

newsletter
on
intellectual
freedom



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In Zykan v. Warsaw (Indiana) Community School Corporation and Warsaw School Board of Trustees, a high school student brought suit, seeking to reverse school officials' decision to "limit or prohibit the use of certain textbooks, to remove a certain book from the school library, and to delete certain courses from the curriculum." The district court dismissed Zykan's suit, which charged that school officials had violated constitutional guarantees of academic freedom and the "right to know." The case was appealed to the U.S. Court of Appeals for the Seventh Circuit, in Chicago (see Newsletter, March 1980, p. 35; May 1979, p. 45).

On August 22 the court ruled on the appeal. In light of the importance of this case, the Newsletter asked William D. North, who wrote the amicus brief filed by the Freedom to Read Foundation, to comment. For excerpts from the decision see page 121.

By WILLIAM D. NORTH, Vice President, Freedom to Read Foundation.

The decision rendered by the U.S. Court of Appeals for the Seventh Circuit on August 22, 1980 is remarkable only as an archetypical demonstration of the confusion which exists in the courts and among judges as to legal limits of secondary school censorship. The decision is a model of judicial ambiguity. Each of the important issues presented by the case is sententiously considered by the Court but left utterly unresolved and unanswered. One looks in vain for any guidance or insight from the decision.

The case itself presented a truly unique opportunity for the court to clarify the appropriate limits of school board efforts to restrict the secondary school as a marketplace of ideas. Certainly no recent school censorship case has involved a wider range of censorship conduct and techniques, including, but not limited to, teacher dismissal, curricula revision, course cancellation, library purging, and even a classic public "burning of the books" abetted, if not actually sponsored, by the Warsaw School Board.

The *Warsaw* case was unique in yet another respect. The materials and curricula subject to censorship action by the school board were not alleged to be either

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

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AAParagraphs

data and more data

Later this fall—probably by the time this column hits the streets (or the stacks)—the three groups co-sponsoring the study elaborately entitled “Books and Materials Selection for School Libraries and Classrooms: Procedures, Challenges and Responses” (whew!) will know a great deal about that subject. The mail survey questionnaires described in this column last May have been received from respondents—with an impressively high rate of response—and the information processed by a computer. At this writing, the computer product is being analyzed by that *sine qua non* of computer data—a human being: Michele Kamhi, the project’s research consultant.

So while it is too early to draw any conclusions from the wealth of information amassed by this ambitious joint project of the AAP, ALA and the Association for Supervision and Curriculum Development (ASCD), it is not too soon to report some of the preliminary figures that have come from the computers. They give at least a hint of the scope of the information hidden in the mass of computer-spewed numbers.

A total of 7,571 survey questionnaires were mailed out: 4,980 to school administrators at the district and building levels, and 2,591 to librarians, at the same levels. The rate of return of the two groups was almost identical: 26.4 per cent (1,314 replies) for the school administrators and 22.3 per cent (577 responses) for the librarians—for an overall response rate of 25 per cent. Statisticians tell the project sponsors that this is a respectable and valid rate of survey response.

Respondents, both among librarians and school administrators, were widely distributed geographically and quite representative of the original sample: thus, the northeast, which received 24.6 per cent of the original mailings, accounted for 22.6 per cent of the responses; south, 24.3 per cent of the sample and 20 per cent of responses; west, 15.7 per cent of the sample and 12.7 per cent of responses, and the midwest—the region that proved most responsive—accounted for 35.4 per cent of the original sample but 44.7 per cent of the responses.

How are these librarians and school administrators finding that the level of “challenges” to instructional or library materials in their schools during the past two years compares with the level for the preceding two years? Approximately half of both groups find it about the same, and a little more than a quarter (26-27 per cent) find they encountered *more* challenges in the recent two-year period. Those who say they have encountered *fewer* challenges than in 1976-78 are less

than 10 per cent of both groups (from 13 to 15 per cent are uncertain about the trend).

Asked the same question, the textbook administrators in the 22 state-adoption states also replied preponderantly “about the same”—twelve, compared to five who reported a higher rate of protest and two who sensed a dropping off.

The state-adoption returns—easier to summarize because their number is small—offer a foretaste of the extremely wide gamut of “objectionable aspects” which protesters found in the school materials they challenged. Offered a list of 35 possible replies, they spread their answers over virtually all—with “secular humanism,” “evolution,” scientific theories, and atheism or agnostic views and “criticism of U.S. history” drawing most frequent mention—and seven respondents added additional aspects not listed!

Much remains to be done by way of tabulating and decoding the survey results—and then, of course, summarizing them in a report—and possibly in suggested guidelines—that will prove useful to the project cosponsors and to the education, library and publishing communities at large. But this is by way of an interim report and a promise of much more useful information to come.

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.

from the Zykan decision

Following are excerpts from the Seventh Circuit’s decision in Zykan v. Warsaw.

“Secondary school students certainly retain an interest in some freedom of the classroom, if only through the qualified “freedom to hear” that has lately emerged as a constitutional concept. But two factors tend to limit the relevance of ‘academic freedom’ at the secondary school level. First, the student’s right to and need for such freedom is bounded by the level of his or her intellectual development. A high school student’s lack of the intellectual skills necessary for taking full advantage of the marketplace of ideas engenders a correspondingly greater need for direction and guidance from those better equipped by experience and reflection to make critical educational choices. Second, the importance of secondary schools in the development of intellectual faculties is only one part of a broad informative role encompassing the encouragement and nurturing of those fundamental social, political, and moral values that will permit a student to take his place in the community

"Educational decisions necessarily involve choices regarding what students should read and hear, and particularly in light of the formative purpose of secondary school education, local discretion thus means the freedom to form an opinion regarding the instructional content that will best transmit the basic values of the community. As a result, it is in general permissible and appropriate for local boards to make educational decisions based upon their personal social, political, and moral views.

"To be sure, the discretion lodged in local school boards is completely unfettered by constitutional considerations School boards are for example not free to fire teachers for every random comment in the classroom. In the case of the students themselves, local school boards must respect certain strictures that for example bar them from insisting upon instruction in a religiously-inspired dogma to the exclusion of all other points of view, or from placing a flat prohibition on the mention of certain relevant topics in the classroom or from forbidding students to take an interest in subjects not directly covered by the regular curriculum. At the very least, academic freedom at the secondary school level precludes a local board from imposing 'a pall of orthodoxy' on the offerings of the classroom

"[Therefore] complaints filed by secondary school students to contest the educational decisions of local authorities are sometimes cognizable but generally must cross a relatively high threshold before entering upon the field of a constitutional claim suitable for federal court litigation. Such a balance of legal interests means that panels such as the Warsaw School Board will be permitted to make even ill-advised and imprudent decisions without the risk of judicial interference Nothing in the Constitution permits the courts to interfere with local educational discretion until local authorities begin to substitute rigid and exclusive indoctrination for the mere exercise of their prerogative to make pedagogic choices regarding matters of legitimate dispute."

