newsletter on
intellectual freedom
IFC ALA

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

ISSN 0028-9485

September 1979 ☐ Volume XXVIII ☐ No. 5

nuclear power problems named 'best censored' story

What may well be the biggest story of 1979 was named the "best censored" story of 1978, by Project Censored, a national media research project.

The historic failure of the mass media to inform the American public of the potential dangers of nuclear power was cited by each of the twelve jurors who selected the "Ten Best Censored Stories of 1978."

Nicholas Johnson, chairperson of the National Citizens Communications Lobby in Washington and a Project Censored panelist, said, "It's a shame that it takes a popular feature film like *The China Syndrome* and its eerie real-life re-enactment at Three Mile Island to get the media to focus on what is literally a life and death issue."

Project Director Carl Jensen, associate professor of sociology at Sonoma State University California, said, "It is not surprising that many Americans were shocked by what happened at Three Mile Island since the media had not told the public what a strong possibility there was for such a disaster."

The panel of jurors who named the top ten stories were: Ben H. Bagdikian, journalist, University of California, Berkeley; Stewart Brand, editor and founder of *The CoEvolution Quarterly* and *Whole Earth Catalog;* Robert Cirino, author and teacher; David Cohen, president, Common Cause; Johnson, who also is a former member of the Federal Communications Commission; Robert MacNeil, executive editor, *MacNeil/Lehrer Report,* PBS; Victor Marchetti, writer and lecturer; Mary McGrory, nationally syndicated columnist, *Washington Star;* Jessica Mitford, writer and lecturer; Jack L. Nelson, author and professor of social education, Rutgers University; Joseph J. Schwab, educator; and Sheila Weidenfeld, author and television host, producer, and moderator.

The panel of jurors selected the ten "best censored" stories from a group of twenty-five submitted to them by a sociology seminar class in mass communications at Sonoma State taught by Jensen.

The other nine "best censored stories," as ranked by the jurors, in descending order, were:

2. **Organic Farming**—in an article titled "Curbing the Chemical Fix: the Secret Is It Works," which appeared last year in the *Progressive*, Daniel Zwerdling documented how organic farming works in terms of energy, production, health, and profit. Zwerdling suggests that successful commercial organic farms have proven there is an alternative to the mounting evidence that agricultural chemical pesticides are responsible for cancer,

(Continued on page 116)

Published by the ALA Intellectual Freedom Committee, Frances C. Dean, Chairperson

titles now troublesome

Books

Periodicals

Comic Strips

Films

Television programs

Kaiser blasts networks for rejection of 'issue ads'

The Kaiser Aluminum and Chemical Corp., "quite surprised" when the three major television networks rejected issue-oriented commercials, complained in June in full-page advertisements in five major newspapers.

In the ads, headlined "Can a corporation speak its mind in public?" Kaiser said the networks rejected the issue commercials, "not because they were untrue, misleading, or in anyway inaccurate," but "simply because they were controversial and not acceptable material."

"Our judgment was that if we ran these we would be open to the fairness doctrine," NBC said. ABC stated: "We do not sell time for the discussion of controversial issues that are of public importance. We feel those issues are best left for treatment by our public affairs and news departments." CBS declared: "It's been a policy that we do not accept editorial advertising," explaining that such commercials would allow "those with the most money to speak the loudest."

Kaiser's newspaper compaign urged readers to write to their elected representatives about the "free exchange of ideas."

One of the rejected commercials asked whether "excessive control over big business [will] lead to control over all our business." Saying that "the answers are up to you," the commercial concluded: "Whatever your views let your elected representatives know. People, one by one, need to speak up now. You can help keep free enterprise free."

Another commercial stated: "America needs an energy plan for the future now. One that uses all resources available from coal and nuclear power to solar. But we're only going to get it if people, one by one, demand it. . . . There's not much we can do when the light goes out."

The third commercial attacked red tape. "In 1977, America spent $100 billion on federal paperwork alone. And in the end we all pay for it. But if people, one by one, start speaking out, we can begin untangling America's knottiest problem." Reported in: *New York Times,* June 20.

notice to our subscribers

Effective January 1, 1980, the annual subscription price of the *Newsletter on Intellectual Freedom* will be $10. Single copies and back issues will be $2 each.

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

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.

IFC reports on LBR revision

The following report was submitted to the ALA Council by the ALA Intellectual Freedom Committee at the association's 1979 Annual Conference in Dallas. It was presented by IFC Chairperson Frances C. Dean.

Revision of the *Library Bill of Rights* was foremost in the minds of the members of the Intellectual Freedom Committee during this past week. We had earnestly hoped we would have a final draft of the revision ready for presentation to the Council today. However, review and evaluation of the comments received on the proposed revision—comments which were submitted to the Committee in writing and in an open hearing during this Annual Conference—have required every hour available to the Committee for revision of the *Library Bill of Rights.*

It is now our firm intention to complete our work during the coming weeks and submit our final proposal to all members of the Council prior to the 1980 Midwinter Meeting. I think I can briefly describe our current situation.

We have revised the Preamble and Articles I through IV of the *Library Bill of Rights* in a manner that we believe takes into account most of the criticism of the revision publicized last winter.

Our difficulty with Article V—on unjust denial of a person's right to use a library—has been acknowledged by virtually every member who wrote or spoke to the Committee. To summarize much debate, we must decide whether we want to be very general, in effect simply saying that no person's right to use a library should be infringed, or whether we want to list every specific condition or factor that may lead to the infringement of a person's right, for example, race or age. We face a dilemma. The general approach may not speak meaningfully to the many audiences we need to reach. The specific approach—what we have come to call the "laundry list" approach—brings the danger of excluding, by omission, some factor that may tomorrow represent an injustice. Also, the Committee wants to keep the document focused clearly on freedom of expression and freedom of intellectual inquiry.

We want to consider further revision of Article VI—on meeting rooms and exhibit space in libraries—to remove several possibilities for misunderstanding which have been described to us. Also, the Public Library Association has asked us to await comments that they want to submit in

(Continued on page 124)

ALA and AAP protest proposed USOE rule

In a letter sent to the U.S. Office of Education in June, the American Library Association and the Association of American Publishers jointly decried proposed USOE rules that would require all recipients of USOE grants to avoid the purchase of any instructional materials with "race stereotype or sex bias." The letter stated:

We write jointly with respect to the proposed rules, Education Division General Administrative Regulations (EDGAR), published in the May 4 *Federal Register.* We urge that subparagraph (a), entitled "Contents of materials," of Par. 100a.620 be deleted.

There is no legislative authority for this rule. As a matter of fact, such a rule is contrary to both the letter and the spirit of the law. Section 432 of the General Education Provisions Act provides that our education laws cannot be construed "to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system. . . ."

In addition, with respect to public library programs, Section 2(b) of the Library Services and Construction Act provides that nothing in the Act "shall be construed to interfere with State and local initiative and responsibility in the conduct of library services. The administration of libraries, the selection of personnel and library books and materials, and, insofar as consistent with the purposes of this Act, the determination of the best uses of the funds provided under this Act shall be reserved to the States and their local subdivisions."

That this concern is not a relic of the past is evidenced by the fact that both the House and Senate versions of the legislation creating a Department of Education contain provisions voicing similar concerns.

Both librarians and publishers have been in the forefront in efforts against racial stereotypes and sex bias. But, we have been equally adamant against all efforts to impose censorship guidelines, as Par. 100a.620(a) clearly does.

Our concerns were well expressed by the Department of Health, Education, and Welfare itself when, issuing Title IX regulations, it noted:

> The Department recognizes that sex stereotyping in curricula and educational materials is a serious problem

(Continued on page 123)

in review

Defending My Enemy
By Aryeh Neier. E.P. Dutton, 1979. 182 p. $9.95.

Few issues have divided the American liberal community—particularly Jewish liberals—as the debate over whether a group of American Nazis should be permitted to demonstrate in Skokie, Illinois, the home of scores of Holocaust survivors. Aryeh Neier, himself a Jew and a refugee from Hitler's Germany, who was executive director of the American Civil Liberties Union at the time of the controversy, describes the legal efforts to secure First Amendment rights of free speech and assembly not only for Nazis wishing to march in Skokie but also for the Ku Klux Klan in Mississippi, alleged Klansmen at Camp Pendleton, California, and black Marines who raided what they thought was a Klan meeting at that camp. Skokie, Mississippi, and Southern California cost the ACLU not only money for legal efforts but also members, as thousands resigned when the organization announced its defense of the Nazis' and Klansmen's rights.

At the height of the furor over Skokie, Neier was asked most frequently, "How can you, a Jew, defend freedom for Nazis?" He replied: "How can I, a Jew, *refuse* to defend freedom, even for Nazis?" [Emphasis added.] He continues:

> Freedom is no certain protection. The risks are clear. If the Nazis are free to speak, they may win converts. It is possible that they will attain the power to abolish freedom and to destroy me.

Why was Skokie a symbol and a rallying point? Not for the legal issues—nothing novel was presented, as there is nothing new in strutting storm troopers wearing swastika armbands. Nothing unusual either about Nazis trying to march where their presence is an insult to the memories of the victims of Nazi Germany. What was unusual about Skokie was in part the timing—the fear of many American Jews that they—and Israel—would be sold out for Arab oil. Skokie symbolized the possibility that there could indeed be another Holocaust.

Skokie also came at a time when the alliance between supporters of left-wing causes and supporters of civil liberties was particularly fragile. That alliance, forged by the civil rights and antiwar movements of the 1960s and opposition to Richard Nixon, was all but shattered by Skokie and related cases. Finally, Skokie developed during a period when liberalism as a movement was in sharp decline. Fewer candidates for public office were willing to identify themselves as liberals.

Neier describes the development of the various Nazi "parties" since the end of World War II. He cites reports of the Anti-Defamation League of B'nai B'rith (ADL), the American Jewish Congress (AJC), and other organizations which monitor activities of groups like the Nazis. The ADL, for example, in a 1978 report said that "the American Nazi movement is politically impotent, capable and noteworthy only in the production of vicious hate propaganda, occasional street violence, and trouble-making on the local level." And the AJC reported: "The danger of American Nazism . . . is not that it has the capacity to engulf Americans or influence our government and its institutions." (This does not mean, however, that Nazis are incapable of violence—as Jews have learned to their cost, even in the United States.)

In the early 1960s, the National Jewish Community Relations Advisory Council (NJRAC), a coalition of national and local Jewish organizations, took a firm position against prior restraint. NJRAC recognized that public protests of Nazi leaders' appearances merely served Nazi ends by providing the publicity they want. By 1978, however, many Jewish groups were advocating prior restraint, while more moderate voices called for counterdemonstrations. The American Jewish Congress, formerly a leading defender of First Amendment freedoms, sought a prohibition of the Nazi march in Skokie, and announced plans to file a friend-of-the-court brief in support of prior restraint if the Supreme Court agreed to hear the case.

An important factor in the Jewish groups' deliberations—although an unacknowledged one—was the Jewish Defense League, a radical, militant organization formed in 1968. The JDL has conducted violent protests against treatment of Jews in Russia. Because of their violent history and the ability of their leaders to manipulate media, the JDL—like the Nazis, a relatively small organization—attract publicity out of proportion to their numbers. The JDL slogan, "Never again," says that anti-Semitism will not go unchallenged; the Nazis will not rise; there will not be a second Holocaust; and Jews will not be slaughtered like sheep. No matter how Jewish organizations view the JDL, individual Jews are moved deeply by the vow of Never Again. Certainly organized Jewry's stand on Skokie was influenced by the JDL slogan.

The split between Jewish organizations which had traditionally defended First Amendment freedoms and the ACLU was also significant because of accidents of timing. Skokie evolved at the time when the U.S. Supreme Court was considering the *Bakke* case and when the Middle East peace negotiations and public disenchantment with Israeli Prime Minister Menachem Begin's policies constrained many Jewish leaders from public criticism. The combination of Skokie, Begin, and *Bakke* served to deepen the schism between Jews and their traditional allies.

Because Skokie is home to a large Jewish population, particularly a large number of Nazi concentration camp survivors, the Nazis' plans to march in front of the village hall were particularly odious. Neier details the village's actions to prevent the march, and the ACLU's defense of the rights of free speech and free assembly.

After more than a year of legal wrangling, the Nazis did not march in Skokie, even though the village's attempts to

prevent it were defeated in the courts. Rather, the Nazis demonstrated in Chicago's Federal Plaza on June 24, 1978.

Divisiveness within the ACLU over a defense of Ku Klux Klan members did not help strengthen membership and financial support either. In late 1976, a group of black Marines burst into a barracks room at Camp Pendleton (a large Marine Corps base located near San Diego) under the mistaken belief that a Klan meeting was being held there. The blacks erred—there was indeed a Klan meeting in the barracks, but not in the room they raided.

The Marine Corps took action against both the black Marines and the alleged Klan members. Fourteen blacks were arrested on felony charges, and the alleged Klansmen were transferred to other bases to separate them both from Camp Pendleton and each other.

Upon being contacted by the Klan members, the San Diego chapter of ACLU filed suit in federal court challenging the power of the Marine Corps to transfer the whites to other bases only because of their membership in the Klan. This suit triggered a controversy in the parent Southern California ACLU. By a one-vote margin, the Southern California ACLU executive board asked the San Diego chapter to drop the lawsuit. The San Diego chapter refused.

Neier, acting at the request of the Southern California ACLU, visited Pendleton to investigate the event and to recommend action which would be acceptable to the chapter and its parent group. He learned from the base commander that the Marines alleged to be Klan members were transferred solely because of their supposed membership in the hopes of defusing racial tension. Neier found that the civil liberties of the black Marines had also been violated. At his recommendation, the Southern California ACLU agreed to attempt protection of both the Klan members' and black Marines' civil liberties by furnishing legal representation to the blacks facing criminal charges and endorsing the lawsuit on behalf of the Klan members.

Members of the Southern California ACLU called expressions of racism unprotectible speech. Attacks on "free

(Continued on page 117)

mixed predictions for First Amendment

Speaking in June at a special ALA President's Program to celebrate the tenth anniversary of the Freedom to Read Foundation, Author Jessica Mitford and Attorney Robert M. O'Neil arrived at conclusions on the future of the First Amendment which differed in emphasis: O'Neil seemed cautiously optimistic, while Mitford was pessimistic and cautious in predicting the future for authors. Their remarks were presented at the ALA's 1979 Annual Conference in Dallas.

O'Neil characterized recent Supreme Court decisions as "not all dark." Dismayed by such rulings as the one allowing questions about a journalist's state of mind in a libel suit, O'Neil praised decisions giving new protection to commercial speech, speech of public employees, and symbolic speech. He said that in the case of litigation in the lower courts over censorship of school libraries, the progress in law had been "striking."

Looking ahead to the 1980s, O'Neil said tensions between free expression and criminal due process, between free expression and intangible private property (in libel and slander actions), and between free expression and equality of opportunity promise a future of critical tests.

O'Neil concluded that the struggle between equality of opportunity and freedom of expression will tax the commitment of civil libertarians to the First Amendment.

Mitford, focusing on the difficulties of authors in general and of muckrakers in particular, charged that the shrinking number of publishers in the nation will pose problems for "subversive" writers. She said she had found that "publishers can be as cowardly in their own way as the film industry was" in the blacklisting days of the 1950s.

Speaking about her personal experiences in trying to publish an expose of the Famous Writers School, Mitford said publishers of magazines backed away from her work when they realized the amount of advertising revenue from the school that would be lost.

Atlantic Monthly, which originally commissioned Mitford to write about the school, only decided to publish the piece after lengthy reconsideration.

