school officials announced in October that library materials showing women in demeaning roles in society were under scrutiny. Kathleen A. Novak, chairperson of a board committee studying sexual equality in the school district, reported that "books that are biased are being removed by the librarians gradually."

District Superintendent Daniel Knauer praised the judgment of the librarians and revealed that he himself had removed a book from the library after a parent complained about vulgar words in it.

Board member Joseph T. Anastasi asked about the standards by which books were being judged. Novak replied that books "not in keeping with the times" were unacceptable. Reported in: *Allentown Chronicle,* October 7.

schools

Cedar Lake, Indiana

A decision to ban the *American Heritage Dictionary* from the Hanover Community School System (see *Newsletter,* Nov. 1976, p. 145) was modified in mid-November when school trustees voted three to two to allow the book in senior English classrooms.

At an earlier meeting in November, the board refused to modify the ban and also to apologize to teachers, whom President Carolyn Kenning reportedly characterized as unqualified to select learning materials.

Some spectators at the board's second November meeting charged that it was bending to pressure and was taking "the easy way out."

The board's legal counsel advised them that the dictionary could not be considered obscene, and that while he thought the board could win a test case to establish its authority to remove controversial material, such litigation would be too costly.

Students at the school voted overwhelmingly for return of the dictionary. Reported in: *Hammond Times,* November 10; *Gary Post-Tribune,* November 17.

Billings, Montana

A ninth-grade social studies text used in all junior high schools in Billings was censored in October. Pages dealing with teen-age pregnancies and a father making sexual advances toward his daughter were ripped out of *Kids, Cops, Courts and the Law,* used in a required course called "Teen-Agers in Contemporary Life."

Reportedly, the order to eliminate the pages was given by Acting Superintendent William A. Serrette, but school officials would not say the censorship was prompted by objections to the sections from members of a church headed by the Rev. Harold Fuqua. Fuqua said, however, that his group was working "in favor of better literature in our books and cleaner schools morally for our kids."

The book was written by several Montana educators who received a federal grant for their work. Consultants to the authors included a district judge, law officials, a Lutheran minister, a Catholic priest, and several state social agencies. The volume deals with family law, civil law, criminal law, juvenile law, and law pertaining to Indian reservations.

A spokesperson for Planned Parenthood contended that the pages deal with situations in which teen-agers actually find themselves. Reported in: *Billings Gazette,* October 24.

Dayton, Ohio

After receiving a recommendation from officials in the Dayton school system's instruction and language arts departments, Superintendent John Maxwell ordered an anthology, entitled *Black,* removed from Dayton schools. Parents of a student had complained that the work contains "hard-core pornography."

Black, comprised of short stories by James Baldwin, Nikki Giovanni,Ralph Ellison, Imamu Amiri Baraka, and other black writers, was used in an English mini-course called "Establishment Hangups."

Maxwell said the incident was a case of "poor judg-

ment," but he defended the instructor, whose dismissal had been demanded, as a "fine teacher." Wilbur Wright High School Principal Edgar Norris agreed with Maxwell's action, but not the parents' charges of "pornography."

In response to the censorship, the *Dayton Journal Herald* editorialized:

"It is shocking that [Maxwell] withdrew the book without having read it himself. It is doubly shocking if the incident means that high school literature teachers in the Dayton school system are to have their administration second-guessing their professional judgments.

"It seems reasonable, given the great variation in public standards of morality, that school authorities exercise care in drawing up reading lists for required literature courses. . . But it is impossible for students to taste the full range of contemporary writing–or even classical literature–without dealing with works that some people will find objectionable. This is particularly true of contemporary black writing, which often expresses alienation, resentment, despair, and rage in raw, abrasive, even scatalogical language.

"The bulk of white America still has insufficient understanding of the black experience, and high school students probably need greater contact with such writing. High school teachers who have the courage and the judgment to expand the horizons of their students should be supported and encouraged. . .." Reported in: *Dayton Journal Herald,* October 16, 19; *Dayton Daily News,* October 16, 17, 19.

Mahwah, New Jersey

School trustees in Mahwah who object to *One Day in the Life of Ivan Denisovich* failed in September to have the book removed from the Mahwah High School library (see *Newsletter,* November 1976, p. 144), but they succeeded in vetoing a ninth-grade civics text published by Harcourt-Brace.

According to Trustee Richard Mech and several local residents, *American Civics* gives a distorted picture of "the American way of life." Mech attacked the book on the grounds that it promotes socialized medicine and views government as a large machine which permits people no voice. Reported in: *Patterson News,* September 14.

Westport, Rhode Island

Members of the Westport School Committee agreed in September to consider the appointment of a special committee of parents to oversee the selection of books for use in English courses. The action followed a decision of the board to remove four novels from required reading lists. They were *A Clockwork Orange, One Flew Over the Cuckoo's Nest, Rosemary's Baby,* and *The Sting.*

Of the four members of the five-person committee who voted to censor the works, three said they had not read them.

Committee member Martha Kirby said she had seen excerpts from "one or two" of them, and that she had talked with a couple of parents who had read them. "They're garbage, and that's all there is to it," she said.

Another committee member commented that although he thought the books unsuitable for a required reading list, he did not consider them "filth or garbage." He said he would not be opposed to their presence in the school library.

Committee member Clyde Armstrong, who opposed the books, also proposed that the head of the English department, Paul Larrivee, be removed.

Larrivee responded that the English department permitted students of parents who object to certain works to request assignment of other books. Reported in: *Providence Bulletin,* September 26.

In its October 4 edition, the *Providence Journal* opposed the action of the committee:

"The Westport School Committee has been dabbling in book censorship; it has banned four novels from the required reading list for English. It erred in interfering with the English curriculum, and its proposal to set up a special committee of parents to oversee selection of books is an abdication of its responsibilities.

"A basic function of a local school committee is to fix educational policies, including the creation of administrative machinery that will leave selection of novels and texts in the hands of teachers, the professionals. . . ."

Fairfax County, Virginia

A decision of the Fairfax County school system to restrict use of *The Lottery,* a film based on a short story by Shirley Jackson, to students in the eleventh and twelfth grades (see *Newsletter,* Nov. 1976, p. 146) was followed by a ban on any use of a related work, *Discussion Film of the Lottery.*

The ban was based on a recommendation from a twelve-member English review and evaluation committee. Superintendent S. John Davis said he agreed with the committee after viewing the work. "It didn't contribute anything, so why bother with it?" Davis asked.

According to Barry Morris, associate superintendent for school services, much of the opposition to *The Lottery* was prompted by the discussion film. He said parents complained especially about flashbacks to the original film and to "the open-ended questions" posed by the narrator of the discussion film, who asks viewers: "Do we still worship a stern and vengeful God who demands outrageous sacrifices and bloody rites, and, if we do, should we continue our service" to such a deity?

According to Helen Tidball, one of the first parents to request a community viewing of the movie and to lodge a complaint against its use in the schools, the discussion film is "anti-tradition." She argued that it portrays religion as "obsolete" and encourages children to ignore guidance from the family.

Milton Yiasemides, an English teacher at Woodson High School, disagreed: "I think what we have here is a very small minority dictating what the majority will see, and I think that's wrong." Reported in: *Washington Post,* October 7.

colleges-universities

Baltimore, Maryland

Undergraduates led by the Black Students Union at Johns Hopkins University successfully pressured their student council to ban the film *Coonskin* from a weekly film series.

The film, directed by Ralph Bashki, satirizes black stereotypes, employing both animation and live action. A group of five black students who viewed the film found it "derogatory and offensive," according to McLin Hawkins, co-chairperson of the black group.

Jennifer Bishop, co-director of the film series that had scheduled *Coonskin* for showing in October, praised the work as a "brilliantly done, anti-racist film." She commented: "Through harsh representations of the social system it came out against racism, and against the overall social structure. I don't think it should have been banned, especially not here. I have seen Bashki's other films, and this is by far the best."

Steve Lovejoy, a senior class representative on the student council, responded that the movie was not censored. "We decided that we should not sponsor it. If somebody else on campus wants to sponsor it, they can, and even though the council may well have the authority to stop them, we won't."

When the issue of censorship was discussed with James Baldwin during an appearance of the author and playwright at the campus, he rejected censorship:

"I do not believe in banning any book or film. Show the film and let it go. That film does not hurt you the way it hurts the kind of people who need to believe in it. See it, and tell your child, 'That's bullshit.' Then he's immune. You don't protect anyone by banning something. Show it, you've survived worse than that." Reported in: *Baltimore News American,* October 29.

St. Louis, Missouri

A special resolution passed by the St. Louis University Student Government Association challenged the school's president, the Rev. Daniel C. O'Connell, for "arbitrary and wanton disregard of the opinions of faculty and students" with regard to films shown on campus.

At the university council's quarterly meeting in October, O'Connell rejected a suggestion to use the film ratings of the Office for Film and Broadcasting of the U.S. Catholic Conference as guidelines. The proposal would have left the final decision on campus screenings of movies rated *C* (for condemned) to a film selection committee appointed by the council.

O'Connell insisted to the council that he must retain final authority over campus affairs. The council, made up of fifty administrators, faculty members, and students, has an advisory role.

"It's not a question of censorship, but simply of tactics," O'Connell said. "Let's turn this thing around: Is anyone seriously suggesting that we, as a Catholic institution, should characteristically show films that are *C* and *X*-rated? The answer is, 'Absolutely not.' "

But a member of the university council disagreed. Helen Mandeville, a former nun who has taught courses on movie criticism, said the university was more inflexible and out of date than the Catholic rating system O'Connell cited. She said the system had outgrown what she called the "sin orientation" of the old Legion of Decency, and added that she interpreted the *C* rating as "caution" rather than "condemned."

The Rev. Joseph M. O'Brien, director of the St. Louis Archdiocesan Office for Radio and Television, supported Mandeville. "It doesn't mean you've committed a mortal sin and are going to perdition or are excommunicated if you see a *C* movie, although that was the implication, I guess, of 'condemned' under the Legion of Decency," he said. Reported in: *St. Louis Post-Dispatch,* October 14.

