Co-editors: Judith F. Krug, Director, and Roger L. Funk, Assistant Director, Office for Intellectual Freedom, American Library Association

ISSN 0028-9485

September 1977 □ Vol. XXVI □ No. 5

ALA protests federal obscenity measure

Widely dubbed "Son of S. 1," the current version of the proposed "codification" of the federal criminal code, S. 1437, incorporates a section on obscenity that provides none of the safeguards for First Amendment rights repeatedly recommended by the ALA. As a consequence, the following statement was submitted in June to the Senate Subcommittee on Criminal Laws and Procedures, chaired by Senator John L. McClellan (D.-Ark.). For McClellan's remarks on the nature of S. 1437, as well as those by Senator Edward Kennedy (D.-Mass.), see the Congressional Record *for May 2, 1977, pp. S 6833-41.*

Founded in 1876, the American Library Association is the oldest and largest library association in the world. It is a nonprofit, educational organization representing over 35,000 librarians, library trustees, and other individuals and groups interested in promoting library service. The Association is the leader of the modern library movement in the United States and, to a considerable extent, throughout the world. It seeks to improve libraries and librarianship and to create and publish literature in aid of this objective.

The right to know

Libraries are repositories of knowledge and information, and are established to preserve the records of the world's cultures. In the United States, under the First Amendment, libraries play a unique role by fulfilling the right of all citizens to have unrestricted access to these records for whatever purpose they might have. The Association's interpretation of the First Amendment as it applies to library service is set forth in the *Library Bill of Rights.* Under this interpretation, it is the responsibility of the library to provide books and other materials presenting all points of view concerning the problems and issues of our times. The *Library Bill of Rights* further states that no library materials should be proscribed or removed because of partisan or doctrinal disapproval, and that the right of an individual to the use of the library should not be denied or abridged because of age, race, religion, national origin or social or political views.

In sum, libraries foster the well being of citizens by making information and ideas available to them. It is not the duty of librarians to inquire into the private lives of library patrons, nor is it their duty to act as mentors by imposing the patterns of their own thoughts on their collections. Citizens *must* have the freedom to read and to consider a broader range of ideas than those that may be held or approved by any single librarian or publisher or government or church.

(Continued on page 144)

Published by the ALA Intellectual Freedom Committee, Zoia Horn, Chairperson

titles now troublesome

books and curricular materials

America in Legend . . . . p. 133
Conception and Contraception . . . . p. 133
Foolproof Birth Control . . . . p. 133
The Girls in the Office . . . . p. 133
In the Night Kitchen . . . . p. 134
The Joy of Sex . . . . p. 132
Men and Women . . . . p. 133
More Joy of Sex . . . . p. 132
Population, Evolution and Birth Control . . . . . . p. 133
Portnoy's Complaint . . . . p. 133
The Relearning . . . . p. 134
Sex . . . . p. 133
Sex Is for Real . . . . p. 133
The Sexual Revolution . . . . p. 133
Vasectomy . . . . p. 133

Periodicals

Hustler . . . . p. 142
Oui . . . . p. 132
Penthouse . . . . pp. 132, 142
Playboy . . . . pp. 132, 142
Playgirl . . . . p. 132
Sport . . . . p. 133
Waupun World . . . . p. 140

Films

The Devil in Miss Jones . . . . p. 142
Deep Throat . . . . pp. 142, 143

Television

Saturday Night . . . . p. 142

On stage

The King and I . . . . p. 143

IFC reports to Council

In its report to the ALA Council at the 1977 Annual Conference in Detroit, the Intellectual Freedom Committee recommended action on the White House conferences on library services and on the recent wave of concern over "kiddie porn."

As usual, the Intellectual Freedom Committee arrived at the 1977 Annual Conference with a lengthy and complex agenda; and also as usual, other matters were awaiting our arrival. This Conference, some of the new agenda items were not a surprise–they deal with *The Speaker*, as you know, and had been heralded in the library press well before we stepped into Detroit. The Committee, of course, discussed *The Speaker*. If these matters come before Council, the Committee's recommendations will be reported for your information.

In my Midwinter report to Council, I stated that the Committee would use the four months before this Conference to attempt to resolve any perceived conflicts between the "Resolution on Racism and Sexism Awareness" and the *Library Bill of Rights*. As a first step, we indicated that comments and suggestions would be sought from all units of the Association and particularly from the intellectual freedom committees of the Young Adult Services Division, the Association for Library Service to Children, the American Library Trustee Association, and the American Association of School Librarians. We have be receiving statements during this Conference, and some are yet to come. With this being the situation, the Committee determined that it was impossible to begin its own consideration at this time. It was, therefore,

> *VOTED*, That an Intellectual Freedom Committee subcommittee be appointed to develop a statement representing a compatible synthesis of the concerns of the "Resolution on Racism and Sexism Awareness" and the *Library Bill of Rights*, the draft to be presented to concerned unit representatives for their discussion at Midwinter 1978, and that this Intellectual Freedom Committee subcommittee report back to the IFC at Midwinter 1978.

Miriam Braverman, Elliot Shelkrot, Stephen Oppenheim and Grace Slocum, chairperson, were appointed as the subcommittee. The following procedural steps were also approved: (1) the subcommittee will prepare a draft before Midwinter 1978 for circulation to all units expressing a concern; (2) at Midwinter, the representatives of concerned units will meet with the subcommittee to discuss the draft; (3) the subcommittee will present its recommendation to

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

Newsletter on Intellectual Freedom is published bimonthly (Jan., March, May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, Illinois 60611. Subscription: $8 per year. Change-of-address, undeliverable copies, and orders for subscriptions should be sent to the Subscription Department, American Library Association. Editorial mail should be addressed to the Office for Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611. Second Class postage paid at Chicago, Illinois and at additional mailing offices.

the IFC following its meeting(s) with unit representatives; and (4) the IFC will report to Council at the 1978 Annual Conference.

The last two items in my report are for action. The first relates to the state conferences on library and information services and is before you as Council Document 62: "RESOLVED, That the ALA Council strongly urges the State Library Agencies and the ALA Chapters to plan appropriate inclusion of the principles of intellectual freedom in the agenda of all state conferences leading to the White House Conference on Library and Information Services." [The resolution was adopted by the Council.]

The final item recommended by the IFC is Council Document 65, a statement on recent legislation to control the sexual abuse of children. [The statement was adopted by the Council. The full text appears below.]

Respectfully submitted,
FLORENCE MCMULLIN
IFC Chairperson

Members of the 1976-77 IFC were: Joseph J. Anderson, Miriam Braverman, Robert F. Delzell, Zoia Horn, Priscilla S. Moulton, Stephen L. Oppenheim, Elliot L. Shelkrot, Grace P. Slocum, Karl Weiner, Ella G. Yates, and Florence McMullin, chairperson.

Members of the 1977-78 IFC are: Dorothy Bendix, Miriam Braverman, Richard M. Buck, Tyron D. Emerick, Jeanne English, Susan Kamm, Priscilla S. Moulton, Stephen L. Oppenheim, Elliot L. Shelkrot, Grace P. Slocum, and Zoia Horn, chairperson.

on legislation to protect minors

The ALA statement below–approved by the Council–was recommended by the IFC and the IFCs of the Young Adult Services Division and the Association for Library Service to Children.

The intense and widespread concern about the abuse of minors through child pornography created political pressures for immediate legislative remedies. The ALA statement addresses itself to the problems created by sweeping measures with broad and ill-defined offenses that would have a chilling effect on the development and use of sex education collections.

As this issue of the Newsletter *went to press, bills had been passed and awaited gubernatorial signature in at least three states–Delaware, Illinois, and New York. And more were expected.*

The American Library Association is in accord with the *intent* of proposed legislation that would make it illegal for adults to recruit and use minors in circumstances that constitute their sexual exploitation and/or sexual abuse.

Consistent with this intent, the American Library

(Continued on page 144)

the controversy over 'The Speaker'

"*The Speaker* is a film not only about the concept of freedom of expression," states the discussion guide to the Intellectual Freedom Committee's new First Amendment film, "but also about the personal torments each of us experiences in learning tolerance for ideas we detest. Because this emotional aspect of freedom of expression cannot be ignored, the value of *The Speaker* will depend upon its ability to allow people to think and talk openly about their own experiences–and their personal reservations."

About the ability of *The Speaker* to promote discussion, at least, there can be little doubt. After it was shown to the members of the ALA Executive Board at their spring meeting in Chicago, the board engaged in a long closed-session debate. At the close of the meeting, they decided to delay the film's release until it could be evaluated by the membership at the 1977 Annual Conference. A few days later, after a telephone conference call, the board rescinded its vote to postpone release.

The air buzzing with rumors, many members came to the Detroit Conference ready to engage in the debate they knew would follow the film's first major screening. And debate there was–long and sometimes bitter, involving the Intellectual Freedom Committee, the membership, the ALA Council, and, once more, the ALA Executive Board.

In successive votes on motions to remove the ALA name from *The Speaker,* the IFC, the membership, and the Council voted to retain the ALA imprimatur on the work. At its last session in Detroit, however, the Council approved "the spirit" of a resolution proposed by IFC member and Councilor Ella Gaines Yates. The Council recommended that an introductory statement be added to the film which would "clarify" that the film was made for "discussion and teaching purposes without intention to offend any racial or ethnic group." The Council also called for statements from the Black Caucus for incorporation into the film discussion guide.

Full coverage of the discussion of *The Speaker* can be found in the July/August 1977 issue of *American Libraries.*

•

Preview request for *The Speaker* (16mm, color, 42 min., $495) should be directed to: Office for Intellectual Freedom, American Library Association, 50 E. Huron St., Chicago, IL 60611. There is no charge for preview privileges.

Foundation supports Long Island suit, two actions in California

In a report prepared for the ALA Council at the 1977 Annual Conference, retiring Freedom to Read Foundation President Richard L. Darling presented an account of the business conducted by the Foundation Board at its regularly scheduled summer meeting on June 15. The first item in his report (edited for publication here) concerns new developments in Moore *v.* Younger, *a Foundation suit made especially urgent by recent police action against Palos Verdes libraries (see* Newsletter, *July 1977, p. 99).*

In my last several reports I told the Council that we were waiting, in the case of *Moore* v. *Younger,* for an opinion requested from the California Attorney General by the State Librarian, affirming that he construed the Superior Court decision in a manner that exempted librarians from criminal liability under the California "harmful matter" statute. A favorable opinion would have meant that the case was finished. An unfavorable one would force us to return to the federal court, where we began in 1972.

After months of delay, Attorney General Younger finally responded. He reaffirmed his original opinion given in 1972–the court decisions to the contrary notwithstanding–that libraries, librarians, and library employees are *not* exempt from prosecution under the "harmful matter" statute.

We have exhausted our alternatives in the California State courts. Our only hope now of eventual success in *Moore* v. *Younger* is to return to the federal court which had directed us to pursue relief in the state courts. The road ahead may be as long as that we have already travelled, though we hope not. The research is done, however, and the briefs with which we were successful in the state courts will only need to be updated. A favorable action in federal court will have more widespread implications, in any case. On Wednesday, the Board of Trustees directed us to return to federal court and carry the case as far as we need to go.

Smith v. U.S.

By now you know from press reports that the U.S. Supreme Court, by a five-to-four vote, upheld the conviction of Iowan Jerry Lee Smith in *Smith* v. *U.S.* . . . The Supreme Court, in upholding Smith's conviction, ruled that the jurors' "own knowledge of the views of the average person in the community" are the source of applicable community standards. Since a jury is not selected until after an act has been committed, there is no way of knowing from what community they will be selected or of determining what community standards apply. . . .

Censorship on Long Island

The third case discussed by the Foundation Board was *Pico* v. *Board* of Education, better known as the Island Trees School District case, filed by the New York Civil Liberties Union on behalf of students.

