newsletter on intellectual freedom

IFC ALA

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Foundation to appeal 'local standards'

The Freedom to Read Foundation, the legal arm of the ALA intellectual freedom program, decided in March to petition the U.S. Supreme Court to overturn the obscenity conviction of Iowan Jerry Lee Smith in an important case which hinges on the issue of "local community standards." In 1973, when the Supreme Court abandoned a "national" First Amendment as "unrealistic," it authorized jurors to draw on the standards of their "vicinage."

The Foundation supported Smith's appeal to the U.S. Court of Appeals for the Eighth Circuit, which affirmed his conviction in an opinion filed February 13.

In upholding Smith's conviction, the appellate court ruled that in federal prosecutions, federal law alone applies, and that federal obscenity law permits jurors to use their "inborn" sense of community standards. Smith, who argued that the explicitly defined standards of the Iowa legislature should obtain in his case, was indicted by a federal grand jury on charges of using the U.S. postal service to send "unsuitable" materials from his Des Moines firm to Iowa addresses used by postal inspectors.

The Foundation, which also filed an *amicus* brief in the names of the American Library Association and the Iowa Library Association in support of Smith, called special attention to the fact that "the Iowa legislature has expressly determined that the 'community standards' in Iowa do not require a prohibition of the distribution of sexually oriented, arguably 'obscene' materials to adults and declared that its determination preempts any such prohibition by a lesser Iowa community."

The state legislature's decision is "binding on the Federal District Court for the Southern District of Iowa and precludes the enforcement of 18 U.S.C. 1461 [a federal obscenity statute] against the appellant," the Foundation argued.

Standards 'not on sleeves'

The opinion upholding Smith's conviction was issued by an appeals panel consisting of U.S. Supreme Court Justice Tom C. Clark, retired, sitting by designation, and Court of Appeals Judges Myron H. Bright and J. Smith Henley. Their opinion said:

"Jerry Lee Smith was convicted in the U.S. District Court for the Southern District of Iowa on seven counts of placing non-mailable matter in the U.S. mails . . . and was sentenced to three years' imprisonment on each count to run concurrently, all of which was suspended except for six months. On this appeal Smith asserts two errors by the trial court: (1) In refusing to ask or permit counsel to ask certain questions of the jury panel as to the contemporary community standards existing in the Southern District of Iowa

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titles now troublesome

Books and curricular materials

Periodicals

Films

On stage

Etc.

State Department ends censorship

In response to a protest by the American Civil Liberties Union, the U.S. State Department withdrew a requirement that members of its cultural exchanges submit any writings for clearance. The department said "changing concerns and sensibilities" made the requirement a "historic anomaly."

The department's action included a waiver of the requirement in the case Thomas Gambino, a musician, who had refused to submit the manuscript of a projected book critical of a tour of the USSR by the City Center Joffrey Ballet.

"While the provision might well be seen now by some as a form of censorship," Assistant Secretary John Richardson wrote to the ACLU, "I think you should be aware that the intent was to help avoid inadvertent potential harm to the objective of the exchange program to improve mutual understanding and respect."

Richardson added, "It may well have been that those charged with disbursement of taxpayer funds at the time the contract provision was inserted felt an obligation to try to minimize the risk of embarrassment. . . ."

The ACLU's legal director, Melvin L. Wulf, said he was pleased with the State Department's response. He added that he hoped Richardson's "receptiveness to the interest of free expression will permeate the department at all levels." Reported in: *New York Times*, February 11.

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freedom at home . . .

In 1942, ruling in the case of a penniless and uneducated Maryland farm hand indicted for robbery, the U.S. Supreme Court declared that the assistance of counsel, made mandatory in federal cases by the Fifth Amendment, "is not a fundamental right, essential to a fair trial."

In 1947, hardly more than a quarter of a century ago, the Supreme Court declared that the privilege against self-incrimination is not enforceable in state criminal proceedings, as due process of law, except in cases employing torture to force confessions.

On March 29, 1976, the Supreme Court summarily rejected an appeal from a lower court decision which found that a Virginia statute against consensual sexual relations among adult homosexuals violated neither the constitutional guarantee of privacy nor its protection of due process and free expression.

We blink our eyes in disbelief. Can more than a decade of progress in human rights be made to disappear?

More than a century and a half after the adoption of the Bill of Rights, and nearly a century after the approval of the Fourteenth Amendment, the members of the Warren Court labored to erase the legacy of repression fashioned by their predecessors. In 1976, by turning a deaf ear, the present Supreme Court can undo what the Warren Court accomplished.

On the day the Supreme Court failed to find anything alarming in Virginia's interest in the bedrooms of its citizens, the U.S. House of Representatives overwhelmingly approved funds enabling its ethics committee to conduct an investigation of the unauthorized publication of the House Intelligence Committee's report, which CBS correspondent Daniel Schorr passed to the *Village Voice.*

The House ethics committee, noted for its singular ability to find no fault in the conduct of House members, was given only $150,000 of the $350,000 which it requested, but with a tight budget it should be able to punish this "breach of parliamentary privilege," a privilege which the colonial legislatures vigorously defended with the interrogation and punishment of those who "libeled" them or their proceedings. As Leonard Levy has observed, had John Peter Zenger attacked the New York legislature instead of Governor Cosby, he would have been summoned to the bar of the house and very quickly jailed.

. . . and freedom abroad

In an appeal organized by Dorothy Norman, a biographer of the late Indian Prime Minister Jawaharlal Nehru, Sidney Hertzberg, former correspondent of the *Hindustan Times* of New Delhi, and Ved Mehta, *New Yorker* author, eighty American writers, scientists, historians, and civil libertarians in March called upon Indira Gandhi to restore fundamental rights in India, "the world's largest democracy" whose democratic principles were suspended in order to save them. As Mehta's recent *New Yorker* article on Indira Gandhi regime shows, the outlook in India is bleak—as indeed it is throughout the Third World.

Spring in South Korea did not bring a thaw in the icy authoritarianism of President Park Chung Hee, who in March forced the resignation of more than 400 university professors, all supposedly "idle" and "incompetent." Insiders estimated that three-quarters of the dismissals were for "political reasons," that is, political dissent, which is ruthlessly suppressed by Park.—RLF

RCA exec approved cable spying

A retired RCA executive revealed in March that he agreed in 1947 to let the government monitor international cable traffic and that the practice continued for almost thirty years with no other executive's knowledge or approval.

Sidney Sparks, an RCA Global Communications officer who retired in 1964, told the House government information and individual rights subcommittee that he approved a request by "someone in the Army" in 1947 to set up a system for "scrutinizing certain traffic that was believed to be in the national interest." Sparks said that the decision was his alone, and that he authorized the surveillance because "the cold war was getting very hot at this time." Reported in: *Chicago Sun-Times,* March 11.

legal data center moved to New York

Morality in Media has begun a nationwide fund raising campaign to support the National Legal Data Center, designed as an archive and educational center for prosecutors of obscenity, which was moved from Pacific Lutheran College in Thousand Oaks, California to the New York City headquarters of Morality in Media. Files will now be under the direction of Jesuit Morton A. Hill, head of the anti-obscenity organization.

Prior to the move, the center's funding was canceled by the Law Enforcement Assistance Administration of the U.S. Justice Department when federal support of the operation was attacked by civil libertarians.

The center claimed that more than 3,500 prosecutions around the U.S. were guided by information supplied from the archives. Reported in: *Variety,* February 25.

dissenting California justice assays 'obscenity'

In a five-to-two decision handed down in February, the California Supreme Court upheld California's obscenity statute, ruling that it meets the requirements established by the U.S. Supreme Court in its 1973 Miller *decisions.*

In a vigorous dissent, Justice Mathew Tobriner analyzed the problems of "obscenity" with remarkable clarity.

I dissent. The majority today attempt to save the California obscenity statute through incorporating by reference the general guidelines set forth in *Miller* v. *California.* This effort is unlikely to prove any more successful in resolving the "intractable obscenity problem."

Even if we assume the viability of the social value test, its application requires that the jury in each case pass upon the intellectual content and social utility of the challenged work. We need not elaborate upon the utterly subjective and unpredictable nature of such an undertaking. In truth this standard demands of the jury an evaluation of whether, despite its sexually explicit nature, a work is sufficiently important to merit public dissemination. This issue does not turn upon fact, but upon judgment–which necessarily derives from personal taste, values, and experience. That individuals consistently reach different judgments in appraising a given work on this basis can hardly come as a surprise. Yet the Penal Code requires the defendant, at peril of liberty, to guess whether a particular jury will hold that his work is obscene under this diffuse standard.

The problem of vagueness is aggravated still further by the fact that the jury is called upon to determine and apply a *"community"* standard in some phases of its deliberations. This delegation of judgment contrasts sharply with virtually the entire corpus of the criminal law, in which the community's view of appropriate conduct is embodied in the rule itself. (All penal statutes are, of course, statements of conduct that the community finds offensive. Yet uniquely with respect to obscenity, the statute does not identify the offensive conduct, but rather makes reference to a community standard that is applied by the jury to the defendant's conduct after the allegedly offensive act has already occurred.) Here, however, the jury is expected *both* to determine the applicable standard and to judge whether the defendant's conduct conforms to it. . . .

Clearly the validity of conditioning criminal liability upon the accurate prediction of a "community" standard not specified by statute heavily relies upon the presence of a highly cohesive community view which is both predictable in application, and readily apparent to the average person. Yet findings contained in the Commission Report cast serious doubt upon the very concept of a "community standard," let alone the existence of one capable of providing fair notice of what is prohibited: " . . . people do not agree about whether or not a given sexual stimulus is 'sexually arousing,' 'offensive' or "pornographic.' . . . In nearly every case the judgments provided by a group for a given stimulus ranged from one extreme to another. For example . . . [the subjects in one test] so differed among themselves in their judgments of this picture on each of these dimensions that their judgments were distributed on each of the eleven points of the scale. . . . Similar findings, regarding the lack of consensus among members of the groups in their judgments of explicit sexual stimuli along dimensions related to constitutional standards for obscenity were found by other investigators using a variety of kinds of subject and stimuli."

These findings confirm the lesson of nearly two decades of experience with obscenity regulation–that there is no representative "community view," but rather a spectrum of response to identical material *within* a community. To delegate to the jury the determination of a hypothetical community standard is thus necessarily to deprive the defendant of advance warning of what is prohibited. Although a state "community standard" is more realistic than a national standard, it falls far short of providing the level of certainty required of a criminal statute. . . .

The fundamental right to receive information and ideas "regardless of their social worth" is predicated upon the

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in our mailbox

Dear Editors:

You may be interested in a highly practical use for the *Newsletter on Intellectual Freedom.* I wrote a letter to *Playboy* (February 1976 issue) about censorship efforts in this area. As a result, an Episcopal priest asked me to go on his radio show to debate with the Camden County Assistant Prosecutor. I did so. For one hour, we talked and answered call-in questions. The only material I took with me was your January issue, and the items on Morris County, New Jersey (p. 19) and Charlotte, North Carolina (p. 24) were very effective in debate.

It was my first experience in such a situation and I'd recommend it to others interested in intellectual freedom as stimulating! By the way, the prosecutor assured me he had no interest in raiding libraries and so felt there was no need for librarians to defend sellers of "dirty books." He was surprised that I was not reassured.