Glassboro, New Jersey

Venue, the student magazine at Glassboro State College, nearly lost its charter and funding in October when it issued a cover carrying, in unexpurgated and illustrated form, the remarks about blacks that cost former Secretary of Agriculture Earl Butz his cabinet post.

When the cover appeared, *Venue's* staff was assailed by black students, the Student Government Association, and the president of the college, Mark Chamberlain.

Chamberlain issued a blistering denunciation of the cover, calling its cartoon "the most tasteless piece of journalism that I have encountered in my association with Glassboro State College. . . . I am appalled. This cover gives evidence of an extraordinary lack of sensitivity by the editors of *Venue* to the feelings and concerns of black students."

Within four hours of its appearance, Angelo Cucchiara, editor-in-chief of *Venue,* withdrew the magazine from circulation. Undistributed issues were circulated on the following day with a virtually blank cover carrying only the headline "No Butz About It!"

In a meeting on the controversy, the Student Government Association listened to black students and *Venue* staffers, and examined an opinion from its legal counsel, who found "nothing illegal about the cover, editorial or any other matter contained in this issue of *Venue.*" The opinion noted that under the First Amendment "much offensive and objectionable material is published and distributed."

After examining the case, the Student Government Association voted forty to two to reprimand *Venue* and establish a non-binding advisory board for consultation

with the magazine's staff on potentially controversial issues. On its part, the magazine issued a formal apology to black students and agreed to publish an issue about the controversy in which black students would have a fair opportunity to voice their views. Reported in: *Philadelphia Bulletin,* October 14; *Editor & Publisher,* October 30.

New York, New York

Administrators at City College told the CCNY student senate in November that it had violated due process requirements of the New York City Board of Higher Education when it voted to suspend *The Campus,* a weekly journal, for alleged violations of journalistic ethics.

During a conference with administrators, senate leaders were given a letter urging them to "void immediately any punitive actions" and "recognize the rights of *The Campus* under BHE guidelines and the First Amendment."

The senate had voted the suspension by a vote of nine to seven, charging that "*The Campus* distorted the truth." An eight-member committee was set up "with authority to investigate *The Campus* and other newspapers."

The Campus responded in an editorial: "The senate's indiscriminate lack of courtesy, protocol, and knowledge of First Amendment rights, coupled with its complete lack of understanding as to the workings of a professional newspaper, cause us to question their right to exist as well as their claim to the power they wield. Or don't wield."

Senate leaders refused to discuss their action. Appended to their resolution, however, was a complaint from Stanley Page, a professor of history, on "apparent news manipulation." Page contended that a November issue of *The Campus* had highlighted the picture of one professor and left out others at a chapter meeting of the American Association of University Professors. Reported in: *New York Times,* November 19.

Voice of America

Washington, D.C.

The director of the United States Information Agency, James Keogh, has ruled that Voice of America correspondents "must conform to U.S. government policies" and that he does not view such compliance as "in any way contravening the law referred to as VOA's charter" nor as "any form of censorship."

Keogh's ruling was outlined in a "confidential" October cable to U.S. Ambassador to Israel Malcolm Toon and was cleared by top State Department officials.

Keogh's action was one of the first known responses by top USIA officials to recent legislation mandating that VOA news be "accurate, objective, and comprehensive" and "consistently reliable and authoritative."

The cable, a copy of which was obtained from congressional sources, was meant to resolve a dispute between the U.S. embassy in Israel and VOA news officials over an order prohibiting VOA correspondents from having any contacts with officials of the Palestine Liberation Organization. It is U.S. government policy not to have such contacts.

Keogh's cable was sent only one day after Representative Bella Abzug (D.-N.Y.), sponsor of the VOA legislation in the House, had asked what the USIA had done to implement the law.

In a letter to Keogh, Abzug said she was "particularly disturbed" by the orders to the VOA correspondent in Israel. "I am sure you can appreciate the serious impediments such a blanket prohibition presents in terms of checking routine stories filed from the Middle East. It effectively undercuts the ability of the Voice to independently develop sources," Abzug's letter said. "I trust you will take strong action to correct this situation."

A spokesperson for Senator Charles H. Percy (R.-Ill.), sponsor of the VOA charter legislation in the Senate, said the senator planned to introduce legislation in the spring to create an independent VOA.

The ruling in Israel was handed down after the VOA correspondent there, Charles Weiss, telephoned a PLO official in Cyprus to verify a report that an Israeli vessel had attacked a boat carrying a leftist Lebanese leader. Reported in: *Washington Post,* October 27.

broadcasting

New York, New York

Two movies scheduled by ABC and CBS came under fire from some of the networks' affiliates who decided not to broadcast them because they considered the works too violent.

"It's too intense," said Eugene Corkin, general manager of WAST-TV in Albany, in explaining the decision of his station not to air *Nightmare in Badham County.* The second film, *Death Wish,* was canceled by four CBS affiliates, according to a CBS official, George Zurich, director of station clearance. In all, at least ten CBS and ABC affiliates rejected the films.

In a related development, the National Council of Churches and the U.S. Catholic Conference joined together in asking CBS to cancel *Death Wish.* A spokesperson for the two groups said the film advocates taking the law into one's own hands and is "socially irresponsible" and an "incitement to inhuman behavior and social terrorism."Reported in: *New York Times,* November 4, 10.

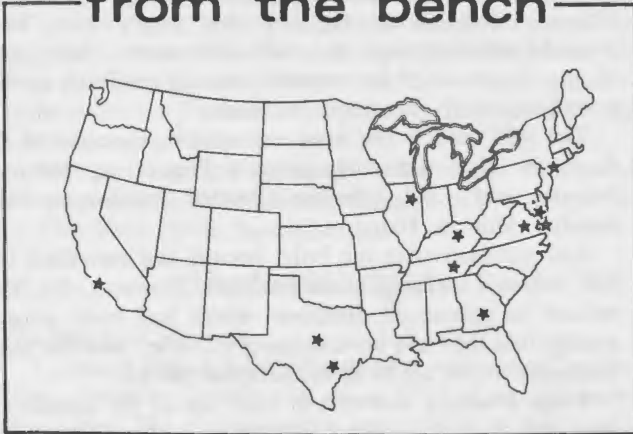
Houston, Texas

Houston's three network-affiliated stations, KPRC-TV, KHOU-TV, and KTRK-TV, refused in November to accept advertising for the film *God Told Me To.* According to the stations, the film shows religion in a bad and unnatural light and contains violent scenes.

Two independent stations in Houston, KDOG-TV and

(Continued on page 18)

from the bench



U.S. Supreme Court rulings

For procedural reasons, the U.S. Supreme Court decided in November not to overturn an Oklahoma court's order barring a newspaper from publishing already disclosed facts about a murder case for the next seven years. The justices noted that the Oklahoma Publishing Company, parent firm of the *Daily Oklahoman* and filer of the appeal, had failed to ask the Oklahoma Supreme Court to void or modify the order.

Under the court order in question, the *Daily Oklahoman* has been forbidden to publish the name or the picture of an eleven-year-old youth who was ruled a delinquent for murder, even though other news media have disclosed his name and widely published his picture. The judge who issued the order said he expects it to be honored until the youth has reached age eighteen. Reported in: *Washington Star,* November 11.

FCC broadcasting rules

In October the Court rejected challenges to a new broadcasting rule that exempted the debates between President Ford and Jimmy Carter from Federal Communications Commission requirements. The Court's brief order denied appeals filed by the Democratic National Committee and others.

The action let stand an FCC decision that debates and news conferences involving presidential candidates are "bona fide news" events exempt from the equal-time law. The FCC ruling, handed down in September, reversed the commission's own 1964 ruling that coverage of one candidate, whether an incumbent president or not, gave broadcasters the duty to provide exposure for all candidates.

Under the new FCC policy, a candidate can obtain an equal-time order only by showing that the coverage of another candidate was not an exercise of news judgment but an effort deliberately designed to advance the candidate's interest.

The court also rejected an appeal by the Socialist Workers Party, which sought to have its presidential candidate, Peter Camejo, included in the debates.

In comments on the new FCC rules, Representative Shirley Chisholm (D.-N.Y.) and the National Organization for Women called it a setback for minority and female candidates, who usually have difficulty in obtaining media exposure. Reported in: *Chicago Sun-Times,* October 13.

Funding of the arts

Without dissent the Court decided not to hear the appeal of a New Hampshire literary journal, *Granite,* whose government funding was revoked by the State Arts Council at the request of Governor Meldrim Thomson, who objected to an issue of the journal with a poem entitled "Castrating the Cat." Reported in: *New York Times,* October 19.

presidential tapes

Washington, D.C.

The U.S. Court of Appeals for the District of Columbia ruled in October that White House tape recordings used as evidence in the Watergate trials may be reproduced, broadcast, and sold to the public in records as soon as a suitable plan for distributing the tapes can be developed.

The appellate court reversed a ruling by U.S. District Court Judge John J. Sirica, who banned public distribution of the recordings at least until the appeals of four former Nixon aides who were convicted had been finally decided.

The appeals court acted at the behest of the three commercial television networks, the Public Broadcasting System, an association of radio broadcasters, and a record manufacturer. "Distribution should be prompt," the court said, "and on an equal basis for all persons desiring copies."

The appellate court based its decision on what it called a precious common law right that predates the Constitution—the right to inspect and copy public records. "This common law right is not some arcane relic of ancient English law," the court said in an opinion by Chief Judge David Bazelon. "To the contrary, the right is fundamental to a democratic state."

Nixon's attorney, Herbert J. Miller, announced that the former president would appeal the decision. "The effect of the Court of Appeals' decision is to permit the commercial exploitation of recordings of presidential conversations subpoenaed for use in a criminal trial," Miller said.