At Midwinter the Board of Trustees authorized the Foundation to enter this case in whatever way would be most effective. We sought to file a suit on behalf of librarians as a class but were unable to find a librarian with standing in whose name the case could be filed. Repeated attempts to find other ways to become involved were similarly frustrated. Despite criticism in the library press that the Foundation was failing to act in this case of flagrant censorship affecting libraries, every effort was made to enter the case.

We held a meeting last month in New York City with representatives of the Civil Liberties Union, the New York Library Association Intellectual Freedom Committee, and the Foundation, and have agreed to file an *amicus* brief on behalf of the students at the appropriate time. Executive Director Krug has asked the president of the ALA Young Adults Services Division, who was present at the meeting, to request that the appropriate group in that division assist us by identifying the issues concerning young people's rights that should be addressed.

In the meantime, the case has not progressed. The NYCLU filed the case in the New York State courts. The Island Trees Board of Education succeeded in having it moved to federal court, but to date the lawyers for Pico have taken no further action, either to accept the federal court jurisdiction or to have the case returned to the state court. Until they do, nothing can happen on the issues, and we can only wait.

Violence in the media

The new case discussed by the Foundation was *Niemi* v. *NBC.* The case derived from the NBC television program entitled "Born Innocent," which some of you may have seen. The program concerned a girl in trouble who at one point in the broadcast was confined in an institution for delinquent girls. In one scene, the girl was the victim of an artificial rape. The program subsequently dealt with her escape from the reformatory and her later problems. One of the messages of the program was clearly the lack of safety provided by such institutions.

A few days later Olivia Niemi, a minor, was the victim of a similar artificial rape at a beach. One of the perpetrators of this act said she had seen or had heard about the broadcast of "Born Innocent," and on that ground Niemi's mother sued NBC.

NBC won in the lower court, but when Niemi appealed, the network asked us to file an *amicus* brief relating to the First Amendment issues involved. The Executive Committee of the Foundation, acting on behalf of the Board of Trustees, decided we should do so.

The implication of this case for librarians is clear. If the

(Continued on page 145)

Smith v. U.S.: the implications for libraries

Following the decision of the U.S. Supreme Court in Smith *v.* U.S. *(reported fully in the July issue of the* Newsletter), *ALA and Freedom to Read Foundation General Counsel William North prepared the following analysis of the case for the IFC and the FTRF Board of Trustees.*

The final paragraphs summarize the risks under current obscenity law–as fashioned by the Supreme Court–and present recommendations for both librarians and library boards.

The *Smith* case was supported by the Freedom to Read Foundation and the American Library Association in the Court of Appeals for the Eighth Circuit and in the Supreme Court to further consider and clarify certain issues presented or created by the Court's decision in *Miller* v. *California,* 413 U.S. 15 (1973), establishing that "obscenity" was a "question of fact" to be measured by the "contemporary community standards of the community." Among the specific issues posed by the *Smith* case deemed relevant to libraries and librarianship, as well as the broader interests of intellectual freedom and the right to read, were the following:

1. What is the community from which the applicable community standards must be derived?

2. May a state, by legislation, define the applicable standards for all communities in the state?

3. What showing must be made to prove the community standards by which a literary or pictorial work is to be judged?

4. Do state law and the standards established thereby preempt the application of federal law?

5. What is the nature of the "knowledge" which will satisfy the requirement of scienter *for criminal prosecution?*

As a consequence of the decision in the *Smith* case, all of these issues have been clarified, albeit *not* in the way the Foundation and the Association desired. The implications of the *Smith* case in respect of each of the foregoing issues may be summarized as follows:

1. The Court confirmed the definition of the "community" utilized in *Hamling* v. *U.S.,* 418 U.S. 87 (1974), as the "community or vicinage from which [the juror] comes. . . ." This means that the "community" for purposes of the determination of whether sexually explicit materials are constitutionally protected is defined solely by the composition of the jury hearing the case. Depending on the geographical area from which such jury is drawn, the jury may represent many towns, villages and cities, or it may represent merely one municipality or even one neighborhood. Moreover, since the community standards are derived by the juror's ". . . own knowledge of the views of the average person in the community or vicinage from which he comes," it must follow that those standards are not ascertainable until after the jurors are selected. This being so, there can be no ascertainable community from which "community standards" may be derived until *after* the act which is alleged to offend those standards has occurred and prompted criminal prosecution.

Thus, the *Smith* case clearly holds that a distributor of sexually explicit material may be criminally prosecuted and convicted of violating community standards which he could not have identified prior to his prosecution.

2. The Court held that the state legislature was not entitled to define the applicable standard of appeal to prurient interest for all communities in the state. The Court recognized the authority of the state to define the kinds of conduct to be regulated but refused it the right to define the criteria by which such conduct is to be deemed "reasonable" or as involving "prurient appeal." To the extent a state legislature desires to influence the determination of community standards, it must do so, not by defining the standards themsleves, but rather by defining the area from which the jury could be selected or by legislating with respect to jury instructions, provided such instructions do not define the community standard to be applied.

Thus, the *Smith* case clearly holds that the state legislation may not be relied upon to define the community standards by which the criminality of the dissemination of sexually explicit material will be measured.

3. The Court held that the only showing which the prosecution is required to make to convict is the work itself. In the *Smith* case the prosecution introduced into evidence the materials covered by the indictment–materials which depicted nude males and females engaged in intercourse, masturbation, fellatio, and cunnilingus. It offered no other evidence on the issue of obscenity or on the "community standards" which should be applied.

Thus, the *Smith* case clearly holds that once the offending material has been introduced into evidence, the prosecution has satisfied completely its burden of proof on the issue of obscenity and has absolutely no obligation to prove that such material is contrary to community standards.

4. The Court held that a state policy permitting consenting adults access to obscene matter did not foreclose criminal prosecution under federal law even when the entire distribution occurred intrastate.

Thus, the *Smith* case clearly holds that state statutory exemptions from liability under obscenity and harmful matter statutes do not foreclose prosecution under federal statutes which do not have comparable exemptions. Moreover, notwithstanding the suggestion of the Supreme Court in *Paris Adult Theatre I* v. *Slaton,* 413 U.S. 49, 64 (1973), that "the states are free to adopt a 'laissez-faire' policy and drop all controls on commercialized obscenity, if that is

what they prefer," such freedom is really meaningless in view of the fact that it merely changes the forum of prosecution from the state courts to the federal courts, at least to the extent the mails and/or interstate commerce are involved.

5. The Court makes it clear that the only knowledge required to permit criminal prosecution is knowledge that a literary or pictorial work contains representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, and/or representations or descriptions of masturbation, excretory functions, and exhibition of the genitals. Moreover, the disseminator of a work may be presumed to have such knowledge, albeit not conclusively.

It is *not* necessary for a person to have knowledge or belief that the representations or descriptions are patently offensive or lewd, or inconsistent with community standards. A good-faith belief that the work had serious literary, artistic, political or scientific value will not avoid conviction if the jury believes the work does not have such value.

Risks and liabilities

The significance of the *Smith* case to librarians is enormous in that it appears to clarify, at least until there is a change in the Supreme Court composition, the nature and scope of the risks and liabilities of disseminating works which may be deemed sexually explicit. The *Smith* case makes clear:

(Continued on page 145)

S. 1437 troubles reporters' group

In a June 21 appearance before the Senate Subcommittee on Criminal Laws and Procedures, Jack C. Landau—representing the Reporters Committee for Freedom of the Press—charged that S. 1437 "is an official secrets act which would give the government wide ranging new criminal powers to severly restrict the First Amendment rights of the press to report—and the public to receive—the news.

"[S. 1437] retains the same basic philosophy and most of the same provisions of the 1973 and 1975 versions of S. 1 [and S. 1400]" except for the espionage act provisions, Landau declared. "This official secrets act philosophy—conceived mainly by the Nixon administration—was and is that the government should have the power to protect itself from public criticism and embarrassment. . . ."

Landau's criticisms focused on these points:

• On Section 1358 on "Criticizing a Public Servant": "It would be a crime for a news organization or news reporter to publish a news report or editorial which 'improperly' 'attacks' a government employe, causing him any financial damage, such as suspension, reassignment or job termination."

• On "Violations of Illegal Gag Order," Sections 1331 and 1335: "This bill would make it a crime for a news person or news organization to publish a news article or editorial in violation of a court order later declared void."

• On Section 1331 on "Contempt": "The bill would make it a crime for a news reporter or news organization to refuse to obey an illegal court order requiring the disclosure of confidential news sources by testimony or by revealing notes and out-takes."

• On Section 1333, "Refusing to Testify or Produce Information": "The bill would make it a crime for a news reporter or news organization to unsuccessfully challenge an order issued by a court, a legislative proceeding or an agency, seeking testimony or unpublished notes or film identifying confidential news sources."

• On Section 1331, "Hindering Law Enforcement": "This bill would make it a crime for a news reporter or news organization to refuse to give information, notes or news film out-takes to law enforcement officials, grand juries or courts, if the information involved confidential sources who were known to have committed a crime or to be criminal suspects."

• On Section 1733, "Publishing 'Stolen' Government Reports": "The bill would make it a crime for a news reporter or news organization to publish a 'stolen' government report if the reporter or news organization derived any profit from the publication of the report."

• On Section 1344, "Illegal Possession of Any Original Government Memorandum": "This bill would make it a crime for a news reporter or news organization to possess any original government memorandum or document."

• On Section 1301, "Obstructing the Government's Purported Information Control Function": "The bill would make it a crime for a news reporter or news organization to publish any government information without permission."

• On Section 1525, "Government Employes Cannot Leak 'Private' Information to the Press": "It would be a crime for a past or present government employee to tell the press about government or non-government crime or other news based on 'private' information submitted to the government in confidence."

• On Section 3807, "Sealing Conviction Records": "The Federal courts are authorized to permanently seal public arrest, indictment and conviction records of first-offenders under twenty-one years of age convicted of possessing heroin and other drugs, if they are placed on probation."

Landau was the only press spokesperson to appear before the subcommittee. Reported in: *Editor & Publisher,* July 2.

AAParagraphs

no "Miller" liberalization

With regard to freedom of sexually-oriented expression, the news from the U.S. Supreme Court, where a seemingly unshakable five-judge majority continues to hold sway in criminal obscenity matters, is not reassuring. This year's series of cases had appeared to present the Court with an opportunity to tinker with—and perhaps to liberalize somewhat—the standards of obscenity laid down in *Miller* v. *United States.* Instead, in three cases, the *Miller* majority if anything tightened the repressive structure they have established, throwing down the gauntlet to would-be reformers.

In the *Smith* case, the majority was presented with the inconsistency of federal authorities "nullifying" the very local standards that were the supposed linchpin of the *Miller* structure. Yet without batting an eye they affirmed federal preemption where the result was to broaden the criminal enforcement of obscenity laws. In so doing, they strengthened the unreviewable discretion of local juries to make their own findings on obscenity, even where such findings ignore state law.

In the *Ward* case, the majority appeared to renege on its own promise—another central feature of the *Miller* structure— that no one will be subject to criminal obscenity charges *unless* the regulating state law *"specifically defined"* the "hard core" conduct that would be considered subject to prosecution.

In the *Splawn* case, the majority reaffirmed the ever-dangerous doctrine—first devised in *Ginzburg* v. *United States*—that evidence of "pandering" to prurient interests in the creation, promotion or dissemination of material is relevant in determining whether the material is obscene.