"I think it could easily have happened that it could

(Continued on page 123)

FTRF speakers Robert M. O'Neil and Jessica Mitford flank ALA President Russell Shank on the platform in Dallas.

intellectual freedom in schools: a bibliography

Compiled by GREGG D. JOHNSON

This bibliography lists recent law journal articles on the First Amendment rights of teachers, librarians, and students in public schools and universities. Virtually every development in law pertaining to academic freedom is critically discussed, including two appellate court decisions of special interest to librarians and students who use public school libraries: President's Council *and* Minarcini.

Note: Mentions of "first circuit," "second circuit," etc., refer to the U.S. Court of Appeals for the First Circuit, Second Circuit, etc. All articles are cited in conformity with legal practice: the number which precedes the journal name refers to the volume; the numbers which follow refer to pages and the year of publication.

Excerpts from four especially pertinent U.S. Supreme Court decisions appear on p. 103.

Adams, Kathleen W. *Personality Control and Academic Freedom*—Rampey v. Allen. 1975 Utah L. Rev. 234-45, 1975.

A study of the tenth circuit decision that a college president's dismissal of several faculty members and administrators violated their First Amendment rights.

Banta, Robert Edward. *School Authorities May Prohibit Sex Questionnaire to Prevent Possible Psychological Harm to Other Students.* 31 Vand. L. Rev. 173-83, 1978.

An analysis of *Trachtman* v. *Anker.* There, the second circuit held that the distribution of a sex questionnaire could constitutionally be prohibited due to possible psychological harm of high school students. A good discussion of the shortcomings of this decision is provided, the author concluding that the *Trachtman* test allows school officials to circumvent the judicial test created in *Tinker.*

Beaney, William M. *Students, Higher Education, and the Law.* 45 Denver L. Journal 511-24, 1968.

Explores the disintegration of the *in loco parentis* doctrine as applied to university students in the wake of constitutional doctrines of a more recent vintage, such as privacy rights. It is well noted that university policies must now display respect for a growing list of student rights.

Behind the Schoolhouse Gate: Sex and the Student Pollster. 54 N.Y.U. L. Rev., 161-203, 1979.

Aside from the standard criticism of the holding in *Trachtman* (viz., that the court deviated from the *Tinker* guidelines), adjudicative models for deciding student speech controversies are presented.

Board of Education Rule Requiring Prior Submission of Private Student Newspaper is Unconstitutionally Vague and Overbroad—Nitzberg v. Parks. 35 Md. L. Rev. 512-22, 1976.

In *Nitzberg,* the fourth circuit held that a school board order proscribing publication of two student newspapers suffered from overbreadth and lacked necessary procedural safeguards. This comment investigates the court's decision as well as some of the perplexities resulting from the *Tinker* decision.

Bogoty, Lewis. *Beyond* Tinker *and* Healy: *Applying the First Amendment to Student Activities.* 78 Col. L. Rev. 1700-13, 1978.

Exclusively concerned with group activities on college campuses, this article maintains that universities may now deny recognition of student groups only when the *Brandenburg* standard is met or the group refuses to abide by reasonable regulations. Universities are not required, however, to provide all groups with financial aid.

Bradley, Julia Turnquist. *Censoring the School Library: Do Students Have the Right to Read?* 10 Conn. L. Rev. 747-74, 1978.

A solid examination of school censorship cases. Distinguishing the selection of books from censorship, Turnquist focuses on a constitutional formula through which the First Amendment rights to read may be ensured without damaging school boards' interests in the selection of instructional materials.

Brown, Ronald C. *Tenure Rights in Contractual and Constitutional Context.* 6 Journal of Law and Ed. 279-318, 1977.

A significant article analyzing the interrelationship between academic tenure and substantive constitutional rights. Current Virginia law is then employed to illustrate the likely outcome of enforceable tenure rights in a state devoid of any tenure statute.

Clay, Richard H.C. *The Dismissal of Public School Teachers for Aberrant Behavior.* 64 Ken. L. Journal 911-36, 1976.

On the assumption that teachers leave vast impressions on their students, this note asserts that school authorities should exercise great discretion in their determination of what teacher conduct warrants dismissal. In addition, teachers should receive precious few privacy rights.

Development in the Law—Academic Freedom. 81 Harvard L. Rev. 1045-1159, 1968.

The first comprehensive article on academic freedom. Areas considered include collective bargaining, the advancement of student rights within a system of private ordering and the theoretical foundations of academic freedom. This is one of the most frequently cited articles in the field.

(Continued on page 120)

key high court rulings

The excerpts from Supreme Court cases given below are cited according to the official reports of the Supreme Court. The first number indicates the volume in which the decision may be found. The abbreviated "U.S." refers to the official Court reports. The numbers following "U.S." indicate the page on which the decision begins and the year in which it was handed down.

Keyishian v. Board of Regents of the University of the State of New York. 385 U.S. 589 (1967).

Keyishian and other faculty members were terminated from employment by the university for refusing to comply with the requirement of the university trustees that they certify they were not nor had they ever been members of the Communist Party.

The Supreme Court held that the regulation was invalid insofar as it proscribed mere knowing membership without any showing of specific intent to further the unlawful aims of the Communist Party.

Opinion of the Court:

There can be no doubt of the legitimacy of New York's interest in protecting its education system from subversion. But "even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton* v. *Tucker,* 364 U.S. 479, 488.

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton* v. *Tucker, supra,* at 487. The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection." *United States* v. *Associated Press,* 52 F. Supp. 362, 372.

Epperson v. Arkansas. 393 U.S. 97 (1968).

Epperson was employed as a biology teacher in Little Rock. Though the textbook assigned by the administration discussed the general theory of evolution, an Arkansas statute made it unlawful to teach the theory of evolution. Epperson thus sought a declaration that the Arkansas statute was void and that the State be enjoined from dismissing her for violation of statute.

The Supreme Court held that the Arkansas statute was contrary to the mandate of the First Amendment and also violated the Fourteenth Amendment.

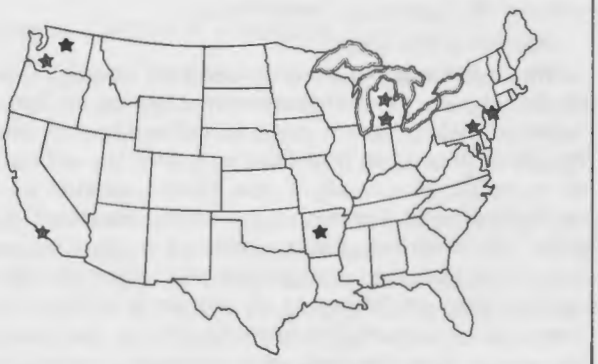
Opinion of the Court:

We do not rest our decision upon the asserted vagueness of the statute. On either interpretation of its language, Arkansas' statute cannot stand. It is of no moment whether the law is deemed to prohibit mention of Darwin's theory, or to forbid any or all of the infinite varieties of communication embraced within the term "teaching." Under either interpretation, the law must be stricken because of its conflict with the constitutional prohibition of state laws respecting an establishment of religion or prohibiting the free exercise thereof. The overriding fact is that Arkansas' law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine; that is, with a particular interpretation of the Book of Genesis by a particular religious group.

(Continued on page 124)

Alex P. Allain, former member of the ALA Intellectual Freedom Committee and first president of the Freedom to Read Foundation, was the recipient of the 1979 John Phillip Immroth Memorial Award for Intellectual Freedom, sponsored by the Intellectual Freedom Round Table. The award was presented at the ALA's Annual Conference.

censorship dateline



libraries

Little Rock, Arkansas

The Arkansas Chapter of the American Civil Liberties Union complained in June that the Parkview High School librarian, Wilma Hanner, had engaged in censorship by the removal of library materials. The ACLU said it was considering a lawsuit alleging violations of the constitutional rights of students.

Hanner replied through Juanita Carter, supervisor of libraries for the Little Rock school district, and Madison Hodges, the communications director, denying that she had engaged in censorship. She said she had returned five books to their publishers because they failed to meet literary standards or contained what she considered unsuitable content. She said she had placed three other books on the special shelf, but she emphasized that they were included in the card catalog and could be checked out.

Hodges said that the Parkview principal was preparing a report on the issue and would make recommendations for changes in library procedures.

The five works returned to their publishers were *Blood Summer, Shooting Stars: the Rolling Stone Book of Portraits, The Day of the Jackal, Hollywood Babylon,* and *Going Down with Janis.*

The books placed on the "special shelf" were *Down These Mean Streets, Soul on Ice,* and *For All the Wrong Reasons.*

According to the *Little Rock Gazette,* several students alleged that written permission from teachers was required before they could examine books on the special shelf. Carter said Hanner denied the charge. Reported in: *Little Rock Gazette,* June 16.

Romeo, Michigan

Last spring the Romeo school board voted to remove *Forever* from open shelves in junior high libraries and directed that the book be placed in restricted areas where it would be accessible only to students with parental permission.

The action was taken after a parent and the Rev. John Massey of the First Baptist Church complained that the book's theme is "sex, sex, sex."

"Obviously, this is a very emotional issue," Assistant Superintendent Fred Kessler said. "When you listen to both sides, each makes sense. Our media people don't want restrictions, and I can see that. But I also sympathize with parents who want control over what's available to their children."

Massey said he considered the issue of *Forever* settled, but he added, "We're not going to continue to allow library people blanket approval of books. We're not a monitoring committee, but if books like [*Forever*] come to our attention, you can bet we'll be heard from." Reported in: *Detroit Free Press,* July 1.

Watervliet, Michigan

School Superintendent Samuel Gravitt told the local school board in May that he had ordered the high school library to cancel its subscription to *Psychology Today.* He characterized advertisements in the magazine as "offensive," explaining that "they're completely out of character with the rest of the magazine."

Gravitt announced his action during discussion of a letter from the Rev. Harold Knickerbocker, pastor of a local Baptist Church.

"Many of the descriptive ads and some articles are very pornographic in nature," Knickerbocker's letter said. "They could contribute to the breakdown of proper moral relationships."

Knickerbocker was the second cleric in the community to complain about the magazine at the high school. Earlier, in response to a complaint from the Rev. Harvey Lord, pastor of the Congregational Church, the school board asked a panel of citizens to review the periodical.

The review committee recommended that the magazine remain in the library. Although they characterized some of the advertisements as "marginally objectionable," they felt the problem was "minor when compared to the potential value of the articles."

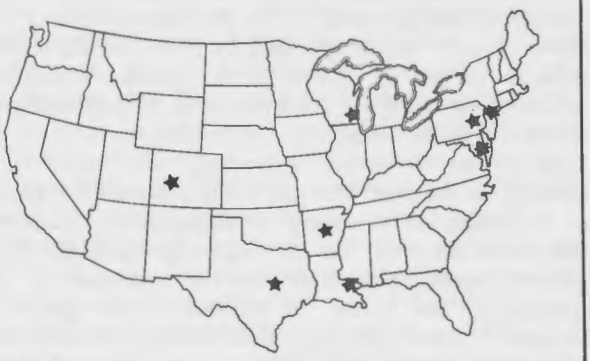
In explaining his action to the board, Gravitt cited advertisements for materials on "how to pick up girls." Reported in: *St. Joseph Herald Palladium,* May 15.

Kirkland, Washington

A special committee consisting of an elementary school librarian and five other professional employees of the Lake Washington school district decided in April to place *Nightmares: Poems to Trouble Your Sleep* in the professional reading sections of district libraries--where it would be unavailable to students without a teacher's permission.

(Continued on page 111)

from the bench



U.S. Supreme Court rulings

In a five-to-four ruling which upheld a decision of New York State's highest court, the U.S. Supreme Court ruled in July that members of the public and the news media have no "independent constitutional right to insist upon access to a pretrial judicial proceeding" when "the accused, the prosecutor, and the trial judge all have agreed to the closure of that proceeding in order to assure a fair trial."

The Court's decision, presented by Justice Potter Stewart, appeared at times to go beyond pretrial hearings, often referring simply to "trials."

Justice Stewart wrote:

"In arguing that members of the general public have a constitutional right to attend a criminal trial, despite the obvious lack of support for such a right in the structure or text of the Sixth Amendment, the petitioner and *amici* rely on the history of the public trial guarantee. This history, however, ultimately demonstrates no more than the existence of a common-law rule of open civil and criminal proceedings. . . .

"There is no question that the Sixth Amendment permits and even presumes open trials as a norm. But the issue here is whether the Constitution *requires* that a pretrial proceeding such as this one be opened to the public, even though the participants in the litigation agree that it should be closed to protect the defendants' right to a fair trial. The history upon which the petitioner and *amici* rely totally fails to demonstrate that the framers of the Sixth Amendment intended to create a constitutional right in strangers to attend a pretrial proceeding, when all that they actually did was to confer upon the accused an explicit right to demand a public trial. . . .

"We certainly do not disparage the general desirability of open judicial proceedings. But we are not asked here to declare whether open proceedings represent beneficial social policy, or whether there would be a constitutional barrier to a state law that imposed a stricter standard of closure than the one here employed by the New York courts. Rather, we are asked to hold that the Constitution itself gave the petitioner an affirmative right of access to this pretrial proceeding, even though all the participants in the litigation agreed that it should be closed to protect the fair trial rights of the defendants.

"For all the reasons discussed in the opinion, we hold that the Constitution provides no such right."

Justice Stewart's opinion was joined by Chief Justice Warren E. Burger and Justices Lewis F. Powell Jr., William H. Rehnquist, and John Paul Stevens.

In a concurring opinion Justice Powell said that in his opinion the trial judge should first decide "whether there are alternative means reasonably available by which the fairness of the trial might be preserved without interfering substantially with the public's interest in prompt access to information concerning the administration of justice."

In his concurring opinion, Justice Rehnquist argued that the Court's ruling applied not only to pretrial hearings, but also to criminal trials.

Justice Rehnquist said "the Sixth Amendment does not require a criminal trial or hearing to be open to the public if the participants to the litigation agree for any reason, no matter how jurisprudentially appealing or unappealing, that it should be closed."

Chief Justice Burger would limit the Court's holding to pretrial proceedings. He wrote:

"Even though the draftsmen of the Constitution could not anticipate the twentieth century pretrial proceedings to suppress evidence, pretrial proceedings were not wholly unknown in that day. Written interrogatories were used pretrial in eighteenth century litigation, especially in admiralty cases. Thus, it is safe to assume that those lawyers who drafted the Sixth Amendment were not unaware that some testimony was likely to be recorded before trials took place. Yet, no one ever suggested that there was any 'right' of the public to be present at such pretiral proceedings as were available in that time; until the trial it could not be known whether and to what extent the pretiral evidence would be offered or received.

"For me, the essence of all of this is that by definition 'pretrial proceedings' are exactly that."

Dissenting Justice Harry A. Blackmun accused the majority of adopting a "wooden approach" which he characterized as "without support either in legal history or in the intendment of the Sixth Amendment." He was joined by Justices William J. Brennan Jr., Byron R. White, and Thurgood Marshall.

Justice Blackmun wrote:

"The public trial guarantee . . . ensures that not only judges but all participants in the criminal justice system are subjected to public scrutiny as they conduct the public's business of prosecuting crime. . . .

"It has been said that publicity 'is the soul of justice.' And in many ways it is: open judicial processes, especially in the criminal field, protect against judicial, prosecutorial, and police abuse; provide a means for citizens to obtain

information about the criminal justice system and the performance of public officials; and safeguard the integrity of the courts.

"Publicity is essential to the preservation of public confidence in the rule of law and in the operation of courts. Only in rare circumstances does this principle clash with the rights of the criminal defendant to a fair trial so as to justify exclusion. The Sixth and Fourteenth Amendments require that the states take care to determine that those circumstances exist before excluding the public from a hearing to which it otherwise is entitled to come freely. Those circumstances did not exist in this case." (*Gannett* v. *DePasquale,* decided July 2)

State restraint on newspapers struck down

A West Virginia statute prohibiting newspapers from publishing the names of juveniles charged with criminal offenses violated the First Amendment, the Supreme Court said in a decision delivered by Chief Justice Burger.