Rinehart S. Potts
Assistant Professor
Glassboro (N.J.) State College

NCC decries spread of 'obscenity'

Disturbed by what it characterized as the growing "legitimization" of sexually explicit movies, the National Council of Churches issued in March a four-point plan which called for social action against "the poison of pornography."

"While [pornography] makes money and while the public is indifferent and the laws are flaccidly ambiguous, [pornography] is more than likely to spread like the cancer it is," stated Robert E.A. Lee, a member of the council's communications commission.

The council said that the Supreme Court "seems to have ushered in an open season of film sexploitation. . . . The situation nationwide is legally and ethically confusing if not chaotic."

The guidelines issued by the council advised film patrons to regard film advertisements as unreliable guides to "offensive material a film might contain." Patrons were advised to read film reviews and "to take pen in hand" if annoyed by sex in movies. "Letters should be sent to the theater, distributor, producer, and to the news media that profit from sexploitation advertising." Reported in: *Variety,* March 17.

Ads on contraceptives opposed

The communications commission announced in February, after a three-month study, that "we do not believe there is sufficient information at this time to justify widespread advertising of non-prescription contraceptives on radio and television." The NCC commission called for research in test markets to determine whether televised advertising of contraceptives could help reduce unwanted pregnancies and venereal disease.

The commission's statement, released when the National Association of Broadcasters' Code Board had under consideration a relaxation of its rules against advertisements for contraceptives, said there was a serious question concerning whether advertising would be "sufficiently truthful and responsible so as to be beneficial." Reported in: *Chicago Tribune,* February 18.

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snuffing out 'snuff'

In a telegram to Manhattan District Attorney Robert Morganthau, various New Yorkers, including Eric Bentley, Ellen Burstyn, Joseph Chaikin, David Dellinger, Barbara Deming, Rosalyn Drexler, Martin Duberman, Glorida Emerson, Viveca Lindfors, Grace Paley, Muriel Rukeyser, Donald Shriver (president, Union Theological Seminary), Susan Sontag, and Sol Yurick, stated:

"We . . . call upon you . . . to prosecute and prevent the presentation, distribution, and advertising of the film entitled *Snuff* now being shown at the National Theater in New York City. This film exhibits the violent dismemberment and murder of a woman for the purposes of arousing sexual interest. As citizens we demand the immediate investigation, prosecution, and removal of this barbaric film from our community."

In his column in the *Village Voice,* Nat Hentoff asked: "Where does one stop after one has begun snuffing out expression, however repellent and frightening? Shall we count on this august committee, which has made such a splendid start, to guide us from here on in?"

Bella Abzug, asked to join the group against *Snuff,* answered that she supported picketing the theater and other moves against the movie, but "would not go along with official censorship," she said, "because I think once it is established, we in the women's movement or any other movement of dissent will find ourselves victimized." Reported in: *Village Voice,* March 15.

Around the nation

Snuff, which includes a five-minute faked murder-mutilation scene, has also been the object of controversy in Chicago, Baltimore, and Minneapolis.

In Chicago, the Plitt Theatre chain reacted to a newspaper editorial criticizing the booking of *Snuff* by canceling the film before the third edition of the paper appeared on newsstands.

The Maryland State Censor Board asked Circuit Court Judge Harry A. Cole to decide whether *Snuff* should be licensed in Maryland after the board itself refused to license the film.

In Minneapolis, police vice squad efforts to seize *Snuff* and two other allegedly pornographic films were thwarted by the courts. The film-obscenity cases, the first brought in Minneapolis since 1973, were dismissed because the orders requiring the owners to appear prior to seizure were improperly served. *Baltimore Sun,* February 21, 25; *St. Paul Pioneer Press,* February 25; *Minneapolis Tribune,* February 27, 28, 29, March 5; *Variety,* March 3, 9, 10.

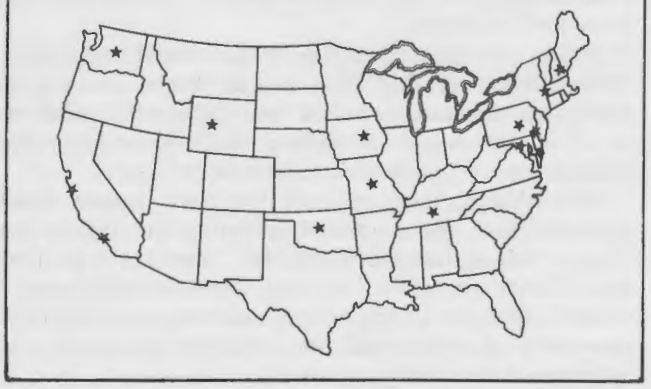
'Doonesbury' halted by five papers

The Pulitzer Prize comic strip "Doonesbury" was suspended in February for a week by at least five major newspapers because its story line involved an admission of homosexuality by one character.

A survey conducted by United Press International showed that the *Columbus* (Ohio) *Citizen-Journal,* the *Cleveland Press,* and the *Houston Post* all censored the strip.

Other papers which refused to run the strip included the *Richmond Times-Dispatch* and the *Miami Herald.* Reported in: *Boston Globe,* February 13; *Editor & Publisher,* February 28.

censorship dateline



libraries

Davenport, Iowa

Two books were ordered removed from elementary and junior high school libraries in Davenport after parents complained about the "too mature" themes of one work and the portrayal of sex stereotypes in the other. The Davenport School System's Instructional Materials Reconsideration Committee voted nine to one to remove *The Making of a Nurse* from Sudlow Junior High library, but agreed to permit it at the city's two senior high school libraries. The committee decided that the book's descriptions of life at a big city hospital, including its accounts of sexual encounters involving patients, nurses, and doctors, were not suitable for junior high students.

A book for first and second graders, *I'm Glad I'm a Boy! I'm Glad I'm a Girl!,* was ordered removed from Wilson and Buchanan elementary school libraries after committee members unanimously agreed that it portrays boys in career roles and girls in passive roles.

The reconsideration committee, composed of five faculty members, two students, and four local citizens, is appointed by the Davenport School Board to review complaints about materials used in classrooms and libraries. Reported in: *Des Moines Register,* February 18.

Montgomery County, Maryland

Challenges to an elementary school textbook on economics and a library book on the training of horses prompted the Montgomery County school system to ban the works in February.

The economics textbook, *Everyone Has Important Jobs to Do,* was reevaluated at the request of a member of the local chapter of the National Organization for Women. The reevaluation committee found that the work "reinforces traditional roles rather than reflecting changing societal attitudes. . . ." The work was approved in 1971 for use in elementary classes.

The library book, *First Steps in Horsemastership,* was challenged by an elementary school speech therapist who described herself as "a horse lover." She said she feared that both children and horses would be injured if horses were trained in the manner described in the book. She contended that the book depicts not "first steps," but rather "the final steps used on a renegade horse by an experienced trainer."

The reevaluation committee decided to retain *Drugs and You* and *America's First Army,* as well as four works which were challenged as sexist: *Madeline and the Bad Hat, Sugarplum and Snowball, The Case of the Scaredy Cats,* and *A Letter to Amy.* Reported in: *Montgomery Journal,* February 26.

Milton, New Hampshire

Copies of Alexander Solzhenitsyn's novel about life in a Siberian concentration camp, *One Day in the Life of Ivan Denisovich,* were removed from the high school library in Milton after the head of the school board, Joan Chase, objected to "bastard" and other words in the work. Chase, who had heard complaints from parents, said the work contains "language you wouldn't allow to be used in the home." Reported in: *Chicago Daily News,* March 13.

Levittown, New York

Using a list of "objectionable" books compiled by Parents of New York United (PONY-U), the head of the Long Island School Board ordered sixty books removed from the Island Trees School District High School library. However, a school board official, Richard J. Ahrens, denied charges of teachers that he and another school board member themselves removed the books from the library.

The PONY-U list included *Slaughterhouse-Five, The Law and the Consumers, Black Boy, The Naked Ape, Laughing Boy, Go Ask Alice, A Hero Ain't Nothin' But a Sandwich, Down These Mean Streets, A Reader for Writers,* and *The Dictionary of American Slang.*

The teachers also charged that *The Fixer* and *The Best Short Stories by Negro Writers* were removed from classrooms where they were being used in a literature course. In response to the censorship, the teachers announced plans to file a grievance charging violations of academic freedom. Walter Compare, president of the district's union, said the teachers' contract requires that challenged materials be reviewed by a committee of teachers, administrators, students, and parents.

A group of residents of the Island Trees School District joined the protest against the book ban, stating that they planned to protest the school board action to the state commissioner of education.

Edna Yarris, one of the residents, said, "We happen to feel very strongly on this subject, We happen to be avid readers. We have set the moral theme of our children with religious instruction and feel that our children are reasonably intelligent and have not seen fit to ban or censor any

of their reading material." Reported in: *New York Daily News,* March 19; *New York Times,* March 19, 20, 23.

Oklahoma City, Oklahoma

In an effort to halt a destructive and bitter feud between Oklahoma County Commissioner Ralph Adair and the Oklahoma County Library System, local library commissioners decided in February to inaugurate a dual card system for users under fifteen-and-a-half years of age in order to permit their parents to control their access to sex education works and other materials on sex.

The dispute began last December (see *Newsletter,* March 1976, p. 35) when Commissioner Adair attacked Library Director Lee Brawner after Brawner refused to remove *Boys and Sex* and *Girls and Sex* from the system's children's collections. Adair characterized the works as "obscene."

In a related development, Adair threatened to withdraw from the Methodist Church if the minister of the United Methodist Church of the Servant refused to withdraw his support from the library system and Brawner.

During his crusade against the books, Adair conducted a mail campaign to call attention to excerpts from the books which he considered pornographic. Commenting on the action, prosecuting attorneys said that if Adair's charge of "pornography" were correct, he had violated both local statutes and federal mail statutes. Reported in: *Oklahoma Journal,* February 5, 6; *Daily Oklahoman,* February 6; *Oklahoma Times,* February 6.

schools

Howard County, Maryland

After consideration of complaints from Citizens Advocating Responsible Education (CARE), the Howard County School System in February removed instructional materials on population growth.

John A. Soles, assistant director of curriculum for Howard County schools, said a special review committee directed that a substitute be found for a filmstrip entitled "Population Explosion" and that an article entitled "Rats Without Room" be eliminated.

The review committee found the filmstrip "somewhat dated and biased" and the article "biased." Mrs. John McGough, a member of CARE, characterized the materials as "not relevant."

Soles also revealed that a Howard County media review committee had determined that twenty-nine "drug education and family life education books" are "not recommended" for use in Howard County school media centers.

The reviewers found *Understanding Your Body* by Lawrence Blochman "excellent" but refused to recommend it because it contained a picture showing "the male and female organs in juxtaposition," a picture which the committee found "unnecessary to depict and makes the book undesirable for public school libraries."

Also on the list of prohibited books were Tom Wolfe's *The Electric Kool-Aid Acid Test* and James Bennett's *Drug Abuse and What We Can Do About It.*

In 1975, the media review committee said *The Major Young Poets* contains "objectionable language" and "is outspoken about sex." The work was removed from the county's school media centers. Reported in: *Baltimore Sun,* February 14, 17.

Orchard Farm, Missouri

The Orchard Farm School Board refused in February to order two of three paperback books requested by Thomas King, head of the high school social studies department in the St. Louis suburb. King, who ordered the works for supplemental reading in American and world history classes, said he was told by Larry Doyle, director of instruction, that "severe financial conditions" made it impossible for the school district to purchase the books.