The good news from Washington is that the three traditional dissenters—Brennan, Marshall, and Stewart—have been joined by the Court's newest justice, John Paul Stevens, in their unswerving opposition to the structure of obscenity law devised in *Miller* and extended this term in *Smith, Splawn,* and *Ward.*

The bad news underlying this good news is the strong impression that at least the three traditional dissenters have despaired of persuading the majority even to tinker with or liberalize the *Miller* regime of censorship. Their spokesman, Justice Brennan, continues to write the briefest of opinions, ignoring the unique circumstances of the obscenity cases that are under consideration and simply reiterating the view, first stated in 1973 when *Miller* was decided, that no statutory scheme that censors materials that consenting adults wish to view is proper under the Constitution.

Even Justice Stevens, whose willingness to grapple with the issues in dissent and to reach out for new solutions to the "intractable" obscenity conundrum comes as a welcome breath of fresh air in the stultifying rigidity of the traditional schism on these issues (the other three dissenters pointedly did not join Stevens in three of his dissenting opinions), seems to hint that what he believes will be the "ultimate downfall" of *Miller* may not come from the Court as currently composed.

The horrifying, yet somehow expectable, results of this year's Supreme Court obscenity decisions might support the view that—in general—it would be better if no cases were brought to the Supreme Court for a period of time. This may be so. However, one case (*Ballew*) is already on the 1977 docket for argument next term, and it is almost inevitable that other cases will be appealed to the Court and that at least a few will be accepted for argument and decision.

Accordingly, it would seem unwise to abstain from further *amicus* brief writing on the theory that the cases cannot be won. One simply must take into account the apparent lessons of this disastrous term; carefully select the cases in which to intervene; and take pains to define positions in light of the realities of litigation before the Court as now constituted.

This column, contributed by the Freedom to Read Committee of the Association of American Publishers, was written by the committee's counsel, Henry R. Kaufman.

Cleveland mayor fights smut

Using the services of Cleveland's garbage collectors last June, Mayor Ralph J. Perk distributed nearly 300,000 questionnaires to Cleveland citizens to determine "community standards" on obscenity.

"I am shocked by the shameful, pornographic materials which are invading our city and neighborhoods," Mayor Perk stated in the questionnaire's cover letter. "For years, I have led a fight to stop these immoral magazines, books, and films, but we have been frustrated because offenders have been released by the courts with a slap on the wrists. Their excuse is that the law is unclear. The Supreme Court of the United States has given us a tool to use that will help us greatly. It has ruled that each city has the right to determine what can be sold and what cannot be sold in its area. Only by fully using this new freedom [sic] can we drive this filth from our streets."

Saying that he was "declaring a war on pornography," Mayor Perk asked Cleveland residents to respond to more than a dozen yes-no questions on obscenity.

In its section on books, magazines or films which "appeal to a shameful or morbid interest in sex," the questionnaire asked: "Books, magazines or films which are obviously designed to cater to sexual interest to the exclusion of other values, like literary, artistic, political or scientific. Do these appeal to a shameful or morbid interest in sex?" "Books, magazines or films which are successful

only in arousing an interest in sex to the exclusion of other interests. Do these appeal to a shameful or morbid interest in sex?"

Although Mayor Perk implied that the results of the poll would be useful in court, at least one Cleveland judge said the results would be inadmissible, in part due to the inflammatory statements in the cover letter.

Judge Edward F. Katalinas, administrative judge of the Cleveland Municipal Court, said: "The mayor is baiting a response. He has clued [local citizens] in on what he wants to hear. He's told them the literature covered in the survey is pornographic. He's setting them up. It's hardly objective."

Katalinas, who reportedly would like to run for mayor, also volunteered that the mayor's questionnaire was probably a shrewd political move. "He's trying to show himself as the white knight," Katalinas said, referring to Perk and his plans to run for reelection in November.

Materials banned at airport

In a related move, Mayor Perk banned the sale of sexually oriented magazines and books on city property. Within hours of the order, several magazines and books disappeared from airport newsstands. Among the titles were *Playboy, Playgirl, Oui, Penthouse, The Joy of Sex,* and *More Joy of Sex.*

In an editorial condemning the mayor's action, the *Cleveland Plain Dealer* stated: "What is offensive to the mayor does not necessarily offend others of the millions who use the airport. Perk is wrong to decide for them. For example, four of the banned magazines alone sold more than 5,000 copies a month at the airport. Perk should not choose what these or other patrons may or may not buy." Reported in: *Cleveland Plain Dealer,* June 10, 18; *New York Times,* June 13.

Justice Department: can't help Marchetti

The U.S. Department of Justice has decided that it cannot help Victor Marchetti, author with John D. Marks of *The CIA and the Cult of Intelligence,* in his efforts to dissolve an injunction that prevents him from speaking or writing about classified material that he obtained when he was a Central Intelligence Agency employee without first having it cleared by the agency.

In a letter sent to Marchetti's attorney, Melvin L. Wulf, Barbara Babcock, the new head of the department's civil division, said, "I don't think there is anything that we can do about the injunction against Mr. Marchetti at this point."

Wulf, a former American Civil Liberties Union attorney, tried to have the injunction reversed as " a relic of the totally discredited Nixon regime and the Nixon Department of Justice." Wulf said the decision was important in that it places the Carter administration's Department of Justice in support of the action against Marchetti.

Babcock also stated in her letter that she could not promise that the department would not seek a similar injunction against another CIA official, Philip Agee, if he returned to the U.S. Agee, author of *Inside the Company: CIA Diary,* escaped the censors by publishing his book abroad. He had been living in England since 1972, but was recently deported for unspecified reasons of "national security" and now lives in the Netherlands.

The CIA and the Cult of Intelligence was published with 168 deletions insisted upon by the CIA and upheld by the federal courts. Reported in: *New York Times,* June 21.

Sakharov asks amnesty for political prisoners

Andrei Sakharov, the Nobel Peace Prize winner and leading Soviet dissident, petitioned the Kremlin in early June to declare a nationwide amnesty for political prisoners on the occasion of the USSR's new constitution. The appeal, signed by fifty-six political and religious activists, was issued at a time when Soviet authorities appeared to be ready to crack down on the dissidents in response to President Jimmy Carter's human rights campaign.

Sakharov told the ruling Politburo and the Supreme Soviet—the country's rubber-stamp parliament—that it is an almost universal tradition to free political prisoners when a new national constitution is approved. (The official Novosti press agency announced that the new Soviet constitution includes a bill of human rights guaranteeing freedom of religion, press, and speech, but only if they do not "prejudice the socialist system.")

Objectionable painting includes Solzhenitsyn

A painting by a prominent Soviet artist which portrays Aleksandr I. Solzhenitsyn in prison garb along with other figures consigned to historical obscurity by the Kremlin

(Continued on page 146)

helpful matter

Professor Thomas L. Tedford of the University of North Carolina at Greensboro has prepared a annotated bibliography covering books on freedom of speech. In addition to analytical and historical works, the bibliography includes works on such special topics as defamation, academic freedom, and broadcasting.

The four-page compilation is available from the Speech Communication Module of the ERIC Clearinghouse on Reading and Communication Skills, 5205 Leesburg Pike, Falls Church, VA 22041.

censorship dateline

libraries

Cobb County, Georgia

The Cobb County school board decided in May to review library purchasing procedures after school officials disclosed that they had removed several copies of a book on American folklore from library shelves in response to complaints about "objectionable" passages.

The book, *America in Legend* by Richard M. Dorson, was the object of complaints from local political figures and several parents.

Former Powder Springs Mayor Bobby Waters charged that the book "condones draft dodging" and is "terrible for children." Parents complained about the song "Casey Jones," which contains several stanzas describing the fabled railroad engineer's sexual prowess.

Superintendent Kermit Keenum said the book was purchased by the system on the basis of reviews in professional publications. Board member John McClure declared that any book purchased in the future should be "reviewed in its entirety" because "you're going to get freaks in the American Library Association just like any place else." Reported in: *Atlanta Journal,* May 27.

Rockville, Maryland

Sport magazine was removed from Montgomery County's elementary and junior high schools after a staff review of several issues concluded with an unfavorable verdict. Reportedly, the review was initiated after an elementary school librarian complained about the May issue–devoted to sex in sports–but Nancy Walker, director of instructional materials, said the action was not taken on the basis of one number. "Even *Time* or *Newsweek* can have one objectionable article," Walker declared.

Walker said a review of several issues of the magazine determined that there is "a pattern . . . the whole scope [of which] is far more adult." Walker also instructed senior high librarians to review their subscriptions.

In a statement to the *Montgomery County Sentinel,* the editor of *Sport,* Berry Stainback, said there was no attempt on the part of *Sport* "to get rid of young readers." He explained that the magazine was "just trying to be more honest about what's happening in sports. The next issue, for instance, was 'Greed in Sports.' " Reported in: *Montgomery County Sentinel,* June 23.

Brighton, Michigan

The Brighton school board has unanimously voted to remove all sex education books from the high school library. Works removed in May were: *Conception and Contraception* by Jean C. Lipke; *Sex* by Jones, Shainberg, and Byer; *Population, Evolution and Birth Control* by Garrett Hardin; *Sex Is for Real* by Willard Dalrymple; *Vasectomy* by John J. Fried; *Foolproof Birth Control* by Lawrence Lader; *The Sexual Revolution* by McCuen and Bender; and *Men and Women,* issued by Time-Life Books.

The action was taken after a member of the board's steering committee, Pat Ridling, threatened legal action. She argued that the Michigan sex education law prohibits the instruction and dispensing of birth control information through the public schools.

The school's attorney, William McCririe, told the board: "Taken to its logical conclusion, [the law] makes even the *Detroit Free Press* illegal in the library because it has small ads dealing with abortion clinics in it."

Board member Richard Close condemned Ridling's expurgation of several of the books, which she reportedly returned to the library mutilated beyone use. Reported in: *Detroit News,* May 25; *Livingston County Press,* June 1.

St. Marys, Pennsylvania

After a long battle with Librarian Ted Smeal over a "books for adults only" shelf at the St. Marys Public Library, the library board voted in May to "retire" Smeal in February 1978. Rather than work under policies in conflict with the *Library Bill of Rights,* however, Smeal decided to resign.

In reaction to the board's decision, the *St. Marys Daily Press* editorialized: "There are, we have been told, other reasons for seeking the dismissal of Ted Smeal as chief librarian, but we still believe the original dispute or controversy started over books on the shelves. Incidents that have occurred since have no doubt contributed to the decision. . . .

"It is a shame that [after] such a small incident as granting freedom to readers in this nation of 'freedoms' it is found necessary to 'sacrifice' a human being to meet the desired goal. . . ."

At the same meeting at which the board voted on Smeal's "retirement," the board also decided that *The Girls in the Office* and *Portnoy's Complaint* should be put on the "adults only" shelf. Reported in: *St. Marys Daily Press,* May 21, June 10, 13, 14, 16.

colleges-universities

Durham, North Carolina

Winston Broadfoot, director of the Flowers Collection at the Duke University Library and a member of the Intellectual Freedom Committee of the North Carolina Library Association, resigned from the committee in April because he said he could not in good faith attack censorship in other institutions when his own practiced it. Broadfoot had charged earlier that an exhibit of books and graphics from Die Eremitenpresse, Munich, was censored by University Librarian Connie R. Dunlap.

James Rolleston, associate professor of German at Duke and organizer of the exhibit, denied claims that Dunlap had ordered the removal of "offensive" graphics, but he took exception with the reasons Dunlap gave for requesting changes in the display. The university's religious affiliation, and the fact that visitors to the library would come upon the graphics "unprepared," Rolleston said, were insufficient grounds. Rolleston insisted that the first loyalty of a university must always be to the free dissemination of ideas.

In a letter to the provost of Duke University, NCLA Intellectual Freedom Committee Chairperson Judie M. Austin expressed regret at Broadfoot's decision to resign and called the provost's attention to Broadfoot's allegation of censorship.

schools

Springfield, Missouri

A 1971 incident which prompted ALA's policy on the expurgation of library materials was repeated—virtually without variation—in the Springfield schools last spring.