Further, with respect to the standing of the student plaintiffs, the court argued that, "It is difficult to conceive how a student may assert a right to have the teacher control the classroom when the teacher herself does not have such a right. As a result, whatever rights secondary school students may have outside the classroom to meet and discuss with a particular teacher, their associational interests do not afford them a right to be taught in the classroom by that instructor or in accordance with that teacher's own sense of the best material. A student's appreciation of a teacher's skills simply does not invest a teacher with a constitutionally based tenure when the actions of the school board have given that teacher none."

As for the issue of library censorship, the court concurred with several other recent unfavorable decisions "in rejecting the suggestion that a particular book can gain a kind of tenure on the shelf merely because the administrators voice some objections to its contents."

In the court's view "school libraries are small auxiliary facilities often run on limited budgets. They must, despite their limitations, cater to the needs of an often diverse student body, primarily by providing materials that properly supplement the basic readings assigned through the standard curriculum. An administrator would be irresponsible if he or she failed to monitor closely the contents of the library and did not remove a book when an appraisal of its contents fails to justify its continued use of valuable shelf space."

harassment of Iranian students continues

In the wake of the continuing hostage crisis, the First Amendment rights of Iranian students and other Iranian nationals residing in the U.S. have been repeatedly called into question. While recent court decisions generally support the rights of foreign students, state legislatures and federal agencies continue to single out the Iranians for "special treatment."

On July 2, the Fifth Circuit Court of Appeals declared unconstitutional disciplinary actions taken against thirty-one Iranian students who participated in on-campus political demonstrations at Jackson State University, in Mississippi, on November 19 and 29, 1979. Approximately 200 students of varied ethnic backgrounds attended the demonstrations, which were sparked by the presence on campus of Immigration and Naturalization Service agents, but only the Iranians were singled out for punishment. Attorneys for the ACLU, who represented the students, saw the decision as an important precedent defending foreign students' rights.

Also in Mississippi, the ACLU, joined by the Justice Department, filed suit on behalf of Iranian students against the Board of Trustees of State Institutions of Higher Learning, challenging a new state law, signed by Governor William Winter on May 26, which imposes a \$4,000 non-resident fee for students "from a nation not having diplomatic relations with the United States or against who the United States has economic sanctions." On July 3, the Federal District Court prohibited the legislature from implementing the statute, holding that it violated the students' Fourteenth Amendment rights. The judge also reminded the university that states do not have the power to make immigration or foreign policy. The state will appeal.

Meanwhile, the New Mexico University Board of Regents voted unanimously to bar Iranian students from the university beginning July 15. On July 16, however, a U.S. district judge issued a temporary restraining order permitting the Iranians to enroll in the fall. A bill with similar intent to the New Mexico measure, proposed by Assemblyman Louis Bassano, is pending in the New Jersey legislature. In Louisiana, the legislature passed a resolution which, although not legally binding, urges state colleges to deny admission to Iranians.

The Immigration and Naturalization Service has also continued its campaign to identify—and, many observers claim, intimidate—Iranian students. In June, however, public pressure forced a loosening of INS restrictions. In late 1979, the Campaign for Political Rights, joined by 24 public interest groups, had appealed to President Carter to end discriminatory treatment of the Iranians. The Campaign letter was followed on April 25 by a statement signed by six educational groups, including the American Council on Education, the Educational Exchange and the College Entrance Examination Board, declaring that it is unfair to single out students solely because of their nationality or political activity.

The Iranian controversy also led to a confrontation over the question of a newspaper's right to keep confidential photographs in its possession. On March 20, the county attorney and University of Texas administrators had subpoenaed television station KTTV and the *Daily Texan*, a student newspaper, for photographs and videotape recordings of a speech by the ex-Shah's U.S. ambassador, Fereydown Hoveyda, which was disrupted by Middle Eastern students. The station released its videotapes, but the *Daily Texan* moved for dismissal of the subpoena, which was granted.

However, when new student editors took over in June, new subpoenas were issued. On September 2, editor Mark McKinnon was jailed briefly for refusing to turn over the paper's photographs. He has been released on bond, but vows to return to jail if need be to protect the paper's free press rights.

And, finally, in Atlantic City, New Jersey, the Board of Education has censured a teacher who last June circulated a petition against the nomination of an Iranian student as high school valedictorian. As reported in the September *Newsletter* (page 101), the student, Tina Bahodori, withdrew. Unfortunately, it now appears that, in criticizing censorship by its faculty, the Board has taken on the role of censor itself. A new policy now prohibits the circulation of petitions on school property which the Board believes may violate public accommodation sections of the New Jersey anti-discrimination laws. Reported in: *Organizing Notes*,

Redgrave casting stirs protest, boycott

The Tuesday, September 30 airing on CBS television of the three-hour docudrama, *Playing for Time*, based on the memoirs of Auschwitz survivor Fania Fenelon, stirred a storm of controversy centering on the casting of outspoken Trotskyist and PLO supporter, Vanessa Redgrave, in the role of Ms. Fenelon. The issue is whether the privately held political beliefs and off-camera political activity of an actor or actress should be considered in casting a part which many think runs counter to those beliefs or activities.

Two days before the show's airing, the Jewish Defense League and a group called Children of the Holocaust burned Redgrave in effigy at a rally and "mock trial" attended by some 150 demonstrators outside CBS' Hollywood studios. "It's a horrible insult. Six million Jews will roll over in their graves," said JDL leader Irv Rubin. "We encourage Jews and gentiles alike to call CBS in protest. We hope to cancel the show before Tuesday."

A boycott of the show had already been encouraged by the Simon Wiesenthal Center for Holocaust Studies in Los Angeles. The center called for a national "switch-off" when the film was aired. According to *Newsweek*, "Tremendous pressure was put on potential sponsors by some Jewish groups." At one point, Fenelon, who is active in the sponsor boycott drive, listed Johnson and Johnson, Pillsbury, General Motors, Coca-Cola, and William Wrigley Jr., Co. among advertisers who refused to participate in sponsorship. It is unclear whether the limited number of commercial interruptions which did appear was a product of this pressure or, as announced at the program's opening, an expression of CBS' commitment to the drama's importance.