The board rejected the purchase of the two books on the basis of recommendations from Doyle. A letter from him cited profanity and racial slurs in *Negro Views of America* and *The Immigrant's Experience.*

Doyle wrote that language in the works was unsuitable for fourteen-year-old students. To illustrate, Doyle underscored two phrases, "you black sonofabitch" and "damn fine place to live."

King, who told board members he was upset over their decision, even offered to delete the objectionable phrases in order to win permission to use the books as supplements. King defended the works, stating that "no parent has ever complained to me about these books" and that students "never go to sleep when we use them." Reported in: *St. Louis Post-Dispatch,* February 17.

Hendersonville, Tennessee

Faculty objections to use of the words "bosom" and "prostitute" in a high school production of *One Flew Over the Cuckoo's Nest* led to the cancellation of the play and resignation of its director. Dwayne Hood, a student a Hendersonville High School, said he resigned as director because he could not submit to changes in the play's dialogue.

Principal William Clever said the cancellation was "a disciplinary measure." He added, "We just haven't gotten to the point yet where students can run this school." Reported in *Washington Post,* March 10.

King County, Washington

Acting on a request from Bothell High teacher John Jacobs that *Catch-22* be authorized as a supplementary text for a senior English class, the Northshore School Board voted in March to reject the work because of its "objectionable" language and descriptions of sexual acts and because it is "silly and boring."

When the recommendation came before the school board, Janet Nelson, a board member and an *ex officio* member of the district's Instructional Materials Committee, which supported the request for the authorization of *Catch-22,* prefaced her motion to reject the book with a prepared statement:

"I do not believe in censorship of materials to protect our students because I believe it impossible and inadvisable. . . . I do not find the [book] particularly objectionable . . . from a moral standpoint . . . [but] I do object to material inappropriate for at least fifty percent if not the majority of the class. . . .

"Most of [the students] would find the material silly and boring as I did. . . . World War II ended over thirty years ago [and] thus this book is not contemporary to this new generation. . . . "

Northshore Education Association President Robert DeLange took exception to the board's action. He noted that *Catch-22* occurs on nearly seventy-five percent of the reading lists prepared for college freshmen. Reported in: *Northshore Citizen,* March 24.

Cheyenne, Wyoming

Gordon Parks' *The Learning Tree* was banned from junior high schools in Cheyenne after several parents protested the work's "filth." Leo Breeden, assistant superintendent of Laramie County School District No. 1, ordered the book removed from the schools after meeting with parents who challenged a review committee's recommendation that the book be retained in the junior high schools.

"I received various reactions from the [review] committee members," Breeden said. "But the committee on the whole felt that the book told a story of the life of an ethnic group and recommended to restrict the book to the ethnic class at both the junior and senior high schools, but to excuse the students who didn't wish to read the book."

The instructor of the ethnics literature class at McCormick Junior High School, Julie Luhr, defended her selection of the book by emphasizing its appeal to students. "With fifteen students I've gotten more response to this book than with *Great Expectations* or Shakespeare," Luhr said. "I offer students a choice in books so I can make reading on the junior high level a joy."

Luhr added, "Six students have requested to read the book since it was removed from the list, and one of our strongest advocates is a black teacher."

Glenn Williams, one of the protesting parents, said, "The person who wrote [the book] must have been deviant. I could not in good faith say to any child, 'Here, read this book, it will give you an insight into the colored man.' "

Sandy Wallace, another parent, said one student had told her that the book was "filthy" and that she was ashamed to tell anyone what she had read. "I don't feel this book is necessary to the teaching curriculum and will pursue the issue until the book is banned completely," Wallace declared.

Following a vote of the Cheyenne Teachers Association to file a grievance with Laramie County School District No. 1, Breeden issued a statement revealing his intention to stick by his decision to ban *The Learning Tree.* Teachers stated that only the school board had the right to remove books from the schools. Citing Breeden's failure to follow the school system's formal review procedure, which calls for meetings between parents and teachers, Walt Miner, a Cheyenne communication arts teacher, said, "Separate meetings of the review committee and of complaining parents were held, with the predictable result of polarized feelings. This prevented the full exchange of views and possible meeting of minds intended by the regulation."

Alberta Johnson, president of the Cheyenne Branch of the NAACP, stated that her organization objected strongly to the ban. Referring to Williams' remark that Parks is a "deviant," Johnson said, "The point is that some of these book protesters do not even know who our black leaders are and apparently are not too interested in finding out, and that kind of negligence and indifference is an insult to black people." Reported in: *Wyoming State Tribune,* March 5, 6, 10; *Rock Springs* (Wyo.) *Rocket-Miner,* March 6; *Cheyenne Eagle,* March 9, 10, 11.

universities

Newark, Delaware

Charging a violation of his First Amendment rights by the University of Delaware, the theater director at the institution contends that his contract was not renewed because he advocated homosexuality.

The president of the university, E.A. Trabant, said the director, Richard Aumiller, was not let go because of his homosexuality, but because "his advocacy of homosexuality is inappropriate for the university undergraduate campus." The president contended that Aumiller "placed himself in a position of encouraging, condoning, and sanctioning homosexuality for the undergraduate."

Aumiller replied, "I have never advocated homosexuality for anyone but homosexuals; yet even if I had done so, the president's action is a direct violation of my First Amendment right of free speech and the University of Delaware's published policy concerning academic freedom."

Aumiller filed a grievance under the collective bargaining agreement negotiated by his faculty union, an affiliate of the American Association of University Professors.

The *Wilmington Evening Journal* said in an editorial that it had a "visceral feeling President Trabant is right." Reported in: *Chronicle of Higher Education,* February 9.

Washington, D.C.

Acting to put an end to what they called the "crisis, alarms, and acrimony" that had "impaired the quality of broadcasting" over Georgetown University's radio station

WGTB-FM, university officials in March closed the station for sixty days in order to accomplish a reorganization of its management.

A spokesperson for the university said the decision to close the station, run by seventy-five volunteer staff members, was made by the Rev. Robert J. Henle, president of Georgetown, on the recommendation of a university review board.

The most recent crisis involving the station, embattled since the late 1960s when it adopted an alternative news format, began last December when the university dismissed the station's general manager Ken Sleeman. The university administration charged that Sleeman failed to follow university policies and allowed the broadcast of offensive language. The refusal to censor obscenities, it said, jeopardized renewal of the station's license by the Federal Communications Commission.

Staff members, however, insisted that the university fired Sleeman because the station had angered the university's Jesuit overseers by airing public service announcements for the Washington Free Clinic, which provides abortion referrals.

Denying charges that its actions represented "sinister, authoritarian, and invidious acts of repression," the university said the staffers were deliberately trying to give listeners a bad impression in order to persuade the FCC to revoke the station's license. Reported in: *Washington Star,* March 17.

immigration

Washington, D.C.

In March the U.S. State Department notified the sponsors of an international film festival in Los Angeles that a Cuban delegation would be denied visas to attend the festival. The department said the sponsors had been informed months before the festival that the Cubans would be granted special waivers to enter the U.S., but added that no final assurances were given.

In explaining the decision, officials of the department cited statements by President Ford and Secretary of State Kissinger concerning "Cuban conduct." Ford called Prime Minister Fidel Castro an "international outlaw" because of Cuba's intervention in the Angolan war and said his administration "will have nothing to do" with the Castro regime. Reported in: *Philadelphia Inquirer,* March 21.

the press

Philadelphia, Pennsylvania

Philadelphia Mayor Frank L. Rizzo appeared in Common Pleas Court in March seeking an injunction to prevent the *Philadelphia Inquirer* from further publication or distribution of a column from its March 14 issue which the mayor characterized as "garbage," "filth," and "treason."

In an appearance before Judge Stanley Greenberg, the mayor testified against the offending column, a satire entitled "The Skeptic," by Desmond Ryan. Greenberg, who refused the mayor's request for a preliminary injunction, was told by Rizzo: "I don't own a newspaper. And because of that, I have no recourse but to fight such treason in the courts. I feel it is incumbent on me as a public official. . . . "

Attorneys for the *Inquirer* said the article was "clearly a satirical spoof and was not intended to portray a truthful occurrence. It was opinion, comment, and criticism." Arguing that only "the most urgent circumstances" could justify any limitation upon publication of the satire, the attorneys contended that "the almost nonexistent potential for harm to the plaintiff's reputation cannot warrant the imposition of prior restraint. . . . "

Pickets block paper distribution

In an action which the *Inquirer* said represented a breakdown of law attributable to Mayor Rizzo, who filed a $6,000,000 libel suit against the paper, members of the Building and Construction Trades Council of Philadelphia attempted to halt the printing and distribution of the *Inquirer's* March 20 edition.

Nearly 250 members of the council blocked the newspaper's rear entrance and loading platform for about ten hours until they were dispersed by federal marshalls who served a temporary restraining order issued by U.S. District Court Judge Edward R. Becker.

The paper accused the mayor and his chief legal officer, Sheldon Albert, of refusing to take any effective steps to stop what they called union "anarchy."

City officials said that the problem was a "labor" dispute. Members of the council said they were protesting the newspaper's favorable coverage of nonunion construction firms. Reported in: *Philadelphia Inquirer,* March 19, 20, 21; *Philadelphia Bulletin,* March 21.

etc.

Hollywood, California

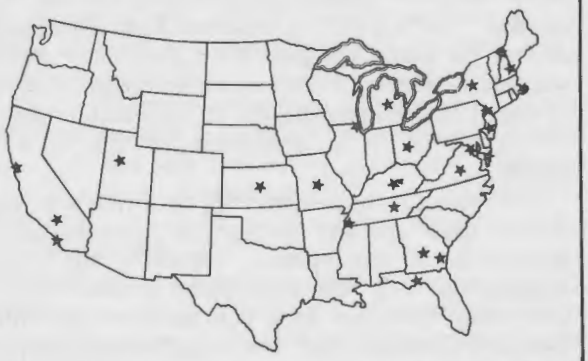
The Writers Guild, which has long fought censorship, in February found itself charged with censorship after it dismissed the Guild's newsletter cartoonist, Will Gould, because members of its publications committee objected to one of his cartoons.

Reportedly, a cartoon in which Gould used the expression "broad" led committee members who considered the expression anti-feminist to request his dismissal.

Gould said he would have refused the request to contribute to the organization if he had known that he was to be censored by a committee. Reported in: *Variety,* February 25.

(Continued on page 72)

from the bench



U.S. Supreme Court rulings

In a decision that narrowed the First Amendment shield protecting the news media against libel suits, the U.S. Supreme Court declared March 2 that a prominent Florida socialite could not be considered a "public figure" for the purpose of deciding libel claims against *Time* magazine.

The Court, ruling on an appeal brought by Time Inc. from a $100,000 libel award won by Mary Alice Firestone on the basis of *Time's* alleged misreporting of her 1968 divorce decree, refused to equate "public controversy" with "all controversies of interest to the public."

Time Inc. argued that it could not be held liable for publishing any falsehood defaming Mary Alice Firestone unless it could be established that the publication of remarks concerning her divorce was done "with actual malice" against a "public figure."