The tapes involved in the decision were those played to jurors, the press, and spectators at the Watergate cover-up trial. There were thirty tapes in all, of which twenty-eight were Nixon's White House recordings. Reported in: *New York Times,* October 27.

U.S. Customs

New York, New York

A November decision handed down in U.S. District

Court barred the U.S. Customs Service from interfering with the distribution and exhibition of the Japanese film *In the Realm of the Senses,* which was removed from the New York Film Festival at Lincoln Center after Customs Service officials threatened to confiscate it on grounds of obscenity.

U.S. District Court Judge Marvin E. Frankel did not rule on the question of obscenity, but he declared that the Customs Service had violated its own regulations because officials in New York had raised questions about the film after it had already been admitted into the country in Los Angeles.

Judge Frankel said he did not believe that regulations permitted Customs officials in one port to reinspect a film that had entered the country through another where officials had not raised any objections. However, he added that if the Customs Service's regulations permitted such a practice, it would be an unconstitutional violation of due process of law.

The Customs Service would "spread a pall of uncertainty" over works protected by the First Amendment, Judge Frankel said, if it could reconsider and seize films or other forms of expression that had already been admitted into the country.

Regarding the Customs Service's "notice of delivery" directing that the Japanese film be surrendered for reinspection, Judge Frankel said he considered the act "an outrage." He rejected the view that Customs officials "with different 'prurience thresholds' around the country" could reinspect and seize a film. Reported in: *New York Times,* November 10.

freedom of information

Washington, D.C.

Ruling on a request from journalist-historian Alan J. Fitzgibbon, the U.S. District Court for the District of Columbia has declared that decisions of agencies not to waive fees under the Freedom of Information Act must be reviewed on a case-by-case basis

Subsection (a) (4) (A) of the FoIA requires an agency to base its discretionary determination on its interpretation of whether the public interest justifies a fee waiver. Fitzgibbon sought to have waived a $448 fee charged by the Central Intelligence Agency in response to his request for CIA records relating to a political murder by the Trujillo regime in the Dominican Republic.

In the same case, however, the court denied the CIA's contention that courts do not have jurisdiction to review an agency's denial of a request for a fee waiver. Reported in: *Access Reports,* November 15.

Washington, D.C.

Following *in camera* inspection of several National Security Council directives sought under the Freedom of Information Act, U.S. District Court Judge Thomas A. Flannery declared in October that "they have been properly withheld since they fall within several exemptions of the Freedom of Information Act as set forth by the government in its pleadings filed herein."

The NSC records had been requested by members of the American Civil Liberties Union's Project on National Security and Civil Liberties, headed by former NSC member Morton Halperin.

Last summer, after the FoIA lawsuit had been filed, the NSC released some of the documents. However, the NSC refused to release all directives which had been sought, arguing that they had been properly classified and that their disclosure would not be in the national interest.

Judge Flannery said that at least one of the documents deals with "certain sensitive intelligence methods," and that "its release could jeopardize current and future intelligence activities resulting in possible serious damage to national security." Reported in: *Access Reports,* November 15.

New York, New York

Government affidavits have been accepted by a U.S. District Court as sufficient evidence that information sought in a Freedom of Information Act request was properly classified and thus exempt from disclosure.

Judge Lloyd F. MacMahon ruled that *in camera* inspection of Department of Defense documents containing the information was not necessary since the affidavits supplied by the department clearly established that the request concerned sensitive national security information. Judge MacMahon said the documents "described clandestine intelligence operations and, in some instances, individual sources of information. Disclosure of such information can only cause damage to the national security."

The documents, which were sought by Jonathan A. Bennett, a New York attorney, include DOD records of U.S. military operations in Cuba after January 1, 1959. Bennett argued that the information was not classifiable because it might show violations by government officials of U.S. criminal statutes that prohibit counterrevolutionary activities within countries with which the U.S. is at peace. Reported in: *Access Reports,* October 4.

broadcasting

New York, New York

NBC was ordered by the Federal Communications Commission in early November to schedule a thirty-minute paid political broadcast by the U.S. Labor Party, although the party's request for election eve time had been made only two days earlier.

The network had rejected the Labor Party's request, citing the short notice. NBC said the half-hour programs aired by President Ford and Jimmy Carter had been discussed in August and purchased in October.

The FCC, which cited the "reasonable access" provision of a 1971 law, which requires broadcasters to accept political commercials from all qualified candidates for federal office, directed NBC to reschedule its programs to make room for a telecast by Lyndon H. La Rouche Jr., the Labor Party's presidential candidate.

The party, which appeared on ballots in twenty-five states, waged its first national campaign in 1976. Reported in: *New York Times,* November 2.

students' rights

Los Angeles, California

Lynwood High School officials were enjoined in October from preventing distribution of an issue of an alternative newspaper, *The Forum,* which was critical of dress codes and security at the school.

"Some of the contents of the paper appeared to the court to be vulgar and in poor taste," Judge Norman R. Dowds commented. "Further, some of the statements in the paper respecting teachers and members of the school administration, if not true, could well be found to be libelous."

However, Dowds ruled that dislike of the paper on the part of the administration of the court could not justify prior restraint. He said the right of students to distribute their papers could not be abridged without proof of possible disruption of the campus. He added that if statements proved libelous, their authors could be subjected to school disciplinary procedures. "The court is satisfied from the totality of the evidence that at least a large part of the [Lynwood officials'] motivation is their dislike of being pictured in an unflattering light," Dowds concluded.

The judge ruled on a suit filed by student Daniel St. Ledger, who was represented by an attorney of the American Civil Liberties Union. St. Ledger brought a similar suit in 1975 concerning articles censored from the regular student newspaper, the *Castle Courier* (see *Newsletter,* Sept. 1976, p. 122). In that case, Dowds ordered officials to reinstate St. Ledger as editor, but he did not compel them to permit publication of the articles. In the view of the court St. Ledger failed to prove that school officials ever relinquished control over what appeared in the paper. Reported in: *Los Angeles Times,* October 20.

Baltimore, Maryland

A three-year-old federal suit seeking to halt censorship of student newspapers by Baltimore County school officials was dropped in September when the only remaining plaintiff, Richard Smith, completed requirements for his diploma.

Smith and two fellow students at Woodlawn Senior High School, Rodney Jackson and Samuel Nitzberg, both now graduated, began their legal action in 1974 in U.S. District Court, alleging that school officials had employed unconstitutional prior restraints in preventing the distribution of their alternative newspapers. An unfavorable ruling of the District Court was appealed to the U.S. Court of Appeals for the Fourth Circuit, which reversed the lower court.

The Court of Appeals held that alternative student newspapers could be reviewed by school officials before distribution, but only pursuant to written rules. Such rules, the court said, must specifically define the type of material prohibited, as well as such terms as "disruption." In addition, the appellate court ordered that any rules calling for prior review of student newspapers allow students the opportunity to appear and argue their case in favor of distribution.

In February 1976, Baltimore County school officials presented a new set of rules for the District Court's approval, saying that the new rules met the criteria set by the Court of Appeals. Smith challenged the new rules, but lost in a ruling of the District Court handed down in May.

On June 7, Smith filed notice of the appeal which was dropped in the face of his imminent graduation. Reported in: *Baltimore Sun,* September 28.

Austin, Texas

Unless a Texas appellate court overturns an October ruling of an Austin district court judge, the University of Texas' *Daily Texan* can continue to take sides in political issues and campaigns. District Court Judge Herman Jones refused to issue a temporary injunction barring the paper form endorsing political candidates and legislation.

University of Texas law student Howard Hickman had sought the restraining order, citing a Texas statute forbidding the use of state-appropriated funds to "influence the outcome of any election or the passage or defeat of any legislative measure." Hickman contended that the *Texan* is partially funded by the state.

Judge Jones, who heard an identical lawsuit against the campus newspaper three years ago, repeated his opinion that the state legislature had not seen fit to prohibit such use of appropriated funds. Jones argued that if the legislature had intended to bar newspaper political activity, it should have said so. Reported in: *Austin American-Statesman,* October 30.

libel

Nashville, Tennessee

"We choose now to reject and to inter the word 'malice' without ceremony, tears, or mourning," a unanimous Tennessee Court of Appeals said in October in a ruling that a private individual no longer has to prove malice to collect libel damages from a newspaper.

In deciding that a plaintiff must prove only that a newspaper did not use "reasonable care" in the publication of an article, the appellate court overturned a trial court decision

(Continued on page 17)

is it legal?

students' rights

Holtville, California

Holtville school officials will this year ask the U.S. Court of Appeals for the Ninth Circuit to overturn a December 1975 U.S. District Court ruling that ordered them to permit a student to publish and distribute an alternative newspaper, *The First Amendment,* on the Holtville High campus.

The First Amendment was begun as a special project of the school's chapter of Quill and Scroll after student Lisa Pliscou was removed from an editorial position on the school's official student newspaper. When school officials interfered with distribution of the paper, Pliscou filed suit in U.S. District Court seeking a ruling that school authorities had acted unconstitutionally. In addition, Pliscou sought $1.6 million in damages, but a decision on that claim cannot be made until the U.S. Court of Appeals rules on the basic issues in the case. Reported in: *Press Censorship Newsletter,* October 1976.

in the U.S. Supreme Court

On December 8 the U.S. Supreme Court heard oral arguments in the case of *Smith* v. *U.S.*, an action supported by the Freedom to Read Foundation (see *Newsletter,* Sept. 1976, p. 111).

Represented by Attorney Tefft W. Smith, the Foundation told the Court that the appellant, Jerry Lee Smith, was unconstitutionally convicted of obscenity charges by U.S. District Court jurors who employed personal standards in determining the suitability of challenged materials which Smith had mailed within Iowa. In view of the fact that the Iowa legislature had decriminalized so-called obscenity for adults, the Foundation argued, explicit standards had been formally established that were ignored by the federal jurors.