Copies of Maurice Sendak's *In the Night Kitchen* distributed to forty Springfield kindergarten classes were altered with a black felt-tip pen, according to Howard Lowe, director of curriculum development. "We had an artist draw some shorts [on the drawings of a nude boy] because we thought it would be in a little better taste for the community standards," Lowe explained.

Lowe said the decision to add the clothes to the nude drawings in the book was made jointly by staff members and approved by Wanda Gray, director of elementary education. "Obviously we felt there would be a reaction, so we decided that if the book could be changed without altering it severely, we would do it." Lowe said. "We didn't want to detract from the story. We felt it was a good story."

Gray said she did not want to risk offending parents or groups. "I think in the public schools we have to be sensitive to the feelings of people," she commented. "As far as nudity is concerned I guess I'm an old fogey, but I think it should be covered."

Lowe said he did not believe that the school system had engaged in censorship. "I feel it's a form of using materials that normally wouldn't have been used."

Providence, Rhode Island

James E. Humphrey, whose latest book of poetry, *The Relearning,* was nominated for both the 1977 Pulitizer Prize and the National Book Award, knows it's not easy to teach poetry in the schools—and that for more reasons than one.

In a recent attempt to teach poetry in classes at South Boston High School, Humphrey faced more than the predictable problem (described by Humphrey in these terms: "Poetry gets destroyed in the elementary schools. . . . People grow up thinking poetry has to have a sing-a-song"). When he used *The Relearning,* several teachers complained that the book is vulgar, and a group of parents who agreed informed the South Boston Information Committee.

"My poems basically deal with love and how we love one another, and that also includes sex," Humphrey responded to the criticisms. "But it's written in a clean way, and there's nothing dirty about it."

Although Humphrey stopped using the book at the request of the school's director, the withdrawal did not halt the community's criticism. Humphrey reported that he received two threatening telephone calls, as well as a letter stating: "We warn you. Don't teach or die." Reported in: *Chicago Sun-Times,* July 13.

art exhibits

Chicago, Illinois

Women artists in the Artemisia Art Cooperative withdrew from a scheduled show in the John Hancock Center in June to protest censorship by building officials. The artists took their works down just hours before the show was scheduled to open.

A John Hancock Center official had objected to nudity in five photos exhibited by artist Jan Wenger. Members of the cooperative voted fourteen to seven to withdraw the entire show in response.

"There's more nudity on display in magazines for sale in the Hancock Center than there was in our show," said Lucia Beier, a coordinator of the Artemisia Gallery.

A statement issued by John Briggs, public relations director of the center, stated:

"The John Hancock Mutual Life Insurance Company [owner of the center] regrets any misunderstanding that may have arisen over the removal of several nude photographs. . . .

"As with all exhibits placed on display at John Hancock Center for public interest and enjoyment, the company reserves the right to exclude any material that might prove offensive, particularly to children who are residents in the center or visitors to the observatory and to other areas."

Elaine A. King, an Artemisia coordinator, replied, "The pictures are not sexual pictures or erotic pictures. There's

(Continued on page 142)

from the bench

U.S. Supreme Court rulings

In a series of First Amendment decisions handed down in the closing weeks of its 1976-77 term, the U.S. Supreme Court gave new protection to commercial speech; decided that former President Richard Nixon's rights were not violated by the Presidential Recordings and Materials Preservation Act signed into law by former President Gerald Ford; defined new rights for union members; and continued its recent tradition of cracking down on obscenity.

Ads for legal services

Determining that traditional bans on legal advertising are more a matter of etiquette than legal ethics, the Court invalidated an Arizona Supreme Court disciplinary rule which prohibited attorneys from advertising in newspapers and other media.

In an opinion written by Justice Blackmun and joined by Justices Brennan, White, Marshall, and Stevens, the Court decided that lawyers should be able to publish advertisements about the availability and prices of "routine" legal services, such as uncontested divorces, adoptions, and personal bankruptcies.

The Court ruled that the usual arguments against legal advertising are inadequate to support the suppression of all "commercial speech" by attorneys. The case before it, the Court said, did not involve any questions concerning solicitation or advertising as to the quality of legal services, but only the question whether lawyers may advertise prices for routine services. The Court also concluded that the advertisement of legal services is not inherently misleading: ". . . advertising does not provide a complete foundation on which to select an attorney. But it seems peculiar to deny the consumer, on the ground that the information is incomplete, at least some of the relevant information needed to reach an informed decision." (*Bates* v. *State Bar of Arizona*, decided June 27)

"Offensive" ads

In a ruling which invalidated a New York State education law making it a crime for anyone to sell or distribute contraceptives to persons under sixteen, for anyone other than a licensed pharmacist to distribute contraceptives to persons over sixteen, and for anyone, including pharmacists, to advertise or display contraceptives, the Court held that the potential "offensiveness" of information regarding contraceptives does not justify its suppression.

In the portion of the opinion pertaining specifically to First Amendment rights, which was joined by Justices Stewart, White, Marshall, Blackmun, and Stevens, Justice Brennan wrote:

"Appellants contend that advertisements of contraceptive products would be offensive and embarrassing to those exposed to them, and that permitting them would legitimize sexual activity of young people. But these are classically not justifications validating the suppression of expression protected by the First Amendment. At least where obscenity is not involved, we have consistently held that the fact that protected speech may be offensive to some does not justify its suppression. . . . As for the possible 'legitimation' of illicit sexual behavior, whatever might be the case if the advertisements directly incited illicit sexual activity among the young, none of the advertisements in this record can even remotely be characterized as 'directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.' . . . They merely state the availablility of products and services that are not only entirely legal, but constitutionally protected." (*Carey* v. *Population Services International*, decided June 9)

The Nixon papers and tapes

In its adjudication of former President Nixon's First Amendment attack on the Presidential Recordings and Materials Preservation Act, the Court rejected claims that the act necessarily entails invasion of Nixon's constitutionally protected rights of associational privacy and political speech.

The opinion of the Court was written by Justice Brennan and joined in full by Justices Stewart, Marshall, and Stevens. In the portion pertaining to the First Amendment, which Justices White and Powell also joined, the Court declared:

"It is of course true that involvement in partisan politics is closely protected by the First Amendment . . . and that 'compelled disclosure in itself can seriously infringe on privacy and belief guaranteed by the First Amendment.' But a compelling public need that cannot be met in a less restrictive way will override those interests . . . 'particularly when the free functioning of our national institutions is involved.' . . . Since no less restrictive way than archival screening has been suggested as a means for identification of materials to be returned to appellant, the burden of that screening is presently the measure of his First Amendment

claim. The extent of any such burden, however, is speculative in light of the Act's terms protecting appellant from improper public disclosures and guaranteeing him full judicial review before any public access is permitted. . . . As the district court concluded, the First Amendment claim is clearly outweighed by the important governmental interest promoted by the Act.

"For the same reasons, we find no merit in appellant's argument that the Act's scheme for custody and archival screening of the materials 'necessarily inhibits [the] freedom of political activity [of future Presidents] and thereby reduces the "quantity and diversity" of the political speech and associations that the nation will be receiving from its leaders.' It is significant, moreover, that this concern has not deterred President Ford from signing the Act into law, or President Carter from urging this Court's affirmance of the judgment of the District Court." (*Nixon* v. *Administrator of General Services*, decided June 28)

Unions restricted

Ruling on a complex labor case involving the rights of Detroit teachers under an agency shop authorized by the Detroit board of education, the Court declared that union members cannot be compelled to make contributions to political purposes to which they object. "For at the heart of the First Amendment," the Court stated, "is the notion that an individual should be free to believe as he will, and that in a free society one's belief should be shaped by his mind and his conscience rather than coerced by the State."

Noting that freedom of belief is "a fixed star in our constitutional constellation," the Court said First Amendment principles firmly prohibit a state from compelling an individual to affirm a belief in God, or to associate with a political party, etc., as a condition of retaining public employment. And these principles, the Court added, "are no less applicable to the case at bar, and they thus prohibit the appellees from requiring any of the appellants to contribute to the support of an ideological cause he may oppose as a condition of holding a job as a public school teacher."

The Court concluded: "We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or towards the advancement of other ideological causes not germain to its duties as collective bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment." (*Abood* v. *Detroit Board of Education*, decided May 23)

Prisoners' rights restricted

There is no First Amendment principle which requires a state to let prisoners solicit memberships in a prisoners' union or permit prisoners to receive bulk mailings about the union, the Court declared in its ruling on a suit filed by the North Carolina Prisoners' Labor Union Inc.

Justice Rehnquist, joined by Chief Justice Burger and Justices Stewart, White, Blackmun, and Powell, declared:

"The prohibition on inmate-to-inmate solicitation of membership [in the union does not] trench untowardly on the inmates' First Amendment speech rights. Solicitation of membership itself involves a good deal more than the simple expression of individual views as to the advantages or disadvantages of a union. . . . If the prison officials are otherwise entitled to control organized union activity within the prison walls [for reasons of security], the prohibition on solicitation for such activity is not then made impermissible . . . for such a prohibition is then not only reasonable but necessary."

The Court also rejected the trial court's reasoning that bulk mailings to the inmates concerning the union must be permitted because bulk mailings were permitted for materials from the Jaycees, Alcoholics Anonymous, and the Boy Scouts. The Court stated: "Affidavits indicate exactly why Alcoholics Anonymous and the Jaycees have been allowed to operate within the prison. Both were seen as serving a rehabilitative purpose, working in harmony with the goals and desires of the prison administrators, and both had been determined not to pose any threat to the order or security of the institution. The affidavits indicate that the administrators' view of the union differed critically in both these respects."

Justice Marshall, who was joined by Justice Brennan, dissented. He said the Court's decision took "a giant step backwards" toward the day when prisoners were regarded as mere slaves of the state.

"Once it is established that traditional First Amendment principles are applicable in prisoners rights cases," Marshall wrote, "the dispute here is easily resolved. The three-judge court [below] not only found that there was 'not one scintilla of evidence to suggest that the union had been utilized to disrupt the operations of penal institutions,' as the Court acknowledges, it also found no evidence 'that the inmates intend to operate [the union] to hamper and interfere with the proper interests of government' or that the union posed a 'present danger to security and order.' In the face of these findings, it cannot be argued that the restrictions on the union are 'imperatively justified.' " (*Jones* v. *North Carolina Prisoners' Labor Union*, decided June 23)

Obscenity convictions upheld

Rejecting a challenge to Illinois' obscenity statute on the grounds that it lacks the specificity required by the Court's *Miller* guidelines, the Court held that the "intent" of the Illinois court to adopt the *Miller* examples of forbidden depictions was sufficient.

The Court's opinion—written by Justice White and joined by Chief Justice Burger and Justices Blackmun, Powell, and Rehnquist—stated:

"Because the Illinois [Supreme Court] did not . . . expressly describe the kinds of sexual conduct intended to be

referred to under part (b) of the *Miller* guidelines, the issue is whether the Illinois obscenity law is open-ended and overbroad. As we understand the Illinois Supreme Court, however, the statute is not vulnerable in this respect. . . . The Illinois court plainly intended to conform the Illinois law to part (b) of *Miller,* and there is no reason to doubt that, in incorporating the guideline as part of the law, the Illinois court intended as well to adopt the *Miller* examples, which gave substantive meaning to part (b) by indicating the kinds of materials within its reach. The alternative reading of the decision would lead us to the untenable conclusion that the Illinois Supreme Court chose to create a fatal flaw in its statute by refusing to take cognizance of the specificity requirement set down in *Miller.*"

In a dissent joined by Justices Brennan, Stewart, and Marshall, Justice Stevens expressed his exasperation with the reasoning of the majority. Stevens asked what the purpose of *Miller* was, if it was not to invalidate precisely the kind of statute before the Court.