Some opponents of the Redgrave casting have sought to distinguish their efforts and views from blacklisting and censorship. Fenelon herself remarked, "I don't want to have her blacklisted. I fought blacklisting through the McCarthy period. But casting her is for me a moral wrong because she is a fanatic . . . I just don't see how a woman who is so much my opposite can play me." Nathan Perlmutter, national director of the Anti-Defamation League, argued that casting "an apologist for the PLO in the role of a heroine who has survived the Holocaust is in abysmally bad taste." But, at the same time, he stressed that "we are not

calling for or participating in any boycott. The dedication here is to the principles of free speech.”

One of the most impassioned statements of support for the production, and implicitly for Redgrave’s right to appear in the lead role, came from twelve of the supporting actresses in the cast who addressed an open letter to the media, advertisers and Jewish organizations a week before the program’s airing: “We believed so deeply in this material that those of us who portrayed Jewish women agreed to have our heads shaved . . . Our varied heritages lead us to feel and to say that all people . . . would be proud of this film.”

In the end, Redgrave’s performance received critical acclaim, even from individuals who had questioned her casting. *Newsweek* declared that her portrayal “may well be the finest performance ever given on a television screen.” Arthur Miller, who wrote the screenplay and is a supporter of Israel himself, was initially upset by the hiring of the controversial actress. After the filming, however, he concluded that Redgrave’s contribution to the production’s success had been of great importance. “I thought the play could be a tremendous statement,” he declared. “She’s amplified that statement.”

The program’s producer, Linda Yellen, summed up the controversy over the Redgrave casting: “I chose Vanessa because I knew she’d give the most illuminating performance—and she did. But if people won’t allow themselves to be illuminated, if her casting interferes with their feelings, then I have failed on one level.”

The day after the show’s airing, the CBS affiliate in Chicago reported receiving a steady stream of calls protesting the film. According to Nancy Volino, who spoke for the station, many callers demanded a list of the program’s sponsors and threatened to boycott their products. Less than three percent of the calls registered support for the telecast. “They said they were glad we were not bending to public censorship,” Volino said. Reported in: *Newsweek*, September 24; *Chicago Sun-Times*, September 29, October 1; *Variety*, September 17.

sculptors carve controversy

Satirical sculptor John Sefick has once again won a court battle with the censors, but this time a former antagonist became an unlikely ally.

Last year, Sefick tried to display a statue satirizing former Chicago Mayor Michael Bilandic and his snow removal fiasco, but a city official ordered the exhibit removed from the Daley Center lobby. With the assistance of the ACLU, Sefick sued Mayor Jane Byrne and the city for abridging the artist’s freedom of expression. A federal judge ruled in Sefick’s favor and the statue was subsequently displayed in the city building.

This spring, Sefick produced a new statue, poking fun at Mayor Byrne and her family. Permission was granted to display the piece in the lobby of the Kluczynski Federal Building, but a day after the sculpture was unveiled federal officials ordered its removal.

It was at this point that Mayor Byrne stepped in, apparently having absorbed the lesson of the previous controversy. Declaring, “It’s going to give everybody a good laugh,” she invited Sefick to again display his work in the lobby of the Daley Center. Sefick cautiously accepted, but also filed suit against the censoring federal authorities. And once more, a federal judge ordered that Sefick’s satirical artwork must be displayed.

And, in New York City, a proposed life-size sculpture by George Segal, entitled “Gay Liberation,” has met with criticism both from gay activists and other citizens, including some who may be opposed to the gay cause. Gays are circulating petitions which describe Segal’s realistic bronze figures as “grotesque stereotypes offensive to all in our community.” Reported in: *New York Times*, August 28; *The Brief* (Illinois Civil Liberties Union), July–September, 1980.

Car Thief dispute resolved

Following a controversy involving the banning of Theodore Weesner’s *The Car Thief* by Greensboro (North Carolina) School Superintendent Kenneth Newbold, and the subsequent involvement by the North Carolina Civil Liberties Union (see *Newsletter*, March 1980, p. 32; May 1980, p. 59), the book has been returned to the library, but placed on restricted reserve. ACLU lawyer Michael Curtis, representing four students, called the settlement satisfactory; new guidelines set up by Newbold include “careful safeguards” of constitutional rights, according to Curtis. The new policy requires the application of U.S. Supreme Court guidelines to books before they can be removed for review. The restricted reserve designation requires high school students to sign a waiver saying they realize they may be offended; junior high students may read the book if their parents sign the same waiver. Reported in: *Greensboro Daily News*, August 20.

star spangled banner irks navy men

Should sailors have to stand silently for the national anthem each time they watch a movie? Apparently some navy men don’t think so. At the Great Lakes Naval Training Center, north of Chicago, a chorus of boos, hisses and “general unpleasantness” so consistently greeted the compulsory playing of the anthem, that when no one stepped forward to identify the disruptors,

base commander Rear Admiral Charles Gurney reluctantly abandoned the practice. Two weeks later, after considerable publicity, the anthem returned. Gurney ordered that the lights remain on during the playing and that "sufficient official personnel [be] present to guarantee proper behavior." According to press reports, armed military police patrolled the aisles to insure that the mandatory performance of this ballad of freedom could be heard. Reported in: *Chicago Tribune*, August 20, 22.

Jeanne Layton wins Downs award

The Robert B. Downs Award for 1980 has been given to Jeanne Layton, the Davis County, Utah, librarian whose courageous fight to retain her position as County Library Director and to oppose the censorship efforts of a local politician won broad support.

The Downs award is given annually for "an outstanding contribution to intellectual freedom in libraries" by the Graduate School of Library Science, of the University of Illinois. The award was established in 1968 to honor Downs, now dean emeritus of library administration at Illinois, for his twenty-five years of service to the University. It consists of a citation and a grant of \$500.

The award committee paid tribute to Layton for her "steadfastness of purpose and personal courage" and applauded her "support of the First Amendment and the principles of the *Library Bill of Rights*."

Anderson columns raise challenge for editors

The treatment of Jack Anderson's August series of columns, which claimed that President Carter has approved an invasion of Iran as a means of gaining electoral advantages in November, offers an interesting and unique glimpse into the handling of controversial material by American newspapers.