The Foundation hopes to establish that there is no compelling federal interest in the control of obscenity that permits federal prosecutors and courts to annul the decision of citizens within a state to permit freedom of choice for themselves.

In a second obscenity case before the Court—a case involving the federal prosecution of *Deep Throat* exhibitors in Kentucky—a startling confession of error from U.S. Solicitor General Robert H. Bork resulted in one of the most confusing presentations ever in the history of top-level pornography litigation (see cover report).

In his appearance before the justices in early November, Bork was sharply questioned on his formal agreement with the defendants' complaint that the trial judge erred in charging the jury on the basis of standards established by the Supreme Court in *Miller* v. *California,* which was handed down in 1973 after the alleged showings of *Deep Throat,* and that judges of the U.S. Court of Appeals for the Sixth Circuit should have viewed the supposedly obscene material in the case.

Bork was also bitterly criticized by U.S. Attorney Tom Turley of Memphis, who argued that Bork had jeopardized convictions in three Memphis obscenity prosecutions, including that of Harry Reems for his involvement in a "conspiracy" to disseminate *Deep Throat.*

Commercial speech

In a case that bears similarities to one last year in which a ban on the advertisement of prescription drug prices in Virginia was voided, the Court will consider whether the First Amendment bars a municipal ordinance banning "for sale" signs on homes in a New Jersey town. The town argues that it was motivated to preserve a racially integrated community by preventing "panic selling" by white homeowners.

The New Jersey ordinance was upheld be a federal appellate court in a two-to-one decision which ruled that "the promotion and maintenance of integrated housing is of the highest public interest." The appellate court noted that "every anti-sign ordinance infringes to some extent upon some form of speech" and held that such infringements are permissible when justified "by a public interest that is compelling or paramount."

The controversial ordinance was adopted by the township of Willingboro in 1974. The community, which was exclusively white until 1960, had acquired a population that was eighteen percent black by 1973. The town's leaders told the lower courts that the increase in black population had been achieved without the formation of a ghetto. However, the town said that the appearance of "for sale" and "sold" signs could "create the impression that many people were leaving the community." The appeals court agreed, overturning the district court which found that the ordinance denied blacks "a fair opportunity to find suitable housing" by looking over a neighborhood. Reported in: *Wall Street Journal,* November 9.

The Court also agreed to hear a test case brought by two

Phoenix lawyers who want to challenge the American Bar Association's rules prohibiting them from advertising their fees in newspapers. In ruling on the case the justices may be able to bring an end to a growing battle among bar associations, consumer groups, and the Justice Department.

The lawyers, John R. Bates and Van O'Steen, contend that they have a right under the constitution and federal anti-trust laws to advertise their fees. The Justice Department, which agrees, is suing the ABA on similar anti-trust grounds.

Bates and O'Steen were censured in July for placing a forbidden newspaper ad that read: "Do you need a lawyer? Legal services at very reasonable rates." It explained that the clinic of Bates and O'Steen would charge $175 plus $20 in court fees for a simple, uncontested divorce, and comparable rates for bankruptcy actions and other services.

All the states now prohibit price advertising by lawyers. Reported in: *Editor & Publisher,* October 9.

academic freedom

Albany, New York

In a $2.5 million lawsuit filed in U.S. District Court, two New York parents seek to restrict use of the controversial social studies course *Man: A Course of Study* in New York public schools

Luise Cudzey of Nassau and Sandor Balogh of East Greenbush, who seek both punitive and exemplary damages, have asked the court to grant an injunction forbidding the New York State Education Department from compelling children to participate in the course. The suit names State Education Commissioner Ewald B. Nyquist and the nine-member East Greenbush board of education as defendants.

The suit argues that the course violates the First Amendment by espousing secular humanism. Cudzey and Balogh contend that "the course teaches religious value judgments which conflict with those judgments that the plaintiffs, as parents, have attempted to instill in their children."

The suit also alleges that the course "endorses and encourages students to accept and approve infanticide, senilicide, contempt for human life, the superiority of male over female, and a view of the world in which all moral, ethical, and religious values are relative, arbitrary, and entirely dependent upon social and cultural values."

The action was filed on behalf of the parents by Attorneys James McKenna and John Sullivan of the Foundation of Law and Society, a recently formed Washington, D.C. group.

In an earlier dispute over the course, Commissioner Nyquist stated that the First Amendment "does not guarantee that nothing offensive to any religion will be taught in schools." Reported in: *Albany Knickerbocker News,* October 8; *New York Times,* October 10; *Albany Times Union,* October 11.

the press

Washington, D.C.

The American Civil Liberties Union took steps in November to halt a Justice Department attempt to force *The Irish People,* a newspaper which supports the Irish Republican Army in Northern Ireland, to register under the Foreign Agents Registration Act as an agent of the Irish Northern Aid Committee.

According to the Justice Department, the paper, which is published in the United States, should be registered under the act because it receives financial and other assistance from the committee, which is itself registered as the "agent of a foreign principal."

In a letter to Attorney General Edward H. Levi, the ACLU said the application of the registration act to a newspaper represented a "distortion" of the purpose of the legislation. By stretching the law to include a newspaper, the ACLU contended, the Justice Department could further stretch it to include anyone who purchased a copy or wrote a letter to the editor.

Pointing out that other ethnic and religious newspapers published in the United States are committed to a variety of Irish causes, the ACLU said: "To select out one such journal and to ignore the rest, points out the dangerous flexibility of the act, and should be an adequate warning against its discretionary use against any domestically published paper."

A Justice Department official denied that any censorship was involved. He said the public registration of agents for foreign groups is required under the 1938 act so that interested parties can know who is supporting any particular cause. Reported in: *Washington Post,* November 15.

libel

Baltimore, Maryland

A deputy patrol chief with the Baltimore police department has filed an $8,100,000 civil suit in U.S. District Court which charges that he was libeled by WJZ-TV, a Westinghouse- owned ABC outlet.

The civil action, brought by James H. Watkins, stems from a series of reports based on the station's investigations of narcotics traffic in the city. Watkins, who was head of the city's anti-drug squad at one time, seeks $100,000 in compensatory damages and $8 million in punitive damages. He claims that an October broadcast falsely said he "supported the city's drug traffic either by selling drugs or by covering for those who did." Reported in: *Variety,* November 3.

New York, New York

Disagreement with a review article by Robert Sherrill in the October 10 *New York Times Book Review* has prompted the McDonnell Douglas Corporation to take legal

action against the New York Times Company.

Filed in U.S. District Court, the company's suit charges that the review stated and conveyed the impression that McDonnell Douglas and its personnel engaged in dishonest and improper practices in the conduct of corporate affairs. The firm seeks $25 million in actual and punitive damages.

The review concerned two books, *Destination Disaster* by *London Sunday Times* writers Paul Eddy, Elane Potter, and Bruce Page, and *The Last Nine Minutes* by Moira Johnston. Both works deal with the crash of a Turkish Airlines DC 10 near Paris in 1974. Reported in: *Editor & Publisher,* October 30.

freedom of information

Washington, D.C.

Following the lead of the Church of Scientology, which has been one of the most active groups in seeking access to records under the Freedom of Information Act, several religious organizations have filed FoIA requests. Among them are the Jesuit Order, the Zionist Methodist Church, and the Commission for Racial Justice of the United Church of Christ.

Daniel Sheehan, a spokesperson for the Jesuit Order, said the Jesuits had been involved in world-wide "affirmative action to bring about significant social change," and that groups involved in seeking such changes have "been subjected to unethical and patently illegal surveillance and record-keeping by various intelligence organizations funded by the U.S. Executive Department."

In a related action, the Task Force on Civil Liberties of the Washington Interreligious Staff Council has urged all organizations affiliated with it to make FoIA requests. The council is composed of representatives of major U.S. religious groups, including the National Council of Churches, the U.S. Catholic Conference, and the United Presbyterian Church. Reported in: *Access Reports,* October 4.

Washington, D.C.

In a suit filed under the Privacy Act, NBC reporter Carl Stern has asked the U.S. District Court for the District of Columbia to force the Federal Bureau of Investigation to publish notice of the existence and character of "a significant number" of secret systems of records.

Stern's suit is based on the fact that the FBI has listed only nine file systems in the report which the Privacy Act requires every federal agency to publish annually. Stern maintains that the FBI has many more than nine systems of records on individuals. Reported in: *Access Reports,* November 15.

New York, New York

In mid-November it appeared that a crucial victory would be won in the Socialist Workers Party's three-year-old action against the Federal Bureau of investigation under the Freedom of Information Act. Calling files on nearly 1,600 FBI informers "absolutely crucial" to the suit, U.S. District Court Judge Thomas P. Griesa said he might order an independent examination of the records for evidence of illegal FBI activities against the party.

The FBI's investigation of the Socialist Workers Party, which was halted by Attorney General Edward Levi, continued for nearly thirty-eight years. The FBI considered the party a radical organization and therefore a target for domestic surveillance. Reported in: *Access Reports,* November 15.

commercial speech

Chicago, Illinois

A Chicago attorney filed suit in November to force the publisher of the Yellow Pages to print his professional advertisement.

The action, initiated by attorney Richard Halprin against the R.H. Donnelley Corp., charged that an ad was refused which would have identified him as a lawyer specializing in criminal law and civil rights litigation.

Halprin argued that the publishing firm is not in a position to determine the policy of the Chicago Bar Association, which has banned advertising by lawyers. He said that Donnelley should publish his ad in accordance with his First Amendment rights, and that the Association could move against him if it so desired. Reported in: *Chicago Tribune,* November 3.

obscenity

Grand Forks, North Dakota

North Dakota's new obscenity statute, adopted in 1975, unjustly denies a potential defendant a jury trial, an attorney contended in October in asking for dismissal of civil obscenity proceedings against his clients.