"One of the strongest arguments against regulating obscenity through criminal law," Stevens said, "is the inherent vagueness of the obscenity concept. The specificity requirement as described in *Miller* held out the promise of a principled effort to respond to that argument. By abandoning that effort today, the Court withdraws the cornerstone of the *Miller* structure and, undoubtedly, hastens its ultimate downfall. Although the decision is therefore a mixed blessing, I nevertheless respectfully dissent." (*Ward* v. *Illinois,* decided June 9)

Ruling on a case arising out of California, the Court continued an attack on obscenity begun by the Warren Court in *Ginzburg* v. *U.S.* (1966), in which it was held that "evidence of pandering" could be relevant in determining whether material is obscene.

In an opinion written by Justice Rehnquist and joined by Chief Justice Burger and Justices White, Blackmun, and Powell, the Court held that a section of the California Penal Code which authorized "evidence of pandering" was satisfactorily employed in the case at bar even though it was enacted after the conduct for which the petitioner was tried. That part of the code, the Court concluded, did not create any new substantive offense but merely established what type of evidence may be received and considered by the jury in an obscenity case.

In a dissent joined by Justices Brennan, Stewart, and Marshall, Justice Stevens declared:

"Under any sensible regulatory scheme, truthful description of subject matter that is pleasing to some and offensive to others ought to be encouraged, not punished. I would not send Mr. Splawn to jail for telling the truth about his shabby business." (*Splawn* v. *California,* decided June 6)

In other cases, the Court decided that:

- Incoming international mail may be opened if it is reasonably suspected of containing contraband. Noting that mailed letters do not differ substantially from letters carried on a traveller's person, the Court observed that border searches have not been shown to invade protected First Amendment rights.
- Hugo Zacchini, the "Human Cannonball," can demand damages from WEWS-TV in Cleveland because it filmed and broadcast his fifteen-second act in its entirety without his permission. The Court likened Zacchini's right to a copyright which cannot be appropriated without liability to the owner.

The Court let stand:

- A decision by the Missouri Supreme Court that requires juries for obscenity cases in municipal courts even though offenders have a right to a jury trial in a higher court.
- A lower court ruling that libel suits against newspapers may be tried in a state court far from the paper's home base and predominant circulation area. The Times Mirror Company in Los Angeles thus may be sued for libel in Wyoming by two political figures in that state.
- A decision by the Maryland Court of Appeals overturning the disorderly conduct conviction of a man who was alleged to have made derogatory comments about both blacks and police in a crowded diner.

freedom to march

Chicago, Illinois

Acting in response to a U.S. Supreme Court directive to the Illinois courts, the Illinois Appellate Court in July modified an injunction against Nazi marches in Skokie, a heavily Jewish suburb with nearly 7,000 survivors of Nazi concentration camps.

The three-judge state court said the First Amendment gives the Nazis the right to march so long as they do not wear their party's emblem, the swastika. "Under our Constitution, the public expression of ideas may not be prohibited merely because the ideas themselves are offensive to the hearers," the court said. But the court prohibited the swastika because it found the emblem a symbol of "racial and religious hatred." The court concluded that the swastika, when displayed in a community like Skokie, is in the category of "fighting words" that would "provoke a violent reaction."

Due to Skokie ordinances against marches, however, the Nazis still could not march legally. American Civil Liberties Union lawyer David Goldberger, representing the National Socialist Party of America, said further court action would be necessary.

Frank Collin, head of the Nazi party (and, ironically, a Jew and the son of a survivor of a Nazi camp), commented on the situation: "This is tyranny. We as Americans are being denied our right to demonstrate. What happens tomorrow if somebody finds the peace symbol objectionable?" Reported in: *Chicago Sun-Times,* July 13; *Chicago Tribune,* July 14.

reporters' rights

Baltimore, Maryland

A former editorial employee of the *Baltimore Sun* was restored to his editorial post in June by order of Arbitrator Seymour Strongin. The employee, Ken Gleason, alleged that he was originally dismissed from his post due to editorial disagreements with the management of the *Sun* and expressions of his opinion in independent journalistic reviews.

First hired by the *Sun* in 1969 as an assistant editor of a Sunday news section, Gleason was discharged in 1973 for his failure to attend a scheduled meeting and for absences and tardinesses. When that discharge became the subject of a grievance, the arbitrator ruled in favor of Gleason, who was finally restored to his position by court order.

In 1974, Gleason was demoted to the copy desk and then fired in 1976, again for "tardiness."

Arbitrator Strongin concluded "that Gleason was not discharged for cause, that the grievance must be sustained, and that Gleason should be reinstated [to his editorial post] with back pay."

freedom of information

Washington, D.C.

Information in a government employee's file that might reveal a conflict of interest is a matter of public concern and thus cannot be withheld when requested under the Freedom of Information Act, according to a May decision handed down by Judge William B. Bryant, chief judge of the U.S. District Court for the District of Columbia.

Judge Bryant ruled on a suit filed by the Public Citizen Health Research Group, a watchdog organization, which had asked for certain records pertaining to Marshall Miller, a Labor Department official. The group suspected that Miller had had conflicting interests when he made policy for the Occupational Safety and Health Administration.

The Labor Department had refused to yield Miller's records on the basis of the FoIA exemption giving agencies the authority to deny access to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Judge Bryant said "invasion of privacy" was not the issue: "If the disclosure proves fruitful to plaintiff, then the public interest served clearly outweighs the potential embarrassment caused to Mr. Miller. If the disclosure should clear Mr. Miller . . . the limited intrusion upon his privacy right is justified to sustain the public's confidence in the unbiased, objective formulation of governmental policy." Reported in: *Access Reports*, June 1.

Washington, D.C.

A federal judge has ordered the Central Intelligence Agency and the Department of Justice to prepare a *Vaughn* index of the materials they want to withhold from Sam and Juene Jaffee, who seek documents containing personal information about themselves.

Although U.S. District Court Judge Barrington D. Parker noted that the two government agencies had complied with certain parts of the decision of the U.S. Court of Appeals in *Vaughn* v. *Rosen* (1973), which requires specific justifications for materials withheld under exemptions mentioned in the Freedom of Information Act, he declared that "the untailored, boilerplate descriptions and justifications as well as the serious omissions and inconsistencies found in the affidavits render the government offerings insufficient."

A similar ruling against the Federal Bureau of Investigation was handed down in March by U.S. District Court Judge Charles S. Haight Jr. (see *Newsletter,* July 1977, p. 107). Reported in: *Access Reports,* June 14.

Washington, D.C.

U.S. District Court Judge Gerhard A. Gesell decided in June to remove himself from a Freedom of Information Act case involving access to documents about the Glomar Explorer project. The judge said attorneys for the CIA had been "playing games" with him when they forced him to hold secret hearings in the case last year.

"I think I am compromised in the case," Judge Gesell told a CIA lawyer at a June hearing. "I certainly can't accept your representations any longer and I wouldn't be able to accept the representation of witnesses" who testified in the earlier secret proceedings, Gesell added.

Gesell was angered when the CIA admitted publicly in June that it was "involved" in the secret Glomar attempt to raise a sunken Russian submarine from the Pacific Ocean floor. The agency had earlier claimed before Gesell that even to confirm or deny its involvement would endanger national security. On the basis of the CIA's contentions, the U.S. Court of Appeals ordered Gesell to hold the unprecedented secret hearings. Reported in: *Washington Post,* July 1.

Kansas City, Kansas

Although federal agencies are required to disclose existing records under the Freedom of Information Act, a federal judge held in June that they cannot be required to initiate investigations to resolve questions not answered by those records.

Ruling on a suit filed by Eddie David Cox, a prisoner at a federal penitentiary in Illinois, U.S. District Court Judge William H. Becker said the Justice Department could not be required to make an investigation to determine who put former Attorney General John Mitchell's initials on a 1970 wiretap order.

Cox had asked the Justice Department to give him "records in the Office of the Attorney General which would provide the name of the individual who initialed an

ancillary wiretap dated June 2, 1970." When the Department of Justice said the Attorney General's office did not have any records other than an index card, Cox asked the government "to provide documentation" to prove its contention that Mitchell had initialed the order. Reported in: *Access Reports,* July 12.

libel

Winchester, Tennessee

A federal judge has dismissed a $6 million libel suit against NBC, filed after the network had aired the movie *Judge Horton and the Scottsboro Boys.* District Court Judge Charles Neese said the network had not been proved negligent in broadcasting the work.

"I'm going to fight it," said the plaintiff, Victoria Price Street, after the judgment was announced. She was one of two women allegedly raped by the so-called Scottsboro Boys in 1931 and was the main witness at their trials. One of the trials was the subject of the film, which was shown last January.

Street contended in her suit that the movie had defamed her by suggesting that she lied at the trials, in which nine blacks were sentenced to a total of 130 years. Her attorneys argued that a script writer for the movie had invented sections of dialogue calling Street a whore, a bum, and a perjurer. Reported in: *New York Times,* July 13.

obscenity law

Atlanta, Georgia

Georgia's highest bench has held that a county ordinance designed to eliminate adult theaters through a myriad of licensing standards was an invalid prior restraint on freedom of expression.

The court rejected an argument that the county's ordinance was legitimate under the U.S. Supreme Court ruling which upheld a Detroit zoning ordinance controlling the location of so-called adult enterprises. The Georgia court said that the Detroit case left the market for adult films essentially unrestrained, whereas the ordinance before it was aimed at the total suppression of sexually explicit but non-obscene films. Reported in: *West's Judicial Highlights,* June 15.

New York, New York

In a ruling that condemned part of New York City's campaign against pornography, a federal judge in June barred New York City's police from using obscenity laws to harass three mid-Manhattan bookstores.

U.S. District Court Judge John M. Cannella said that whereas the police department could not be prohibited from making obscenity arrests at the bookstores, the arrests must be made in a manner "not calculated to seriously injure the plaintiffs' business."

The pattern of arrests criticized by Judge Cannella apparently stemmed from a decision of Manhattan District Attorney Robert M. Morganthau that sporadic arrests of alleged violaters of obscenity laws had been ineffective. A campaign was initiated to make repeated arrests at certain locations and to increase prosecution. It was believed that repeated arrests would cause stores to suffer losses that would force them to close.

Commenting on Judge Cannella's ruling, Morganthau stated, "If the effect of the decision is to prevent the prosecution of individuals who repeatedly sell pornographic materials despite arrests, it could seriously affect our ability to limit the sale of pornography in Manhattan."

Judge Cannella said of the police department's action against the stores: "Such law enforcement will run afoul of the Constitution if its purpose is to force a sexually oriented enterprise to cease doing business or to refrain from dealing in presumably protected sexually oriented materials. In those circumstances, such activity constitutes an invalid restraint on First Amendment rights." Reported in: *New York Times,* June 23.

Salt Lake City, Utah

A sharply divided Utah Supreme Court decided in June that "community" or "vicinage" standards on obscenity must be interpreted to refer to less than the whole state. The decision upheld the convictions of four Ogden persons.

The appeal to the Supreme Court was based on three alleged procedural errors: that the trial judge failed to instruct the jury on the required element of *scienter* (whether the defendants "knowingly" sold pornography); that the jury was not instructed that contemporary community standards were statewide standards; and that the judge erred in instructing the jury that children could be considered in evaluating the conscience of the community.

Writing for the majority, Justice Gordon R. Hall declared that the jurors' "vicinage" is clearly less than the total confines of the state:

"The trial court logically determined that such was the jurisdictional area from which the jury was drawn. It is not reasonable to view it otherwise, since as a practical matter, how could any statewide standard applied by a St. George jury, for example, be the same as a statewide standard applied by an Ogden jury."