Time reported that the divorce was granted "on grounds of extreme cruelty and adultery" and that the divorce trial "produced enough testimony of extramarital adventures on both sides [in the words of the trial judge] 'to make Dr. Freud's hair curl.' "

Dissenting from the opinion of the Court delivered by Justice Rehnquist, Justice Brennan wrote: "At stake in the present case is the ability of the press to report to the citizenry the events transpiring in the nation's judicial systems. There is no meaningful or constitutionally adequate way to report such events without reference to those persons and transactions that form the subject matter in controversy."

Justices Marshall and White also dissented. Marshall would have overturned the libel judgment, whereas White held that the Supreme Court should have upheld the damage award against *Time* rather than sending the case back to the Florida Supreme Court. (*Time Inc.* v. *Firestone,* no. 74-944)

Shopping centers may prevent picketing

Relying on a 1972 case in which it held that a Portland, Oregon shopping center could expel persons distributing anti-war leaflets, the Court—in an opinion by Justice Stewart—decided that the owner of a suburban Atlanta, Georgia shopping center could expel union pickets.

The case arose in 1971 when striking employees of the Butler Shoe Company protested the company's failure to reach a contract by picketing not only the company's warehouse but also its nine retail stores in the Atlanta area. When expelled from the shopping center, the employees complained to the National Labor Relations Board, which ruled that they enjoyed a First Amendment right to picket on the shopping center property.

Justices Brennan and Marshall dissented. Marshall said that the ruling failed to take account of a 1968 decision of the Court, which held that such cases must be decided on the basis of whether "the picketing is directly related in its purpose to the use to which the shopping center property is put," and whether there are other "reasonable opportunities" for the pickets to convey their message to their intended audience. (*Hudgens* v. *National Labor Relations Board,* no. 74-733)

Military rights restricted

Citing the American tradition of "a politically neutral military," the Court drew a sharp distinction between the rights of civilians and those of military personnel in holding that base commanders have broad powers to bar political campaigning on U.S. installations.

The Court's six-to-two decision declared that the business of military bases is "to train soldiers, not to provide a public forum" for political debate. The case before the Court involved an attempt by Benjamin Spock and others to campaign at Fort Dix, New Jersey.

Justices Brennan and Marshall dissented. Marshall accused the majority of showing "unblinking deference" to the military. (*Greer* v. *Spock,* no. 74-848)

Police use of records upheld

The Court ruled five to three that police do not violate the constitutional rights of citizens by publicly branding them as active criminals even when they have never been convicted of a crime. The decision dismissed a Louisville citizen's complaint against local police after they distributed a flyer identifying him as an active shoplifter. The flyer was distributed at a time when the individual had been merely arrested on shoplifting charges, charges which were subsequently dismissed.

Justice Brennan, who dissented, said it was strange that the Court could downgrade the individual's right to a good name when injured by a government official when only three weeks earlier the Court had ruled, over his dissent, that "the same interest" was sufficient to override the First Amendment. Justice Brennan referred to the Court's decision in *Time Inc.* v. *Firestone.* (*Paul* v. *Davis,* no. 74-891)

In other action, the Court:

• Left intact a lower court ruling that followers of a Tennessee religious sect, the Holiness Church of God in Jesus' Name, had no constitutional right to handle poisonous snakes or drink strychnine at worship services.

• Let stand a lower court decision that NBC's 1972 documentary "Pensions: The Broken Promise" did not violate the Federal Communications Commission's so-called Fairness Doctrine. Accuracy in Media had claimed that the show about deficiencies in U.S. pension systems amounted to a one-sided look at a controversial issue.

• Refused without comment a plea made on behalf of Polish-Americans asking for television time to respond to derogatory Polish jokes which were broadcast nationally on a network talk show.

• Ruled unanimously that defendants in obscenity cases may not be precluded from contending that their books and films are not obscene merely because the same materials were adjudged obscene in previous cases in which they were not involved.

the press

Orange County, California

In an effort to "open things up a little bit," Orange County Juvenile Court Judge Raymond F. Vincent decided in February to allow reporters to sit in on juvenile proceedings in his courtroom. "I want to open these courts up to news coverage," Vincent said, "so that the public will know what is going on and be able to understand some of the problems involved in the system."

Reporters will not be able to name juvenile defendants, however, since California law specifically prohibits it. The California law also provides that juvenile judges may "admit such persons as [they] deem to have a direct and legitimate interest in the particular case or the work of the court."

Unlike many juvenile court judges in California, Vincent believes that news people have "a direct and legitimate interest" in the juvenile courts. Reported in: *Orange County News,* February 14.

Columbus, Ohio

After three years of litigation challenging a refusal of Dayton police to allow the *Dayton Daily News* to check the list of inmates in the city jail, the newspaper won a victory before the Ohio Supreme Court after suffering defeats in two lower courts. The high state court unanimously rejected the city's contention that its jail log was not public because there was no legal requirement that it be kept.

The seven-man court declared that all records kept by a municipal or state government should be open "unless the custodian of such records can show a legal prohibition to disclosure."

One member of the court asked: "If there is no official arrest record at the jail, except the private log of the jailer, how is it to be determined if there was unnecessary delay in according the person arrested his rights? How is his family or a friend going to learn of his arrest if, on inquiry, they are advised there is no official record?" Reported in: *Editor & Publisher,* February 21.

When Portage County Common Pleas Court Judge Joseph Kainrad imposed a gag order on the *Akron Beacon Journal,* forbidding it to report certain testimony in a murder trial, the paper on the same day appealed to the Ohio Supreme Court, which two days later voted six to one to vacate the order. Judge Kainrad, presiding over the trial of one of two men charged with murder in the same crime, imposed the order to protect the rights of the second defendant.

The Supreme Court did not rule on the merits of the order, but held that the *Beacon Journal* was entitled to immediate relief from the threat of a contempt citation for publishing testimony the judge wanted suppressed.

Attorney Norman Carr, who represented the paper, told the Supreme Court in oral argument that there is no case on record anywhere in the U.S. where a judge has been allowed to prevent public discussion of testimony given in open court. Reported in: *Editor & Publisher,* February 7.

Somerville, New Jersey

The *New Brunswick Home News* and the *Somerville Courier News* were ordered in February by Somerset County Court Judge Wilfred P. Diana not to print any testimony or motions made outside the presence of the jury in a murder trial in his courtroom. Executives from both the newspapers immediately challenged the directive as unconstitutional.

The judge said he could sequester the jury, but added that because the trial could last four to six weeks he considered such a procedure too inconvenient for the jurors. He told reporters from the papers that he would hold them in criminal contempt of court if they disobeyed his order. Reported in: *New York Times,* February 19.

Trenton, New Jersey

In early March a Mercer County judge ordered the *Trenton Times* to limit its coverage of a murder trial in progress to evidence taken in the presence of the jury. The newspaper, owned by the Washington Post Company, appealed the order but agreed to abide by it pending a hearing in the state appeals court.

Thomas C. Jamieson Jr., the lawyer for the paper, said the order of Judge Harvey S. Moore violated the First Amendment. He characterized as an "assumption" the court's claim that full newspaper coverage would prejudice the defendant's Sixth Amendment right to a fair trial. Reported in: *New York Times,* March 6.

broadcasting

Washington, D.C.

The Federal Communications Commission announced in March that broadcasters do not have to comply with its strict obscenity guidelines when broadcasting live spots during newscasts. In granting the request for relaxation of the rules filed by the Radio-TV News Directors Association, the FCC said broadcasters should not be held accountable for comments during live spots. Reported in: *Variety,* March 24.

The Federal Communications Commission also ruled in March that radio and television stations cannot refuse to sell a political candidate less than five minutes of air time. The decision represented a victory for the President Ford Committee, which sought to buy one-minue and thirty-second spots from WGN radio and television, located in Chicago, to promote President Ford's campaign in the March 16 Illinois primary.

William Wills, manager of public relations for WGN, said his station would abide by the commission's interpretation of the law. However, he justified the station's five-minute policy, which had been in effect since 1956, saying that it encouraged candidates "to address themselves to the issues, thereby furthering the public interest in developing an informed electorate."

In another decision, the FCC turned down a request from supporters of Ronald Reagan that a Miami television station be forced to give Reagan equal time to match a series of interviews with President Ford. Miami station WCKT-TV ran five six-minute taped interviews with Ford during each of the station's evening news casts in the week before the Florida presidential primary. Reported in: *Chicago Tribune,* March 5.

Tallahassee, Florida

The Florida Supreme Court in February authorized the experimental use of television in one civil and one criminal case scheduled to take place in the state's Second Judicial Circuit, Tallahassee.

The high court, which ruled on a petition filed by Post-Newsweek stations, declared that no television film or copy could be used in any public newscast without its prior permission.

Among the groups which opposed the Post-Newsweek petition were the Trial Lawyers Section of the Florida Bar and the Conference of Circuit Court Judges. Reported in *Editor & Publisher,* February 21.

students' rights

Concord, New Hampshire

After a hearing that took only twenty minutes, U.S. District Court Judge Hugh H. Bownes declared New Hampshire's public school prayer law unconstitutional and issued a permanent injuction against the recitation of prayers under its provisions.

The law allowed recitation of the Lord's Prayer in school "as a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion." It stated: "Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner," and the exercises "shall be conducted so that pupils shall learn of our great freedoms. . . ."

Shortly after entering his courtroom, Judge Bownes said he was convinced that the nine-month-old law was unconstitutional and challenged lawyers to prove otherwise. In his ruling, Judge Bownes said the "unconstitutionality of the statute is obvious and patent." Reported in: *New York Times,* February 7.

prisoners' rights

Macon, Georgia

U.S. District Court Judge Wilbur D. Owens Jr. upheld a claim filed by a Georgia prison inmate that in the absence of adequate legal assistance to prisoners, the state is obligated to furnish access to a law library containing relevant state and federal laws and modern state and federal cases. Such a library is required, the court said, in order to enable inmates to conduct research in their preparation of petitions for post-conviction relief, habeas corpus, or redress for deprivation of civil rights. Reported in: *West's Judicial Highlights,* March 1976.

obscenity law

Los Angeles, California

A unanimous ruling handed down by a three-judge federal panel in February upheld the right of the U.S. Postal Service to prevent sexually oriented advertising from being sent to those who specifically ask not to receive such mail.

However, the unanimous ruling also struck down certain civil sanctions used by the postal service, holding that it was unconstitutional for postal authorities to seek injunctions halting sex-oriented advertising to those who requested it or expressed no preference.

The federal panel also ruled that the postal service does not have the right to return mail simply because it responds to sexually oriented advertising. Reported in: *New York Times,* February 19.

San Francisco, California

In a five-to-two decision handed down February 6, the

California Supreme Court ruled that California's obscenity statute is legally valid.

The tribunal rejected the appellant's contention that the statute is unconstitutionally vague. In a reference to the U.S. Supreme Court's decision in *Miller* v. *California* (1973), the majority of the court said that the law "has been and is to be limited to patently offensive representations or depictions of a specific hard-core sexual conduct. . . ."

(Excerpts from the dissent filed by Justice Mathew Tobriner appear elsewhere in this issue.)

In a March decision which reversed a 1975 ruling by California Superior Court Judge Charles S. Vogel, the California Supreme Court declared that law enforcement officers may use California's public nuisance laws–but not its Red Light Abatement Act–to prevent the display of obscene films and books.

In holding the public nuisance laws applicable, the Supreme Court emphasized that an injunction may be issued only after an adversary court proceeding and a judicial finding that the subject matter is obscene under prevailing law. However, the high court expressed no view on whether bookstores and theaters may be closed or further operations enjoined regarding materials not yet found obscene.