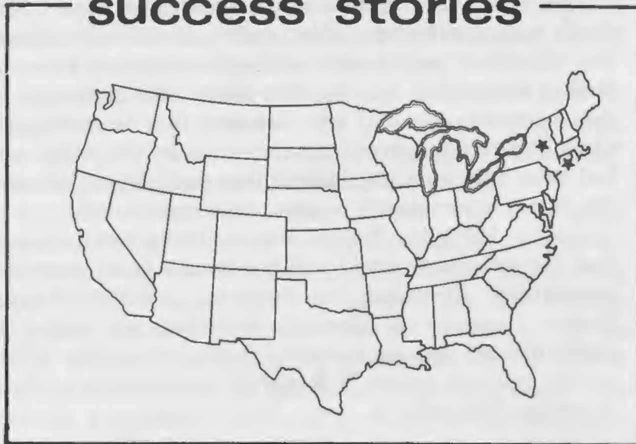
Attorney David Kessler, representing *Gallery, Club, Swank,* and *Pub* magazines, as well as a local news agency, argued against the law in a civil action brought by State's Attorney Thomas B. Jelliff, who sought to have the publications declared obscene.

Under the law, when a magazine has been judged obscene by either a district court judge or a panel of three judges, criminal action may be initiated against those who sell and distribute it.

Kessler told District Judge Harold Hager that the law is unconstitutional because it denies a potential defendant a jury trial on what Kessler termed "the very essence of the case, namely whether something is obscene." The law sets up "a judicial censorship board" when a jury trial would be more appropriate, Kessler argued.

(Continued on page 19)

success stories



Bethany, Connecticut

The Bethany Board of Education unanimously voted in November to reject the request of a parent that *Black Is Brown Is Tan* be removed from the school library. The parent objected to the book's lack of "proper" grammar. "We have to correct our children's English everyday. How can they learn when they read language like this in books?" Richard Barnes asked.

The book, by Arnold Adoff, was purchased by the school library in 1973 with funds donated anonymously in memory of the Rev. Martin Luther King Jr. Reported in: *New Haven Register,* October 9, November 2.

Rochester, New York

Despite complaints from a member of the Rochester City Council, circulation of *Show Me!* through the Monroe County Library System continued uninterrupted last fall.

Council member Charles A. Schiano, who said *Show Me!* was "as bad as the stuff they're selling in porno shops," declared: "I'm thoroughly disgusted that our public libraries would waste money on this kind of junk."

But Julie Cummins, children's services consultant for the library system, disagreed: "We buy books for all kinds of people. The library tries to have a broad spectrum of books that encompasses all kinds of things, all kinds of lifestyles."

She explained that the library offers several approaches to sex education for children. "While [*Show Me!*] may not be suited to everybody's approach, it is what some people's lifestyle is suited to," she said. Reported in: *Rochester Democrat & Chronicle,* September 30.

(From the bench . . . from page 13)

and held that a Memphis woman was entitled to a full jury trial of her suit alleging that she had been libeled by an article published in the *Memphis Press-Scimitar* in 1971.

In the original trial of the plaintiff's case, stemming from an article stating she had been shot by another woman who found her husband at the victim's home, the trial judge ordered the jury to rule in favor of the *Press-Scimitar.* Reported in: *New York Times,* October 10.

commercial speech

Alexandria, Virginia

A three-judge federal panel ruled in November that it is unconstitutional for states to prohibit directories of physicians which list their qualifications and rates. The panel, comprised of Judges John D. Butzner Jr., Albert V. Bryan Jr., and D. Dorich Warriner, said a Virginia statute outlawing a proposed listing of physicians in the state violated First Amendment guarantees.

Lawyers representing health and consumer groups that opposed the Virginia law said the ruling was the first in the country to set aside restrictions on advertising by physicians.

The three judges, who referred to a U.S. Supreme Court ruling that lifted a similar ban on drug advertising in Virginia, held that consumers should not be deprived of the opportunity to shop around for the physician of their choice. Reported in: *Chicago Tribune,* November 12.

obscenity: convictions, acquittals, etc.

Atlanta, Georgia

An Atlanta man, already serving two twelve-month sentences in an Atlanta jail for showing *Deep Throat,* was found guilty in October of all charges in a ten-count federal indictment for interstate transportation of obscene materials. Two co-defendants were also found guilty of a single count of conspiracy.

The jailed man, Arthur Sanders Jr., was fined $25,000 and sentenced to four years in federal prison. Reported in: *Variety,* October 6, November 16.

Rockford, Illinois

A twenty-one-year-old bookstore clerk, Jacqueline Davis, was found guilty in September of selling obscene materials despite testimony that she was unaware of the contents of the films and magazines offered for sale where she was employed.

Davis told the jury in the trial, conducted before Winnebago County Circuit Court Judge John W. Nielsen, that female clerks were not allowed in the portion of the store where film booths were located. "I've never seen the films. It was a policy set down by the manager," she said.

Assistant State's Attorney David Koski told the jury it was "obvious" that Davis, in her position as clerk, should be held responsible for the dissemination of films and other articles. "She was working in an adult bookstore and she knew it," Koski said. Reported in: *Rockford Star,* September 17.

Louisville, Kentucky

A Louisville Police Court jury deliberated for less than thirty minutes in November before finding Garth Quinn, owner of a bookstore, guilty of selling obscene materials.

Quinn was arrested in a sweep by Louisville police in which seventy-nine warrants were served againse twenty-nine individuals and seven businesses.

The jury recommended that Quinn be given the maximum penalty of a $250 fine and ninety days in the county jail. Reported in: *Louisville Courier-Journal,* November 13.

Baltimore, Maryland

In November, Maryland prosecutors dismissed criminal charges against a Baltimore theater that continued to show *Deep Throat* in the face of repeated raids by police who confiscated print after print. The prosecutors were faced with a technical difficulty, because use of the confiscated prints to obtain a civil injunction against exhibitions of the film precluded use of the same prints as evidence in a criminal trial.

According to the prosecutors, however, Maryland considers the case won because showings of the film at the theater were halted. Reported in: *Variety,* November 10.

Corpus Christi, Texas

A jury of Nueces County residents has convicted a twenty-one-year-old bookstore clerk of charges of exhibiting obscene material after the prosecutor challenged them to set community standards that would not allow "filthy films" to be shown locally.

The jury of four women and two men imposed a $1,000 fine and a six-month jail sentence on Reynold Champion, a university student. He was accused of being in charge of the Corpus Christi Book Mart in April when vice officers raided the store and confiscated six fims. Reported in: *Corpus Christi Caller,* September 18.

(Censorship dateline . . . from page 10)

KHTV-TV, accepted the ads. Reported in: *Variety,* November 10.

the press

Seaford, Deleware

According to a new policy announced in October, the Seaford police department will withhold from the news media the names of first offenders convicted of "minor" crimes. Mayor William Slatcher halted distribution of a weekly crime report and said that local news organizations would be able to obtain only screened information.

Slatcher explained that "minor" crimes included shoplifting and "small" burglaries.

The new policy grew out of a report published in Seaford's weekly newspaper, *The Leader,* in which the name of one shoplifter was deleted although names of other offenders were listed. Slatcher first blamed the newspaper for the inconsistency, but later learned that the offender's name had been removed from the report by the police, who had been told by a psychiatrist that publicity might cause the shoplifter, an elderly woman, to commit suicide.

Leader Managing Editor Bryant Richardson reported that the newspaper could still gain access to all records of convictions. According to Delaware Solicitor Norman Barron, "records of criminal convictions are within the public domain and are accessible through the clerks' offices of the various courts." Reported in: *Baltimore News American,* November 1.

Paducah, Kentucky

Late in the 1976 presidential campaign, the *Paducah Sun-Democrat* rejected an advertisement on behalf of President Ford. "It was in violation of the newspaper's policy on campaign advertising," Publisher Fred Paxton stated. He said the piece contained controversial campaign issues which had not been previously raised in advertisements in the *Sun-Democrat.*

"It is the newspaper's policy not to advertise new or controversial issues after the Wednesday prior to the election," Paxton said. He explained that the policy was devised to give the opposition time to respond to a new or controversial ad.

The ad in question compared the position of President Ford and candidate Carter on eight issues, including gun control, abortion, and national defense. Reported in: *Louisville Courier-Journal,* October 28.

Kansas City, Missouri

An episode of "Doonesbury" in which Joanie Caucus, a liberated campaign worker, falls in love with a reporter and spends the night with him offended the editors of several papers, according to James S. Andrews, editor-in-chief of Universal Press Syndicate Inc., which handles the cartoon strip. Andrews announced that several papers had declined to carry the story of Joanie Caucus, including the *St. Louis Post-Dispatch,* the *Boston Globe,* and the *New York Daily News.* Reported in: *Washington Post,* November 13.

Cincinnati, Ohio

Several reporters for leftist newspapers were excluded from the United Mine Workers convention in September. Union staff officials acknowledged that the move represented an effort to appease rank-and-file critics of Arnold Miller, the former West Virginia coal miner whose reformist presidency of the UMW is under attack for alleged "ineffectiveness" and for the placement of "radicals" on the staff.

Three reporters from the *Daily World,* the Communist

Party newspaper, and two from *The Militant,* the paper of the Socialist Worker Party, were advised that they should leave the convention "for your own safety."

A reporter for *Miner's Report,* a periodical edited by Paul Neyden, a professor at the University of Pittsburgh, was "physically removed from the convention pressroom," according to a statement distributed to reporters.

Miller's press aides also canceled the convention credentials of the reporter for *The Bulletin,* a twice-weekly publication of the Workers League, which its reporter described as "Trotskyist." A reporter for the *Workers Vanguard* of New York was told by telephone that he would be denied credentials if he came to Cincinnati, and that the union could not guarantee his physical safety. The *Workers Vanguard* is published by the Sparticist League, a Trotskyite splinter group. Reported in: *New York Times,* September 28.

etc.