Dissenting Justice D. Frank Wilkins stated, however, that the effect of Utah's anti-obscenity laws must be uniform throughout the state:

"To convict a defendant of distributing pornographic materials in one part of the state by applying strict local community standards while acquitting a similar defendant in another part of the state because more lenient community standards prevailed would constitute a denial of

(Continued on page 143)

is it legal?

in the U.S. Supreme Court

The U.S. Supreme Court was asked in June to rule on an appellate court decision outlawing private or *ex parte* communications in informal agency rulemaking. The Federal Communications Commission appealed a ruling of the U.S. Court of Appeals for the District of Columbia that agency rules could be invalidated if secret meetings were conducted with any interested parties following publication of proposed rules.

Ex parte communications are forbidden in formal rulemaking by the federal Sunshine Act. Informal rulemaking processes, however, are exempt.

The case before the courts arose when persons in favor of a pay-television system challenged the FCC's authority to issue rules regulating that medium. The issue of *ex parte* communications became important when former FCC general counsel Henry Geller filed a friend-of-the-court brief arguing that the FCC had held illegal secret meetings with interested parties after it had filed public notice of proposed rules. Reported in: *Access Reports*, June 28.

students' rights

Newark, New Jersey

A federal judge here has been asked by a sixteen-year-old high school sophomore to rule on the constitutionality of a state law requiring all pupils to stand at attention while the Pledge of Allegiance is recited in their classrooms.

The student, Deborah Lipp, calls the pledge's description of the U.S. as a repository of "liberty and justice for all" a "lie." She contends that the law's requirement that she stand during the pledge is an unconstitutional denial of her freedom of expression and choice.

Constance Hepburn, a lawyer for the American Civil Liberties Union who represented Lipp, said the law compelled symbolic speech in violation of the First Amendment.

Commenting on her lawsuit, Lipp said: "A lot of people have called me a commie, and say why don't I go to Russia. I love the freedom that I have to do what I am doing right now. I love the freedom to fight a law I don't like. In other countries, I'd have to keep my mouth shut."

In a preliminary ruling on Lipp's suit, U.S. District Court Judge H. Curtis Meanor issued an injunction granting temporary relief to her. Reported in: *New York Times*, June 28.

teachers' rights

Boston, Massachusetts

The executive director of the Civil Liberties Union of Massachusetts announced in June that the group may back a challenge to a new state law requiring teachers to commence each class day in all grades in all schools with a group recitation of the Pledge of Allegiance.

The measure, which was voted into law on June 15 over the objections of Governor Michael Dukakis, was ruled unconstitutional in an advisory opinion of the Massachusetts Supreme Judicial Court (see *Newsletter*, July 1977, p. 108).

The civil liberties official said the challenge would probably occur in the fall, after the opening of school. Reported in: *Boston Globe*, June 17.

Spotswood, New Jersey

A Spotswood teacher announced in June that he would appeal a decision of the Middlesex County school system board not to rehire him. He alleged that he was fired because he showed portions of the film *Roots* to students.

The teacher, Patrick Henisse, coordinator of junior and senior high humanities programs in the Middlesex County system, said Board President Frank Kardashian "told me . . . showing *Roots* was the major cause" for the dismissal. Kardashian, however, denied Henisse's statement but refused further comment on the matter.

The New Jersey Education Association said it would back Henisse in his fight to keep his job. Reported in: *Philadelphia Inquirer*, June 18.

prisoners' rights

Madison, Wisconsin

"Stringent and self-serving censorship" was charged in May by two Wisconsin prison inmates in a suit against various Wisconsin prison officials. Their action was filed in Dane County Circuit Court.

Ernie Bach, legal writer for the *Waupun World*, and Thomas J. Jury, *World* editor, said in their suit that although the *World*, an accredited member of the International Penal Press, is required to carry a statement that

the paper does not necessarily reflect the views of the prison administration, absolutely nothing is allowed that does not reflect the political, penal or personal views of the prison administration or the Wisconsin Division of Correction.

Both Bach and Jury concede that prison officials may impose censorship to protect such legitimate penal concerns as security, order, and rehabilitation. They assert, however, that censorship imposed upon the *World* has gone beyond such concerns and serves the whims and wishes of prison officials.

Bach and Jury contend that they were prevented from publishing information about the low percentage of paroles given and about budget cuts in the Reference and Loan Library's Institutional Service Program when it was considered by the state legislature. Reported in: *Milwaukee Courier,* May 28.

filmmakers' rights

Denver, Colorado

In the first appellate adjudication of the right of filmmakers to protect their notes and working materials, the U.S. Court of Appeals for the Tenth Circuit has stayed a lower court's contempt ruling against Buzz Hirsch, who refused to disclose research materials for his film, *The Karen Silkwood Story.*

Hirsch's materials were gathered during his research into the death of Silkwood, an employee in the nuclear facilities of Kerr-McGee Corporation. Her estate filed suit against the company, which in turn obtained a subpoena for all of Hirsch's notes, film, and recordings. U.S. District Court Judge Luther Eubanks in Oklahoma City granted the subpoena, then cited Hirsch for contempt for his refusal to surrender the materials.

In response to his request for financial and legal assistance, Hirsch received help from the Reporters Committee for Freedom of the Press, the Bill of Rights Foundation, and the Writers Guild of America West. Reported in: *Variety,* June 1.

broadcasting

San Francisco, California

A federal judge in Los Angeles erred last year when he ruled against "family viewing hours," legal representatives of ABC, CBS and others told the U.S. Court of Appeals in June.

U.S. District Court Judge Warren Ferguson ignored the right of broadcasters to engage in self-regulation, the two networks and the National Association of Broadcasters argued in a brief mailed to the appellate court. The two networks and the NAB claimed that they have a First Amendment right to choose self-regulatory efforts over the risk of government regulation. They said it is irrelevant whether broadcasters act cooperatively or individually in responding to actual or threatened regulation.

Judge Ferguson held in November 1976 that the adoption of the family viewing policy constituted improper pressure on broadcasters, a violation of the First Amendment, and a violation of the rights of Hollywood writers. Reported in: *Variety,* June 29.

Washington, D.C.

The Federal Communications Commission was asked in June to extend its Fairness Doctrine to allow responses to televised criticisms of homosexuals.

A San Francisco gay activist group, the Council on Religion and the Homosexual, petitioned the FCC to order a Glendale, California station to air responses to the views of Anita Bryant.

The twenty-one page petition to the FCC alleged that station KVOF-TV aired six hours of programming featuring Bryant and her husband, Bob Green, talking about Save Our Children, their anti-gay campaign. The petition claimed that the station refused requests to allow homosexuals to present their views.

An FCC spokesperson said a ruling could take weeks. Reported in: *New York Post,* June 16.

freedom of belief

New York, New York

Hineni ministries, the national Jews for Jesus organization, filed suit in the New York State Supreme Court in early July to halt the Long Island Council of Churches from disseminating information about Jews for Jesus which the group considers damaging.

The Rev. Jack Alford, executive director of the Long Island Council of Churches, contended that the suit "proves the point that we were making about their tactics." He commented: "The Jews for Jesus would like to deny us our rights protected under freedom of speech and freedom of religion. Theirs is the kind of mentality that has been spawned in some fascist and communist countries."

The suit filed by Jews for Jesus specifically asked for an injunction against the distribution of a letter in which the group is charged with "engaging in subterfuge and dishonesty" and with "mixing religious symbols in ways which distort their essential meaning." The director of Jews for Jesus, Moishe Rosen, said the letter "reflects poorly on the actions of our group, which are anything but dishonest."

Rosen continued: "We feel we are not a threat to Judaism, but we understand why some rabbis might feel we are and feel obligated to denounce us. But we cannot understand why Christian groups are against us. We are simply following a biblical command to preach the gospel." Reported in: *New York Times,* July 2.

obscenity, etc.

Baltimore, Maryland

Hustler magazine has sued the United States Army for banning the publication from Fort Meade's newsstands. James M. Kramon and Andrew J. Graham, lawyers for *Hustler,* filed the $500,000 civil action in U.S. District Court in June.

"*Hustler* magazine is, according to all prevailing indices, very much desired by purchasers of the demographic characteristics of those persons who purchase goods at post exchanges," the lawyers said. Reported in: *Baltimore Sun,* June 10.

Flint, Michigan

The Greater Flint Chapter of the American Civil Liberties Union and a Flint attorney filed suit in June to remove an anti-pornography referendum from an August 2 county-wide ballot. The referendum, supported by fundamentalist churches, was given approval by county attorneys.

The ballot question stated: "As a resident of Genessee County, are you in favor of the elimination of the sale and showing of pornographic, sexually explicit literature and material in Genessee County?"

The question was supported by Stop the Tide of Obscenity and Pornography (STOP), led by the Rev. Lee Vandenberg, president of the Fundamental Ministerial Fellowship. "They say you can't legislate morality, but we do it all the time," Vandenberg stated. "We legislate against litter and immorality, for instance. If there was no immorality, there would not be that kind of legislation."

Vandenberg said he expected the American Civil Liberties Union and some anonymous money to fight the proposal, but he did not look for any effective resistance. "After all," he asked, "who would really speak up for pornography?" Reported in: *Flint Journal,* June 15, 26, July 1.

Memphis, Tennessee

Attorneys for ten persons and five corporations indicted on obscenity charges in connection with the production and interstate shipment of *The Devil in Miss Jones* have asked a federal judge in Memphis to dismiss their indictments or move their trial to another city.

Philip Kuhn, attorney for five of the indicted, said in a motion submitted in June to U.S. District Court Judge Robert M. McRae Jr. that the defendants were "victims" of selective prosecution instituted "maliciously" by former Assistant U.S. Attorney Larry Parrish–now a special prosecutor–and U.S. Attorney Mike Cody.

"This prosecution is merely under the guise of obscenity," Kuhn charged. "It is a deceitful pattern, practice, and procedure deliberately instituted by the Justice Department to segregate and destroy those persons believed to be in organized crime, and thus, the prosecution is trying to imprison selected individuals they know they cannot prosecute any other way."

Other motions submitted by attorneys argued that the trial should be moved because Parrish, who has gained national prominence through appearances on television shows and the lecture circuit, has "poisoned the community."

Defense attorneys also claimed that their clients were subjected to double jeopardy because most of them were indicted and convicted in a similar trial involving *Deep Throat.* Judge McRae was asked to read the entire transcript of the thirteen-week *Deep Throat* trial before ruling on the motions before him. Reported in: *Memphis Commercial Appeal,* June 18; *Memphis Press-Scimitar,* June 18.

Fairfax County, Virginia

Warned by its legal staff of the possible unconstitutionality of a proposed ordinance to force such magazines as *Playboy* and *Penthouse* under the counters of local stores, the Fairfax County Board of Supervisors decided in June to postpone action on the measure to allow time for its "fine tuning."

The board established September 19 as the date for a public hearing on the proposal, which would also outlaw the sale of sexually explicit magazines to persons under eighteen. Board Chairperson John F. Herrity said one purpose of the hearing would be to help determine "community standards" as provided in recent obscenity decisions of the U.S. Supreme Court.

At least one supervisor, Alan H. Magazine, expressed serious doubts about the proposed law: "I'm for it, but I would doubt that it would stand up in court. I'm afraid it treads too closely to abridging First Amendment rights. What is to stop a local jurisdiction from regulating the contents of paperback books based on suggestive covers? I'm not an attorney, but on the basis of the some of the court cases, I think an argument like that could be used." Reported in: *Washington Star,* June 21.

(Censorship dateline . . . from page 134)

no reference to a person, and the body looks like rock sculpture. If the building is so prudish, what about the magazines they're selling down at their newsstands–*Playboy* and *Oui?* If they can accept that, why can't they accept a higher level of art expression?" Reported in: *Chicago Daily News,* June 3; *Washington Post,* June 6.

television

Paducah, Kentucky

Its complaints about the skits on NBC's "Saturday

Night" unsatisfied, the NBC outlet in Paducah, WPSD-TV, decided in June to cancel the series.