It appears that most editors of the roughly 970 daily newspapers subscribing to Anderson's column published the first installment routinely, despite its sensational—and, many think, unbelievable—content. But other newspapers refused to treat the matter in the usual fashion. The *Washington Post*, *Newsday*, and the *New York Daily News* tried to independently verify Anderson's charge. Failing to do so, they refused to print the first column.

The *Miami Herald* also refused to publish the opening column on the first day it became available, but later reconsidered, in part because of telephoned complaints that Anderson had been censored. "We didn't want to get accused of suppressing anything," said Jim Hampton, the editorial page editor.

Smaller newspapers with similar doubts about the veracity of the allegations were in a somewhat different position, however. At the *Evening Herald* in Sanford, Florida, managing editor Thomas Giordano thought the columns were irresponsible, but decided to publish them because he has no Washington bureau to check the assertions. "It would be worse not to run the columns and then learn some other newspaper had turned up confirmation of them than to run them 'offset by an editorial.'"

This latter method was indeed employed by several editors. The *Daily Press*, in Montrose, Colorado, put the column on the paper's front page with an editor's note explaining: "We feel that the allegations . . . are the most serious ever made against any president . . ." The note observed that "Anderson enjoys high credibility among journalists," and added that "we have no reason to believe that Anderson is making it up."

Other editorial commentary was less trusting of the columnist. In publishing the columns, the *Fayetteville Observer* in North Carolina called the Anderson charge "worse than accusing the president of murder. If Anderson is right, the president has committed an impeachable offense. If he is wrong, he should be drummed out of journalism."

Anderson himself was, not surprisingly, highly critical of those newspapers which failed to publish the columns. "I thought newspapers were supposed to publish information, not suppress it," he said. "I would consider any newspaper that suppressed a story because its own reporters could not confirm it to be arrogant." Reported in: *Washington Post*, August 19.

Congress considers bills to criminalize "naming names"

Both the House and the Senate have held hearings on proposals to establish criminal penalties for disclosing names of CIA agents. Thirteen different versions of such legislation have been introduced since January, all of which raise serious First Amendment questions.

The House Intelligence Committee hearing on H.R. 5615, held on January 30-31, heard representatives of the ACLU, *Covert Action Information Bulletin*, and attorneys for media groups testify to the difficulty of drafting language which would restrict disclosure without infringing upon free speech and press rights. The Senate Intelligence Committee held hearings on June 24-25 at which sixteen administration officials, members of Congress, former intelligence agents and representatives of civil liberties and press groups testified.

Both committees reported out bills, and in early September the Senate Judiciary Committee heard CIA Deputy Director Frank Carlucci speak in favor of the Senate version, while a representative of the Reporters Committee for Freedom of the Press criticized the proposal as subjecting legitimate journalists to threats of prosecution.

In related developments, the House Committee held three days of hearings in May on the effect of the recent Supreme Court decision in the case of former CIA agent Frank Snepp, author of *Decent Interval*, which upheld the CIA's policy requiring pre-publication review of all writings and speeches by its former employees (see *Newsletter*, July 1979, p. 81, September 1979, p. 110). Also in May, the CIA reversed its decision to review the book *Ropes of Sand*, about the agency's involvement in the Middle East during the 1950s. The publishers report the CIA will review the book after publication and attempt to mitigate any perceived damage at that time. Reported in: *Organizing Notes*, Vol. 4, No. 4 & 5; *Washington Post*, September 6.

cameras in court

July and August saw activity in several states involving the presence of cameras in court.

As California began its year-long experiment with in-court camera coverage, the Pasadena Superior Court admitted a television camera during a plea bargaining in a marijuana case. Later, Judge Gilbert Alston said the filming went "as smooth as glass." (See *Newsletter*, September 1980, p. 98.)

Elsewhere in California, television and still cameras were set up in San Diego's Judicial Council July 1 for a case. Response was generally favorable. The *San Diego Union* had requested cameras in at least four other proceedings, but these requests were denied by the defendants. In a police shooting trial in Los Angeles, the District Attorney also refused to grant a TV station permission to enter the courtroom.

In mid-August, defense attorney H. Dean Steward, representing Joseph B. Meltzer, who faces charges growing out of the FBI's Abscam operation, filed a motion for television coverage in federal court in San Diego. Meltzer's wife's attorney, however, opposed such coverage due, he said to possible intimidation of witnesses.

In late June, the Pennsylvania Supreme Court denied the immediate admission of news cameras into Pennsylvania's criminal courtrooms. New organizations that had participated in a year-long experiment involving news cameras and civil non-juried court cases, had petitioned for admission to criminal courts.

A Norfolk, Massachusetts Superior Court judge heard concluding arguments in a murder trial at which

television and still cameras were present. The unprecedented presence of photographic media brought a negative reaction from defense attorney Joseph Balliro, who argued that they have "an inherent intimidating, coercive, interfering effect." Balliro's planned appeal of the decision may argue that live camera coverage had a prejudicial effect on his client. Reported in: *Los Angeles Herald-Examiner*, July 2; *San Diego Union*, July 2, August 14; *Los Angeles Herald-American*, July 22; *Pittsburgh Post-Gazette*, June 28; *Boston Herald American*, July 4.

student First Amendment essay contest announced

The Student Press Law Center has announced that twenty-four leading national education and journalism organizations, including the American Library Association, have joined to sponsor a national student journalism competition on the value of free speech and free press in America. The purpose of the competition, an outgrowth of the First Amendment Congress held in January of 1980, is "to encourage young people to write, read and think about the importance of freedom of expression."

Entries should examine some aspect of freedom of expression, including such topics as: fair trial/free press, book censorship, gag orders, free speech for unpopular minorities, or student press rights. Submissions can be news, editorial or feature articles which have appeared in print or broadcast media between August 1, 1980 and February 28, 1981 and were written entirely by students regularly enrolled in a public or private school.

Judging this year's entries will be syndicated columnist, James J. Kilpatrick; media critic, columnist and author, Nat Hentoff; *Washington Post* reporter and co-author of *The Brethren*, Scott Armstrong; and Phyl Garland, professor at the Columbia University Graduate School of Journalism.

The competition is funded by grants from the Scripps-Howard Foundation, the Harte-Hanks Media Development Foundation and the Student Press Law Center. For more information, contact the Student Press Law Center, 917 G P1., NW, Washington, D.C. 20001.

is this progress?

D.H. Lawrence's *Lady Chatterley's Lover* has been removed from the South African government index on censorship. No reason was given for the removal of the title from the list of 13,000 entries. Reported in: *Baltimore Sun*, September 14.