The Court concluded that the important interest of the state in protecting juvenile offenders through preserving their anonymity was not sufficiently great to justify application of a criminal penalty to two Charleston dailies which in 1978 published the name of a fourteen-year-old student charged in connection with the death of a fellow pupil.

Burger characterized the Court's holding as "narrow." He said it was unnecessary for the Court to determine whether the statute operated as a "prior restraint."

The chief justice's opinion was joined by all the justices except Justice Rehnquist, who concurred only in the judgment, and Justice Powell, who did not participate in the consideration of the case.

Justice Rehnquist would have struck down the law because it applied only to newspapers and not to the nonprint news media. If a law on the publication of names of youthful offenders applied to all media alike, Rehnquist would allow a juvenile court judge to determine "whether publishing the name of the particular young person will have a deleterious effect on his chances for rehabilitation and adjustment to society's norms." (*Smith* v. *Daily Mail Publishing Company,* decided June 26)

"Public figure" more narrowly defined

Ruling on a libel action against Author John Barron, the Reader's Digest Association, and various publishers with contractual arrangements with the Reader's Digest Association, the Court rejected the contention "that any person who engages in criminal conduct automatically becomes a public figure for purposes of comment on a limited range of issues relating to his conviction."

The initiator of the libel action, Ilya Wolston, emigrated to the U.S. from Russia in 1939. His uncle, Jack Soble, was arrested in 1957 on espionage charges, pleaded guilty, and was sentenced to seven years in prison. Wolston, subpoenaed several times following Soble's arrest by a grand jury investigating Soviet spying, failed to respond to one subpoena and received a one-year suspended sentence conditioned on his cooperation with the grand jury in further inquiries regarding Soviet espionage.

In the 1960s, Barron began research into Soviet spy operations for his book, *KGB: the Secret Work of Soviet Secret Agents,* which appeared in 1974. Barron identified Wolston as one of several Soviet agents "convicted of espionage or falsifying information or perjury and/or contempt charges following espionage indictments."

According to Justice Rehnquist, who wrote for the majority in the case, Wolston did not engage the attention of the public "in an attempt to influence the resolution of the issues involved" in the espionage case. He did not assume "special prominence in the resolution of public questions." His failure to respond to the grand jury's subpoena "was in no way calculated to draw attention to himself in order to invite public comment or influence the public with respect to any issue."

Justice Blackmun, joined by Justice Marshall, concurred in the result. Blackmun said that "because petitioner clearly was a private individual in 1975, I see no need to decide the more difficult question whether he was a public figure in 1958" as discussed in Justice Rehnquist's opinion. Blackmun reasoned that "the lapse of sixteen years between petitioner's participation in the espionage controversy and respondents' defamatory reference to it was sufficient to erase whatever public-figure attributes petitioner once may have possessed."

Justice Brennan dissented. Quoting the Court of Appeals, Brennan said the "issue of Soviet espionage in 1958 and of Wolston's involvement in that operation continues to be a legitimate topic of debate today, for the matter concerns the security of the United States." (*Wolston* v. *Reader's Digest Association,* decided June 26)

Senator may be sued for libel

Senator William Proxmire may be sued by a researcher who claims he was libeled by one of the legislator's "Golden Fleece" awards, the Supreme Court ruled in June. The researcher, Ronald Hutchinson, contends that his federally sponsored work on agression was unfairly belittled by Proxmire in a press release and newsletters. Proxmire announced that Hutchinson was studying "why monkeys clench their jaws."

The decision of the Court reversed lower court holdings that Proxmire was protected by the "speech or debate" clause of the Constitution, which states that "for any speech or debate in either House," federal legislators "shall not be questioned in any other place." The justices also reversed lower court findings that Hutchinson was a "public figure" and that he had failed to establish "actual malice" on the part of the senator.

With regard to the "speech or debate" issue, Chief Justice Burger said that " a speech by Proxmire in the Senate would be wholly immune and would be available to other members of Congress and the public in the *Congressional Record.* But neither the newsletters nor the press release was 'essential to the deliberations of the Senate' and neither was part of the deliberative process."

In his defense, Proxmire claimed that "I have found in nineteen years in the Senate that very often a statement on the floor of the Senate or something that appears in the *Congressional Record* misses the attention of most members of the Senate, and virtually all members of the House, because they don't read the *Congressional Record.* If they are handed a news release, or something, that is going to call it to their attention. . . . " Proxmire also argued that it is an essential part of his duty as a senator to inform his constituents of issues being considered in the Congress.

Rejecting the claim that Hutchinson needed to demonstrate "actual malice" in order to prevail in his action, the chief justice said Hutchinson was not a "public figure" because "he did not thrust himself or his views into public controversy to influence others." Hutchinson came into public prominence as a result of the "Golden Fleece" award, the chief justice found, and, he reasoned, "those charged with alleged defamation cannot, by their own conduct, create their own defense by making the claimant a public figure."

Justice Brennan dissented; Justice Stewart dissented in part. (*Hutchinson* v. *Proxmire,* decided June 26)

Federal Reserve may delay announcements

Despite a section of the Freedom of Information Act providing that every federal "agency shall separately state and currently publish in the *Federal Register* for the guidance of the public . . . statements of general policy . . . promulgated and adopted by the agency," the Federal Reserve System may legitimately delay announcement of policy directives pertaining to the purchase and sale of government securities in the domestic securities market, the Supreme Court held in June. The opinion was delivered by Justice Blackmun, who was joined by all his colleagues except Justices Stevens and Stewart.

Stevens and Stewart found no middle ground in the statute between "current" release and total exemption from release. Thus, they said, they found "incomprehensible" the majority's conclusion that the Federal Reserve may temporarily delay publication of policy directives that cannot be permanently withheld from public view without violating the FoIA.

The majority held that the domestic policy directives constitute exempted "confidential commercial information" during the month in which they provide guidance to the Federal Reserve's account manager, who governs the Federal Reserve's day-to-day transactions, and that therefore the directives are privileged from civil discovery during the one-month period. (*Federal Open Market Committee of the Federal Reserve System* v. *Merrill,* decided June 28)

Bookstore owner wins obscenity appeal

Ruling on procedural grounds, the justices unanimously overturned the conviction of a bookstore owner charged with violating a New York State obscenity law. According to the Court, the procedures used by police deprived the bookseller of his Fourth Amendment right against unreasonable searches and seizures.

The unconstitutional procedure in the case utilized an "open-ended" search warrant that failed to specify the material to be seized and also involved the active participation of a local judge in an extensive search of the store's inventory.

Writing for the Court, Chief Justice Burger said: "This search warrant and what followed the entry on petitioner's premises are reminiscent of the general warrant or writ of assistance of the eighteenth century against which the Fourth Amendment was intended to protect. . . . Except for the specification of copies of the two films previously purchased [by police as the basis for requesting a warrant], the warrant did not purport to 'particularly describe . . . the things to be seized.' "

According to the chief justice, the judge in the case "did not manifest that neutrality and detachment demanded of a judicial officer when presented with a warrant application for a search and seizure. . . . He allowed himself to become a member, if not the leader, of the search party which was essentially a police operation. Once in the store he conducted a generalized search under authority of an invalid warrant; he was not acting as a judicial officer but as an adjunct law-enforcement officer."

The ruling of the Court also rejected the New York State argument that by opening his premises to the general public, the bookstore owner had forfeited any "legitimate expectation of privacy against governmental intrusion."

In its friend-of-the-court brief in the case, the Freedom to Read Foundation noted that the power to seize is a form of prior restraint. (*Lo-Ji Sales* v. *New York,* decided June 11)

In other action, the Court:

- Declined to review a ruling of the Pennsylvania Supreme Court holding that a "situation wanted" classified ad may legally refer to the advertiser's race, sex, age, religion, or national origin. The high state court ruled against the Pennsylvania Human Rights Commission, which interpreted the state's Human Relations Act as barring such references to personal attributes.
- Affirmed a ruling of the Washington Supreme Court which upheld a state statute requiring each major political party to have a state committee consisting of two persons from each county. According to the justices, such a law restricting the composition of the state committee does not violate the rights of members of a political party to freedom of association as protected by the First Amendment.
- Refused to review a contempt citation against former San Antonio District Attorney Ted Butler for "harassment" of a theater operator whom Butler charged with possession of a criminal instrument—a projector used to show *Deep Throat* (see *Newsletter,* May 1979, p. 58).
- Upheld the obscenity conviction of Herman Lynn Womack, convicted in 1978 of displaying a sexually explicit magazine to juveniles at a Norfolk bookstore. The decision affirmed the holding of the Virginia Supreme Court, which

rejected Womack's claim that the Norfolk ordinance barring exhibition of "obscene" items to juveniles was "vague and indefinite."

prior restraint

Milwaukee, Wisconsin

The order barring *Progressive* magazine from publishing an article on the hydrogen bomb was kept in effect in June in a one-sentence public statement and a seven-page secret opinion issued by U.S. District Court Judge Robert W. Warren. Warren's opinion was slated to remain secret until the case could be taken up by the U.S. Court of Appeals for the Seventh Circuit, probably in September.

Warren announced his decision on June 15. There was no hearing, conference, or meeting of any kind, and neither prosecution nor defense counsel was present in court, though Warren had met with both sides earlier in the week on a motion filed by *Progressive* magazine requesting that Warren lift his injunction.

Although the hearing on *Progressive's* motion was held in a closed session, it was widely speculated that the magazine had argued that new evidence showed that the information in the suppressed article had long been in the public domain. Reported in: *Chicago Tribune,* June 16; *Washington Post,* June 16.

reporters' rights

New York, New York

The New York State Court of Appeals ruled unanimously in July that a Bronx judge properly excluded the press from a pretrial hearing on murder charges against a thirteen-year-old boy. The decision from the state's highest court came only one week after the U.S. Supreme Court upheld its 1977 decision giving judges broad discretion to close hearings whenever they found "a reasonable probability" that pretrial publicity would endanger a defendant's chance for a fair trial.

The defendant in the Bronx case, Robert Davis, was charged with murder under a state law that provides harsh penalties for juveniles convicted of murder and other violent crimes. Justice Howard E. Bell of the Supreme Court in the Bronx closed the hearing held to determine whether videotaped statements of the boy could be admitted in evidence against him.

The appeal of Justice Bell's decision was unusual in that Bronx District Attorney Mario Merola joined with the *New York Daily News* in asking for an open hearing (see *Newsletter,* July 1979, p. 80). Reported in: *New York Times,* July 10.

libel

New York, New York

Having dismissed a libel suit against *Barron's* magazine, U.S. District Court Judge Robert L. Carter ruled in June that the plaintiff and his lawyers must pay $50,000 in attorneys fees to *Barron's* for having filed a "baseless" action against the publication.

The federal suit accused *Barron's* of conspiring with short sellers of stock in Technicare Corp. to publish information disparaging the firm, so that the stock would fall to the benefit of the short sellers.

Said Judge Carter: "The suit was filed either with the knowledge that counsel has no adequate factual basis to sustain the allegations or in reckless disregard of the fact that proof of the charges was not available. In either circumstance, plaintiff and his counsel knowingly proceeded with litigation that lacked foundation. Clearly, the purpose could not have been to litigate on the merits. Indeed, the only rational inference to be drawn is that plaintiff's and his counsel's real objective was the public airing of the damaging allegations against the publishing defendant–an objective achieved with the filing of the complaint." Reported in: *Editor & Publisher,* June 9

New York, New York

A statement in an article in *Hustler* magazine–on the extensive litigation over the estate of William Loeb's mother–disparaged an attorney and was libelous per se, U.S. District Court Judge Leonard B. Sand declared in a ruling handed down in April. But, according to Judge Sand, because the magazine, its publisher, and the author of the article did not act recklessly or with malice toward the attorney, there was no basis for assessing punitive damages against them. Furthermore, because the attorney did not demonstrate that he had been damaged he was only entitled to an award of nominal damages.

The *Hustler* article stated that Loeb "fought the will for about six years, letting high-priced New York lawyers eat up over $800,000 before withdrawing his complaint, leaving his daughter to pay taxes on the rest." Reported in: *West's Federal Case News,* June 1.

teachers' rights

Denver, Colorado

No constitutional principle prohibits school boards from rejecting books proposed for elective reading in a high school literature course, the U.S. Court of Appeals for the Tenth Circuit held in July. The court ruled on a suit filed by five Colorado teachers against the Aurora board of education, which in 1975 refused to approve ten books on a list of 1,285 works proposed for use in language arts classes.

The rejected volumes were *A Clockwork Orange, The Exorcist, The Reincarnation of Peter Proud, Rosemary's Baby,* and collections of poetry by Donald Allen, Lawrence Ferlinghetti, William Burroughs, Allen Ginsberg, and Frank O'Hara.

According to the appellate bench, the teachers posed their case in these terms: "The teachers acknowledge the right of the school board to prescribe the curriculum and

the principal textbooks used in the courses. They agree the school board does not have to offer the three courses at issue here; but they say that once the courses have been approved the teachers' 'right of academic freedom includes the right to use non-obscene materials electively in elective courses taught to high school students.' They do not ask the board to purchase or endorse certain books; they do not seek to require a student to read materials against the student's will; but they want to be free from restrictions 'based upon the personal predilections of members of the school board.' "

The school board replied: "A teacher is free to comment upon, or to recommend that any student read any of the ten books. Except as indicated below, he may discuss any of the books during class. Outside of class, a teacher may meet with any student anywhere, at anytime, for any length of time, for the purpose of reading or discussing any book. No student is prohibited from reading any book, except in class or otherwise for course credit. . . . Classroom discussion of nonselected works is proscribed only when it becomes so protracted as to approximate or exceed the amount of class time spent on selected works or to effectively require that the student read the book in order to understand and benefit from class discussions. In short, the proscription relates only to activities which in substance, if not form, would reinstate the nonselected work on the reading list from which it was deliberately removed."

Because the teachers agreed that there was no unconstitutional effort on the part of the school board to exclude a particular point of view or philosophy from the curriculum, and because the teachers did not object that the school board had failed to follow its own standards and guidelines in rejecting the books, the appellate court concluded that there is no constitutional principle that would free teachers from the "personal predilections" of school board members.

Concurring in the judgment, Judge William Doyle said he would require school boards to give reasons for any rejection of proposed titles. If books are "excluded because a school board member disapproves for a subjective reason," Judge Doyle said, "I would say that this is an unlawful and unconstitutional invasion of the classroom."

Little Rock, Arkansas

An assistant professor of history who was dismissed by the University of Arkansas at Little Rock in 1974 after he publicly revealed his membership in the Progressive Labor Party and his Communist sympathies was ordered reinstated in July by a federal court.

U.S. District Court Judge Gerald W. Heaney said Grant Cooper's acknowledgment of his political beliefs was protected by the First Amendment. He ordered the university to pay the historian an amount equal to the difference between what he earned as a public school teacher and what he would have earned as an assistant professor at the institution. Reported in: *Chronicle of Higher Education,* July 9.

freedom of information

Washington, D.C.

The State Department's biographic register may be withheld from journalists and scholars because it can be used by terrorists, U.S. District Court Judge June L. Green declared in June. She said release of the document under the Freedom of Information Act would violate the privacy and endanger the lives of public servants abroad.

"Some terrorist organizations have seized on the records of foreign service personnel—the fact that they may have served in more than one tour in a particular country, for example—to allege connections between the employee and the U.S. policy which the terrorist organization opposes," Judge Green said.

The biographic register, classified in 1975, was sought under the FoIA by Smith Simpson, a former foreign service officer who later was a research professor in diplomacy at the Georgetown University School of Foreign Service. Simpson, two other professors, and two scholarly organizations claimed that access to the register is vital for research. Reported in: *Washington Star,* June 21.

Washington, D.C.