In a broadcast statement, WPSD President Fred Paxton declared:

"There are certain boundaries beyond which television should not go. We believe NBC's 'Saturday Night' has gone beyond those boundaries. In our opinion it did so when it made flippant jokes about a tragic airline crash where dozens were killed and hundreds were left grieving. It did so when it made sick jokes about a little girl's eyes being stapled shut. It did so by creating songs and skits as excuses for discussing masturbation, singing about oral sex, and telling about fitting women with working models of male sex organs.

"We have discussed such problems with NBC and asked the network to review its own standards for the program. We advised that if it were not upgraded, WPSD-TV would cancel the program. NBC has declined to make changes.

"We recognize this is all a matter of taste, and that there are widely varying opinions as to where the line should be drawn. Viewers have the right to exercise their taste by selecting from among the programs available to them. Stations have the same right. Indeed, they are charged by the FCC with exercising that right."

on stage

San Diego, California

The King and I is racist in its perpetuation of "negative stereotypes" of Asians, the San Diego Human Relations Commission charged in June in an attack on a summer production of the work.

"*The King and I* does injustice to the positive contributions made by our Asian brothers and sisters," the commission said in a letter to J. Howard Stein, executive director of San Diego's Starlight Opera Company. "We wish to convey to you the great disfavor you have done to the public."

Stein said the opera company's board of directors would reply to the commission. "We certainly didn't write the show, and it's been around for about twenty years now, I guess," Stein said. "There are about twenty reasons we'll be putting on paper for [Commission Chairperson Fred] Martinez in defense of our production."

The commission's letter complained that the play's "use of stilted and pidgin English . . . the mockery made of bowing . . . the portrayal of Buddhism as an inferior religion . . . reinforce negative myths about Asians and Asian-Americans, thus contributing to racism." Reported in: *Los Angeles Times*, June 16.

(From the bench . . . from page 139)

equal protection of the law."

Justice Hall also wrote that errors in instructions to the jury on *scienter* did not represent "prejudicial" errors. Reported in: *Ogden Standard-Examiner*, June 14; *Salt Lake City Tribune*, June 14.

obscenity: convictions and acquittals

Gainesville, Florida

Prosecutors' efforts to determine "local community standards" on obscenity in Gainesville were temporarily halted in June by two acquittals—one a directed verdict by the judge—in the trials of two theater projectionists.

"We lost both cases on technicalities," State Attorney Eugene Whitworth said, explaining that prosecutors were unable to prove that the projectionists were in control of the booths showing allegedly obscene films. "But that doesn't mean we're going to quit trying to decide the standards," Whitworth added. "This is only one step in trying to decide what the public will or will not accept."

Whitworth promised that future efforts would be more successful as more was learned about juries. The city's entire vice squad watched the trials to see weaknesses in acquiring evidence, Whitworth explained. Reported in: *Orlando Sentinel-Star*, June 10.

Covington, Kentucky

Three men who exhibited *Deep Throat* in Kentucky prior to the U.S. Supreme Court's 1973 *Miller* decision have been found guilty for the second time by a federal jury.

Stanley Marks, Harry Mohney, and Guy Weir succeeded in having their first conviction overturned by the Supreme Court on the grounds that they were tried for pre-*Miller* conduct under *Miller* standards, which are more stringent than their predecessors.

In the second trial, the jury found *Deep Throat* to be "utterly without redeeming social value." Reported in: *New York Times*, July 21.

Knoxville, Tennessee

Finding Grady Taylor a "persistent" offender "unwilling to lead a productive life," the Tennessee Criminal Court of Appeals unanimously upheld Taylor's 1975 convictions for showing obscene films. The appeals court overruled more than ten objections to the convictions filed by Taylor's attorneys, including an objection to the trial court's imposition of three consecutive one-year sentences.

The court's opinion was written by Judge Charles H. O'Brien and concurred in by Judges Mark A. Walker and Lloyd Tatum. Reported in: *Lexington* (Kentucky) *Herald*, June 30; *Bristol* (Virginia) *Herald-Courier*, June 30.

Salt Lake City, Utah

Howard Richards, the convicted manager of a Salt Lake City theater, learned when he was sentenced to serve six months in jail that he was also the object of conspiracy

charges filed by Prosecutor Theodore L. Cannon.

Cannon charged Richards and four of his employees with engaging in a conspiracy in connection with the showing of two allegedly obscene films. Such a charge could carry a maximum prison sentence of five years upon conviction. Reported in: *Salt Lake City Tribune*, June 11.

copyright

New York, New York

Ruling on the rights of publishers of copyrighted newsletters, the U.S. Court of Appeals for the Second Circuit held in June that the reporting of financial news based upon copyrighted sources does not enjoy a First Amendment shield.

The suit began when Wainright Securities Inc., which sends copyrighted reports to subscribing customers, sued a weekly newspaper, *Wall Street Transcript*, for publishing excerpts from disclosures about stocks in lengthy Wainright reports (see *Newsletter*, July 1977, p. 109).

U.S. District Court Judge Morris E. Lasker had earlier issued a preliminary injunction against the *Transcript* to protect Wainright's "copyrighted property and to shield it from the unmeasurable consequential damage to its brokerage business, which could flow from making the contents of its research reports known without cost to its competitors, potential clients, and the public."

The editor and publisher of the *Transcript*, Richard A. Holman, said the case would be appealed to the U.S. Supreme Court. Reported in: *Editor & Publisher*, June 25.

(ALA protests . . . from page 125)

Current anti-obscenity laws

In general terms, the American Library Association rejects anti-obscenity laws as unwarranted intrusions upon those basic freedoms which Justice Cardozo once described as the matrix of all our other freedoms. Anti-obscenity laws, which are directed not at the control of anti-social action but rather at the control of communication, represent a form of censorship ultimately aimed at the control of the thoughts, opinions, and basic beliefs of citizens in a free democracy.

Anti-obscenity laws confront American librarians with a very special dilemma. Under the most recent rulings of the U.S. Supreme Court (including *Smith* v. *U.S.*, decided May 23, 1977), the "community standards" by which the obscenity of a work will be determined cannot be ascertained until after the prosecution has been initiated and the jury impaneled.

This means that librarians disseminating works having sexual content must do so at their peril. On the one hand, if they refuse to disseminate a work because they believe it to be obscene, librarians infringe the First Amendment rights of their patrons if that belief is wrong. On the other hand, if they disseminate a work having sexual content, they are subject to criminal prosecution, fine, and imprisonment if a jury ultimately deems the work obscene.

The American Library Association believes that librarians must have the absolute right, free from the chilling effect of the threat of criminal prosecution, to procure and disseminate all works and materials which have not been held obscene by a court of competent jurisdiction, and the right to continue to do so with immunity until they are so held.

This right becomes even more essential to the fair and honest performance of libraries and librarians because of those rulings of the Supreme Court which make clear:

First, that any librarian disseminating any work describing or depicting normal or abnormal intercourse, excretion, masturbation, or the genitals, is vulnerable to federal criminal prosecution, notwithstanding express exemption from such prosecution under state law.

Second, that the determination of a jury that a work is obscene is a question of fact which is substantially unreviewable on appeal.

Third, that the general existence and ready availability of other works substantially comparable in nature, content, descriptions, and representations to the work which prompts the prosecution does not establish that the work in question satisfies community standards.

Fourth, "guilty knowledge," that is, knowledge of the obscenity of the work, is not required for conviction so long as the disseminator is aware that the work includes the descriptions or depictions which the jury ultimately determines to be obscene.

Section 1842 of S. 1437

Although Section 1842 would apply to the non-commercial dissemination of materials in only certain cases, none of the above concerns generated by the rulings of the Supreme Court is eliminated for librarians. Section 1842 applies to dissemination to minors, and library service to minors employs more librarians today than all other forms of library service combined.

Accordingly, Section 1842 of S. 1437 should be amended to exempt librarians or, alternatively, to provide that no criminal prosecution for disseminating an obscene work shall be initiated until the work has first been adjudged obscene in a prior *in rem* proceeding.

(On legislation . . .from page 127)

Association is concerned that the legislation, in seeking to suppress the abuse of minors, not suppress the creation and dissemination of educational and scientific works designed to help young people understand their own physiological development and human sexuality.

For example, books using photographs of minors for the purpose of furthering the understanding of their sexuality and physical development should not be affected by legislation designed to control the abuse of minors.

Librarians who are aware of proposed legislation which might chill the development and dissemination of information and materials, not intended to exploit minors or contribute to their delinquency, should counsel with the Office for Intellectual Freedom.

(Foundation supports . . . from page 128)

plaintiff's arguments are accepted, then the victim of any crime–kidnapping, robbery, rape, murder–could claim damages if the wrong-doers can merely be persuaded to blame their crime on something they read, heard or saw. When you consider the acts of violence with which our literature is filled, it becomes obvious that accepting the view that "monkey see, monkey do" applies to all humankind could only lead to endless and direct censorship. Even admitting that there are sick and deranged people among us, to accept a theory that material which might lead them to act in anti-social ways should be controlled would reduce us all to seeing and reading only that which has been screened for the deficient among us. By implication, we would need psychological profiles on all the patrons of our libraries. Our concern with this case is very real.

The new Board of Trustees for 1977-78 also met on Wednesday and elected its officers. Dr. R. Kathleen Molz was elected president and will be reporting to you at the Council's next meeting at Midwinter.

Respectfully submitted,
RICHARD L. DARLING, President
For the Trustees
Freedom to Read Foundation

(Smith v. U.S. . . . from page 130)

First, that any librarian disseminating any work describing or depicting normal or abnormal intercourse, excretion, masturbation, or the genitals, is vulnerable to criminal prosecution, notwithstanding express exemption from such prosecution under state law.

Second, that the "community standards" by which the obscenity of the work, and therefore the criminality of its dissemination, will be determined cannot be ascertained until after the prosecution has been initiated and the jury has been impaneled.

Third, that the determination of a jury that a work is obscene is a question of fact which is substantially unreviewable on appeal.

Fourth, that the general existence and ready availability of other works substantially comparable in nature, content, descriptions, and representations to the work which prompts the prosecution do not establish that the work in question satisfies community standards.

Fifth, that the jury may determine whether a work lacks serious literary, artistic, political or scientific value, but that this determination may be the subject of appellate review.

Sixth, "guilty knowledge," that is, knowledge of the obscenity of the work, is not required for conviction so long as the disseminator is aware that the work includes the descriptions or depictions which the jury ultimately determines to be obscene.

Recommendations

In practical terms, the decision in the *Smith* case appears to warrant the adoption of some or all of the following policies and procedures to minimize risk that librarians and library administrators and trustees will be criminally prosecuted and convicted under federal and/or state obscenity laws.

First, all library employment agreements and personnel policies should include an agreement that the library will defend and pay all legal costs incurred as a result of the criminal prosecution of a library or library employees as a result of performance of their duties.

Second, within the limits of law the library should agree to indemnify and hold harmless library employees for any or all fines and penalties assessed against them as a result of convictions under the obscenity laws for acts done in performance of their duties.

Third, the library should agree in writing that in the event library employees are imprisoned as a result of convictions under the obscenity laws for acts done in performance of their duties, they shall be retained as employees during the periods of their imprisonment on full salary, with the continuation of all fringe benefits, and their service shall not be deemed interrupted for purposes of pension benefits or contributions or for promotion or salary increases.

Fourth, all works purchased or contemplated for purchase by the library which describe or depict normal or abnormal intercourse, excretion, masturbation, or the genitals, should be identified and submitted to the federal and/or state officials responsible for the enforcement of obscenity and harmful matter statutes for an opinion as to whether the dissemination of such works or any of them would be a prosecutable offense.