New York, New York

To Die, To Live, Survivors of Hiroshima, a BBC film based on Robert Jay Lifton's book *Death in Life,* has been suppressed by its distributor, Time-Life Multimedia Films, according to charges made by John S. Robotham, a member of the New York Library Association's Intellectual Freedom Committee and an adult specialist at the New York Public Library's Richmond Regional Library.

According to Robotham, Time-Life removed the film from its catalogue, will not provide a copy for previewing (although it is customary for firms to provide such copies to libraries), and sells the work to libraries for $1,100, about double the price of comparable films.

Time-Life's actions constitute censorship, Robotham explained, because those persons who normally view such films at their public libraries will probably never get a chance to see *To Die, To Live.*

The film has been well received both abroad and in New York City, where it was shown on public television.

(Is it legal . . . from page 16)

Jelliff said his reason for bringing the civil action before the court was the belief that "these materials are harmful to minors." Jelliff contended that the magazines were available for purchase by minors in Grand Forks. Reported in: *Grand Forks Herald,* October 15.

Denver, Colorado

After a city attorney for Denver told District Court Judge Robert T. Kingsley that portions of an ordinance used to halt the operations of an adult theater may be unconstitutional, the judge granted a preliminary injunction prohibiting its enforcement. The ordinance in question states that no theater or amusement facility restricted to adults may be located within 500 feet of a residentially zoned area.

The injunction against enforcement of the ordinance was requested by an attorney for Kitty's Cine Art Theatre. The attorney said the ordinance is unconstitutional because it places the power to grant or deny a license in the hands of an official who may do so with or without reason.

Assistant City Attorney Charles Sellner told the court that his office had advised the Denver City Council not to pass the ordinance because city attorneys felt that some portions of it were unconstitutional. Reported in: *Denver Post,* October 2.

Dayton, Ohio

After first deciding that students at Wright State University have a First Amendment right to show *Deep Throat* at a film festival, U.S. District Court Judge Robert M. Duncan reversed himself. He postponed an order which permitted exhibitions of the film until he could view it in order to determine whether it is obscene.

The legal battle over the exhibition of the film began in October when Wright students, supported by the American Civil Liberties Union, filed suit in U.S. District Court to restrain WSU administrative officials. The movie was scheduled for showing with several other films at a student "Pay-One-Price Night" scheduled for October 15. However, the university halted the film and stated that it "objects to the showing of the film because it believes it is in poor taste and doesn't believe university funds should be used for this type of entertainment."

In his initial decision to issue a temporary restraining order, Judge Duncan agreed with the students and the ACLU. However, after university officials announced plans to ask Chief Judge Harry Phillips of the U.S. Court of Appeals to grant a stay on their behalf, Judge Duncan decided he wanted to view the film. Reported in: *Dayton Daily News,* October 10, 29; *Variety,* November 3.

Seattle, Washington

Operators of three Seattle theaters featuring sexually explicit films have filed suit in King County Superior Court to challenge the city's new zoning law that will force all businesses with sexually explicit fare into one downtown zone. The three theaters are all located outside the prescribed downtown area.

The operators claim that the ordinance violates the First and Fourteenth Amendments to the U.S. Constitution. City Corporation Counsel John Harris noted that the Seattle ordinance was based on a Detroit law which was upheld by the U.S. Supreme Court. Reported in: *Variety,* September 29.

(Supreme Court confrontation . . . from page 1)

argument to be made in support of affirming a judgment that has gone in favor of the government, to make that argument rather than simply adopt what he thinks is the law?" Rehnquist asked.

"I do indeed," the bearded Bork replied. "If I thought there were a plausible case to be made for applying *Miller* standards to pre-*Miller* conduct, I would certainly make that argument."

Rehnquist shot back: "What you're saying is that two courts of appeal [in this and another similar case] presumably consisting of judges appointed by the President and confirmed by the Senate have reached a totally implausible result. The government is unwilling even to argue in favor of it in Court."

"That in effect is correct," Bork replied. "I would like to be able to argue to uphold these convictions and I deplore the waste of resources that has gone into some prosecutions that must now be reprosecuted. But nothing in those courts of appeals opinions gave me any–I thought–any intellectually defensible way to defend the convictions there."

Rehnquist broadened his approach: "How is this Court supposed to function in that kind of a situation?" he asked, again citing requirements of the "adversary system" of law. Surely, he added, the high court "would look with great skepticism" at a defense attorney who assumed the same position as Bork.

Bork was unswayed: "I think the answer can only be that the government feels it has an obligation not only to the adversary process but also to the law and justice. In a case where it thinks an injustice has been done and there is no intellectually defensible way of supporting a conviction, I think the government must say so."

Still unsatisfied, Rehnquist asked: "But isn't that ultimately the responsibility of this Court–to decide whether or not an injustice has been done or whether a particular conviction should be upheld or reversed?" Bork agreed, and noted that in many previous instances the Court had rejected confessions of error by the government.

Now it was the turn of Chief Justice Warren Burger–like Rehnquist, an appointee of former President Richard Nixon. He inquired in an acid tone: "I take it your position, Mr. Solicitor General, is not intended to impinge upon our ultimate authority to decide the case or the way it is to be decided?" Bork assured him it was not.

The Court's newest member, John Paul Stevens, an appointee of President Ford, asked Bork whether his policy of confessing error in intellectually indefensible cases was a new one. "It has gone on," the government lawyer replied, "since the memory of man runneth not to the contrary." Later he added that he had served notice three years ago, when *Miller* was decided, that this would be the government's position "but unfortunately that was not communicated to the U.S. attorneys."

It was Associate Justice Harry Blackmun's turn. Also a Nixon appointee, he inquired of Bork: "I trust you are aware of the reaction of federal courts of appeals judges when the U.S. attorney has prosecuted a case and it is then affirmed, only to have the rug pulled out from under them up here?"

"I'm aware of the reaction of the courts," Bork replied, "and I'm also aware of the reaction from U.S. attorneys: I've been made aware of that. Nevertheless, it seems to me I have an obligation to do this."

Bork noted that some Memphis prosecutions involving *Deep Throat* (including that of actor Harry Reems) also might be affected by the outcome of the *Marks* case–and he accepted Rehnquist's suggestion that "it might have been a good idea if we had appointed a [special] counsel in this case to argue here this morning."

The Court took the puzzling case under advisement.

(Family hour . . . from page 2)

this decision discredits him," Midgen stated.

In an interview with the *New York Times*, however, Wiley denied that he had threatened the networks. "In expressing concern to the industry with the problem of violence and urging it to adopt voluntary reforms," he said, "I believe my colleagues and I were operating in a responsible and proper manner and in the best interests of the American people. At no time were any threats expressed or implied and I reject any sugestion to the contrary."

Programming may remain unchanged

Since Judge Ferguson's ruling condemned only the manner in which the family hour was implemented, and not the family hour as such, television programming may not change.

"I don't see any long-term influence," said CBS-TV President Robert J. Wussler. "CBS believes in quality programming and will continue to program in the best interests of the American people. I don't feel defeated at all."

NBC-TV Executive Vice-President Tom Sarnoff said there would be no "specific change" in NBC programming because of the court decision.

CBS and ABC said they would appeal the district court's decision; NBC said it needed more time to study the ruling before making a decision on an appeal.

Excerpts from the decision

On independence of programming: "The networks were fully aware that they have a First Amendment and statutory duty to program based exclusively on the basis of their independent judgment. They have a duty as public trustees and fiduciaries to resist government intrusions into the programming domain. When their corporate profits have been threatened by commission actions, the networks

have not hesitated to go to battle."

On FCC "threats": "If the First Amendment means anything . . . the commission has no right to accompany suggestions with vague or explicit threats of regulatory action should broadcasters consider and reject them. The commission has no right whatsoever to demand or to secure commitments from broadcasters that its suggestions be accepted. It has no right to launch orchestrated campaigns to pressure broadcasters to do what they do not wish to do. Particularly when commissioners make recomendations in areas where formal regulation would be questionable, it is vital that any suggestion of pressure or the appearance of pressure be scrupulously avoided."

On NAB activity: "The National Association of Broadcasters has the right to adopt as a part of its code anything that it wishes, but it has no First Amendment right to interfere with the right of the public to independent broadcaster decision making." Reported in: *New York Times,* November 5: *Variety,* November 10.

(Geography of censorship . . . from page 4)

mon with one another than they do with states in other regions.

3) West Virginia, just to give one good example, can be arbitrarily assigned to the Northcentral region, even though a good case can be made for its belonging to the East, the South, or even a region of "border" states together with Maryland, Delaware, Kentucky, Missouri and Oklahoma.

(For an excellent discussion of regionalism and its uses and hazards, see: Ira Sharkansky, *Regionalism in American Politics,* Bobbs-Merrill, 1970.)

Assumptions abound in the examination of regional trends, and the assumptions rest largely upon themselves. No empirical proof is possible, although many studies have shown the inferred existence of "regional thinking" and shared belief.

Two further disclaimers: (1) all population figures for the tabular data are taken from 1970 census figures, and are, in many cases, inaccurate at this reading, and (2) the cities and counties reported have been arbitrarily divided, by the author, into four classifications: 100,000 or more; 25,000 to 100,000; 2,500 to 25,000 and under 2,500. It is not provable that this is a legitimate method of subdividing a population of cities, and it must be taken as a given.

Cases are examined the following ways: by region, and states within regions; by community population; and by type of library. Generalized results are reported in the tabular summaries, with conclusions drawn below. The final part of this investigation is an appendix of all cases reported in the *Newsletter on Intellectual Freedom* during the time period March 1973 through March 1976.

Conclusions and implications

1) Censorship cases finding their way into the pages of the *Newsletter* are neither increasing nor diminishing in quantity. It is possible to hypothesize that a certain level of stasis has been reacher; call it optimum size or whatever.

2) School libraries in large cities seem statistically to have the greatest chance of attracting the undesired attention of citizen groups interested in or bent on restriction of certain materials. Public libraries in very small towns or rural areas have the smallest chance.