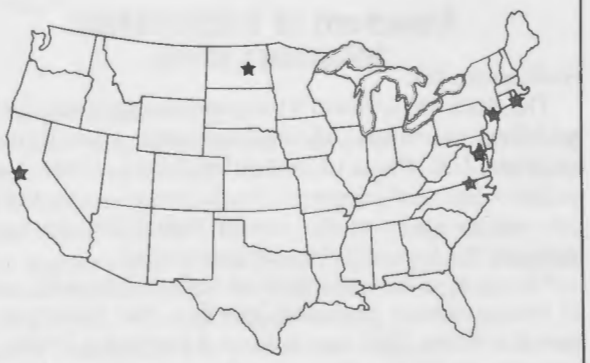
In a ruling handed down in May on a Freedom of Information Act suit filed by the Church of Scientology, the U.S. Court of Appeals for the District of Columbia reversed a lower court's summary judgment against the religious group and ordered that court to conduct further proceedings. The Church of Scientology wants to obtain documents pertaining to it which are in the custody of the National Security Agency.

According to the appellate court, the U.S. District Court should not have simply accepted an NSA affidavit asserting that the requested materials were "acquired in the course of conducting lawful signals intelligence activities" and that "release of any record or portion thereof would disclose information about the nature of NSA's activities." An *in camera* inspection of the documents should have been considered.

The appellate court was also extremely critical of the NSA's claim that its files are inadequately indexed to recover the data requested by the church, "Since NSA's prime mission is to acquire and disseminate information to the intelligence community," the court said, "it seems odd that it is without some mechanism enabling location of materials of the type appellant asks for, particularly with identifying details as extensive as those furnished." Reported in: *Access Reports,* May 30; *West's Federal Case News,* June 8.

(Continued on page 112)

is it legal?



in the U.S. Supreme Court

The U.S. Supreme Court announced in May that it would determine whether records of recipients of government grants are subject to the Freedom of Information Act. Specifically, the justices will decide whether records created in a study of diabetes funded by the National Institute of Arthritis, Metabolism and Digestive Diseases must be given to a group of 200 physicians who treat patients with the illness.

The physicians want access to the records in order to analyze data leading to the conclusion that a combination of diet and oral medicine is no more effective than diet alone in treating the disease. The Court of Appeals for the District of Columbia said the recipients of NIAMDD grants were not agencies and thus not subject to the FoIA.

Two different groups have had access to the data, but the full data have never been made public. A committee of the Biometric Society was given limited access by NIAMDD to review the results, and the Food and Drug Administration consulted the data and made public a report during hearings on suspension of a drug used in treating diabetes. Reported in: *Access Reports,* May 30.

Ruling requested on congressional documents

The justices were requested in June to decide whether documents which originated in a body exempt from the Freedom of Information Act become subject to the FoIA when they come into the possession of an agency governed by the law. Susan D. Goland asked the Court to rule on her petition for access to congressional papers now held by the Central Intelligence Agency. Goland said that the ruling of the U.S. Court of Appeals denying access to the documents was the "epitome" of the "disturbing trend" of the lower courts to rule in favor of the government in "national security" cases. Reported in: *Access Reports,* July 10.

Snepp asks high court for review

Frank Snepp, former Central Intelligence Agency employee and author of *Decent Interval,* asked the Court in June to review the ruling of the U.S. Court of Appeals for the Fourth Circuit that upheld the validity of the CIA contract requiring him to submit proposed publications to the agency for prior approval (see *Newsletter,* July 1979, p. 81).

Snepp's attorneys–Mark H. Lynch of the American Civil Liberties Union, John Cary Sims, Alan B. Morrison, and Alan Dershowitz–told the justices: "The decision presents an important issue for review because the system of prior restraint sanctioned by the Court of Appeals impermissibly burdens the First Amendment rights of thousands of government employees and the public."

teachers' rights

Newport News, Virginia

The Mathews, Virginia high school teacher who was fired after he asked his students to read *Brave New World* filed suit in U.S. District Court in June to protest his dismissal. The teacher, L. Stuart Gibbs, said in April he was warned that he would be fired if he assigned the novel to his students (see *Newsletter,* July 1979, p. 77).

Mathews High School Principal Harry Ward, who commented in April that the issue was one of "insubordination," officially gave no reason for Gibbs' dismissal.

"No reason was stated," Ward said. "Under the State of Virginia statute, you do not have to give any reason." Reported in: *New York Times,* June 17.

libel

New York, New York

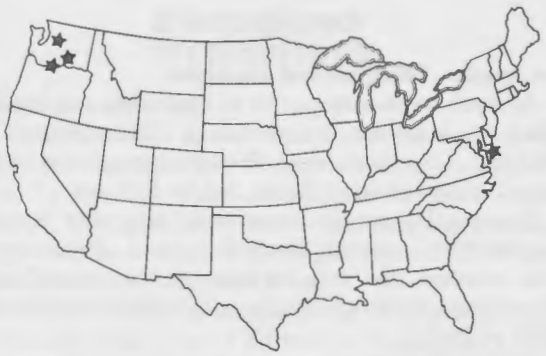
In a novel reply to a federal libel suit filed by the Church of Scientology, Authors James Siegelman and Flo Conway and their publisher, Lippincott, contend that the First Amendment bars the filing of libel actions by religious groups.

The Church of Scientology claims that its ability to function as a non-profit religious organization and raise funds was "grievously injured" by Siegelman and Conway's book, *Snapping: America's Epidemic of Sudden Personality Change.* The libel action cites passages in the book which the Church of Scientology claims are "wholly false." It asserts that a passage linking Charles Manson to Scientology teachings was published with "reckless disregard" for the truth and represented "an extreme departure from the standards of investigation and reporting ordinarily adhered to by reasonable writers and publishers."

According to the authors' attorney, Melvin L. Wulf, the separation of church and state required by the First Amendment forbids religious associations from charging libel because such actions are in essence disagreements about religious beliefs and practices lying beyond the jurisdiction of the courts.

(Continued on page 114)

success stories



Rockville, Maryland

A Maryland law protecting the confidentiality of library circulation records was invoked in Montgomery County when the prosecution in the trial of sixteen-year-old jail inmate accused of murder wanted to place the inmate's library circulation records in evidence.

A police officer obtained the records when the jail librarian, Joyce Alibrando, was not on duty, but when Alibrando defended their confidentiality they were barred from admission as evidence.

Alibrando said that disclosure of the records would have meant loss of "credibility with the entire inmate population." Reported in: *Library Journal,* June 1.

Issaquah, Washington

Thanks to action taken by the local school board in June, students in sophomore English classes at Issaquah high schools will again be able to read *The Catcher in the Rye.* Last year the book was removed from elective reading lists for the 1978-79 school year (see *Newsletter,* Nov. 1978, p. 138).

The decision to return the novel to classrooms was made at the urging of English teachers. They apparently achieved success because three board members who voted in August 1978 to ban the book from classrooms were later recalled from office by district voters. Reported in: *Bellevue Journal-American,* June 28.

Kent, Washington

Ordered by the Kent school district board to review four films after parents complained about them, the district's instructional materials committee unanimously recommended in June that *The Eye of the Storm* be approved for use at all grade levels, and that *Animal Farm* be approved for use by all secondary school students.

Alice Matz, a parent prominent among the complainants, said the teacher in *The Eye of the Storm* "should have been railroaded out of town." That teacher, who attempted to teach the meaning of racial prejudice to her students by dividing them into groups according to eye color, subjected the youngsters to "mental abuse," according to Matz.

Matz said *Animal Farm* made her sick. "I can't understand what it is supposed to be about," she commented.

The instructional materials committee did not submit recommendations on two other films, *The Bully* and *Free To Be You and Me.* Reported in: *Renton Record-Chronicle,* June 17.

Renton, Washington

At a crowded meeting in June, the Renton school board voted three to two to return *Our Bodies, Ourselves* to the libraries of the district's three senior high schools for use by junior and senior students. The members of the board heard testimony from more than thirty people who both praised and condemned the book before an audience of more than 150 persons.

The action reversed the ten-to-six recommendation of the district's General Instruction Committee, composed of professional employees of the district and students. In action on objections against the book, the committee concluded that the work should be placed in the district's professional library for use by staff members only.

The book was temporarily withdrawn from library collections by school administrators in April following the receipt of complaints from parents (see *Newsletter,* July 1979, p. 76).

Angry opponents of *Our Bodies* said they were outraged by the majority's refusal to require written parental permission for use of the work. They promised to defeat the three in the forthcoming fall election. Reported in: *Renton Record-Chronicle,* June 22, 24.

(Dateline . . . from page 104)

The action restricting access to Jack Prelutsky's book was taken after a parent complained that her six-year-old daughter became frightened and experienced nightmares after she borrowed the book from her nine-year-old sister, a student at the Carl Sandburg School.

Prelutsky, a resident of the Kirkland area, disagreed with the action. "All the poems are based on tradtional folklore. A lot of the original Grimm's fairytales are much more gruesome than any of my poems," Prelutsky said. "There are certainly many more frightening things on TV than anything in my book."

Christ Haugen, a spokesperson for the Lake Washington Education Association, said she wished the teachers' group could do something about the ban, but she explained that the teachers' contract with the school district made no provision for an official objection. "We're hanging loose on this one," Haugen said. Reported in: *Bellevue Journal-American,* May 19.

television

New York, New York

CBS censors, apparently fearing that viewers tuning to the presentation of the Tony awards would be offended by a song from *The Best Little Whorehouse in Texas*, nervously turned down the sound eleven times during the performance of the number. References to "right between the goalposts," "I made her," and nine other lines were made inaudible by the network.

During the Tony rehearsal, CBS asked *Whorehouse* Director Tommy Tune to cut the offending expressions from the song, but Tune refused. Reported in: *New York Post*, June 5.

Philadelphia, Pennsylvania and elsewhere

ABC outlets in nine cities refused in June to air a documentary, "The Shooting of Big Man: Anatomy of a Criminal Case," because the network refused to excise "obscenities." The program was canceled by stations in Philadelphia, Houston, Dallas, San Antonio, Atlanta, Buffalo, Jacksonville, Tulsa, and Little Rock.

Lawrence J. Pollock, general manager of the ABC station in Philadelphia, explained the decision he made in consultation with department heads.

"We suggested two options to ABC," Pollock said. "We asked them to give us an edited version, deleting a four-letter word and four uses of a twelve-letter word, or to give us permission to bleep them ourselves. We did not get a reply until late Thursday [for the Friday night program]. They said no." Reported in: *Philadelphia Inquirer*, June 11.

schools

Pullman, Washington

Administrators at Pullman High School and at Lincoln Middle School censored both schools' yearbooks in June in order to remove supposedly offensive material. A local spokesperson for the American Civil Liberties Union charged that the actions violated the U.S. Supreme Court's *Tinker* decision guidelines, which bar censorship of student expression unless it substantially threatens the achievement of legitimate school objectives.

Lincoln Principal Pat Mooney said several pages of the middle school's yearbook were reprinted because the originals contained "objectionable" language. Phyllis Vettrus, the faculty adivser for the yearbook, said she agreed with the decision to reprint the pages, explaining that they were sent originally to the printer without her approval.

Two pages were removed from the high school yearbook before distribution because they showed students using liquor, beer, and drugs. A student involved in a protest against censorship of the pages was suspended after using "objectionable" language when speaking to a member of the school administration. Another student was suspended for tearing up a copy of the yearbook at the protest demonstration. Reported in: *Seattle Post-Intelligencer*, June 8.

newspapers

Los Angeles, California and elsewhere

At least seven newspapers in California and Nevada decided in July not to publish a "Doonesbury" series satirizing Governor Jerry Brown's association with an alleged organized crime figure, Sidney Korshak.

Commenting on the comic strip, Governor Brown said "Doonesbury" creator Garry Trudeau's allegations "have been rehashed, and they are false and libelous and anybody who repeats them knowingly with malice aforethought is guilty of libel."

William F. Thomas, *Los Angeles Times* editor, said his paper decided not to carry some of the strip because "we know from previous and extensive research that some of the allegations cannot be substantiated." The Universal Press Syndicate, which distributes the strip, rejected a few language changes which were suggested by the *Times*.

William German, managing editor of the *San Francisco Chronicle*, said he found the series "hilarious," but "we have not been able to substantiate the charges and the syndicate has refused to permit editing."

Don Hoenshell, editor of the *Sacramento Union*, said he ran the strip and "we haven't had any complaints about it." Reported in: *Los Angeles Times*, July 12.

(From the bench . . . from page 109)

presidential tapes

Washington, D.C.

In a ruling handed down in July, a federal judge approved government plans to make former President Richard Nixon's White House tapes—including those played to the Watergate trial jury—available at eleven listening centers around the country.

In approving the release, U.S. District Court Judge Aubrey E. Robinson Jr. rejected arguments from Nixon's attorney that allowing the public to hear the White House tapes would violate the "presidential privilege of confidentiality," Nixon's "right to privacy," and his "right to control the dissemination of his voice."

Nixon's White House tapes were made federal property in 1974 when Congress passed the Presidential Recordings and Materials Preservation Act. The act ordered the General Services Administration to establish regulations and procedures to govern their release to the public.

Mark Spooner, a lawyer for the Reporters Committee for Freedom of the Press, which favors release of the tapes, said the tapes would probably be made available in their raw form, including the profanity that appeared as "expletive deleted" when the White House released transcripts.

Nixon's lawyer, R. Stan Mortenson, said he would appeal the decision. Reported in: *Chicago Tribune*, July 24, 25.

broadcasting

Washington, D.C.

A complaint filed against CBS under the Federal Communications Commission's fairness doctrine was dismissed in June by the U.S. Court of Appeals for the District of Columbia. The appellate bench found that the complaint, alleging that the network did not give balanced coverage to national security issues, was too vague.

The court upheld the action of the FCC in rejecting the American Security Council Education Foundation's charge against the network. The court and the FCC agreed that the issues were too broad to require a "balanced" presentation of conflicting views under the doctrine.

The foundation based its charge on a year-long study of CBS coverage of four topics: U.S. military and foreign affairs, Soviet military and foreign affairs, Chinese military and foreign affairs, and Vietnamese affairs.

The appellate decision, written by Judge Edward Tamm, noted that when the U.S. Supreme Court upheld the doctrine in the *Red Lion* case, it recognized that zealous enforcement could lead broadcasters to reduce their coverage of controversial issues.

Three dissenting judges argued that "the wagons are being drawn around the fairness doctrine in a fashion assured to deflect the most worrisome fairness complaints—those . . . alleging pervasive and continuous imbalance in the coverage of controversial matters." Reported in: *Variety*, July 4.

Philadelphia, Pennsylvania

A charge of "provocative and compellingly racist programming" by radio station WDAS was rejected in July by Arthur Ginsburg, chief of the Federal Communications Commission's complaints and compliance division.

In a letter to the FCC, Philadelphia City Solicitor Sheldon Albert charged that a WDAS talk show host, Georgie Woods, had called for blacks to arm themselves during an interview with a state representative.

Ginsburg ruled that FCC censorship of broadcast material is prohibited by the First Amendment and by the federal law which established the FCC. Reported in: *Variety*, July 18.

prisoners' rights

New Orleans, Louisiana

Because an Alabama prison regulation stipulating that "absolutely nothing will be allowed to go from one inmate to another in the segregation units" limits the right of a segregated inmate to send literature about politics and religion to other prisoners and to receive similar communications from them, the state can be required in a legal action to show how such a rule furthers its legitimate interest in operating a penal program, the U.S. Court of Appeals for the Fifth Circuit declared in May.

According to the appellate bench, a bare assertion that the regulation is an appropriate means of maintaining security in the segregation unit was not sufficient. The state can be required to produce specific evidence to support its assertion and explain why the regulation should not be modified to less severely restrict the First Amendment rights of inmates. Reported in: *West's Federal Case News*, May 25.

obscenity

Honolulu, Hawaii

Honolulu police were ordered in May not to seize allegedly pornographic films unless there are prior or prompt post-seizure adversary hearings on their status under the law. U.S. District Court Judge Stanley A. Weigel issued a permanent injunction against the enforcement of Hawaii's anti-obscentiy laws, which fail to provide for the required adversary hearings.