— censorship dateline —



libraries

Oak Lawn, Illinois

Show Me, the controversial children's sex education book, by Helga Fleischauer-Hardt, was the focus of a protest made to the Oak Lawn Library Board. A group of thirty residents of the Chicago suburb asked the board on September 9 to remove *Show Me* from its collection. One of the protestors, State Representative Jane Barnes, stated, "Books like this make children ripe for a sex pervert to come along and talk them into doing what they read about." The Library's two copies of *Show Me* have been missing for over a year. Library Board President Larry Collins reported that a review committee will be assigned to examine the book in question and the parts of the library's collection dealing with sex education. Its findings will then go to Head Librarian Mike O'Brien, who will make the final decisions. O'Brien himself commented, "The easiest thing for me to have done would have been to say that I would take the book off the shelf immediately. But . . . I have a professional responsibility as a librarian to uphold the freedom to read and to expose varying points of view." Reported in: *Southtown Economist*, September 11.

Valparaiso, Indiana

A dramatic action by a local citizen drew a crowd to the Valparaiso Library Board's August meeting and touched off a community-wide controversy. John Maresko found *An Illustrated Social History of Prostitution* personally offensive, checked the book out, threatened not to return it, and then brought his case directly to the board. During the meeting, the board explained that the book was currently being reviewed by a committee of eight library staff members, and that the system's other copy had been taken off the shelves during the review, in accordance with library policy. Maresko returned the book, but said he would consider checking it out again if the review committee approves it for circulation.

Later, Maresko appealed to the Library Board of Trustees to create a review committee that represents "a true cross section of the community." But the out-going president of the Valparaiso-Porter County Public Library System, Margaret Heinhold, commented, "What does he think we are? We are a citizen's committee, a cross-section." Maresko also carried his campaign against "pornography" to the Portage Township School Board, which politely refused to prohibit teachers from giving students assignments that take them to the public library.

The controversy prompted a considerable volume of letters to the press. Among them, John Richard Gehm informed the editors that he was permanently removing copies of gun and military books from the library shelves, as he considers their subject matter obscene. Reported in: *Gary Post-Tribune*, August 21.

University City, Missouri

A parent of an eleven-year-old girl led a small demonstration protesting the inclusion of Judy Blume's *Forever* on the University City Public Library shelves. Carrying a sign reading, "Keep Pornography out of the Children's Room and Out of This Public Library," Eugene Petrovics said of his daughter, "I don't want her to be spiritually raped." He, his wife and daughter tore up their library cards in protest. Bruce Collins, library director, replied: "It's a book that's here. It's going to stay." Reported in: *St. Louis Post-Dispatch*, September 16.

Davis County, Utah

County Library Director Jeanne Layton, whose continuing struggle against censorship has been reported in past issues, was forced to act on a majority opinion of a library review committee and a unanimous concurring vote by the Library Board to remove copies of Don DeLillo's novel, *Americana*, from county library shelves. Said Layton, "It bothers me personally to have this happen, but I have no choice but to follow the decision of the board." As previously reported, two earlier review committees voted to retain the title, and Layton backed these decisions. She was subsequently dismissed from her position by the board. Ms. Layton has since won reinstatement, but litigation continues in the state courts.

One hardbound copy of the book has been returned to Houghton Mifflin, the publisher, and two paperbacks to Pocketbooks. In deciding to return the books, an action which Layton stated she had "never heard of," the board rejected two offers to purchase them, one from a local disc jockey who hoped to auction off a copy to raise funds for a boy's club, and another from a California man who wanted to buy them as collector's items.

Board chairman Evan Whitesides noted that either alternative would have been acceptable, adding, "I'm a monetary-oriented guy and I'd like to get some money for them. . . . We could burn them," he also speculated, "but that would create a lot of publicity."

It remains unclear whether library patrons will still be able to obtain the book through inter-library loan. Ms. Layton said that the library has such a policy, but Whitesides stressed that "we better not get it on inter-library loan or procure it. In this case it would be inconsistent. We'll have to tell the patrons we won't get involved [with that book]." Reported in: *Standard Examiner*, August 3 and 6; *Salt Lake Tribune*, August 5, 7 and 26; *Deseret News*, August 4; *Davis County Clipper*, August 27.

Brigham City, Utah

An unofficial complaint, made to a Box Elder County attorney, has led to the removal of four books from the State Library bookmobile. The complainant, a mother of teenagers and a member of Citizens for True Freedom, which has been active in other censorship efforts and played a highly visible role in the Jeanne Layton case, claimed the books contain "the vilest sexual descriptions" and, if given to "the wrong kid at the wrong time, (would) ruin his life." The titles in question were Judy Blume's *Deeny*, Elia Kazan's *Acts of Love, If You Could See What I Hear*, by Tom Sullivan, and Mora Stirling's *You Would If You Loved Me*. All titles are commonly found in young adult collections. Since the complaint was unofficial, the attorney, Roger Barron, "skimmed" the books and returned them to the librarian, but did not ask to have them taken from the bookmobile shelves. They were removed to the State Library anyway; Barron considers the matter closed. Reported in: *Ogden Standard*, August 14 and *Salt Lake City Tribune*, August 15.

schools

Atlanta, Georgia

A group of parents presented the Georgia Textbook Advisory Committee with a list of forty books which they said contained objectionable views of women, evolution, the supernatural, parental authority and morality. The committee, composed of private citizens and educators appointed by the state Board of Education, conducts an annual review of prospective textbooks and makes recommendations to the board, which gives final approval.

In a seven-page evaluation, the parents' group cited specific objections with such comments as: "presents the theory of evolution as fact," "feminist emphasis with women as head of household," "total exclusion of any traditional female roles or occupations," "too much emphasis on opinion" and "no resolution of

moral issue of stealing."

Department of Education representatives said they did not feel pressured by the parents. State textbook administrator, Paul Goethe, said the parents' objections would be considered along with other criteria. The committee tentatively approved some titles on the parents' group's list.

Clayton, Pennsylvania

In response to a father's request for alternative reading matter for his son's high school English course, Superintendent George Funk has allowed the student to select other books from a reading list. After the father had read aloud passages from Daniel Keys' *Flowers for Algernon* and Judith Guest's *Ordinary People* at a school board meeting, board member Leonard Blow commented that Funk's solution didn't "go far enough;" Blow wants both books removed from the reading list. Reported in: *Philadelphia Bulletin*, September 10.