3) Regional location of a city or town seems to make a difference in the likelihood of trouble, but many other, often unseen, variables may affect the temper of the times or the socio-political ambience of the town.

4) Profile of a censoring town: Eastern or Northcentral, in a larger city, with the problem in a school or school library. Many other guesses might be hazarded from the data provided, but the above is the sum of those conclusions which may fairly be drawn from the statistical information obtained through the methodology employed.

Summary of censorship problems, 1973-75
Total 208
Source: *Newsletter on Intellectual Freedom*

	Population, 1970 (thousands)	Type	Date
Alabama			
Troy	12	school	1973
Arizona			
Phoenix	582	school	1975
Thatcher	under 2.5	school	1974
Arkansas			
none			
California			
Chula Vista	68	school	1973
Fresno	166	school	1974
Los Angeles	2810	school	1974
Millbrae	21	school	1973
Modesto	62	public	1974
Oak Grove	under 2.5	school	1975
Pasadena	113	school	1974
Riverside	140	public	1974
Sacramento	257	school	1973
San Francisco	776	school	1973
Stockton	104	school	1973
Colorado			
Collbran	under 2.5	school	1975
Englewood	34	public	1975
Englewood	34	school	1975
Connecticut			
Granby	6	school	1973
Greenwich	60	school	1975
Griswold	8	school	1973
Lisbon	3	school	1973
Ridgefield	18	school	1973
Deleware			
none			
Florida			
Fort Lauderdale	140	school	1973
Gulf Breeze	4	school	1974
Hollywood	107	school	1974
Miami	335	school	1974
Pinellas County	522	school	1974
Pinellas County	522	school	1975
Georgia			
Athens	44	school	1973
Atlanta	497	school	1973
Atlanta	497	school	1975
Columbus	155	school	1975
Macon	102	school	1973
Macon	102	school	1974
Hawaii			
none			

Idaho			
Blackfoot	9	public	1974
Lewiston	26	school	1973
St. Maries	3	school	1974
Illinois			
Carbondale	23	school	1973
Chicago	3367	school	1975
Clarendon Hills	7	school	1975
Niles	31	school	1975
Rock Island	50	school	1974
Sauk Village	7	school	1974
Springfield	92	school	1975
Thornton Twp.	4	school	1973
Indiana			
East Chicago	47	public	1975
Indianapolis	745	school	1974
Pierceton	under 2.5	school	1974
Syracuse	under 2.5	school	1974
Iowa			
Alden	under 2.5	school	1973
Burlington	32	school	1975
Cedar Rapids	111	school	1974
Cedar Rapids	111	school	1974
Cedar Rapids	111	public	1975
Des Moines	201	school	1975
Grinnell	8	school	1975
Montezuma	under 2.5	school	1975
Spencer	10	public	1974
Kansas			
Junction City	19	school	1974
Salina	38	school	1975
Kentucky			
Bremen	under 2.5	school	1974
Pikeville	5	public	1975
Louisiana			
East Baton Rouge Parish	285	school	1975
Maine			
South Portland	23	public	1975
Maryland			
Baltimore	906	school	1973
Baltimore	906	school	1973
Baltimore	906	school	1974
Baltimore	906	school	1974
Baltimore	906	school	1974
Essexville	38	school	1973
Howard County	62	school	1973
Howard County	62	school	1974
Montgomery County	523	school	1973
Montgomery County	523	school	1973
Montgomery County	523	school	1975
Prince George's County	661	school	1973
Prince George's County	661	school	1974
Prince George's County	661	school	1974
Rockville	42	school	1973
Snow Hill	under 2.5	school	1975
Massachusetts			
Boston	641	public	1973
Brockton	89	school	1975
Cambridge	100	school	1973
Ipswitch	5	school	1974
Michigan			
Ann Arbor	100	school	1974
Atlanta	under 2.5	school	1974
Carsonville	under 2.5	school	1974
Clarkston	under 2.5	school	1973
Detroit	1514	school	1973
Ferndale	31	school	1973
Ferndale	31	school	1973
Gaylord	3	school	1975
Kalamazoo	86	school	1974
Kalamazoo	86	school	1975
Lansing	132	school	1973
Mt. Morris	4	school	1973
Oscoda	3	school	1974
Rochester	7	school	1973
Rochester	7	school	1974
Rockford	under 2.5	school	1974
Saginaw	92	school	1975
Sterling Heights	62	school	1975
Warren	179	school	1973
Minnesota			
Cottage Grove	13	school	1975
Frazee	under 2.5	school	1973
Holdingford	under 2.5	school	1974
South St. Paul	25	school	1974
South St. Paul	25	school	1975
Stewart	3	school	1974
Mississippi			
Jackson	154	school	1974
Missouri			
DeSoto	6	school	1975
Liberty	14	school	1974
St. Charles	32	school	1975
St. Louis	622	school	1973
Montana			
Helena	23	public	1975
Nebraska			
Lincoln	150	public	1973
Nevada			
Las Vegas	126	school	1975
New Hampshire			
Dover	21	school	1973
Hillsboro	3	school	1975
New Jersey			
Asbury Park	17	school	1973
Keyport	7	school	1974
Mahwah	11	school	1975
Moorestown	14	school	1974
Montclair	44	school	1975
Mount Laurel	under 2.5	public	1974
Ocean City	11	school	1973
Princeton	12	school	1973
Westfield	34	school	1975
New Mexico			
none			
New York			
Brooklyn	(part of NYC)	school	1973
Churchville	under 2.5	school	1975
Cold Spring Harbor	5	school	1975
Cold Spring Harbor	5	school	1975
De Kalb Junction	under 2.5	school	1973
Herkimer	9	school	1973
Jamaica	(part of NYC)	school	1973
Marcellus	under 2.5	school	1975
New York	7896	school	1974
New York	7896	school	1975
North Syracuse	9	school	1974
Queens	(part of NYC)	school	1975
Randolph	under 2.5	school	1975
Williamsville	7	school	1973
North Carolina			
Asheville	58	school	1973
Buncombe Co.	145	school	1973
Rocky Mount	34	public	1975
Wilmington	46	school	1974
North Dakota			
Bismarck	35	school	1973
Ohio			
Cincinnati	453	school	1974
Columbus	540	school	1973
Hamilton County	923	school	1973
Kent	28	school	1973
Kettering	72	public	1973
Strongsville	15	school	1974
Toledo	384	public	1974
Oklahoma			
Alton	under 2.5	school	1975
Enid	45	school	1974
Oregon			
Gresham	10	school	1973
Halsey	under 2.5	school	1973
Phoenix	under 2.5	school	1973
Roseburg	14	school	1975
Pennsylvania			
Butler	19	school	1975
Centre County	99	public	1975
Elizabethtown	8	school	1973
Hillertown	under 2.5	school	1973
Lower Moreland	under 2.5	school	1975
Philadelphia	1950	school	1974
St. Mary's	7	public	1975
Villanova	under 2.5	school	1973
West Middlesex	under 2.5	school	1975
Rhode Island			

Cranston	74	public	1975
Scituate	7	school	1975
South Carolina			
Columbia	114	school	1974
McBee	under 2.5	school	1973
South Dakota			
none			
Tennessee			
Hamilton County	254	school	1974
Texas			
Arlington	90	school	1975
Austin	252	school	1973
Channelview	under 2.5	school	1973
Dallas	844	school	1974
Dallas	844	school	1974
Dallas	844	school	1974
Dallas	844	school	1975
Houston	1233	school	1973
Odessa	78	school	1974
Utah			
Ogden	69	school	1974
Vermont			
Bennington	15	school	1974
Pittsfield	under 2.5	public	1974
Townsend	under 2.5	school	1975
Wells River	under 2.5	school	1973
Virginia			
Abingdon	4	school	1974
Bedford County	27	school	1974
Bristol	15	school	1974
Buckingham County	11	school	1975
Carroll County	23	school	1974
Herndon	4	school	1975
Hillsville	under 2.5	school	1975
Reston	6	school	1975
Richlands	5	school	1973
Richmond	249	public	1973
Washington			
none			
West Virginia			
Charleston	72	school	1974
Kanawha County	230	school	1974
Wisconsin			
Madison	170	school	1975
Neillsville	under 2.5	school	1975
Oshkosh	53	school	1973
Racine	95	school	1974
St. Francis	10	school	1975
Waukesha	40	school	1975
Wauzeka	under 2.5	school	1975
Wyoming			
none			

New York Regents approve selection guidelines

In a move to encourage the development of "critical thinking" among students, the New York State Board of Regents voted in October to adopt a set of guidelines to assist local school districts in the selection of controversial textbooks and library materials, including materials on sex.

"If the schools are to carry out the important role of helping students to develop the skills and attitudes to function successfully in society," the regents said, "then students must be provided with opportunities and experiences which foster critical thinking in an atmosphere of free inquiry. Students must learn to make choices in solving individual and societal problems."

The regents recognized that parents have a right to determine that specific materials in the school library may not be appropriate for their own children, but the regents added that parents should not be permitted to determine what materials may be used by pupils other than their own children.

Two of the ten regents who attended the meeting voted against the guidelines. Genevieve S. Klein of Queens, one of the dissenters, said the guidelines did not sufficiently protect the rights of parents because they supported "the right of teachers and librarians to force objectionable material on our children."

Local policies recommended

The regents urged that school districts throughout New York develop policies on the selection of instructional materials. Suggested criteria included the following:

- Factual, unbiased material representing all major religions should be included in the library collection.
- Materials should present a reasonable balance of opposing sides of controversial issues so that students may develop the practice of critical thinking.
- Materials should present an accurate portrayal of minority groups.
- Materials should be appropriate to the maturity of the student.
- Materials should present the varied aspects of our society, including some aspects that may be considered undesirable. Reported in: *New York Times,* October 30.

sentence of textbook foe upheld

Despite a personal plea of innocence, a federal judge in Charleston rejected a request for probation for lay minister Marvin Horan and upheld his three-year sentence for bombing activities in the 1974 Kanawha County textbook dispute.