Fifth, as to any work, the dissemination of which is deemed prosecutable, the library should seek a declaratory judgment from a court of competent jurisdiction to determine whether the work is unprotected by the First Amendment.

Sixth, in the event the responsible official fails or refuses to provide the opinion requested, the library should file an appropriate proceeding to compel the issuance of such opinion.

The implementation of the foregoing policies and procedures would obviate most, if not all, of the risks posed by the decision in the *Smith* case to library employees and would, at the same time, compel the law enforcement officials and the courts, including the Supreme Court, to recognize the full implications of the rationale of the *Smith* decision.

WILLIAM D. NORTH
General Counsel

Carter orders review of 'secrecy'

In a message delivered to the Federal Bar Association in May, President Jimmy Carter's counsel, Robert J. Lipshutz, announced that the president had ordered a review of the government's security classification policy. According to Lipshutz, the president expected to issue an executive order on new classification standards in late summer or early fall.

"In our view an open government is a better government," Lipshutz stated. He suggested that previous administrations had "gone far beyond the bare minimum" of secrecy needed to protect the nation's security.

Lipshutz also revealed that President Carter intended to supplement the federal Sunshine Act by requiring officials of agencies not covered by the law to log their meetings with special-interest groups and individuals attempting to influence policy. The officials' logs of visitors would then be made public. Reported in: *Access Reports,* June 1.

Bell issues new policy on announcements

U.S. Attorney General Griffin B. Bell disclosed in early July that he had ordered the Department of Justice's publicity office to end its practice of issuing detailed news releases on criminal indictments. Bell explained the new policy in response to questions from the *New York Times:* "In order to avoid any unfairness or appearance of unfairness I have directed the department's Office of Public Information to confine news releases on indictments to the bare essentials of the charge and the defendants without detailing the allegations of the grand jury."

Although Bell acknowledged that detailed news releases contain nothing not in indictments, he said such releases "appear to carry a potential for prejudicing a case against a criminal defendant as they do repeat charges which have not been proven in court without offering the defendants any opportunity to dispute them."

Marvin Wall, chief of the Public Information Office, said there was no intent on Bell's part to limit the news media's access to the Justice Department. "This policy," Bell said, "does not affect the department's responses to requests for information. These will be answered exactly as they have been in the past."

Bell also explained that he had received complaints from lawyers around the country that detailed news releases constituted a form of prejudicial pretrial publicity. Wall admitted, however, that there was no record that a Justice Department news release had upset a prosecution in court. Reported in: *New York Times,* July 5.

(Sakharov . . . from page 132)

prompted a controversy in June which resulted in the postponement of an officially sanctioned exhibition.

The artist, Ilya Glazunov, dissociated himself from his one-person show at Moscow's House of the Artist after Vladimir I. Popov. a deputy minister of culture, and others objected to the canvas, entitled "The Mystery of the Twentieth Century."

The controversial painting depicts Stalin, Khrushchev, Trotsky, and Mao Tse-tung together with other world figures, including John F. Kennedy. The artists' inclusion of Lenin, however, made the handling of the canvas especially awkward for the authorities.

Petition asks freedom for filmmaker

A petition circulated in Paris in July and signed by Alain Resnais, Francois Truffaut, Jean-Louis Barrault, Bertrand Tavernier, and 300 others asked the Soviets to free Russian filmmaker Sergei Paradjanov.

Paradjanov made *In the Shadow of Our Ancestors,* a noted film on Ukrainian folkways. A committee seeking his release noted that he was able to make one other feature, *Sayat Nova,* which was banned in Russia.

The filmmaker was imprisoned in 1974 on various charges, including dealing in icons, homosexuality, incitement to suicide, and molestation of women and children. But the committee insists that the genuine reason for his imprisonment was his interest in national cultures and his refusal to appear as a witness against a Ukrainian nationalist.

AAP worried about Rudenko

In July the Association of American Publishers sent cablegrams to officials in Moscow expressing concern about the trial of writer Mikola Rudenko and another writer named Tikhi. Both are members of the Ukrainian Helskinki Watch Group.

In cables to Leonid Brezhnev and the chairperson of the State Committee of the USSR Council of Ministers on Publishing, Printing, and Bookselling, the AAP urged clemency "in view of Rudenko's distinguished record as a writer and World War II veteran" and asked for information about the charges against him. Reported in: *Chicago Tribune,* June 3; *New York Times,* June 28; *Variety,* July 13.

feds want 'Throat' guilty to pay court costs

The federal prosecutor of the long (fourteen weeks) and costly ($4,500,000) federal trial in Memphis involving *Deep Throat* now wants the guilty defendants to pay part of the court costs. Former Assistant U.S. Attorney Larry Parrish, now a special prosecutor appointed by the new U.S. attorney, filed a petition against the defendants with U.S. District Court Judge Harry Wellford, who presided over the trial.

Mike Cody, the new federal prosecutor, defended the petition by pointing out that costs had been assessed in other federal cases, including the Jimmy Hoffa trial held in St. Louis. Cody also promised to "exercise this authority in future appropriate cases in the Memphis and West Tennessee districts."

In a statement to *Variety,* one of the chief defense lawyers, Philip Kuhn, expressed outrage at the move: "Mr. Parrish put on numerous unnecessary witnesses that were absolutely ludicrous. He shuttled FBI agents here from all over the country and one time had one agent fly to Memphis at the taxpayers' expense from Miami just to testify that defendants boarded a plane in Miami. This was just plain costly and senseless. . . ."

Judge Wellford stated that " it would be the government's responsibility to prove the need of [the seventy-nine] witnesses called in the case." Wellford instructed the federal attorneys to draw up a detailed bill for each of the defendants. Reported in: *Variety,* July 20.

NYT limits 'porno' ads

A new policy severely restricting the size, format, and information of advertisements for supposedly pornographic films was announced in June by *New York Times* Publisher Arthur Ochs Sulzberger.

Calling the advertisements of "adults only" films "as much a blight in print as the displays for pornographic films are a blight on our city streets," Sulzberger said new guidelines would limit ads to the name of the film, the name and address of the theater, the hours of performance, and the label "adults only."

"The decision as to whether to apply these new standards to a particular film will be based on the information in the submitted advertisements themselves, rather than on the films," Sulzberger explained. "Banning advertising for all *X*-rated films would not meet the goals we are trying to achieve. . . .

"The *Times* believes it can distinguish pornographic films from some other contemporary films in which explicit sex is part of a wider appeal and purpose. We have always made such a distinction in our cultural news coverage and criticism.

"We recognize that a small minority of our readers may wish to read the basic announcements about certain films, their hours of performance, and the theaters showing them. The new policy permits that information to be offered, while maintaining the right of the newspaper to judge and act upon the acceptability of the advertisement." Reported in: *New York Times,* June 21.

Although most newspapers in the U.S. reserve the right to edit objectionable advertisements, few dictate the space and kind of copy that will be permitted. Reaction among newspaper editors was mixed. Some deemed the *Times* policy consistent with the traditional right of newspapers to control the content of advertisements, but others found that the policy fell little short of censorship.

Protesting the decision of the *Times,* distributors and exhibitors of sexually explicit films in Manhattan decided to pull all advertising from the newspaper. In a related move, the Adult Film Association of America warned the *Times* that its new policy may subject it to litigation for the recovery of monetary damages under provisions of the U.S. Civil Rights Act. The association's general counsel, Stanley Fleishman, made public a letter to the newspaper.

"The Constitution," Fleishman noted, "contains no suggestions respecting an array of subjects that various local groups would like to have suppressed—sacrilege, un-Americanism, anti-clerical ideas, atheism, communism, racism, and so on. If the *Times* is to censor films dealing with sex, will it next censor films dealing with these offensive subjects also?" Reported in: *Variety,* June 29.

Brazil increases censorship

In an announcement which coincided with Rosalynn Carter's Latin American visit, Brazil's authoritarian military government stated that it will censor all books and magazines sent to the country from abroad.

Police censors were assigned to post offices in major Brazilian cities to determine whether incoming publications "contain material contrary to public order or to morality and good standards of behavior." Materials which do not meet the new test will be confiscated and destroyed.

Although the Brazilian constitution specifically prohibits prior censorship, the new ruling extended a 1970 decree which has affected *Playboy, Penthouse,* and other American and European magazines, as well as a list of more than 350 books, ranging from *The Happy Hooker* to *Quotations from Chairman Mao.*

The country's leading daily, *O Estado de Sao Paulo,* called the order "one more document for fattening up international reports on human rights violations in Brazil."

A Brazilian author, Antonio Houaiss, compared the

order with the Great Wall of China, saying it will "impede the penetration into Brazil of outside news and opinions and make us removed from what people overseas are saying about us." Reported in: *Washington Post*, June 2.

LA Catholics attack 'Soap'

Tidings, the weekly newspaper of the Los Angeles Roman Catholic Diocese, has called upon church members to boycott products advertised on the new ABC television series "Soap." The paper attacked the program as "so saturated with sex" that it could replace violence as "video enemy No. 1."

Tidings, which has a circulation of 70,000, said the program represents a "desecration" of the Catholic religion. The newspaper based its attack on a *Newsweek* review of the show which said it flaunts two promiscuous couples, a transvestite son, and an immoral daughter whose ambition is to seduce a Jesuit priest. Reported in: *Los Angeles Times*, June 21.

intellectual freedom bibliography

"Bernstein and Albert Testify on Censorship, Currency," *Publishers Weekly*, June 6, 1977 (v. 211), p. 39-40.

"Censorship Is Alive and Well in Oregon," *Oregon Library News* (Oregon Library Association), May-June 1977 (v. 22), p. 26-28.

Christenson, Reo M. "McGuffey's Ghost and Moral Education Today," *Phi Delta Kappan*, June 1977 (v. 58), p. 737-42.

Clinton, Bill. "Arkansas' Obscenity Law and Librarians," *Arkansas Libraries* (Arkansas Library Association), June 1977 (v. 34), p. 12-13.

Flygare, Thomas J. "School-Sponsored Student Newspapers Are Entitled to First Amendment Protection," *Phi Delta Kappan*, June 1977 (v. 58), p. 768-69.

Harader, William H. "Interface of FoI and Privacy Acts," *Freedom of Information Center Report*, May 1977 (no. 371), 8 p.

Hentoff, Nat. "The First Amendment's Clean-Up Hitter Scores Again," *Village Voice*, June 20, 1977 (v. 22), p. 31.

_____. "A Free Press Triumphs, But Read the Fine Print," *Village Voice*, July 7, 1977 (v. 22), p. 29-30.

Kirschenbaum, Howard, et al. "In Defense of Values Clarification," *Phi Delta Kappan*, June 1977 (v. 58), p. 743-46.

Luebke, Barbara F. "The Commercial Speech Doctrine," *Freedom of Information Center Report*, May 1977 (no. 372), 6 p.

Nolte, M. Chester. "What's 'Obscene' in Your School Library?" *American School Board Journal*, July 1977 (v. 164), p. 7.

Oppenheimer, Martin. "Academic Freedom in the Federal Republic of Germany," *AAUP Bulletin* (American Association of University Professors), April 1977 (v. 63), p. 45-49.

Parks, Carl L. "'Sunshine' In Michigan," *Freedom of Information Center Report*, April 1977 (n. 370), 15 p.

"The Question of Censorship," *Show-Me Libraries* (Missouri State Library), June 1977 (v. 28), p. 19-21.

"Viewpoints," *Downeast Libraries* (Maine Library Association), June 1977 (v. 3), p. 3-5.

NEWSLETTER ON INTELLECTUAL FREEDOM
50 East Huron Street • Chicago, Illinois 60611