The injunction was requested by the owners of four movie theaters in Honolulu. Reported in: *Honolulu Star Bulletin*, May 15.

New Orleans, Louisiana

A judge does not have to view an allegedly obscene film before issuing a warrant for its seizure, Louisiana's highest court ruled in May. The justices upheld a warrant issued by New Orleans Criminal District Court Judge Rudy Becker on the basis of two police officers' written description of a film.

The high court overturned the decision of the trial court to suppress the film as illegally seized evidence. Reported in: *Baton Rouge Advocate*, May 23.

Dallas, Texas

Within days of a ruling by U.S. District Court Judge William Taylor which struck down a Dallas anti-obscenity ordinance, members of the Dallas city council said they would attempt to salvage the law. Mayor Robert Folsom said he was certain the council would try to eliminate as many "adult" businesses as possible in Dallas.

The ordinance, which barred theaters showing sexually explicit fare from areas within 1,000 feet of a church, school, park, or residential neighborhood, was so vigorously enforced that a judge of the Dallas County Court of Criminal Appeals estimated in May that the backlog of cases was so large it would take twenty years to clear the dockets.

Employees of one theater were arrested more than 250 times before Judge Taylor issued a restraining order against

police in April of 1978.

In striking down the ordinance, Judge Taylor held that it illegally imposed prior restraints, failed to exempt theaters which existed before the ordinance was adopted, and was enacted without a clear demonstration of compelling social need. Reported in: *Dallas Times-Herald,* June 9; *Variety,* June 20.

etc.

Washington, D.C.

The Washington Metro bus and rail system must accept advertisements on a wide range of controversial political and social issues or else accept no ads whatsoever on such topics, U.S. District Court Judge John H. Pratt declared in July. The ruling was issued in a case involving an attempt by the Gay Activists Alliance of Washington to place an ad in Metro vehicles (see *Newsletter,* Jan. 1979, p. 12).

In 1978, Metro twice rejected the ad, which states that "someone in your life is gay" and shows photographs of Washington-area gays. The alliance filed suit with the aid of the American Civil Liberties Union, contending before Judge Pratt that the Metro system had violated the First Amendment.

Metro argued that such ads would be "objectionable to a substantial segment of the community." Judge Pratt held that the rejection of the ad reflected "the personal and subjective reactions of decision-makers" and was therefore unconstitutional.

"Although we are sympathetic to [Metro's] interest in raising advertising revenue and its natural desire to protect its riders from offensive messages, and to avoid public controversy, we are nevertheless compelled to hold that [Metro] has run counter to the requirements of the First Amendment in its pursuit of these interests and desires," Judge Pratt said.

Attorneys for the alliance noted that Metro had already accepted advertisements from pro-nuclear groups, anti-abortion groups, small religious organizations, and Communist Party candidates. Reported in: *Washington Post,* July 7.

New York, New York

A request by Concerned Jewish Youth for a preliminary injunction against enforcement of New York City police restrictions on picketing and amplified noise in the immediate vicinity of the Soviet Mission in Manhattan was denied in May by U.S. District Court Judge Milton Pollack.

For the purpose of denying the request, Judge Pollack preliminarily ruled that the restrictions were constitutionally valid because of the government's substantial interest in protecting foreign diplomatic missions. He also cited empirical evidence of dangers posed by demonstrations in front of the Soviet Mission. Reported in: *West's Federal Case News,* June 8.

(Is it legal . . . from page 110)

Wulf described the libel action as "a theological dispute dressed up to look like a libel suit." He charged that the Church of Scientology filed the suit to "harass the defendants and to intimidate them and others who dare hold unfavorable opinions about the plaintiffs and their religion." Reported in: *Publishers Weekly,* March 26, May 28.

reporters' rights

San Francisco, California

The Synanon Foundation in June subpoenaed confidential notes and files in the possession of the *Point Reyes Light,* the small weekly that won a Pulitzer Prize for its investigation of the controversial organization.

"We have no intention of betraying the confidence of our sources," said Publisher David Mitchell. He indicated that the newspaper would base its reply to the subpoena on the First Amendment and on California's shield law, noting that "this was precisely the kind of situation the legislature had in mind" when it enacted the shield statute.

Synanon requested the confidential information allegedly to defend itself against a $32 million damage suit filed by Los Angeles Attorney Paul Morantz, the victim of a rattlesnake attack in October 1978. Morantz charges that Synanon was responsible for the attack and seeks all its assets as damages.

In a nearly simultaneous development, a California news service withdrew a story after it was threatened with libel action by Synanon. The Capitol News Service, which serves 400 newspapers in California, notified its subscribers of the action and issued a retraction and apology.

In the story which offended Synanon, CNS Columnist George Nicholson attacked California courts for denying relief to a person who sued Synanon when a convict sent to the organization for rehabilitation escaped and shot the plaintiff and killed several other persons. Nicholson questioned the competence of Synanon to serve as a rehabilitation agency. Reported in: *San Francisco Chronicle,* June 8; *Editor & Publisher,* June 9.

freedom of information

Washington, D.C.

Forty-seven individuals and groups filed suit in U.S. District Court in June to halt destruction of files held at Federal Bureau of Investigation field offices. The suit describes the files as containing information "of the greatest historical, research, legal, and other value."

The suit asked for an immediate temporary injunction on the grounds that the records "are being destroyed on a massive scale and at a rapid pace." The suit seeks a permanent injunction directing that the files be retained by the National Archives.

Thomas W. Wadlow, an official of the National Archives, said the field office records lack sufficient historical value to merit their preservation. He further contended that files at FBI headquarters contain the same or more complete information.

Wadlow reported that a three-month study conducted by him showed duplication of files held by the field offices and the bureau's Washington headquarters.

The suit contends that "headquarters does not know or have any records of the number, or the contents, of files held in the field offices. The headquarters counterpart file, when it exists, contains only limited, fragmented portions of the field office file."

Among the plaintiffs are the American Indian Movement, the American Friends Service Committee, the Women's International League for Peace and Freedom, Angela Davis, Jessica Mitford, Paul Robeson Jr., and the sons of Julius and Ethel Rosenberg. Reported in: *Dallas Morning News,* June 28.

church and state

Grand Forks, North Dakota

A North Dakota statute which requires that the Ten Commandments be posted in public school classrooms will be challenged in the courts by a former state supreme court justice, Robert Vogel, who now teaches law at the University of North Dakota.

Vogel agreed to challenge the constitutionality of the 1927 law in cooperation with the American Civil Liberties Union. "North Dakota's law is an uncontitutional violation of the separation of church and state," Vogel said. Reported in: *Grand Forks Herald,* May 8.

obscenity

Providence, Rhode Island

The Rhode Island legislature met in a short special session in June and enacted a revised version of the state's 1978 anti-obscenity law, which was declared unconstitutional by the Rhode Island Supreme Court in May (see *Newsletter,* July 1979, p. 87).

The 1978 law unconstitutionally stipulated that certain depictions of sexual activity were "patently offensive." The determination of "patent offensiveness" is the "exclusive province" of the jury, the state court declared.

The state's leading spokesperson against pornography, Harold Doran, said he was elated by the legislature's action. He called upon the state attorney general to conduct briefings for local police departments on proper enforcement procedures. Reported in: *Providence Visitor,* June 14.

AAUP censures university in controversial move

Delegates to the sixty-fifth annual meeting of the American Association of University Professors voted in June to add three institutions to the AAUP's list of censured administrations: the University of Maryland, the University of Texas of the Permian Basin, and Wingate College (North Carolina).

For the first time in fifteen years, the delegates rejected a recommendation of Committee A (on academic freedom), Committee A, by a close vote, had decided not to recommend that the University of Maryland be censured, but delegates to the annual meeting voted 143-101 to add the institution to the censured list.

Committee A had investigated charges that the University of Maryland violated the academic freedom of Bertell Ollman by its refusal to appoint him chairperson of the UM political science department. It was contended that he was rejected because of his Marxist views.

In a letter to the *Chronicle of Higher Education* (July 16), a former president of the AAUP chapter at the University of Maryland condemned the delegates' action. Robert F. Carbone wrote: "So AAUP flexed its muscles, but at what cost? Ignoring the record (i.e., the investigating committee report) and voting censure based on something other than evidence of a clear violation of academic freedom seriously damaged AAUP's credibility. Rebuffing Committee A compromises its most influential and useful group. Using censure as a tool for organizational support diminishes its power to protect the rights of professors everywhere."

Two other professors at the University of Maryland also denounced the action in a letter to the *Chronicle.* Stephen G. Brush and Frederick Suppe said: "Not even a majority of the members who attended our local AAUP chapter meeting to discuss the issue wanted censure. Since the AAUP's own investigative committee recommended against censure, it is obvious that the delegates to the national meeting based their vote on something other than the facts of the case.

"Recall that Ollman was being proposed as a department chairman, which means, at least at this university, that he would be primarily an administrator, rather than a scholar and teacher. How can anyone deny the president of a university the right to veto an appointment to his own administrative team, no matter how well the candidate's scholarly and other qualifications are regarded by the faculty?

"The only legitimate criticism here—and it is a serious one—is that other administrators delayed their decisions or led Ollman to believe that approval by the president was a mere formailty. Ollman was thereby put in an inconvenient and embarrassing situation, but he did not lose the position he actually held and his opportunities to express his views were certainly not diminished."

AAParagraphs

sunshine for censorship?

Probably not more than one in twenty-five instances of school book censorship ever reaches the cold white light of media publicity, and Prof. Edward B. Jenkinson, for one, thinks that's a shame and that book publishers ought to do something about it.

Jenkinson is director of the English Curriculum Study Center at Indiana University, but it was as chairperson of the anti-censorship committee of the National Council of Teachers of English (NCTE) that he recently voiced his views about directing the glare of publicity on the would-be censor. Jenkinson talked informally to the Committee on Social Issues in Education of the School Division of the Association of American Publishers (AAP).

An expert on censorship (he has written recent articles with such tongue-in-cheek titles as "How to Keep Dictionaries Out of the Public Schools" and "How to Condemn a Book Without Reading It") Jenkinson does not, let it be said, view attempted censorship of textbooks and school library shelves as an unmitigated evil: educators need to face critics now and again, he believes. But the rapidly growing trend toward censorship—he estimates that perhaps some 200 groups try to dictate the content of school materials—should not be underestimated as something that's "way over there" or that is "only going after dirty books." In many cases, Jenkinson believes, what's at stake is a battle over "virtually everything—over who will control the minds of children."

While some school people prefer to keep instances of censorship or attempts at it under wraps, Jenkinson does not believe publishers should follow suit. Publicize those incidents that come to your attention, he urged his AAP audience, because the public deserves to know just what it is the censors want and why, and what it is they are fighting. Furthermore, the public response to censorship laid bare is often heart-warming, he noted.

Jenkinson offered these further tips to book publishers on the censorhsip issue:

- Recognize parents' right to complain.
- When would-be censors make charges, rebut them; if they make erros of historical fact or of logic, point them out.
- Consult your own sales representatives in the field about potential or actual censorship: they are generally held in high respect by those in the schools.
- When you publish new curricular programs, make certain they are accompanied by full explanations of their purpose and implementation, and make sure those explanations are written in language comprehensible to lay parents as well as to the professional educator.
- Be alert to—and take steps to counter—federal or state legislation aimed at censoring books for the classroom or library.
- Get parents more involved in education—and in the textbook publishing process itself.

(The AAP School Division has published "Parents' Guide to More Effective Schools," of which some 35,000 copies were distributed last year; the AAP Freedom to Read Committee has issued "Books and the Young Reader," a statement about young people's need to read widely and in books that seem relevant to their lives and society. The former is available free by sending a stamped, self-addressed no. 10 envelope to AAP, One Park Avenue, New York 10016; the latter is available at 10 cents per copy, or 9 cents for orders of 100 or more, from the same address.)

This column is contributed by the Freedom to Read Committee of the Association of American Publishers. It was written this month by Richard P. Kleeman, the committee's staff director.

(Nuclear power problems. . .from page 97)

mutations, birth defects, and many other health problems.

3. **War on Scientists**—scientists who uncovered alarming evidence of the potential impact of low level radiation on the public received little support from the government. Dr. Thomas Mancuso, commissioned by the Atomic Energy Commission in 1964 to measure how safe nuclear plants are for the people who work in them, subsequently found that low levels of radiation, previously though to be safe, can actually be quite deadly. His contract with the government was canceled and his research funds cut off. And he was not alone, according to an article titled "The Government's Quiet War on Scientists Who Know Too Much" which appeared in *Rolling Stone,* March 23, 1978.

4. **U.S. Exports Death: the Third World Asbestos Industry**—in the late 1960s, after research showed that people who work in asbestos plants and inhale the fibers run a significantly high risk of contracting lung cancer, the U.S. government issued stronger regulations for the asbestos industry. What the American public does not know is that asbestos manufacturers responded to the new regulations, not by improving working conditions, but by moving their factories to nations such as Mexico, Taiwan, South Korea, India, and Brazil. Manufacturing regulations in Third World countries often are either minimal or nonexistent and the manufacturing profits are even higher because of low wages.

5. **Winter Choice: Heat or Eat**—in the winters of 1975, 1976, and 1977, there were more than 200 deaths directly linked to the shut-off of gas and electric utility service to residents. Thousands of other Americans were forced to make the choice of spending limited funds to pay fuel bills or for medication, food, or rent. These statistics were cited in November 1978 by the Citizen/Labor Energy Coalition (CLEC), a national group which has started a campaign to have the U.S. Department of Energy and state public utility

commissions prevent electric and gas utility companies from stopping service to their customers. As of last year, there were only three states–Wisconsin, Maryland, and Rhode Island–which had legislation to ban winter utility service shutoffs.

6. **America's Secret Police Network**–while most Americans know about the FBI and CIA, few are aware of the LEIU–the Law Enforcement Intelligence Unit. While the LEIU is a little known organization, its power is considerable. The LEIU links the intelligence squads of almost every major police force in the United States and Canada. Although its members are sworn police officers who work for state and city governments, it is a private club; the LEIU is not subject to freedom-of-information laws and its files are even more secret than those of the CIA or FBI.

7. **The Spectre of Sterility**–the average sperm count among American men has dropped substantially since a landmark study done less than thirty years ago. Research indicates that the probable causes are chemicals similar to the DBCP pesticide, herbicides, fungicides, and other elements which are known to decompose very slowly. The male reproductive process may have been affected by the use of industrial and agricultural poisons during the past thirty to fifty years. Dr. Kenneth Bridbord, of the National Institute for Occupational Safety and Health, in Washington, said last year, "I would not be surprised, based on the evidence we have looked at so far, to find the declining sperm count represents a potential sterility threat to the entire male population."

8. **Dangerous Dams**–as the United States busily built nearly 50,000 large dams, it too often neglected questions of the safety of the structures holding back the water. According to Bruce A. Tschantz, a University of Tennessee civil engineering professor and a White House consultant on dam safety, in any given year twenty-five to thirty of the nation's dams may break. Of the 49,422 large dams counted by the Corps of Engineers in a national inventory, about 39,000 have never been inspected by state or federal agencies.

9. **Nutrition and Mental Illness**–there is mounting evidence that our diets may be driving us crazy and that some of the 6.4 million Americans now under mental care, as well as 13.6 million in need of it, could be helped through proper nutrition. Biochemist and Physician Abram Hoffer maintains that seventy percent of prison inmates imprisoned for serious crimes have vitamin deficiencies leading to aggressive behavior and that ninty percent of convicted murderers diagnosed as paranoid schizophrenics suffer from vitamin deficiences or low blood sugar. Benjamin F. Feingold, Kaiser Permanente Department of Allergy chief emeritus, hypothesized in 1973 that one to five million American schoolchildren diagnosed as hyperkinetic are actually victims of toxicity due to ingestion of artifically dyed and flavored foods. Despite this, the mental health area is the least funded area in U.S. nutrition research.