Glocester, Rhode Island; Winston-Salem, North Carolina; State of Maryland

Disputes over materials used in biology and sex education classes occurred in three areas in August. The Foster-Glocester (Rhode Island) School Committee voted to ban the highly respected *Elements of Biology* from the regional school system, stating that a one and one-half page section covering human physical reactions before and during sexual intercourse went "beyond biological facts." National Education Association/Rhode Island president Ronald DiOrio reacted negatively to what he felt was the use of criteria other than academic ones in the decision-making process. But he recognized the School Committee's right to approve or reject textbooks for their schools.

In Winston-Salem, James Adams, superintendent of the city-county school system, rejected a textbook chosen by high school teachers on the basis that it might violate a school policy forbidding the teaching of specific methods of birth control. The text, Karen Arms' and Pamela S. Camp's *Biology*, contains drawings of male and female genitals, a list of contraceptive methods, and a six-page section on abortion. Teachers had previously discussed cutting the relevant pages out of the book, but Adams rejected the idea on the grounds that such action constituted a form of censorship.

The Maryland State Board of Education was asked by an Annapolis resident to overturn decisions by a state hearing officer to continue use of the book, *Human Sexuality: A Course for Young Adults* and the film, *Are You Ready for Sex?* in a sex education course. The complaint was founded on a religious argument: that the manner in which the materials in question discuss

premarital sex, virginity, homosexuality, and contraception challenges traditional concepts of morality and is based on secular humanism, a religion that rejects belief in absolute rights and wrongs. (See also *Newsletter*, January 1979, p. 13 and January 1980, p. 7.) Reported in: *Providence Bulletin*, August 22; *Winston-Salem Journal*, August 23; *Maryland Gazette*, August 2.

universities

Prairie State College, Illinois

ACLU attorneys Burton Joseph, Barbara O'Toole and Janice Kaufman have announced plans to file suit in District Court seeking to reinstall erotic stained glass works by Prairie State College Art Department chairman Albert R. Piarowski in a faculty art exhibit at the college gallery.

Piarowski's censored art works replicate in stained glass drawings by Aubrey Beardsley, a nineteenth century English artist noted for his elegant—and often risqué—pen and ink illustrations. Professor Piarowski's scenes are modeled on Beardsley's illustrations for *Lysistrata*, the ancient Greek play about how women forced their mates to cease making war by withholding sexual favors.

"In contrast to the historical pattern in which distinguished works were censored in their time but later became readily available," Joseph pointed out, "we have here art that was accepted in the nineteenth century but is being suppressed in the twentieth century." *The Brief* (Illinois Civil Liberties Union), July-September.

students' rights

Rochester, New York

A student newspaper's advisor has been dismissed from those duties and one issue of the paper has not been distributed because of "suggestions" made by the school principal. The former advisor of the Eastridge High School *Oracle*, Alice Webster, agreed with student editors that the principal's advice constituted a form of censorship, but principal Ronald Brown claimed he has the same rights a publisher has to control the content of his newspaper. This is in direct disagreement with federal court rulings granting public school students First Amendment rights to a free press. The content in dispute involved a joking reference to the divorce of the district's acting school superintendent. Reported in: *Rochester Democrat and Chronicle*, June 23.

broadcasting

Washington, D.C.

"I hereby condemn ABC's proposal to air the homosexual comedy series, *Adam and Yves*, or any similar

program. . .". This message, sent to the Federal Communications Commission, fell on befuddled ears, as officials of the FCC and ABC tried to puzzle out the reason for a sudden deluge of protests against a proposed television series that was dropped two years ago. Attempts to trace the source of 7,000 identical postcards received by the FCC have been unsuccessful. Individuals who wrote letters against airing the show have been told that the FCC is prohibited by law from "censoring broadcast material and from interfering with freedom of expression . . ." Reported in: *Chicago Sun-Times*, September 8.

Cincinnati, Ohio

Lenny Bruce's famous comedy routine, *Thank You, Masked Man*, is still a target of censorship. The CBS television affiliate in Cincinnati declined to air an episode of a limited-run late-night series, *No Holds Barred*, patterned after the successful *Saturday Night Live*, because General Manager Robert D. Gordon found parts of the show, especially an animated version of the Bruce routine, in poor taste.

Although Gordon also cited other reasons, including scheduling problems, for his refusal to air the program, when asked if he would have carried it had its taste been the only obstacle, he responded, "Probably not." Highly controversial in its time, the Bruce routine has been broadcast in several versions for years on radio stations throughout the country, including in the Cincinnati area. Reported in: *Cincinnati Enquirer*, September 12.

bookstores

Hartford, Connecticut

Last February, three women entered a Hartford store that sells pornographic books and movies, and sadomasochistic paraphernalia, and poured human blood over the displays. In late July, the three were acquitted of charges of trespassing and criminal mischief. The women had made their "nonviolent demonstration" to expose their belief that "pornography is the propaganda that celebrates rape, battering and other sexual violence." Although not in favor of censorship, they had hoped to discourage the selling of the materials in question.

The owner of the Bare Facts store, Sydney Daffner, commented, "They helped business tremendously. I hope they come back for Christmas." Reported in: *Boston Globe*, August 3.

Dubuque, Iowa; Cupertino, California

In May, the Dubuque County Library Board joined with a citizen's group in threatening a boycott of the Walden Bookstore which carried a magazine and several books written for drug users. The magazine, *High*

Times, and the books were removed by the store's owner. In June, the library board removed its support of the boycott, claiming its original action had been a mistake.

In a related instance, in late May, a group of parents and school officials in Cupertino, California requested the removal of drug users' magazines and equipment from two stores in a local shopping center. Both store managers declined to comply with the request, and on June 11, the group appealed for support from the Manager of the shopping center. Reported in: *Mason City Globe-Gazette*, May 26; *Davenport Quad-City Times*, June 12.

Nashville, Tennessee

In August, the Southern Baptist Sunday School Board in Nashville ordered a California-published comic book that may be offensive to Catholics removed from denominational bookstores. The comic book, *Alberto*, tells an allegedly true story of a Jesuit priest who infiltrated Protestant churches with intent to destroy them, and suggests that babies of nuns have been murdered and buried in underground tunnels. The editor of the Catholic-run *Tennessee Register*, Father Owen Campion, praised the Southern Baptist board's sensitivity. Reported in: *Los Angeles Times*, August 9.

magazines and newspapers

Sacramento, California

On Friday morning, March 21, Pulitzer Prize-winning investigative reporter, Denny Walsh, had a sensational story, alleging that one of California's leading fruit growers had engineered a bribery attempt of a public official, set for the Sunday editions of the McClatchy chain of newspapers, the *Sacramento Bee*, *Modesto Bee* and *Fresno Bee*. By the day's end, however, the story had been killed by C. J. McClatchy, who controls 52% of the chain's stock, and Frank McCulloch, the papers' executive editor. It seems the grower in question was a 10% shareholder in a company which had recently agreed to buy the McClatchy chain's Fresno television station for \$13.5 million.