"Since the U.S. Supreme Court has not yet spoken on this difficult question, and since in this posture of the case the issue is not before us, we leave the question open for further consideration," the court said.

California's Red Light Abatement Act provides for certain forms of relief not available under nuisance statutes, including temporary injunctions, removal and sale of pictures, and closure of the premises for one year.

Justice Mathew O. Tobriner was joined in dissent by Chief Justice Donald R. Wright and Justice Stanley Mosk. "The public nuisance statutes do not embrace conduct whose tangible effects are limited to a small group of consenting adults," Tobriner wrote. Reported in: *Los Angeles Times,* March 9.

Topeka, Kansas

The Kansas Supreme Court declared in March that a state law on obscene materials unconstitutionally authorized the destruction of equipment and the closure of any building used in showing obscene films. The high court ruled that provisions of the state nuisance abatement law provided for prior restraint of speech and the press.

The decision resulted from an action filed in Shawnee County District Court in which the prosecuting attorney sought to halt the public exhibition of several films and to obtain an order authorizing the closure of a Topeka theater and the destruction of its motion picture equipment.

The Supreme Court upheld the district court in judging the films shown at the theater obscene and in refusing to authorize the closure of the building and the destruction of its contents. Reported in: *Kansas City Star,* March 7.

St. Louis, Missouri

A federal appeals court reversed the conviction of a St. Louis man on charges of transporting obscene material across state lines because the Federal Bureau of Investigation had no search warrant when it seized his magazines.

According to the U.S. Court of Appeals for the Eighth Circuit, U.S. District Court Judge H. Kenneth Wangelin erred in admitting into evidence magazines seized from United Parcel Service shipments to Thomas Kelly when no search warrant had been issued.

The court ruled that the seizures violated the Fourth Amendment, which prohibits unreasonable searches and seizures, and that "the proper seizure of books and magazines, which are presumptively protected by the First Amendment, demands a greater adherence to the Fourth Amendment requirements."

In the absence of any circumstance that calls for immediate police action to preserve evidence of a crime, "we deem the warrantless seizure of materials protected by the First Amendment to be unreasonable," the court said. Reported in: *St. Louis Post-Dispatch,* January 28.

Memphis, Tennessee

In February U.S. District Court Judge Harry W. Wellford ruled with personal "regrets" that sections of Memphis' obscenity ordinance which prohibited "foul language" were "impermissibly vague."

Judge Wellford also found "most reluctantly" that enforcement of the ordinance by the Memphis Board of Review worked as a prior restraint against film distributors by subjecting them to censorship without court approval.

The review board, created in 1969, was authorized to ask courts for injunctions against offensive films, but generally it operated under a written agreement with Memphis theater owners which required them to prescreen their films for board members. Usually theater owners agreed to cut words or clip entire scenes from films in order to keep *G* or *PG* ratings.

Commenting on the decision, Memphis Mayor Wyeth Chandler said the board was left in limbo. "It is obvious it can't serve the majority of the purposes for which it was set up and, frankly, I'm not sure if there's any function or use left." Reported in: *Memphis Commercial Appeal,* February 14; *Variety,* March 3.

obscenity: convictions, acquittals, etc.

Phoenix, Arizona

In the first felony conviction under Arizona's obscenity law, a defendant described by Deputy County Attorney Lyle Reinsch as "the main contact in Arizona for the

organized distribution of pornographic movies" was found guilty on four counts of commercial exhibition of obscene films. Reported in: *Phoenix Gazette,* February 6.

Atlanta, Georgia

Film viewers in Atlanta were able to see the *X*-rated picture *The Story of O* after Fulton County Criminal Court Judge Daniel Duke threw the case against it out of court in March. Judge Duke said the state had failed to prove that the film lacked "serious literary, artistic, political or scientific value."

After the ruling, four of the five jurors in the case said they did not consider the picture obscene. Reported in: *Atlanta Constitution,* March 25.

Fairfax County, Virginia

In an action which Fairfax County Commonwealth Attorney Robert H. Horan Jr. characterized as precedent setting, a Fairfax County Circuit Court jury found Leroy A. Eichhorn guilty of selling obscene materials and fixed his punishment at four years and two months in jail. Horan said the sentence marked the first time that a person convicted of obscenity in Fairfax County had received more than a fine as punishment.

Eichhorn was found guilty of selling five obscene magazines to undercover police officers. Reported in: *Washington Post,* February 28.

In a second case, a Fairfax County jury convicted Allen R. Sands and sentenced him to two consecutive twelve-month jail terms on two convictions of selling obscene films when he was employed as a clerk at an adult bookstore.

A professional pollster from Los Angeles testified for the defense that a survey conducted by his company showed that 62 out of 100 Fairfax residents agreed that adults have a right to see explicit sex in magazines and movies, whereas only nineteen people disagreed. Reported in: *Washington Post,* March 4.

Erlanger, Kentucky

An Erlanger police court jury of four women and two men viewed the movie *Emmanuelle* in February and ruled that it is not obscene. Erlanger police seized the film from the Showcase Cinemas after Mayor James Ellis filed an affidavit charging that the film was obscene according to local community standards.

An attorney for the defendant company announced that he would seek a permanent injunction in U.S. District Court prohibiting local Kentucky officials from interfering with exhibitions of the movie. Reported in: *Louisville Courier-Journal,* February 6.

Boston, Massachusetts

Suffolk County judges set a record in February when in one week they handed down obscenity fines totalling nearly $100,000 and several stiff jail sentences. Chief among the targets in the campaign against obscenity was the Jolar Cinema Corporation, owner of downtown Boston's Jolar Cinema, which was fined a total of $67,000 by Municipal Court Judge Joseph A. Deguglielmo. It was charged that the theater's thirty-two machines showed obscene films in violation of Massachusetts' obscenity statute. Reported in: *Boston Herald Advertiser,* February 15.
15.

Pontiac, Michigan

Oakland County Prosecutor L. Brooks Patterson, long frustrated in his fight against exhibitions of *Naked Came the Stranger* in Ferndale, won a battle when a jury in Pontiac District Court found the manager of Pontiac's Campus Theater guilty of showing several obscene films in 1975.

Defense Attorney Stephen M. Taylor said the real question in the case–whether Michigan has a valid obscenity statute–would be appealed. Reported in: *Detroit News,* January 15.

Utica, New York

Joseph Deeb, operator of Utica's Adult World Bookstore, was convicted by a Rensselaer County Court jury of second degree obscenity for selling obscene materials to investigators from the county district attorney's office in 1975.

The all-male jury found that the materials purchased from Deeb's store, including the film *Deep Throat,* were obscene according to "contemporary community standards." Reported in: *Troy Times Record,* February 27.

Memphis, Tennessee

A federal jury found three of four defendants and three companies guilty of charges of obscenity for distributing the film *School Girl.* But the jury of six men and six women acquitted the defendants of charges of participating in a nationwide conspiracy to distribute the work.

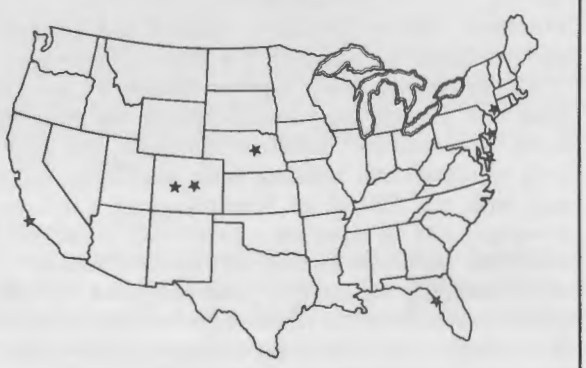
School Girl was seized by the Federal Bureau of Investigation in May 1972 after an eleven-week run at the Studio Theater in Highland, Tennessee, where it played to an estimated 12,000 persons. The work was shown in ninety-eight other cities in twenty-three states. Reported in: *Memphis Commercial Appeal,* February 21.

Salt Lake City, Utah

Charges against a Salt Lake City theater operator who had shown the movie *Sex Clinic Girls* were dismissed after Victor B. Cline, well-known pornography foe and professor at the University of Utah, advised a city prosecutor that the movie included information that some sex therapists might

(Continued on page 72)

is it legal?



in the U.S. Supreme court

The U.S. Supreme Court agreed March 1 to decide whether appellate judges must themselves examine allegedly obscene materials in their review of criminal obscenity convictions.

The Court will review the case of three individuals and two corporations convicted in U.S. District Court in Kentucky of transporting a number of "obscene" items, including the film *Deep Throat.* When the defendants appealed their convictions to the U.S. Court of Appeals for the Sixth Circuit, the appellate judges upheld the district court without looking at any of the materials in the case.

In a 1964 opinion, the Supreme Court rejected an argument that judges should give only a limited review in obscenity cases. "The suggestion is appealing," the Court said, "since it would lift from our shoulders a difficult, recurring, and unpleasant task. But we cannot accept it. Such an abnegation of judicial supervision in this field would be inconsistent with our duty to uphold the constitutional guarantees."

FTRF to request "community standards" ruling

Acting on behalf of the American Library Association and the Iowa Library Association, the Freedom to Read Foundation will ask the Supreme Court to review the conviction of Iowa bookseller Jerry Lee Smith in an important "community standards" case.

Smith and the Foundation, which supported the former's appeal to the U.S. Court of Appeals for the Eighth Circuit, lost round one at the appellate level when the eighth circuit court affirmed Smith's obscenity conviction in an opinion filed February 13.

In upholding Smith's conviction, the appellate court said that federal obscenity law permits jurors to use "inborn" and "often undefinable" community standards. (Further coverage of the activities of the Freedom to Read Foundation can be found elsewhere in this issue.)

schools

Aurora, Colorado

Five Aurora teachers and the American Civil Liberties Union filed suit in February against the Aurora Board of Education for its January decision to ban ten works from high school classrooms. "We consider [the board's action] illegal and unconsitutional censorship of textbooks," James H. Joy, executive director of the Colorado ACLU, told a press conference.

The banned books include *A Clockwork Orange, Rosemary's Baby, The Exorcist, The New American Poetry, Starting From San Francisco, The Yage Letters, A Coney Island of the Mind, Kaddish and Other Poems, Lunch Poems,* and *The Reincarnation of Peter Proud.* Douglas A. Johnson, a member of the Aurora school board, said he believed the board had exercised its duties as spelled out by Colorado law. "I thoroughly believe in academic freedom," Johnson said, "but with it there needs to be some academic responsibility."

Johnson, who said he considers himself "no prude," contended that he would not exclude a book because it included the word "damn," but would reject it if it were "pure, unadulterated garbage."

The Colorado law challenged by the ACLU gives school boards the power to exclude books and other materials which "in the judgment of the board are of an immoral or pernicious nature." The ACLU charges that the law "is vague and overbroad and provides insufficient guidance for determining whether to exclude materials from the classroom." Reported in: *Denver Post,* February 16, 27; *Rocky Mountain News,* February 28.

New Jersey

A coalition of conservative Christians and civil libertarians announced plans in February to halt the teaching of Transcendental Meditation, also known by its registered trademark "TM," in public schools in New Jersey.