10. **Who Owns America?**–despite an occasional story about poverty or hunger in America, the American public is generally led to believe that it is better off financially than ever before. A popular book for politicians asserts that "the economic class system is disappearing. . . . Redistribution of wealth and income . . . has ended economic inequality's political significance." The reality is somewhat different, according to an article by Maurice Zeitlin which appeared last year in the *Progressive*. Zeitlin asked the question "Who Owns America?" and answered it with statistics showing it's "The Same Old Gang." Economic historians reveal that on the eve of the Civil War (1860), the wealthiest one percent owned 24 percent of the net worth of the entire population. In 1969, more than a century later, that figure was 24.9 percent. Today, the richest one percent owns a quarter and the top half of that one percent owns one-fifth of everything in America. Like the "Myth of Black Progress," last year's top-ranked "censored" story, the myth of economic progress is another continuing media deception.

(In review . . .from page 101)

speech purism" may come from outside ACLU; they are almost unheard of from within. As Neier notes, however, the Southern California affiliate defines "civil liberties" far more broadly than other parts of the organization. Issues that others would define as "social responsibilities"–such as health care and unemployment–are civil liberties issues to a majority of the Southern California affiliate members. In addition, many Southern California ACLU members are politically radical.

The National Lawyers Guild, an organization of 5,000 lawyers, law students and others, frequently uses the word *progressive* to describe its own politics. In their view, only progressives (not the enemy) deserve defense. During the turbulent 1960s and early 1970s, the Guild and ACLU attorneys often worked side by side. The ACLU, however, was concerned about the rights of all persons, both on the right and on the left, while the Guild was exclusively concerned with defending the rights of so-called progressives. As a result of the ACLU's agreement to defend the rights of Klansmen in San Diego, the Guild denounced the ACLU in a March 1977 statement, "Sterile Civil Libertarianism Builds Racism." The Guild said the ACLU was guilty "of a poisonous evenhandedness." The statement continued:

> To say that progressive people such as anti-war activists, communists, anarchists, and anti-imperialists, are to be treated in the same way and accorded the same defense by the ACLU as is accorded to Nazis, Fascists (such as the Reverend Moon), and to the Klan, will ultimately weaken support for civil liberties amongst progressive and militant people in struggles in this country. Support for one side, the progressive side, should be wholehearted and provided in the spirit of comradeship. Support for the other side, the reactionary side, may be appropriate at times. On a specific and limited civil

liberties issue, it may be correct for the ACLU and other forces to lend some legal support by way of amicus participation. However, support should be miserly and stingy—limited to the most proscribed of circumstances and focused upon the narrowest of issues.

A Klan case in Mississippi, not Nazis in Skokie, proved to be the most divisive within the contemporary ACLU. A request by a Klan group in Saucier, Mississippi to use a high school ball park for what they called an open, peaceful rally was denied by the board of education. The Klan appealed to the Mississippi ACLU for assistance. A volunteer attorney appeared before the school board in hopes they would reverse their decision. The school board refused. Since unlike many other local ACLU groups the Mississippi affiliate had a membership of about one-third blacks, with blacks comprising one-third of the board, there was deep dissent over representing the Klan. Following turbulent meetings of the ACLU board in Mississippi, at which officials of the national organization were present, the group voted by one vote to continue defense of the Klan. The free speech issues were clearer here than in the Camp Pendleton controversy, and were remarkably similar to Skokie—defending the enemy. Again, elements of the National Lawyers' Guild and their sympathizers within the ACLU accused the organization of being too evenhanded in defending free speech.

Neier also points out that Nazis (and Klansmen) don't just insist on the right to advocate denying freedoms to others, they also want police protection when they express their views. The same freedom of speech that permits the Nazis and Klan to advocate genocide of Jews, blacks, and Catholics also permits a Rabbi Meir Kahane to lead a march of helmeted members of the Jewish Defense League chanting "Death to the Nazis" and "Kill the Nazis." Freedom of speech also permits those who despise both groups to say so with as much vehemence as they want. He says, "The Constitution guarantees to the people not only the freedom to speak but the freedom of the press and the freedom to assemble peaceably to speak in concert with others who want to express similar views."

He goes on:

> A faith that truth and virtue will prevail through free and open encounters with falsehood and evil may appear naive. But Jefferson and Milton were anything but naive. Although they understood the risks of freedom, they knew that it is far more dangerous to entrust the government with the power to determine what doctrines may be safely expressed by the people. Government cannot claim to enjoy the consent of the governed if it places restraints on what they say. Only a society that permits people to speak can justly impose on them the decisions of the majority. The rule of the majority has no claim on the loyalty of the minority unless the minority has its chance to influence others and, thereby, to become the majority.

Neier also describes the neofascist movements in England and the reaction of the British government to these movements. The reaction—denial of the fascists' rights to speak—has not solved the problem. As for Weimar, Germany, the lesson is that a free society cannot continue to exist if it will not act forcefully to punish political violence.

In the end, however, American democracy preserved its legitimacy by confronting the Nazis. As Neier notes in his epilogue,

> The judges who devoted so much attention to the Nazis, the police departments that paid so much overtime, and the American Civil Liberties Union, which lost a half-million dollars in membership income as a consequence of its defense, used their time and money well. They defeated the Nazis by preserving the legitimacy of American democracy.

Defending My Enemy should be required reading for all those who would deny First Amendment rights to individuals or groups whose views may be offensive to them. In denying the rabid racist, virulent anti-Semite, or extreme left-winger the right to speak, to march, or to publish, we hasten the destruction of our own liberty.—*Reviewed by Susan Kamm, Member, ALA Intellectual Freedom Committee.*

Dealing with Censorship

Edited by James E. Davis. National Council of Teachers of English, 1979. 228 p. $7.50 paper.

Ostensibly aimed at English teachers, this volume is like a Mexican Christmas pinata, filled with anti-censorship goodies for all concerned with censorship problems and practical solutions to them. One of the most significant items in this eighteen-article collection (about equally divided between the previously published and the new) is Lee Burress' useful, detailed report of his 1977 NCTE survey, which discovered—as no regular NIF reader will doubt—that "censorship pressure is a prominent and growing part of school life." Another is J. Charles Park's brief but to-the-point study of "Clouds on the Right: a Review of Pending Pressures against Education." It includes the New Right, the Evangelical Right, and the Old Right—pinpointing individuals and groups who are working hard to influence American curricula and to censor library and textbooks.

Granted these and other pressures on teachers/librarians, what can be done to face up to the increasing attempts to deny intellectual freedom? June Berkeley suggests "Teach the Parents Well," detailing a successful experiment in community reading and education which she conducted in Veberly, Ohio, "on the fringes of Appalachia." Charles Suhor, describing his "preventive and reactive action" on censorship as "Basic Training and Combat Duty," lists some quite realistic, practical, and experience-tested methods which the beleaguered educator can use in the continuing war against the censor.

Diane P. Shugert makes two valuable contributions—first, "How To Write a Rationale in Defense of a Book," and second, a very comprehensive and helpful list of

"Organizations Active for Intellectual Freedom." Veteran anti-censorship campaigner Kenneth L. Donelson also has two articles, in one of which he suggests "Some Ways to Handle It When It Comes (and It Will)." He, along with many others in and out of this collection, recognizes the vital importance of soliciting and meriting community support *before* the censor strikes.

Concluding with the editor's seventy-five-item, well-selected and up-to-date bibliography, this work well deserves wide reading, both by practioners and students, in the classroom and the library. My favorite line in the whole book, by the way, is Diane P. Shugert's colorful description of her experiences in "the jungle of censorship," where she has been, she says, "pricked by the thorn of insult and strangled with the vine of ignorance." To avoid similar catastrophes, try using the Davis volume. It makes a great anti-censorship machete! *–Reviewed by Eli M. Oboler, University Librarian, Idaho State University, Pocatello.*

Justice Hugo Black and the First Amendment

Edited by Everette E. Dennis, Donald M. Gillmor, and David L. Grey. Iowa State University Press, 1978. 204 p. $11.50.

To those versed in constitutional controversy it is apparent that some debate still rages as to Justice Black's alleged doctrinaire diagnosis of the Bill of Rights generally and the First Amendment in particular. "I understand that it is rather old-fashioned," Justice Black observed in 1962, "and shows a slight naivete to say that 'no law' means no law, but what the First Amendment says is 'Congress shall make no law.' " Justice Black continued: "And being a rather backward country fellow, I understand it to mean what the words say." Much of *Justice Hugo Black and the First Amendment* addresses and attempts to clarify the justice's interpretational posture on the Bill of Rights, specifically in the realm of communications law.

To one engaging in a barber shop analysis, Black's opinions must appear enigmatic. During the witch hunting nights of the 1950s, Black held the dubious distinction of dissenting in communist 'conspiracy' cases such as *American Communications Association* v. *Douds,* wherein the Court upheld section 9(h) of the National Labor Relations Act requiring labor leaders to file non-communist affidavits. Black's adamant dissent maintained that it was "the fog of public excitement" which was "undermining the security of the Republic," and not any exercise of free speech. In *Barenblatt* v. *United States* the Court upheld the conviction of a former teaching fellow at the University of Michigan who refused to answer questions put to him by the House Committee on Un-American Activities. Again, Black let loose his irritation in a thirty-two page dissent, claiming the Court read

> the First Amendment to say 'Congress shall pass no law abridging freedom of speech' . . . unless Congress and the Supreme Court reach the joint conclusion that on balance the interest of the Government in stifling these freedoms is greater than the interest of the people in having them.

Ironically, it was due to such outspoken liberality in liberty's perilous moment that Black received bizarre letters telling him to "go *back* to Russia."

In light of these cases it appears paradoxical that Black would dissent in *Tinker* v. *Des Moines School District,* wherein the Court upheld the right of public school students to exercise non-disruptive symbolic speech. It is delicious irony that here the majority contends that "the Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says." Yet Black's ire is evident: "This case . . . wholly without constitutional reasons . . . subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students."

Several of the contributors to *Justice Hugo Black and the First Amendment* are instructive in settling much of the muddy water encircling Black's constitutional stance. What these essays lack in innovation is to an extent made up for by the concise and apposite manner in which they are presented. Professor Snowiss's contribution, which notes the limits of a literal interpretation of the First Amendment, is certainly the best of the lot.

Despite such efforts, nonetheless, some murkiness remains: witness *Korematsu* v. *United States* (1944), wherein Black, writing for the majority, upheld the military order sending 112,000 persons of Japanese descent to detention camps, 75,000 of them being American citizens. The Court's decision, jerry-built in nature, declared there was a need for such action "because of the presence of an unascertained number of disloyal members of the group." In dissent, Justice Murphy labelled the decision the "legalization of racism"; Justice Jackson said the plaintiff's only "crime" was being of Japanese extraction and living in the West Coast state where he was born. More so than any other case, it is Black's role in *Korematsu* which precludes any neat categorization of the sum of the justice's opinions.

Professors Grey and Devol make specific appraisals of Black's view on libel and obscenity in this text. On these issues, Black appears wholly consistent: since pornography and libel come in print, the First Amendment proscribes punishment of either. Professor Devol notes Black's concurrence with Judge Arnold's humorous observation concerning the courts and obscenity:

> The spectacle of a judge poring over the picture of some nude, trying to ascertain the extent to which she arouses prurient interest, and then attempting to write an opinion that explains the difference between that nude and some other nude has elements of low comedy.

Indeed, Black's abhorrence for court involvement in such matters went so far as to prevent him from viewing the material at bar. Thus, it has been said that the pronographic shops scattered across America are one of the justice's lesser contributions.

Contributor Petrick's essay titled "Black v. contempt" should prove especial to journalists, as it concerns the

power of judges to issue summary contempts. Black's view on this matter was that the Sixth and Seventh Amendments, as well as Article III, section 2 of the Constitution, prohibited trials without juries. "It is high time," Black concluded in his dissent in *United States* v. *Barnett,* "to wipe out the judge invented . . . notion that judges can try criminal contempt cases without a jury." In a solid analysis stuffed with historical evidence Petrick notes just how far the justice succeeded in swinging the Court over to his steadfast position. Currently, only contemners cited with petty offenses receive no jury trial rights; the issue as to what constitutes a petty offense remains open.

Other chapters germane to the impact Black has left on the law concern privacy and antitrust as a route of access to newspapers. However, Mendelson's essay "Do You Swear to Tell the Whole Truth . . . " is of little use save as a human interest story, which might be expected from a professor of expository writing. The remaining chapters concerning the *Branzburg* decision and Black's questionable use of history will be of interest to historians of the justice.

It is significant to note that on First Amendment issues (excluding privacy) the authors side heavily with the former justice. This text being written primarily by journalists, their recruitment into the Black camp is predictable. While a malicious libel license might appeal to those interested in selling stories, it may prove the kiss of death to many an undeserving subject. Once, when a Detroit newspaper falsely accused Mark Twain of sadistically beating his wife after recovering from a drunken stupor, Twain satirically replied, "Now scarcely the half of that is true." It is unlikely that others would escape unscathed.

Besides lacking a degree of objectivity, *Mr. Justice Black and the First Amendment* leaves one with the impression of being shotgunned with information, though little integration of the material is provided. Much of the monologue is redundant, as several contributors strive to explain the consistency of Black's opinions. While the general theme is certainly relevant, it is occasionally set aside for biolgraphical notes of marginal constitutional importance.

Certainly the task of accurately assessing both the interpretational approach of the justice and his impact on communication law would exercise talents on the scale of Plato's guardians. The bases of Black's forceful dissents, so frequently labelled visionary by his contemporaries, have in many areas of the law swayed later sessions of the Court. His contribution is enduring and monumental. *Mr. Justice Black and the First Amendment* is something less. *–Reviewed by Gregg D. Johnson.*

(Intellectual freedom in schools . . . from page 102)

Drinkwater, W. Wayne, and Barksdale, Charles Claiborne. Cook v. Hudson: *The State's Interest in Integration Versus the First Amendment Rights of the Public School Teacher.* 45 Miss. L. Journal 953-1002, 1974.

Cook v. *Hudson* arose when three public school teachers enrolled their children in private all-white schools, thereby violating school board regulations. This article provides a commendable analysis of the case and asserts that the school board policy suffers from overbreadth.

Education and the Law: State Interests and Individual Rights. 74 Mich. L. Rev. 1373-1502, 1976.

A significant contribution examining the impact of the educational system on the ordering of social relationships. This essay maintains that the function of education is to inculcate social values and provide a minimal scholastic ability, although this need not infringe on the autonomy interests of the individual.

Emerson, Thomas I., and Haber, David. *The* Scopes *Case in Modern Dress.* 27 U. Chi. L. Rev. 522-528, 1960.

A query of how current constitutional theories (e.g., separation of church and state) relate to problems raised by the Tennessee anti-evolution act. The authors contend that current free expression interpretation would most readily render the Tennessee act unconstitutional.

Flygare, Thomas J. *Teacher Loyalty Oaths After* Cole v. Richardson: *Muddy Waters?* 2 Journal of Law and Ed. 193-213, 1973.

Claiming that the firing of teachers without notice on grounds of refusing to sign a loyalty oath violates due process, the author goes on to provide three strategies for working with the decision in *Cole.*

Freedom of Religion and Science Instruction in Public Schools. 87 Yale L. Journal 515-70, 1978.