According to McClatchy, the decision was based on libel considerations only, and had nothing to do with the station's sale. McCulloch, however, whom author David Halberstam has described as "a fearless hunter of sacred cows," had a somewhat different appraisal. Conceding that he ultimately concurred in the decision to kill the article, he noted that the editorial staff had initially approved the story. "We had a few questions, but nothing much . . . If I owned the paper I would have run it. I think it's absolutely true. I never doubted the facts for an instant."

Had the bribery story been printed by the McClatchy papers, it could have caused problems for the station's

sale, since FCC rules require that "any adverse information" obtained by either party about the other must be brought to the commission's attention "immediately."

According to an anonymous McClatchy executive, "Killing that story kills the credibility (of the reporters). Frankly, I don't think they can go back because of that. Our days of investigative reporting in the (San Joaquin) Valley are over." Reported in: *Wall Street Journal*, September 29.

Denver, Colorado

Four top-level and several lower-level editors left their positions with the Denver-based *Rocky Mountain Magazine* on June 23 to protest the publisher's decision to kill a novella he characterized as "really raw." The work, by *Missouri Breaks* author Thomas McGuane, was discussed by publisher Terence Y. Sieg and his editors, and approved for publication. Later, Sieg removed the story without consulting anyone, according to former managing editor Susan Brennehan. Reported in: *Denver Post*, June 28.

Tupelo, Mississippi

The campaign of the Rev. Donald Wildmon, founder of the National Federation for Decency, against numerous companies advertising in *Playboy* and other publications, drew a strong reaction from attorneys for *Playboy*. Neil H. Adelman of Shadur, Krupp & Miller warned Wildmon against "attempting to interfere with . . . [the magazine's] contracts with its advertisers," and threatened a suit for damages.

Wildmon had tallied the number of pages of advertising purchased by various companies in the January, February, and March issues of *Playboy*, *Penthouse*, *Hustler*, *Oui*, *Playgirl*, *Gallery*, *Chic*, *Cavalier*, *Genesis*, *Velvet*, and *Blueboy*. He then urged readers of his monthly newsletter to boycott products of companies which advertise heavily in the magazines. Mr. Wildmon believes the boycott will lead advertisers to cancel their business with the targeted publications. The tactic worked when McGraw-Hill, Inc. decided not to advertise in the magazines anymore. Reported in: *Jackson Clarion-Ledger*, June 28.

New York, New York

Members of the pressmen's union protested the printing of an anti-union cartoon in the *Daily News* by creating a production delay on September 17. The hour-long work stoppage, for which the *Daily News* will dock the pressmen, brought a statement from Gregory L. Thornton, vice president and director of industrial relations for the New York News, Inc.: ". . . we did remind them that it is a First Amendment right of ours to publish editorial commentary." Reported in: *New York Times*, September 17.

Erie, Pennsylvania

Declaring *Playboy* magazine obscene and its sale in violation of a city anti-pornography ordinance, Christian Minutemen head Rev. Peter Natalie led demonstrations before 13 area bookstores on August 18. Although Natalie himself conceded that no court would find *Playboy* obscene, he said, "The public doesn't believe that." The manager of the Loblaws chain of bookstores, which sells general reading matter in addition to *Playboy*, agreed to pull the magazine off its shelves. Reported in: *Erie Pa. News*, August 19.

South Ogden, Utah

The Citizens for True Freedom, which in the past actively opposed Planned Parenthood and sex education in schools, participated in a campaign which led to the closing of an adult bookstore in Ogden, and played a central role in the attack on Davis County librarian Jeanne Layton, has now succeeded in removing *Penthouse* magazine from 7-11 Stores in northern Utah. The convenience store chain has also announced that it will no longer sell any "adult" magazines in South Ogden.

The campaign against *Penthouse* began when CFTF member Joann Talbot sent a seventeen-year old boy into the South Ogden 7-11, where a salesclerk reportedly sold the boy the September issue. The clerk was charged with selling harmful material to a minor, fined \$50 for court costs and placed on six months probation. The charge can be dismissed at the end of the probation period. CFTF, which defends "the right not to read," is headed by Joy Beech, who claims "twenty years experience helping the immoral." The group has widely circulated a petition which reads: "We (the undersigned) support any legal action taken to protect our homes, schools, communities from the pollution of obscenity, lewd portraits, sensuality, pornographic materials that may occur in any book, publication, movie, store or public place." After forcing the closure of the Ogden adult bookstore, Beech had declared that she would "go into libraries and schools." Reported in: *Ogden Standard*, August 28.

films

Champaign, Illinois; Boston, Massachusetts

Women from a number of organizations picketed theaters in Champaign, Illinois and Boston to protest the showing of the movie, *Dressed to Kill*. Stating that the film glorifies violence against women, the Boston demonstrators called for a boycott of the Sack theater chain and of the alternative newspaper, the *Boston Phoenix*, which called one of the rape scenes in the film "gorgeous." Reported in: *Champaign Illinois*, September 6; *Boston Globe*, August 12.

Chicago, Illinois

A Chicago chain removed the sexually violent film, *I Spit on Your Grave*, from its downtown movie house in response to strong criticism in the media. "I reacted to the film critics," said Harrold Klein, vice-president of Plitt Theaters, Inc. The movie, which grossed approximately \$175,000 in its first week in the Chicago area, was cancelled July 17. Reported in: *Chicago Tribune*, July 17.

New York, New York

On August 22, members of various Asian-American groups demonstrated outside the New York offices of Warner Bros. against the film, *The Fiendish Plot of Dr. Fu Manchu*, which the company distributes. According to a spokesperson, the group believes the *Fu Manchu* script is racially insensitive and that a revival of pictures in which Asian characters speak "chop suey English" is retrogressive.

In addition to a public apology from Warner Bros., the demonstrators demanded that the film company fund Asian-American documentaries, employ more Asian-Americans and promote Asian-American performers in non-stereotyped roles.