The organization, called the Coalition for Religious Integrity, said it would file suit in federal court to prove that TM is a disguised form of Hinduism whose principles can be taught in the public schools only in violation of the First Amendment's separation of church and state.

"We are convinced that there is incontrovertable evidence that TM is merely a subtly disguised form of Hinduism," said Albert J. Menendez, spokesperson for Americans United for Separation of Church and State, one of the organizations in the coalition.

Charles Wilson, director of the New Jersey Department of Education Research and Development, denied that the courses—offered as a one-year experiment financed by a $40,000 grant from the Department of Health, Education and Welfare—have any religious content. Wilson said the experiment would help determine whether students improve their learning skills and behavior with the help of TM.

Reported in: *New York Times,* February 19; *Washington Post,* February 26; *Chicago Tribune,* February 28.

freedom of information

Washington, D.C.

In February the Central Intelligence Agency rejected a request filed by the *New York Times* under the Freedom of Information Act for the names of American and foreign news organizations which provided "cover" for American intelligence activities over the last twenty-eight years. The CIA said the information that the *Times* sought was exempted from disclosure under law because it was classified as secret and would disclose "the identities of intelligence sources and details concerning intelligence methods" if made public.

In a letter to Arthur O. Sulzberger, the *Times'* publisher, CIA Director George Bush said that no *Times'* staff member was being "used operationally" by the CIA, but he added that the agency's policy was "not to comment on possible agency relationships with stringers or part-time correspondents."

Bush also gave Sulzberger assurances that the CIA did not attempt to influence the reporting of stringers who were in its employ, and that what he called the agency's "very limited operational use" of part-time reporters associated with news organizations was restricted to the collection of intelligence alone. Reported in: *New York Times,* February 13.

Washington, D.C.

A suit seeking access to Federal Bureau of Investigation records of its 1953-54 surveillance of J. Robert Oppenheimer, father of the atomic bomb, was filed in February by Field Enterprises, publisher of the *Chicago Sun-Times.*

The suit, filed in U.S. District Court under the Freedom of Information Act, charges that the FBI failed to respond to a request for the records within the time limit provided by the act. The suit also contends that the FBI's parent body, the U.S. Justice Department, also failed to act on an appeal to it.

The suit stemmed from a November 26 request filed by Stuart H. Loory, *Sun-Times* associate editor, for the FBI files.

Although the FBI did not reveal its material, Loory disclosed in December that the FBI wiretapped and bugged conversations between Oppenheimer and his lawyers after President Eisenhower stripped the atomic scientist of his security clearance in 1953. Reported in: *Editor & Publisher,* March 13.

the press

St. Petersburg, Florida

In an action stemming from a controversy which began last December, the *St. Petersburg Times* and three of its reporters filed suit against the Church of Scientology, charging that the defendants "have conspired . . . to harass, intimidate, frighten, prosecute, slander, and defame" those who publicized the nature of the religious movement.

The newspaper claims that the Southern Land Development and Leasing Corporation bought the Fort Harrison Hotel, a downtown Clearwater landmark, and vacated the Bank of Clearwater building while concealing its connection with the Church of Scientology of California. The newspaper and its reporters contend that the Scientologists concealed their real interest in Pinellas County "by false and misleading statements," and subjected the plaintiffs and other reporters "to various improper and illegal acts . . . as retribution for their press coverage of the church." Reported in: *Editor & Publisher,* March 13.

libel

New York, New York

Justice Abraham J. Gellinoff of the New York Supreme Court in March dismissed a $5,000,000 libel suit brought by Justice Dominic S. Rinaldi against the *Village Voice,* but denied motions to dismiss two other defendants and ordered a trial of the issues.

Justice Rinaldi, also of the New York Supreme Court, named as defendants the *Voice,* Jack Newfield, a staff writer for that paper, and publisher Holt, Rinehart and Winston. The justice charged that he had been defamed in a book entitled *Cruel and Usual Justice,* which consists entirely of reprints of articles by Newfield.

In granting dismissal of the suit against the paper, Justice Gellinoff held that it had "merely acquiesced" in the request of Newfield and the book publisher to reprint the articles. The articles characterize Justice Rinaldi as "incompetent and probably corrupt" and "cruel and abusive." Reported in: *New York Times,* March 2.

broadcasting

Washington, D.C.

Last February the U.S. Justice Department joined the side of the cable television industry in a suit against the Federal Communications Commission's latest cable rules. The Justice Department said it considers the regulations anti-competitive and similar in effect to "a private boycott by broadcasters."

The brief of the Justice Department, filed with the U.S. Court of Appeals in support of seven CATV firms, argued that the FCC regulations curb competition by narrowing the choice of viewing options, provide reduced revenues for picture and sports producers, and put cable television at a competitive disadvantage with the networks.

The Justice Department said: "The restrictions imposed

on pay cable were based upon a commission desire not to change significantly any aspect of the present program fare on conventional television."

The Justice Department added that the FCC had failed to justify the restrictions in terms of any immediate need to protect the public, and that the FCC even acknowledged the lack of "a clear picture as to the effects of subscription television on conventional broadcasting." Reported in: *Variety,* February 11.

Hollywood, California

In a preliminary ruling in an action against television's "family hour," U.S. District Court Judge Warren Ferguson refused to dismiss a suit filed by the Writers Guild of America and various producers and directors against ABC, CBS, NBC, and the Federal Communications Commission.

The suit was opposed by FCC attorneys on the grounds that it was formulated on the basis of a rule which the FCC never adopted. They contended that a speech by FCC Chairperson Richard Wiley calling on broadcasters to heed congressional concern over the proliferation of sex and violence on the air was the sole basis for the inclusion of the FCC in the suit.

Judge Ferguson noted: "If the plaintiffs' charges were confined to complaints that the commissioners had merely made suggestions as to programming, the government defendants would have a point. . . . But the plaintiffs allege much more. They contend that the government defendants used their authority and resources to interfere with the private licensees' independence in making programming decisions. That contention is a serious one because it suggests that the broadcasters' status as public trustees has been compromised by the FCC." Reported in: *Variety,* February 18.

obscenity law

Denver, Colorado

After the Colorado Supreme Court ruled unanimously in January that Colorado's obscenity law was unconstitutional, Colorado legislators rushed to fill the gap with a new statute. Three separate draft bills were before the Judiciary Committee of the Colorado House in February. Two of the bills would have made promotion of obscenity to both adults and minors a crime but would have set harsher penalties for promoting obscenity to minors. The third bill, sponsored by Chuck DeMoulin (D.-Denver), applied only to minors.

The Judiciary Committee heard testimony from clergy, parents, librarians, and lawyers before approving the DeMoulin bill. Approval of the measure followed a walkout by six Republican members of the committee who objected to the rejection of the other bills, both drafted by Republicans.

An amendment to the bill which would have required prior civil proceedings to determine obscenity was killed by the committee. Reported in: *Denver Post,* February 6, 11; *Rocky Mountain News,* February 13.

Omaha, Nebraska

In a suit filed in U.S. District Court in March, the operator of the Pussycat Theater charged that the state law under which his establishment was temporarily closed in February is unconstitutional because it imposes "prior restraint on First Amendment-protected materials." Michael Clutter further charged that he had been deprived "of the right to distrubute any press matter whatever, in violation of the right to free press and free speech guaranteed by the U.S. Constitution."

The closing resulted from a temporary injunction obtained in Douglas County District Court by Omaha City Prosecutor Gary Bucchino. Bucchino sought the order on the grounds that the "adult theater," having been convicted repeatedly of selling obscene materials, was a "public nuisance." Reported in: *Omaha World Herald,* March 2.

(Censorship dateline . . . from page 64)

Oakland, California

The headquarters of Safeway Stores revealed in March that a message had been sent to Safeway's twenty-one divisions throughout the country informing them of an article in the March *Atlantic Monthly* entitled "Rip-Off at the Supermarket."

According to magazine distributors around the country, a number of regional managers decided to pull the magazine from their stores because it dealt with supermarket practices that cheat or mislead the customer, including false labeling of weight and prominent display of higher profit foods. The article is a chapter from a forthcoming book by John Keats, *What Ever Happened to Mom's Apple Pie.*

A spokesperson for Safeway emphasized that there had been no order from the corporation to pull the magazine. She said it was routine practice to send "alerts" when there were such articles in magazines sold in Safeway stores.

Garth Hite, *Atlantic's* publisher, said he was informed of the action by magazine wholesalers. "Why in the world Safeway ever pulled this silly stunt, no one seems to know," he commented. Reported in: *New York Times,* March 15.

(From the bench . . . from page 69)

use in therapy sessions. Reported in: *Salt Lake City Deseret News,* January 30.

open meetings

Nashville, Tennessee

In a major ruling on Tennessee's 1974 sunshine law, the

Tennessee Supreme Court held that the statute's "open meetings" provisions apply even to committees of public bodies.

"It is clear," the high court declared, "that for the purposes of this act the legislature intended to include any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to state, city or county legislative action and whose members have authority to make decisions . . . on policy or administration affecting the conduct of the business of the people. . . . "

Nashville's Board of Education had charged that the sunshine law was invalid due to its vagueness and its prohibitions against secret meetings under any circumstances. The case was filed by a teacher who was dismissed after action by the board in secret session.

"We are not impressed," the court said, "by the argument that a citizen-member of a governing body suffers an infringement of his right to free speech by the requirement that any deliberation toward an official decision must be conducted openly." Reported in: *Editor & Publisher,* March 6.

freedom of information

Washington, D.C.

"It is the duty of a judge wherever possible to resolve the rights of citizens upon facts and arguments that are presented in an adversary context exposed to the public with all the protections fair hearing and due process provide," U.S. District Court Judge Gerhard A. Gesell declared in a suit brought under the Freedom of Information Act by the Military Audit Project, which sought to obtain materials relating to the vessel "Glomar Explorer," produced by Hughes Tool Company under contract with the Central Intelligence Agency.

Citing the court's lack of expertise in the area of national defense, and claiming that he was entitled to be better informed on the public record, Judge Gesell said the plaintiffs in the case should address concrete issues, and not expect him to resolve the case on the basis of *in camera* inspection of CIA documents. Reported in: *Access Reports,* March 22.

police spying

Chicago, Illinois

U.S. District Court Judge Alfred Y. Kirkland issued a ruling in March forcing the Chicago Police Department to fully disclose the extent of its surveillance of citizens and organizations not accused of criminal conduct. The decision was handed down in a suit filed against the department by the Alliance to End Repression on behalf of thirty-one plaintiffs.

Judge Kirkland's ruling permitted the alliance to sue on behalf of the entire class "similarly situated," that is, every citizen or group spied upon by the police while not accused of criminal conduct. The decision was expected to open to attorneys tens of thousands of pages of records and files relating to police surveillance.

The suit charged that the police department illegally deprived the plaintiffs of their rights to privacy, free speech, and freedom from unreasonable search. Reported in: *Chicago Daily News,* March 30.

freedom of expression

Concord, New Hampshire

After a federal court ruled in February that it is unconstitutional to require motorists in New Hampshire to carry the state motto "Live Free or Die" on auto license plates, Governor Meldrim Thomson announced that the state would appeal the ruling.

In its comment on the state law requiring motorists to display the motto, uttered by Revolutionary War hero General John Stark, the court said the state forced "an involuntary affirmation" of a philosophical and political idea with which motorists might not agree, and thus violated First and Fourteenth Amendment rights.