This thorough investigation questions 1) whether the exclusive presentation of the general theory of evolution in the public schools acts as a burden on the free exercise of religion; 2) whether the compulsory characteristics of public schooling renders this burden substantial; and 3) whether the government interest in the general theory is so compelling as to justify a restraint on religious freedom. In concluding that the general theory abridges the free exercise clause of the First Amendment, it is urged that high school instruction be neutralized or allow for the exemption of students from particular courses.

Glasser, Ira, and Levine, Alan H. *Bringing Student Rights to New York City's School System.* 1 Journal Law and Ed. 213-29, 1972.

A reproachful study alleging that the publication and circulation of 200,000 student rights handbooks was a half-hearted Board of Education attempt to bring student rights to New York City. The evolution of students' rights in New York City is also considered.

Goldstein, Stephen R. *The Asserted Constitutional Right of Public School Teachers to Determine What They Teach.* 124 U. Pa. L. Rev. 1293-1357, 1976.

A skillful study of the lack of constitutional support for the claim that teachers and not their superiors are the determiners of

course content. Mr. Goldstein asserts that this legal arrangement is preferable, as parental control through the school board inculcates social values, and not any one teacher's values.

———. *Reflections on Developing Trends in the Law of Student Rights.* 118 U. Pa. L. Rev. 612-20, 1970.

After identifying three periods in the evolution of court involvement in student rights litigation, Mr. Goldstein goes on to note major trends in the most recent period. These trends include recognition of privacy rights and the growing judicial demand that school regulations be rationally suited to legitimate ends.

Hirschoff, Mary-Michelle Upson. *Parents and the Public School Curriculum: Is There a Right to Have One's Child Excused from Objectionable Instruction?* 50 S. Cal. L. Rev. 871-959, 1977.

Perhaps the most important and long-winded study of its kind, this article maintains that, absent parental religious objections that outweigh state interests, parents' only remedy to objectionable instruction is to send their child to a private school. Thus, Ms. Hirschoff argues that a constitutional right to have one's child excused from objectionable instruction is needed.

Johanns, Michael. *Maryland Federal District Court Upholds Transfer and Dismissal of Teacher Because of "Repeated" and "Unnecessary" Public Appearances Made to Explain His Plight as a Homosexual Teacher.* 7 Creighton L. Rev. 92-104, 1973.

An analysis and critique of *Acanfora* v. *Board of Education*, wherein the court held that Acanfora's lack of restraint outside the classroom disrupted the educational process. Hence, the court felt there was sufficient cause for his dismissal.

Keith, Bradley J. *Academic Freedom: Some Tentative Guidelines.* 55 Marq. L. Rev. 379-87, 1972.

Mailloux v. *Kiley* is here contrasted with the decisions reached in *Keefe* v. *Geanakos* and *Parducci* v. *Rutland.* The author suggests that free expression in the classroom may be limited by its relevance to class subject matter.

Knudsen, Stephen T. *The Education of the Amish Child.* 62 Cal. L. Rev. 1506-1531, 1974.

Echoing much of Justice Douglas' opinion in *Yoder*, this article examines the rights of the child in choosing to continue his or her education.

Koletsky, Joy. *Limit of School Board's Discretion in Curriculum Choice—the Public School Library as a Marketplace of Ideas.* 27 Case Western L. Rev. 1034-55, 1977.

A competent analysis of *Minarcini* v. *Strongsville City School District*, wherein the sixth circuit held that the removal of certain public school library books abridged students' First Amendment rights. A fair comparison between the decisions reached in *Minarcini* and *President's Council* is also given.

Kusma, Kyllikki. *First Amendment Rights and Teacher Dismissal: a Survey.* 4 Ohio N. L. Rev. 329-424, 1977.

An adequate summary of the impact that *Pickering, Parducci,* and *Keefe* have had on teacher dismissals. The issue of the limits of federal jurisdiction in teacher dismissals is discussed, as well as some of the problems attendant to filing actions pursuant to 42 United States Code Section 1983.

Kutner, Luis. *The Freedom of Academic Freedom: a Legal Dilemma.* 48 Chi-Kent L. Rev. 168-189, 1971.

Noting the significance of tenure on academic freedom, this learned scholar maintains that the primary responsibility of protecting academic freedom lies with the members of the academic community.

Ladd, Edward T. *Civil Liberties for Students—At What Age?* Journal of Law and Ed. 251-62, 1974.

The "off-on" rights status of the student who suddenly becomes an adult at age 18 is considered here. It is argued that such an approach to liberty is countereducational, and that the school experience could help in making the transition educationally productive.

Miller, Norman R. *Teachers' Freedom of Expression within the Classroom: a Search for Standards.* 8 Ga. L. Rev. 837-97, 1974.

A perceptive presentation which argues that, although freedom of expression is greatest when concerned with public issues, foremost constitutional protection should be afforded teaching methods.

Miller, Simon A. *Teachers' Freedom of Expression Outside the Classroom: an Analysis of the Application of* Pickering *and* Tinker. 8 Ga. L. Rev. 900-18, 1974.

Lower courts have arrived at varying conclusions in their applications of *Pickering* and *Tinker.* This article suggests that the reason for these inconsistencies may be found in the dicta of *Pickering.*

Morris, Arval A. *Academic Freedom and Loyalty Oaths.* 28 Law and Contemp. Prob. 487-514, 1963.

Morris urges an end to loyalty oaths since they are incompatible with critical and independent thinking.

Moskowitz, Ivor R., and Casagrande, Richard E. *Teachers and the First Amendment: Academic Freedom and Exhaustion of Administrative Remedies Under 41 U.S.C. Section 1983.* 39 Albany L. Rev. 661-705, 1975.

An important article which gives lengthy attention to the federal statute under which most teachers' First Amendment cases are brought. The discussion regarding the substantive problems involved in giving meaning to teachers' First Amendment rights is noteworthy.

Mott, Kenneth, and Edelstein, Stephen. *Church, State, and Education: the Supreme Court and Its Critics.* 2 Journal of Law and Ed. 531-91, 1973.

Contains insight as to the difficulty in achieving a consistent, feasible, and well principled theory of the First Amendment in a pluralistic society.

Murphy, William P. *Academic Freedom—an Emerging Con-*

stitutional Right. 28 Law and Contemp. Prob. 447-86, 1963.

An interesting article in that it forecasts some of the current developments in the realm of teachers' rights.

Nahmod, Sheldon H. *Controversy in the Classroom: the High School Teacher and Freedom of Expression.* 39 Geo Wash. L. Rev. 1032-63, 1971.

An excellent study which primarily concerns itself with court tests establishing the limits of teachers' First Amendment rights within the classroom. The potentially countervailing interests of the state and parent in restricting teachers' rights is given adequate attention.

O'Neil, Robert M. *Libraries, Liberties and the First Amendment.* 42 U. Cinn. L. Rev. 209-52, 1973.

With arguments based on the need for an informed citizenry, this essay insists that libraries should receive legal latitude as great as that of the press. In addition, a discussion on the rights of librarians is provided, as well as a suggested constitutional standard for judicial review of library book selections.

Osterhage, Lawrence Edward. *Academic Freedom in the High School Classroom.* 15 Journal of Family Law 706-31, 1977.

School board powers are contrasted here with the constitutional rights of parents, students, and teachers. Interestingly, Mr. Osterhage suggests that, because the teacher is most able to facilitate the free inquiry of students, it is the teacher who serves as the best protector of academic freedom rights.

Parental Control of Public School Curriculum. 21 Cath. Lawyer 197-210, 1975.

A brief inquiry into the tension between states' rights to control public education and parents' competing rights to guide the upbringing of their children. The conclusion reached is that parents have had most success in the courts when their arguments have rested on the denial of free exercise of religion.

Parrish, Richard. *First Amendment Rights of Non-Tenured Teachers.* 37 Montana L. Rev. 217-26, 1976.

An analysis of *Morrison* v. *Cascade County School District.* The case arose when a teacher was dismissed due to poor relations and outspokenness with the school superintendent and students. The future impact of the 1975 Montana enactment providing non-tenured teachers with dismissal notices is also considered.

Peters, Deborah. *The First Amendment, High School Students, and the Possibility of Psychological Harm:* Trachtman v. Anker. 27 Buffalo L. Rev. 375-94, 1978.

A thoughtful analysis of the second circuit decision which bars high school students from circulating sex questionnaires. While the court's assertion that "a blow to the psyche may do more permanent damage than a blow to the chin" is an obvious fact, Ms. Peters rightfully notes that it is not so obvious how the court's decision squares with previous First Amendment decisions.

Riga, Peter J. *Yoder and Free Exercise.* 6 Journal of Law and Ed. 449-72, 1977.

With the gradual erosion of the compelling state interest doctrine in educational law, the author claims that the balance of control of the pupil is with the parent when free exercise rights are involved.

School Officials Cannot Discipline Students Who Refuse by Word or Act to Show Respect to the Flag. 34 Md. L. Rev. 187-96, 1974.

A descriptive comment on the second circuit case which held that a student could not be forced to stand while the pledge of allegiance was made. The court reasoned that such force unconstitutionally infringed on the student's First Amendment rights.

Seitz, William John. *Removal of Books From School Libraries Violates Students' First Amendment Rights.* 45 U. Cinn. L. Rev. 701-09, 1976.

A cursory glance at the *Minarcini* v. *Strongsville School District* case. Other court decisions are considered and distinguished from *Minarcini.*

Sex Education: the Constitutional Limits of State Compulsion. 43 S. Cal. L. Rev. 548-69, 1970.

Contending that the states' interest in mandatory sex education is permissible and proscriptive sex education legislation unconstitutional, this essay goes on to conclude that the compelling interest of the states could be met by a biological description of the reproductive system. In addition, states could present a factual assessment of the personal and social costs of promiscuity.

Simpson, Wm. Kennedy. *Constitutional Aspects of Removing Books from School Libraries.* 66 Ken. L. Journal 127-49, 1978.

A good comparison of the conflicting decisions reached in *President's Council District 25* v. *Community School Board No. 25* and *Minarcini* v. *Strongsville City School District.* Though both cases considered the constitutionality of removing books from public school libraries, only *President's Council* upheld the removal as constitutional. The author notes substantial problems with that decision.

Skaer, Larry E. *The Effect of Tenure on Public School Teachers' Substantive Constitutional and Procedural Due Process Rights.* 38 Mo. L. Rev. 279-87, 1973.

While centering attention on the procedural rights guaranteed teachers under the Fourteentth Amendment, this analysis of *Perry* v. *Sindermann* and *Board of Regents* v. *Roth* has considerable bearing on the issue of free expression and tenure rights.

Smith, Richard P. *First Amendment Limitation on the Power of School Boards to Select and Remove High School Texts and Library Books.* 52 St. John's 457-84, 1978.

Following a summing up of the history of the constitutional limits on school boards in the acquisition of textbooks and a review of conflicting federal court decisions, suggested judicial guidelines in reviewing book selection cases are offered.

Stevens, George E. *Balancing Speech and Efficiency: the Educator's Freedom of Expression After* Pickering. 8 Journal of Law and Ed. 223-34, 1979.

Focusing on how the conflicting interests of administrators and teachers are harmonized when First Amendment rights are raised, the author concludes that courts have attempted to abide by *Pickering* guidelines in balancing freedom of expression with school efficiency.

Tisdel, Richard P. *Academic Freedom—Its Constitutional Context.* 40 U. Colo. L. Rev. 600-16, 1968.

Suggests that to give scholars a special constitutional right termed academic freedom would only create a greater rift between the academic and non-academic worlds. Hence, courts should treat questions of academic freedom as matters of social importance and not as personal rights of the academician.

Toms, Robert, and Whitehead, John. *The Religious Student in Public Education: Resolving the Constitutional Dilemma.* 27 Emory L. Journal 3-44, 1978.

Noting the tension between religious students' communication rights and the constitutional requirement of religiously neutral public schools, the authors conclude that religious student groups in public schools have identical recognition rights as those of non-religious groups.

Tushnet, Mark. *Free Expression and the Young Adult: a Constitutional Framework.* 1976 U. Ill. L. Forum 746-62, 1976.

This critical analysis of the benefit of court involvement in student rights argues that conflicting and ambiguous court decisions are "susceptible to manipulation to conform with a judge's likely misperception of today's schools." Ominous difficulties in students' free expression rights are forecasted.

Van Alstyne, William W. *The Constitutional Rights of Teachers and Professors.* 1970 Duke L. Journal 841-79, 1970.

After an excellent discussion of the shortcomings of the *Pickering* and *Epperson* decisions, Professor Van Alstyne proceeds to forecast the recognition of pre-termination procedural rights of teachers. Van Alstyne asserts that effective protection of substantive constitutional rights may well hinge on pre-termination procedural due process rights.

——. *The Judicial Trend Toward Student Academic Freedom.* 20 U. Fla. L. Rev. 290-304, 1968.

This well-known constitutional scholar, limiting his discussion to the Due Process and Equal Protection clauses of the Fourteenth Amendment, notes the increased willingness on the part of the courts to recognize student political freedoms and strike down policies fundamentally unfair to them.

Van Doren, Keith W. *Constitutional Rights of High School Students.* 23 Drake L. Rev. 403-22, 1974.

A good introduction to the First and Fourteenth Amendment rights of high school students. An exploration of the degree to which state and federal courts have reviewed school administrative powers is provided as well.

Wasinger, Stephen. *Freedom and Public Education: the Need for New Standards.* 50 Notre Dame Lawyer 530-44, 1975.

A notable investigation of state interests in education as seen through the conceptual foundations in cases such as *Barnette* and *Yoder.* Wasinger suggests that what may be needed to settle some of the confusion surrounding state interests in compulsory education is a reassessment of the objectives of public education.

This special bibliography was compiled with the support of the Ira W. and Ida J. Wright Memorial Fund for Intellectual Freedom.

(Mixed predictions . . .from page 101)

never have gotten published," Mitford told the ALA conferees.

Trustees authorize grants

At their annual business meeting in June, the trustees of the Freedom to Read Foundation approved a second grant of $1,000 to the Tennessee Library Association to fund TLA's participation as a plaintiff in the litigation against the 1978 Tennessee anti-obscenity law, which was drafted by Larry Parrish. In its ruling on the TLA suit, the Tennessee Supreme Court unanimously voided the sweeping statute, saying that it was so vague that ordinary persons necessarily had to guess at its meaning and scope.

After reviewing litigation against the Warsaw, Indiana school board, which has banned books and entire learning programs from the Warsaw schools (see *Newsletter,* May 1979, p. 45), the trustees authorized an initial grant of $300 to the Indiana Civil Liberties Union to support the action. The trustees will be considering further support of the case as it proceeds through the courts.

The trustees also learned that Claire Oaks had been restored to her position of director of the public library in Fairhope, Alabama. With the support of the Foundation, Oaks had filed suit in U.S. District Court in Mobile following her dismissal by the Fairhope City Council after she refused to acquiesce in the demands of the mayor that *The Joy of Sex* and *More Joy* be removed from circulation at the library.

(ALA and AAP . . . from page 99)

to which Title IX could well apply, but the Department has concluded that specific regulatory provisions in this area would raise grave constitutional problems concerning the right of free speech under the First Amendment to the Constitution, and for that reason the Secretary has not covered this subject matter in the proposed regulation. The Department assumes that recipients will deal with this problem in the exercise of their general authority and control over curricula and course content. . . .

As the Department statement implies, constitutional

issues are also raised by the proposed rule.

A careful examination of the proposed rule indicates some of the unfortunate effects which it could have. The rules could be cited to discourage the use of a Shakespeare anthology containing *The Taming of the Shrew,* assuredly a sex-biased play. Or one could mention the works of Aristotle (who wrote, "Woman may be said to be an inferior man") or Nietzsche ("Woman was God's second mistake") or Chesterfield ("Women are only children of a larger growth") or Kipling ("The female of the species is more deadly than the male") or the Babylonian Talmud ("Ten measures of speech descended on the world: women took nine and men one").