"The verdict was justified," U.S. District Court Judge K. K. Hall told Horan in October. "In my opinion, [you were] more guilty than them all."

Several co-defendants of Horan either pleaded guilty to or were found guilty of charges of conspiracy to bomb Midway Elementary School and to implement plans for setting blasting caps to explode gasoline tanks in efforts to stop the busing of children.

Horan was found guilty in April 1975, but appealed his three-year sentence to the U.S. Supreme Court, which refused to review the case and handed it back to Judge Hall for final disposition.

Horan's lawyer, John Boettner, brought a surprise witness to the stand to testify on behalf of his client's motion for probation. The Rev. James Lewis, pastor of St. John's Episcopal Church and an advocate of the controversial textbooks, testified that he had had a close relationship with Horan.

Assistant U.S. Attorney Wayne Rich called Horan's anti-

textbook actions "disgraceful." Rich commented, "He used phrases out of the Bible to encourage violence." Reported in: *Parkersburg News*, October 19.

Utah group rallies against smut

More than 9,000 people filled the Salt Palace Arena in Salt Lake City in October in a well-publicized rally against pornography. The gathering was enthusiastically endorsed by the Church of Jesus Christ of Latter-day Saints and supported by several non-Mormon organizations.

The rally was part of a nearly year-old campaign to shut down theaters exhibiting *X*-rated movies and to force newsstands to halt the sale of sexually explicit magazines. In all, the campaign represents the most concerted effort in the country to impose strict community standards.

Those attending the rally were repeatedly urged to complain to store owners everytime they see sexually explicit magazines for sale, to scrutinize candidates for public office on their views about pornography, and to encourage prosecutors to request jail sentences for those convicted of obscenity charges.

Persons handing out leaflets outside the Salt Palace attacked D. Gilbert Athay, the Democratic candidate for state attorney general, for dismissing a pornography case while temporarily acting as a local judge and for accepting the endorsement of several attorneys who have defended bookstore and theater managers. Reported in: *New York Times*, October 17.

FBI keeps Communists in sights

Attorney General Edward H. Levi decided in November that the Federal Bureau of Investigation may continue its thirty-eight-year surveillance of the Communist Party, despite a finding that the party's activities do not fit Levi's guidelines for the conduct of domestic security investigations.

Reportedly, a secret Justice Department review concluded that the 4,000 member Communist Party-USA is not engaged in activities likely to result in violence—activities which are stipulated in the guidelines as the basis for continuation of domestic security investigations.

However, the review did find evidence of contacts between the party and agents of the Soviet Union. On that basis, supposedly, Levi ruled that the FBI may continue its surveillance of the party under separate Justice Department rules for combatting foreign intelligence activities.

The Communist Party has consistently denied that it has any formal ties to the Soviet Union beyond the fraternal bond of a common political ideology. Reported in: *Chicago Sun-Times*, November 10.

lovebirds censored

The ten-year-olds at the Bentinck primary school in Nottingham, England caused a small flap in November when they made a film about the school's pet lovebirds that included a ten-second shot of the birds mating.

The British Council, the government's cultural arm, picked the brief three-minute film to be shown at a United Nations educational festival in Cairo. But the sex shots did not make the trip.

"The Council's decision made us laugh a little," said the school's headmaster, John Dexter, "but we're still highly delighted that our film is being shown at an international exhibition."

The birds, a pair of Budgerigars, small Australian parrots, are also known as grass parakeets or lovebirds. Reported in: *Washington Post*, November 17.

Aussies feud over radio censorship

The Australian Broadcasting Commission became involved in a censorship dispute in October when the assistant general manager of radio, Keith Mackriell, requested permission to review the scripts of the ABC's 1976 Boyer lectures before they were aired.

The Boyer lectures, part of the responsibility of Alan Ashbolt, director of special radio projects, were written by one of Australia's foremost historians, Professor Manning Clark, an outspoken critic of the Governor General, Sir John Kerr, for his action in dismissing the Labor government in 1975.

Ashbolt firmly rejected the directive from Mackriell and asked for a full ruling by the commission. The ABC staff strongly supported Ashbolt and asked the ABC chairperson, Sir Henry Bland, to restrict management to overall policy matters.

Professor Clark became a center of controversy when he attacked the Governor General in a speech in Sydney. A member of Parliament described him as "an apologist for the Labor Party" and a "political partisan" who had stood on a platform "with all the Socialist and Communist Left." Reported in: *Variety*, October 20.

LA teachers urge end to censorship by principals

A new effort was begun in October to take away from Los Angeles school principals their "ultimate authority" to censor junior and senior high school newspapers. The campaign was initiated by the Los Angeles Journalism Teachers Association in cooperation with Sigma Delta Chi, the organization of professional journalists, and the San

Fernando Valley Press Club.

In 1974, the Los Angeles board of education refused by a four-to-three vote to liberalize rules pertaining to the authority of principals.

In its current approach to the board, which has several new members, LAJTA proposes that principals be limited to making suggestions concerning the suitability of copy for publication. If in any case the journalism advisor should disagree with the principal, LAJTA suggests that the issue go to a school publications board composed of the journalism adviser, the paper's editor, and any other members mutually agreed upon. Final appeal would be to the board of education's legal staff to determine if the questionable article violated newspaper guidelines. Reported in: *Los Angeles Times*, October 17.

Thai publisher arrested

In an October sweep in which Thai police and soldiers arrested dozens of persons suspected of communist activities, the publisher of the most prestigious Thai political journal was seized.

Pansak Vinyaratn, publisher of the weekly magazine *Chaturas*, was picked up at the Bangkok airport as he and his wife and children were about to board a flight to Hong Kong.

According to Mrs. Vinyaratn, a U.S. citizen, she and her husband decided to "take a vacation" after reading in newspapers that past issues of their magazine had been seized in a raid "along with other communist literature."

The sweep was ordered by the group of military officers that toppled Thailand's democratic government in a coup d'etat in mid-October. The leaders of the coup also ordered complete censorship of the Thai press. Reported in: *Washington Post*, October 16.

major Indian paper padlocked

The government of Indian Prime Minister Indira Gandhi escalated its battle with India's largest newspaper chain when, in October, it sent armed police to the *Indian Express* offices and padlocked its presses.

The padlocking occured just two days after electricity at the *Express* was restored by court order following a blackout that the paper charged was part of a government campaign against its independent voice.

Spokespersons for the federally controlled Delhi Municipal Corporation told the *Express* that its presses were padlocked because the paper had a property tax debt of $100,000. *Indian Express* officials acknowledged that they had been engaged in a long dispute over property taxes, but they claimed that the government's handling of the claim represented another attempt to force the management to endorse the policies of Prime Minister Gandhi. Reported in: *Washington Post*, October 5.

Ontario censor board creates flap

The Ontario Censor Board created a controversy in October when it ordered that ninety seconds be cut from a nude scene in the Canadian feature *Partners*. In a final compromise with the producer, Chalmers Adams, thirty-five seconds of the material to be cut was restored before the picture was released on October 29.

Adams failed in an attempt to get a judge to overrule the board's decision. The court did rule that the head of the censor board should not have first made the censorship ruling against *Partners* without the full board's approval, but it said it had no further jurisdiction in the matter.

Adams, a lawyer, summarized the problem faced by Canadian producers. The censor board has the authority to ask for cuts, but producers and distributors find the courts unwilling to become involved in appeals. Reported in: *Variety*, November 10.

British courts reject 'therapy'

A British appellate court ruling which was upheld by a tribunal in the House of Lords, Britian's supreme judicial body, has rejected "therapy" as a defense in pornography prosecutions. Expert witnesses may still testify on the question of the literary or scientific value, etc., of a challenged work, but they can no longer claim that sexually explicit fare benefits sexually repressed persons.

In the wake of the decision, lawyers complained that British obscenity law is more than ever a tangle of confusion. The Law Society has begun to press Parliament to consider a total revision of the law. Reported in: *Variety*, November 3.

Swiss voters defeat broadcast controls

Voters in Switzerland last fall rejected a fundamental change in Swiss broadcasting laws. Fifty-seven percent of those casting ballots were against a referendum that would have required Swiss radio and television "to secure objective and balanced information and to express a variety of opinions in an adequate manner."

The attempt at a Swiss "fairness doctrine" was widely perceived as open to political abuse. However, most Swiss political parties, except those on the left, recommended a vote in favor of the proposal. Reported in: *Variety*, November 3.

'Stars and Stripes' chief quits

The editor-in-chief of the United States Armed Forces newspaper, the *Stars and Stripes,* left his job in October after his superiors complained that they had not been warned about publication of a series of articles on the black market for Army goods in Europe.

Members of the *Stars and Stripes* staff said the paper could lose its editorial independence from the U.S. European Command as a result of the incident. The editor, Colonel James H. Taylor of the Air Force, left his post one week earlier than scheduled after he received what his superior, Captain Russell F. Harney of the Navy, described as a "chewing out."

"I had expressed interest in the series months ago," Harney said, "and yet I picked up the paper Tuesday and there it was. All I asked was to be given warning first."

The series reported that tax-free cigarettes, whiskey, gasoline, and stereophonic equipment were being sold in "unprecedented proportions" in West Germany. Reported in: *New York Times,* October 8.

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intellectual freedom bibliography

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an invitation

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important freedoms
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The organization of the Foundation in 1969 was the American Library Association's response to the interest of its members in having adequate means to support and defend librarians whose positions are jeopardized because of their resistance to abridgements of the First Amendment, and to set legal precedent for the freedom to read on behalf of all citizens.

Support and assistance

Through *the provision of financial and legal assistance* to libraries and librarians, the Foundation attempts to eliminate the difficult choice between practical expediency and principle in the selection and distribution of library materials. Persons committed to defending the freedom to read should be given an assurance that their commitment will not result in legal convictions, financial loss, and personal damage.

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