The law was challenged by Jehovah's Witnesses who covered the motto on their license plates. Reported in: *Boston Globe,* February 11.

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news council urged to expand role

An independent evaluation committee unanimously recommended in February that the National News Council expand its operations in order to "help blunt any drive to restrict press freedom."

The National News Council was established in 1973 to examine and report on complaints concerning the accuracy and fairness of news reporting in the U.S., as well as to defend freedom of the press. Funded for a three-year experiment by a consortium of foundations, the news council project also provided for the creation of the independent evaluation committee.

In its report, the committee stated: "The virtue we see in the National News Council is that it provides a public sounding board . . . for criticism of individual newspaper stories or television or radio broadcasts which vary from the truth either by deliberate slanting or from want of fair procedures."

Members of the committee included U.S. Appeals Court Judge George Edwards, Dean Burch, former chairperson of the FCC, and Harrison Salisbury, former *New York Times* correspondent.

AAParagraphs

'we will no longer purchase . . .'

Letter to a leading New York publisher from a Southern high school principal (with copies to his school superintendent and school librarian):

> Dear Sir:
>
> This is to let you know that as a result of the profanity in your book, _____, by _____ _____, we will no longer purchase books from your company.
>
> Sincerely yours . . .

An isolated case from an atypical community ready to condemn everything coming from a publishing house because it takes exception to a single book? Unfortunately not. Publishing executives tell AAP's Freedom to Read Committee that such off-with-your-heads communications are anything but rare these days. They come over the signatures of educators and librarians; often they are represented as speaking for sizable jurisdictions whose schools or libraries intend to boycott a publisher's entire output because they find fault with a tiny fraction of it.

Mindful of the growing frequency of such occurrences—and of other thinly-veiled censorship threats to schools and libraries—Chairman Simon Michael Bessie of AAP's Freedom to Read Committee has established a Schools and Libraries subcommittee. Named as its chairperson is Jean Karl, vice president and director of the Children's Book Department of Atheneum Publishers, herself no stranger to letters like the one at the head of this column. Serving on the subcommittee will be James Bowman (McGraw-Hill), Toni Morrison (Random House), and Harrison Bell (Harper & Row).

The subcommittee is too new to have formulated statements or guidelines. But no doubt it and the parent FTR Committee can expect soon to confront a plate full of problems caused by individuals and groups, often self-appointed, who believe that their taste in literature or textbooks must be everyone's taste and that books for which they have distaste should be removed from shelves or modified to suit their preconceptions.

The activities of Ms. Karl's subcommittee will be reported upon in this space from time to time. Those who know her know that she well recognizes the right of different communities to have differing tastes in books and to select those to be used within their jurisdictions. But she knows also that no area is completely homogeneous and that no two families will agree completely on what their children should read—not to mention the children's own reading tastes.

And, Ms. Karl would say, communities that object to one work from a publisher ought to be mindful of the fact that that very same publisher probably has been preparing and issuing books on many other subjects—perhaps even another book taking a different approach to the subject of the one objected to. In short, the Karl subcommittee can be expected to maintain that a publisher's total output cannot and should not be judged on the basis of one book.

That a tax-supported community enterprise—whether school or library—cannot buy all books is self-evident. But the choices on what to buy, rather than bowing to the views of a few would-be censors, should represent a wide variety of outlooks and a basic understanding that the fundamental principle underlying book publishing is the presentation of a broad spectrum of views and opinions.

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

(Foundation . . . from page 56)

relative to the depiction of sex and nudity in magazines and books; and (2) in not applying Iowa law in the determination of the contemporary community standards applicable to the case. . . .

"The juror reaches his verdict by applying the definition of obscenity given him by the judge to the facts introduced into evidence, on a contemporary community standard. He draws on his own knowledge as to the views of the average person in the community, just as he does when he determines the propensities of the 'reasonable' or 'average' person in other areas of decision making. *Jurors do not have such standards on their tongues; nor do they wear them on their sleeves; they are inborn and often undefinable.* [Emphasis added.]

"This is not to say that no questions can be asked the jury panel in this area, but only that specific ones tendered here were impermissible. They smacked of the law, of casuistry, of the ultimate question of guilt or innocence, rather than the qualifications to serve as a juror, bias, etc. . . . "

California librarians 'have relief'

In an opinion filed at the end of January, the California Court of Appeal, Second District, declared that the plaintiffs in *Moore* v. *Younger* cannot appeal the judgment *"in their favor"* handed down by Superior Court Judge Robert P. Schifferman. Judge Schifferman's January 1975 ruling exempted California librarians from their state's "harmful matter" law.

"Plaintiffs . . . have achieved all that they could expect as a result of their attack on the statute as librarians: the [lower] court held that it does not apply to them," the appeals panel said. "Their arguments against the [constitutionality of the] statute were advanced solely in behalf of librarians and on this appeal they have no standing to raise possible complaints of others."

In commenting on the acknowledgment of the appeals panel that librarians are indeed exempt from the "harmful matter" statute, Foundation President Richard L. Darling said, "The Foundation appears to have won as broad a victory as possible in the California courts. When it agreed one year ago to appeal the decision of Judge Schifferman, the Board of Trustees was aware that it would be difficult to obtain a review of a basically favorable ruling. Nevertheless, before forgoing further legal action, we will attempt to cement our gains through further negotiation with the attorney general."

President Darling also expressed his pleasure that the Court of Appeal had ordered its opinion published. The fact that Judge Schifferman's decision was not published was one of the elements which entered into the decision of the Board of Trustees to appeal his ruling.

Plaintiffs in the action are Librarians Everett T. Moore, Albert C. Lake, Robert E. Muller, Chase Dane, and the Rev. Charles J. Dollen; the Board of Library Commissioners of the City of Los Angeles; the Los Angeles Public Library Staff Association; the California Library Association; and the American Library Association. The defendant is Evelle J. Younger, the state attorney general.

panel asks laws to restrict press gags

Concluding that attempts by trial judges to restrain the press from covering criminal proceedings "constitute a growing threat to freedom of the press," a group of lawyers, journalists, and judges in March outlined legislation that would strictly regulate the manner in which state court judges could issue gag orders against reporters.

Under the proposal, submitted by the Twentieth Century Fund's Task Force on Justice, Publicity, and the First Amendment, the supreme court in each state would be required to establish a committee to draft a "standing order," or mandatory guidelines, to be followed by the courts in attempting to avoid prejudicial publicity.

The Twentieth Century Fund's proposal differs from that under consideration by the American Bar Association, whose guidelines have been opposed by many major news organizations. Under the Twentieth Century Fund's plan, the "standing order" would apply directly to lawyers and court officials, but not to members of the press. Reported in: *New York Times,* March 16.

Judge urges press to fight gag orders

In a telephone address to an Ohio Newspaper Association meeting in February, U.S. District Court Judge Harold R. Medina urged the news media to "fight like tigers every inch of the way" against gag rules imposed by the courts to restrict coverage of criminal proceedings.

"Stand fast on the First Amendment freedom of the press," the eighty-nine-year-old jurist declared. "This is the law of the land. Stick to it and do not deviate from your course. No compromise, no concessions."

Medina, who said that concessions by reporters may already have done serious damage, commented: "Our whole destiny as a nation depends upon our keeping freedom of the press and freedom of speech inviolate, and upon our doing everything in our power to prevent the erosion and weakening of these rights." Reported in: *Chicago Tribune,* February 22.

ABA delays action on gag rules

The American Bar Association House of Delegates approved February 17 a recommendation of its standing committee on association communications to defer consideration of a report on gag orders submitted by its legal advisory committee on fair trial and free press. The report will be taken up at the ABA's annual meeting next August.

Edmund D. Campbell, chairperson of the communications committee, commented that pending litigation in the U.S. Supreme Court might affect the subject matter of the report, and that requests from the news media organizations for postponement of action by the association were not unreasonable.

The American Newspaper Publishers Association has opposed various guidelines drafted by the ABA. "We cannot endorse anything which denigrates the rights and responsibilities of the press under the First Amendment," ANPA Chairperson Harold W. Andersen told the ABA. Reported in: *Editor & Publisher,* February 28.

Cornell faculty condemns treatment of Ky

A special faculty committee on academic freedom at Cornell University issued a report in March which concluded that freedom of speech on the campus had been violated when Nguyen Cao Ky, the former vice-president of South Vietnam, was shouted off a campus stage in December 1975.

The report was issued just a few days before a scheduled appearance of William H. Colby, whose speech was expected to encounter heckling.

The report attempted to define the rights of students who disagreed with the appearance of a controversial speaker: distribution of leaflets outside the meeting room, peaceful picketing, boycotts, submission of pointed questions, and, within limits set by the moderator, expressions of displeasure with evasive answers.

"Exercise of the right of free speech ought not to depend on the speaker's willingness to endure prolonged, massive verbal hostility and a shouted collective demand to leave, lasting over two minutes," the report said, referring to the Ky incident. Reported in: *New York Times,* March 7.

(Dissenting justice . . . from page 59)

notion that in a free society, the worth of an idea or form of expression is measured not by the willingness of the state to tolerate it, but rather by the willingness of the individual to receive it. "The constitutional right to free expression . . . is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with out premise of individual dignity and choice upon which our political system rests. . . . To many, the immediate consequences of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance. These are, however, within established limits, in truth necessary side effects of the broader enduring values which the process of open debate permits us to achieve. . . . That is why '[w]holly neutral futilities . . . come under the protection of free speech as fully as do Keats' poems or Donne's sermons,' *Winters* v. *New York* (1948), 333 U.S. 507, 528 (Frankfurter, J. dissenting), and why 'so long as the means are peaceful, the communication need not meet standards of acceptability.' *Organization for a Better Austin* v. *Keefe,* 402 U.S. 415, 419 (1971)." *Cohen* v. *California,* 403 U.S. 15, at 24-25 (1971).

Maryland Senate approves textbook review bill

Rejecting arguments that it was encouraging censorship, the Maryland Senate voted March 10 to adopt a bill that would allow parents to examine textbooks and other instructional materials before they are made available to public school students. The legislation, which went to the Maryland House, would require public school systems to establish a procedure for public hearings on instructional materials to which parents object.

The bill was widely opposed by educators throughout the state. And three educators in the Senate–Robert Stroble, Clarence W. Blount, and Robert L. Douglass–argued that the bill was not needed because Maryland parents already had the right to examine books used in public schools.

Charles W. Willis, executive director of the Maryland Association of Boards of Education, said his organization believed the bill would foster "an administrative nightmare." School systems would incur vast expenses in purchasing display materials, he contended, since most publishers do not provide free samples.

Those who sponsored the bill, including Senators John Coolahan, Peter Bozick, and Thomas Miller, rejected claims that they were imposing censorship on the schools. The bill "just allows the public, which pays for the material, to look at it first," they said.

Bozick said his interest in the question of review was prompted by the violent conflict in Kanawha County over instructional materials. Reported in: *Baltimore Sun,* March 11; *Washington Post,* March 11.

House kills television coverage

The Rules Committee of the House of Representatives voted in March to kill–apparently for the year–a proposal for live television coverage of House sessions. The panel voted nine to six to send the measure back to a subcommittee after members voiced fears that television would not cover House affairs with impartiality.

The measure would have authorized the House speaker and a four-member committee to contract with the commercial networks and public television to provide gavel-to-gavel coverage.