And men, equally, could complain that certain works were sex-biased. *She Stoops to Conquer* can be interpreted as showing men to be malleable fools, or the poet Dryden ("Men are but children of a larger growth") or Gilbert and Sullivan ("Man is nature's sole mistake") or Maugham ("Men are mean, petty, muddle-headed, ignoble, bestial from their cradles to their death beds") or even George Washington ("Few men have the virtue to withstand the highest bidder").

There is a serious concern lest this rule inevitably be construed that only approved "good" books and materials could be purchased with federal funds. This would indeed constitute a serious threat to traditional American freedoms.

(IFC reports . . . from page 99)

the near future.

At this stage in our work, I want to stress that we consider the revision nearly completed, and that those persons or ALA units desiring to comment on the *Library Bill of Rights* should do so as soon as possible after the close of this Conference.

Last Midwinter, the Council adopted a resolution on chapter relations, intellectual freedom, and problems of communication. I am happy to report that a joint meeting of the IFC and the Chapter Relations Committe resulted in a fruitful discussion. We agreed that the various levels of communication with ALA that affect or involve the work of chapters should be carefully examined in order to develop guidelines on exchanges of information. A joint subcommittee will undertake this review.

Finally, the IFC voted to recommend that the Council endorse a document on the freedom to view which was brought to the Committee by the Educational Film Library Association. We believe that the document is consistent with ALA's own position on freedom of expression and inquiry. [The EFLA statement, which appears below, was endorsed by the Council.]

Respectfully submitted,
Dorothy Bendix, Richard M. Buck, Edythe Cawthorne, William DeJohn, Tyron D. Emerick, Barbara Immroth, Susan Kamm, Stephen L. Oppenheim, Elliot L. Shelkrot, Grace P. Slocum, Frances C. Dean, Ch.

Members of the 1979-80 IFC are: Lee Brawner, Edythe Cawthorne, William DeJohn, Martha Gould, Susan Heath, Barbara Immroth, Susan Kamm, Stephen L. Oppenheim, Richard Reid, Grace P. Slocum, Frances C. Dean, Ch.

Freedom to view

The following statement, adopted by the Educational Film Library Association and endorsed by the ALA Council, may be freely reprinted for distribution by educational organizations and institutions. For additional information concerning the statement, interested parties may write to: Educational Film Library Association, 43 W. 61st St., New York City 10023.

The freedom to view, along with the freedom to speak, to hear, and to read, is protected by the First Amendment to the Constitution of the United States. In a free society, there is no place for censorship of any medium of expression. Therefore, we affirm these principles:

1. It is in the public interest to provide the broadest possible access to films and other audiovisual materials because they have proven to be among the most effective means for the communication of ideas. Liberty of circulation is essential to insure the constitutional guarantee of freedom of expression.

2. It is in the public interest to provide for our audiences, films and other audiovisual materials which represent a diversity of views and expression. Selection of a work does not constitute or imply agreement with or approval of the content.

3. It is our professional responsibility to resist the constraint of labeling or pre-judging a film on the basis of the moral, religious, or political beliefs of the producer or filmmaker or on the basis of controversial content.

4. It is our professional responsibility to contest vigorously, by all lawful means, every encroachment upon the public's freedom to view.

(Key court rulings . . . from page 103)

The antecedents of today's decision are many and unmistakable. They are rooted in the foundation soil of our Nation. They are fundamental to freedom.

Government in our democaracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.

Arkansas' law cannot be defended as an act of religious

neutrality. Arkansas did not seek to excise from the curricula of its schools and universities all discussion of the origin of man. The law's effort was confined to an attempt to blot out a particular theory because of its supposed conflict with the biblical account, literally read.

Pickering v. Board of Education of Township High School District 205, Will County. 391 U.S. 563 (1968).

Pickering, a high school teacher, was dismissed for writing and publishing in a newspaper a letter criticizing the school board's allocation of funds.

The Supreme Court held:

1. "[T]he theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." *Keyishian* v. *Board of Regents*, 385 U.S. 589, 605-606 (1967). The teacher's interest as a citizen in making public comment must be balanced against the State's interest in promoting the efficiency of its employees' public services.

2. Those statements of appellant's which were substantially correct regarded matters of public concern and presented no questions of faculty discipline or harmony; hence those statements afforded no proper basis for the Board's action in dismissing appellant.

3. Appellant's statements which were false likewise concerned issues then currently the subject of public attention and were neither shown nor could be presumed to have interfered with appellant's performance of his teaching duties or the schools' general operation. They were thus entitled to the same protection as if they had been made by a member of the general public, and, absent proof that those false statements were knowingly or recklessly made, did not justify the Board in dismissing appellant from public employment.

Opinion of the Court:

The public interest in having free and unhindered debate of matters of public importance—the core value of the Free Speech Clause of the First Amendment—is so great that it has been held that a State cannot authorize the recovery of damages by a public official for defamatory statements directed at him except when such statements are shown to have been made either with knowledge of their falsity or with reckless disregard for their truth or falsity.

However, in a case such as the present one, in which the fact of employment is only tangentially and insubstantially involved in the subject matter of the public communication made by a teacher, we conclude that it is necessary to regard the teacher as the member of the general public he seeks to be.

In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.

Tinker v. Des Moines School District. 393 U.S. 503 (1969).

Tinker and other students wore armbands to schools so as to indicate symbolically their opposition to the Vietnam war. They did this in violation of a school board order issued prior to their act. Upon arrival at school they were suspended until they returned without the armbands.

The Supreme Court held that the school board order was unconstitutional in that it violated the students' right to non-disruptive symbolic speech.

Opinion of the Court:

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost fifty years.

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confied to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

VLA condemns forced resignation of librarian

The Vermont Library Association sharply criticized the Vergennes Union High School board in May for having forced the resignation of Librarian Elizabeth Phillips, who actively opposed the board's censorship of library materials.

"Her behavior was appropriate behavior from our professional point of view," said VLA Spokesperson Harold Lancour. She was "given two alternatives: wait and be fired, or resign," said Lancour.

Phillips, who said she would not fight the loss of her professional position, remains a plaintiff in a federal suit against the board which alleges violations of her First Amendment rights and those of students (see *Newsletter,* March 1979, p. 36).

Among the decisions of the board which Phillips opposes–and wants reversed through the federal suit–were bans on purchases of paperback books and a plan to implement a system of color coding or numbering that would determine by markings on books and cards which students could have access to "objectionable" books.

A member of the school board explained that purchases of paperbacks were stopped because the school board did not have enough time to review "a lot of books."

Among the books whose circulation was restricted by the board prior to Phillips' resignation were *Forever, Carrie,* and *Dog Day Afternoon.* Reported in: *Burlington Free Press,* May 31; *New England Library Association Newsletter,* June 1979.

student paper defies government warning on H-bomb letter

The *Daily Californian,* the student newspaper at the University of California at Berkeley, on June 13 defied a government warning not to publish a letter in which four physicists commented on the controversy over *Progressive* magazine's H-bomb article.

The letter was originally sent to U.S. Senator John Glenn, who is in charge of a Senate subcommittee that oversees security of the Department of Energy's nuclear weapons program. Copies of the letter were sent to other members of Congress and various newspapers.

The letter asked Glenn to investigate the physicists' claim that one of the government experts in the *Progressive* case had violated national security in an affidavit submitted on behalf of the government. The physicists also contended that the government itself violated national security by placing the affidavit on the open court record.

The controversial affidavit was submitted by Jack Rosengrin, a consultant to the nuclear weapons program. Rosengrin alleged that the *Progressive* article contains information that details the workings of the most efficient hydrogen bomb available.

On June 11, the *Daily Californian* publicly stated that it had a copy of the letter and would publish it. A DOE courier delivered a warning to the paper that its publication would be a violation of the Atomic Energy Act. The newspaper published both the letter and excerpts from the DOE warning.

The four physicists–Alex DeVolpi, Gerald Marsh, Theodore Postol, and George Stanford–all filed affidavits on the side of the *Progressive* in the case over publication of the H-bomb article. Reported in: *Editor & Publisher,* June 23.

authors supply source material to judge

Authors Lee Hays and Margaret Fuller, collaborators on a book on the family of Navatro LeGrand (see *Newsletter,* July 1979, p. 80), agreed in May to make confidential source material available to the judge presiding over the New York murder trial involving two members of the LeGrand family.

Portions of subpoenaed tapes were played to Judge Edward S. Lental and then released to Defense Attorney Joel Ezra. "There were a few things he thought he could use, but nothing that was not available elsewhere," said Fuller. "Nothing in the tapes was inconsistent with previous information–which is exactly what we had been arguing all along."

The authors failed in their attempts to bring the issue of the confidential tapes to New York State's highest court.

Fuller said compliance was "the best possible decision under the circumstances. It's possible we could have caused more harm than good in the interests of the First Amendment by continuing this fight in the courts."

Fuller concluded, "Anyone who faces the same question these days would be well advised to simply throw out any material that might be subpoenaed. If Lee and I had been thinking at the beginning, we would have done that. It's unfortunate, but that's how a journalist must operate." Reported in: *Publishers Weekly,* May 28.

Khomeini bans music from airwaves

Ayatollah Ruhollah Khomeini on July 23 banned virtually all music from Iran's radio and television because, he said, it is as "stupefying" as opium. The thirty-day ban went into effect on July 26, the start of the Moslem holy month of Ramadan. Only so-called revolutionary music escaped the edict.

Khomeini declared that music, like opium, "stupefies a person listening to it and makes the brain inactive and frivolous." He said musical programming had "corrupted Iranian youth" and robbed them of their "strength and virility."

Music thus joined most Western movies, alcoholic beverages, and the practice of men and women swimming together as forbidden artifacts of the "satanic" regime of the deposed shah. Reported in: *Chicago Sun-Times,* July 24; *New York Times,* July 24.

Irish television refuses to air 'Ulysses'

Joseph Strick's film of James Joyce's *Ulysses,* never legally shown in Ireland, was suddenly dropped in July from Radio Telefis Eireann's schedules and replaced by the filmed version of *Portrait of the Artist as a Young Man.*

Ulysses has been barred from Irish movie screens by official film censors, but because the nation's censorship act does not apply to television transmissions, the film could have been shown by RTE.

Commenting on the removal of *Ulysses* from RTE schedules, a spokesperson said, "We have the right to show the film even though it is banned in the cinema, but we don't like to flaunt our rights in this regard." Reported in: *Variety,* July 11.

Follett to continue use of bookmark

In a newsletter mailed to its customers in May, the Follett Library Book Company announced that it would ignore protests from library organizations, including the American Library Association, and continue to insert "warning bookmarks" in titles that some librarians have complained about.

The book distributor's bookmark says to librarians and teachers: "Some of our customers have informed us of their opinion that the content or vocabulary of this book is inappropriate for young readers. Before distributing this book, you may wish to examine it to assure yourself that the subject matter and vocabulary meets your standards."

Announcing the results of a special survey of customers, Follett said 1,923 respondents out of a total of 2,114, or ninety-one percent, were in favor of the bookmark. Follett stated that the reasons most frequently cited were these: "Calls attention to possible problems, since I don't have time to read all the books in the library"; "Saves time"; and "Reviews do not tell the whole story; need additional selection aids."

Nine percent of the respondents said the bookmark is a form of censorship or that its use "oversteps boundary of book supplier."

"The overwhelmingly favorable response to the use of the bookmark is appreciated," a Follett spokesperson said in the newsletter, "and we will continue to use it until further notice."

Follett also announced that the bookmark would be omitted from all future orders to librarians who object to it.

intellectual freedom bibliography

Compiled by LYNN E. LIVINGSTON, Assistant to the Director, Office for Intellectual Freedom.

Academe (bulletin of the American Association of University Professors), May 1979: articles on academic freedom and tenure.

American School Board Journal, June 1979: issue on censorship includes an article on Mel and Norma Gabler.

Arons, Stephen. "Book Burning in the Heartland." *Saturday Review,* July 21, 1979, p. 24+.

"Big IF Loss in Vermont." *New England Library Association Newsletter,* June 1979, p. 3.

Broderick, Dorothy M. "Censorship: a Family Affair?" *Top of the News,* Spring 1979, p. 223-32.

"Censorship Notes." *Council-Grams* (National Council of Teachers of English), May 1979, p. 3.

Consoli, John. "Secret Opinion Stirs New Controversy in Bomb Case." *Editor & Publisher,* June 16, 1979, p. 12.

"Court Action Prompts Fairhope to Rehire Librarian It Fired." *Library Journal,* July 1979, p. 1410.

Donelson, Kenneth. "The Enemies Within: Teachers and Librarians as Censors." *Top of the News,* Spring 1979, p. 233-36.

"First Amendment Rights of Advertiser Upheld." *Editor & Publisher,* June 23, 1979, p. 13.

Friedman, Robert. "The United States v. the Progressive." *Columbia Journalism Review,* July-August 1979, p. 27+.

Gentry, James K. "Connecticut's FoI Commission." *Freedom of Information Center Report* no. 404, May 1979, 7 p.

"H-Bomb Magazine Article Restrained." *News Media and the Law,* May-June 1979, p. 62+.

Hentoff, Nat. "Colonel Herbert's Fateful Conquest of the First Amendment." *Village Voice,* June 25, 1979, p. 22+.

———. "A Dangerous Citizen Is Dying." *Village Voice,* June 11. 1979, p. 18-19.

———. "Langlais, Goldstein, Cockburn–and Humpty Dumpty." *Village Voice,* July 9, 1979, p. 22-23.

———. "Privacy and the Press–Is Nothing Sacred?" *Saturday Review,* July 21, 1979, p. 22-23.

———. "Spiro Agnew's Dream Case." *Village Voice,* July 9, 1979, p. 22-23.

———. "The Thought Police at the *Village Voice*" *Village Voice,* July 2, 1979, p. 26-27.

Higdan, Philip R. "The Burger Court and the Press." *Freedom of Information Center Report* no. 0020, May 1979, 7 p.

"High Court Gives Judges Broad Freedom to Bar Public and Press from Courtroom." *Editor & Publisher,* July 7,

1979, p. 9+.
"In Defense of the First Amendment–Friend of the Court Briefs in the Progressive Case." *Progressive,* July 1979, p. 31+.
Index on Censorship, May-June 1979: articles on censorship around the world.
Index on Censorship, July-August 1979: articles on censorship in Brazil.
Knoll, Erwin. " 'Born Secret': the Story Behind the H-Bomb Article We're Not Allowed to Print." *Progressive,* May 1979, p. 12-22.
Knox, Jeanette, and Peter White. "Freedom of Information." *Australian Library Journal,* March 16, 1979, p. 53+.
Levine, Paul. "Supreme Court Cases Need Close Reading." *Editor & Publisher,* July 14, 1979, p. 12+.
Middleton, Lorenzo. "Unit of Moon Church Sues to Force M.I.T. Press to Withdraw Book." *Chronicle of Higher Education,* July 2, 1979, p. 4.
"The 'Progressive' Case: Democracy Is Dangerous." *Columbia Journalism Review,* July-August 1979, p. 22+.
"Secrecy Rules of Grand Jury are Challenged." *Editor & Publisher,* May 12, 1979, p. 11.
Smothers, Joyce. "Our Libraries, Ourselves, and Our Children." *New Jersey Libraries,* May-June 1979, p. 9-12.
" 'Snapping' Authors Ask for First Amendment Precedent." *Publishers Weekly,* May 28, 1979, p. 21.
"Tennessee Supreme Court Voids 1978 Obscenity Act." *Publishers Weekly,* May 21, 1979, p. 18.
"Why ACLU Defends the *Progressive.*" *Civil Liberties,* June 1979, p. 1.
Woods, L.B. "Sweating Librarians in the 'Tropic of Cancer' Censorship in the Keystone State." *PLA Bulletin,* May 1979, p. 2+; June 1979, p. 2+.

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