Representative John B. Anderson (R.-Ill.) said the resolution was killed "on the basis of intramural House Democratic politics." Speaker Carl Albert said he supported the broadcasting of proceedings, but he refused to grant authority to govern it to a committee. "I want ultimate authority in the speaker," he said.

Representative John Young (D.-Tex.), author of the move to send the bill back to the subcommittee, questioned, "Just what protection do we have against the camera showing only one side of an argument?"

Anderson stated that there was no possibility of drafting a bill that would provide the type of coverage members desired without violating constitutional guarantees of press freedom. Reported in: *Chicago Sun-Times,* March 25.

FBI reveals burglaries of socialist workers

In compliance with a court order, the Federal Bureau of Investigation revealed in March that it had burglarized the New York offices of the Socialist Workers Party and its youth affiliate, the Young Socialist Alliance, as often as twice a month for a total of ninety-two post-midnight raids in the early 1960s.

The documents released by the FBI showed that its agents photographed at least 8,700 pages of party files, including financial records and personal letters, during break-ins.

The party filed suit against the FBI after the agency told the Senate's special intelligence committee in Septem-

ber 1975 that 238 burglaries were carried out against fourteen domestic organizations during a twenty-six year period ending in 1968. Reported in: *Chicago Sun-Times,* March 29.

New FBI rules issued

In response to growing complaints about the activities of the FBI, the Justice Department in early March issued guidelines to define the investigative powers of the FBI and end the abuses which were justified under the "preventive action" clause that members of Congress had attacked.

Attorney General Edward H. Levi commented that the "preventive action" section of the guidelines was dropped "to remove the nagging and mistaken belief that [it] might somehow sanction something like" the FBI's much-criticized counterintelligence program (known as COINTELPRO) carried out under J. Edgar Hoover.

"There will be no repeat of COINTELPRO," Levi said. The new rules "represent a conscientious attempt to tie any such domestic security investigations to the goal of crime detection," Levi added. Reported in: *Chicago Sun-Times,* March 11.

crime data rules relaxed

In response to criticism from news agencies and state officials around the United States, the U.S. Justice Department's Law Enforcement Assistance Administration announced in mid-March that it would relax regulations governing the release of criminal information. The agency said it wanted "to strike a balance between the public's right to know such information [and] the individual's right to privacy."

Prior to the announcement, the Justice Department rules required that all government agencies, state and local, adopt tough rules restricting access to criminal records to criminal justice and law enforcement agencies or lose federal funds.

The Justice Department's news release stated: "Under the amended regulations, there are no restrictions on the distribution of conviction data, nor on criminal history information contained in court records of public judicial proceedings. Arrest information where prosecution is pending also would be available."

'input' censored

Apparently, the executive committee of the student body at Washington and Lee University has had its fill of computer-age jargon. Early this year it voted seven to two to ban the words "input" and "feedback" from all student government meetings. The penalties to be imposed are censure and prayers for divine retribution.

more is less

Washington Researchers revealed recently that its Federal Information Index has increased forty-seven percent over the past five years, whereas its Federal Press Release Index has decreased nearly five percent.

Washington Researchers said the indices showed that the amount of information generated by the federal government increased vastly while governmental efforts to make people aware of such information actually decreased. Reported in: *Washington Researchers Information Report,* Winter 1976.

intellectual freedom bibliography

Compiled by REBECCA S. MUELLER, Assistant to the Director, Office for Intellectual Freedom.

"After Crossman We Shall Never Go Back to the Old Indeterminacy," *The Bookseller,* January 31, 1976, p. 326-334.

"Attempt to Reconcile Open Records and Right to Privacy," *FOCUS/Midwest* (v. 11, no. 68), p. 16-21.

Bailey, Gil. "Schmidt Fears Passage of Stripped Down S.1," *Editor & Publisher,* February 28, 1976, p. 29.

Barber, Phil. "Opposition To Secrecy Plan Springs From News Stories," *Editor & Publisher,* March 13, 1976, p. 20.

Bender, Paul. "The Reluctant Court," *The Civil Liberties Review,* Fall 1975 (v. 2), p. 86-103.

Bennis, Warren. "Have We Gone Overboard on 'The Right to Know'?" *Saturday Review,* March 6, 1976, p. 18-21.

Berney, Bruce. "Bicentennial Project From the OLA Committee That Kept You Out of Jail," *Oregon Library News,* January-February 1976 (v. 21), p. 13-17.

Birley, Robert. "Freedom of the Press," *Index on Censorship,* Spring 1976 (v. 5), p. 32-40.

"Censorship–The Malady Lingers On: A Parent Speaks," *Today's Education,* March-April 1976 (v. 65), p. 52-54.

Crooks, Joyce. "Civil Liberties, Libraries, and Computers," *Library Journal,* February 1, 1976 (v. 101), p. 482-487.

"Curriculum Battle: Who's In Control?" *Education U.S.A.*, March 22, 1976 (v. 18), p. 175.
"Decision Opens Gag Order Door, Editor Contends," *Editor & Publisher,* February 14, 1976, p. 49.
Eddy, William P. " 'Gag' Judge Predicts More Curbs on Press," *Editor & Publisher,* January 17, 1976, p. 10.
Errera, Roger. "A 'Secrets Act' For the USA?" *Index on Censorship,* Spring 1976 (v. 5), p. 50-56.
Ferrier, Pat. "Censorship—The Malady Lingers On: Students Speak," *Today's Education,* March-April 1976 (v. 65), p. 54.
French, Nancy. "California Privacy Bill Covers Private Sector," *Computerworld,* February 16, 1976, p. 2.
"Gag Test Puts Jurists' Philosophies On Scales," *Editor & Publisher,* March 13, 1976, p. 14.
Garwood, Alfred N. "The Confidentiality of Library Records," *New Jersey Libraries,* March 1976 (v. 9), p. 6-7.
Griffith, Carol. "Censorship—The Malady Lingers on: Students Speak," *Today's Education,* March-April 1976 (v. 65), p. 54.
Harter, Stephen and Charles Busha. "Libraries and Privacy Legislation," *Library Journal,* February 1, 1976 (v. 101), p. 475-481.
Haynes, Jean. "Freedom to View: Censorship at the Distribution Level," *Sightlines,* Winter 75/76 (v. 9), p. 4.
Healey, Gerald B. "Editor Warns of Court Ordered Press 'Freedom'," *Editor & Publisher,* February 14, 1976, p. 44.
Healey, Gerald B. "Judge Medina Urges End to Trial Curbs on Press," *Editor & Publisher,* February 28, 1976, p. 14.
Hill, I. William. "ANPA: High Court Won't Put 6th Ahead of 1st," *Editor & Publisher,* March 20, 1976, p. 10.
"How Much Should We Tell? Some Implications of Medical-Legal Reference," *Bay State Librarian,* December 1975 (v. 64), p. 12-13.
"The Intelligence Report," *Editor & Publisher,* February 28, 1976, p. 9. (editorial)
Killenberg, George M. "Murph the Suft Could Decide Gag Order Issue," *Editor & Publisher,* February 28, 1976, p. 24.
Kosinski, Jerzy, "Against Book Censorship," *Media & Methods,* January 1976 (v. 12), p. 20-24.
Kosinski, Jerzy, "The Writer's Focus," *Index on Censorship,* Spring 1976 (v. 5), p. 46-49.
Krug, Judith F. "Censorship—The Malady Lingers On: A Librarian Speaks," *Today's Education,* March-April 1976 (v. 65), p. 48-49.
Laseter, Ernest P. "Texas and the 'Right to Read': The Ector County Case," *Texas Library Journal,* January 1976 (v. 52), p. 4-5.
Leighton, J.M. "Censorship: One or Two Points in Favor and Some Against," *Index on Censorship,* Spring 1976 (v. 5), p. 41-45.
Luebke, Barbara F. "Textbook Censorship: New Aspects," *Freedom of Information Center Report,* February 1976 (no. 349), 8 p.
Lukas, J. Anthony. "Watergate Revisited: Dismantling Cold-War Confidentiality," *The Civil Liberties Review,* Fall 1975 (v. 2), p. 74-81.
McClain, Wallis E., Jr. "Sunshine Law Works in Missouri—Most of the Time," *FOCUS/Midwest,* (v. 11, no. 68), p. 14-15.
McKinven, Mary Jane. "Used for Censorship," *American Libraries,* March 1976 (v. 7), p. 137.
Martin, Sandra. "Limits to Freedom?" *Oklahoma Librarian,* January 1976 (v. 26), p. 6-28.
Mazer, Norma Fox. "Comics, Cokes, and Censorship," *Top of the News,* January 1976 (v. 32), p. 167-170.
Monroe, Hamilton, "What If? The Texas Librarian and Texas Law," *Texas Library Journal,* January 1976 (v. 52), p. 6-8.
Morris, Dan. "Censorship or Responsible Book Selection," *SCLA Data* (Suffolk County Library Association), Winter 1975 (v. 31), p. 14.
Newmyer, Jody. "Art, Libraries and the Censor," *The Library Quarterly,* January 1976 (v. 46), p. 38-53.
"No Easy Answers," *School Library Journal,* March 1976 (v. 22), p. 53. (editorial)
Packer, Rod. "Censorship—The Malady Lingers On: Teachers Speak," *Today's Education,* March-April 1976 (v. 65), p. 49-51.
Pilpel, Harriet F. "Legal Rights of Minors," *SIECUS Report* (Sex Information and Education Council of the U.S.), January 1976 (v. 4), p. 2.
Pilpel, Harriet F. and Laurie P. Rockett. "Libel, Advertising and Freedom of the Press," *Publishers Weekly,* March 1, 1976 (v. 209), p. 46-48.
"Possible 'Dangerous' Use of Privacy Act is Cited," *Editor & Publisher,* January 31, 1976, p. 9.
Ruane, Don. "The ABA and Gag Guidelines," *Freedom of Information Center Report,* January 1976 (No. 348), 8p.
Savage, Noel. "News Report 1975: Intellectual Freedom," *Library Journal,* February 15, 1976 (v. 101), p. 584-585.
Shibi, Haim. "Presidential Television," *Freedom of Information Center Report,* January 1976 (No. 347), 7p.
Simpson, Imogene. "A Survey: The Influence of Censorship on the Selection of Materials in the High School Libraries in the Third Education District in Kentucky," *Kentucky Library Association Bulletin,* Fall 1975 (v. 39), p. 9-13.
Smith, Jodi E. "Freedom Corner," *Florida Libraries,* January-February 1976 (v. 26), p. 4.
Stein, M.L. "Courts Can't Be Trusted With Right to Know," *Editor & Publisher,* February 28, 1976, p. 30.
"Soaring British Book Prices—And Two Different Kinds of Censorship Cases," *Publishers Weekly,* February 23, 1976, p. 67.

"Suggested Duties of the WLA Intellectual Freedom Committee," *Wyoming Library Roundup,* December 1975 (v. 30), p. 4.

Wagner, Susan. "The First Amendment: Espionage and Obscenity Provisions in S. 1 Pose Threat, AAP Warns," *Publishers Weekly,* March 8, 1976, p. 24.

Wood, Nell. "Censorship–The Malady Lingers On: Teachers Speak," *Today's Education,* March-April 1976 (v. 65), p. 51-52.

Yuill, Phyllis. "Little Black Sambo: The Continuing Controversy," *School Library Journal,* March 1976 (v. 22), p. 71-75.

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