In a related development, another group, the Coalition of Asians to Nix Charlie Chan, with no direct link to the New York demonstrators, recently protested against a Chan movie being filmed in San Francisco's Chinatown. Reported in: *Variety*, August 27.

foreign

Copenhagen, Denmark

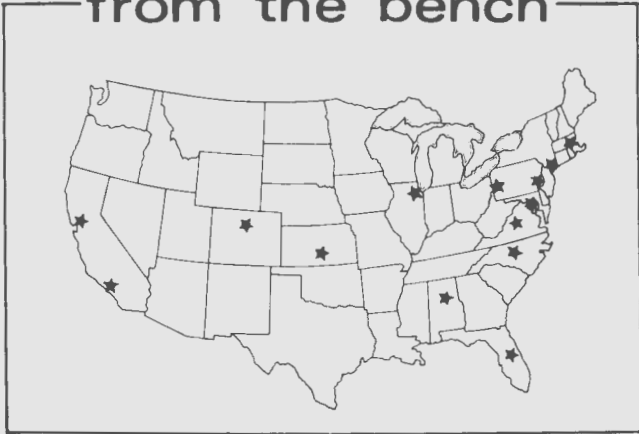
In a country renowned for its liberal attitude toward sex in films for all ages, censorship officials have placed the *Star Wars* movies off-limits to children under twelve. "It's because of the scenes in the movie that will give children a shock, will frighten them," explained Dr. Joergen Bruun Petersen, who made the decision to limit attendance to *The Empire Strikes Back*. "Children are not allowed to see a film that desensitizes them to violence, to suffering. They must not see a film if we feel they will get [from it] less ability to feel pity."

Denmark abolished censorship of films for adults in 1969, but empowered three censors to ban movies for children in two categories: under sixteen and under twelve. A third category, parental warnings for children under seven, was added this year. According to Petersen, had this latter possibility been open when he viewed *The Empire Strikes Back*, he would have used it.

The Danish Censors find sex much less objectionable than violence. "I don't think children will be harmed if they see two adults going to bed with each other," Petersen argued. Reported in: *Boston Globe*, September 24.

(Continued on page 139)

from the bench



U.S. Supreme Court

On July 23, Supreme Court Justice William J. Brennan Jr. issued Walter F. Roche, Jr., a Boston television news reporter, the second of two stays of a jail sentence. Having refused to reveal his sources of information about alleged misconduct by a Roxbury Municipal Court judge, Roche was cited for contempt of court, following a hearing by State Supreme Court Justice Benjamin Kaplan.

Brennan's order gave Roche and his attorneys time to appeal to the full Supreme Court. If the Court agrees to hear Roche's appeal, he will be free from jail for several months.

Commenting on the need for a shield law, Roche said, "Without [such a] law, the kinds of stories that brought this case about will not be done." Reported in: *Boston Herald-American*, July 24.

The High Court refused to review an appeal by a Flint, Michigan adult film distributor, who claimed his film was not subject to the Michigan tax on uncopyrighted material. The film distributor, Harry V. Mohney, had first appealed a suit against him, brought by the State of Michigan in 1976, on grounds that it was unconstitutional for the state to give preferential treatment to copyrighted material. However, the Supreme Court denied review, stating that no federal issue was in question. Reported in: *Flint Journal*, May 13.

On May 19, the Supreme Court agreed to hear a government appeal of a Court of Appeals' decision giving former President Nixon, Henry Kissinger, H.R. Haldeman, and John Mitchell "qualified immunity" from liability for monetary damages in the wiretapping of former National Security Council Advisor Morton Halperin. The government claims the officials have absolute immunity. Reported in: *Organizing Notes*, Vol. 4, No. 4.

church and state

Washington, D.C.

An attempt by an official church body to discourage sale of unapproved religious material by a separate publishing company has been upheld. U.S. District Court Judge June L. Green dismissed a lawsuit against the National Conference of Catholic Bishops brought by the Costello Publishing Company of New York, stating that the N.C.C.B. was not in violation of the Sherman Antitrust Act and referring to a prior U.S. Supreme Court decision prohibiting court review of ecclesiastical decisions.

Publisher Costello had planned to distribute an Irish breviary which he argued is "acknowledged to be vastly superior" to the N.C.C.B.'s approved American text. He will consider appealing after studying Judge Green's opinion. Reported in: *Washington Post*, September 5.

North Carolina

The U.S. Circuit Court of Appeals ruled on September 11 that a "motorist's prayer" printed on North Carolina's official highway map violated the First Amendment. Rejecting the state's argument that the prayer is akin to the national motto, "In God We Trust," the court said, "The state is placing its power and support behind a particular form of theological belief," and that such state sponsorship "is one of the primary encroachments [the First Amendment] seeks to inhibit." The prayer has been printed on the map since 1964. Reported in: *Washington Post*, September 12.

prisoners' rights

State Farm, Virginia

Upholding a lower court decision in a suit filed by inmates of Powhatan Correctional Center, the U.S. Circuit Court of Appeals held that prisoners may not display nude or obscene pictures on their cell walls, but may look at them in private. In its August 20 decision, the Court stated, "The rights of some inmates to look at [such] pictures must be balanced against the right of others not to have to look at them." Reported in: *Baltimore Sun*, August 21.

closed hearings

Birmingham, Alabama

In spite of the Supreme Court decision in *Richmond Newspapers v. Virginia*, a U.S. District Court judge in Alabama barred press and public (with the exception of an Alabama Power Company attorney) from crucial arguments in a government case against the Drummond Coal Company. During those closed-court arguments,

Judge Frank McFadden heard statements concerning the admissibility of questioned segments of the prosecution's case and ruled to dismiss the bulk of that case, a massive conspiracy charge against the Drummond Coal Co. and business and political figures.

Previously, Judge McFadden had closed his court to review testimony involving alleged buying of prostitutes by the coal company for state legislators. Reported in: *Birmingham Post-Herald*, July 9.

Marion County, Florida

Marion County Circuit Judge Wallace Sturgis, Jr. banned pretrial publicity in the case of a former Tennessee district attorney charged with the 1977 killing of a retired immigration inspector. The judge said the ruling applies to all proceedings in the case unless a specific motion is made to open a hearing to the public.

The ruling bars the public from sitting in on all future proceedings dealing with depositions and witnesses giving testimony on videotape. It also bars the public from reading depositions and the court file between the time of the ban and the end of the trial. Reported in: *Orlando Sentinel Star*, August 22.

Orlando, Florida

The Fifth District Court of Appeals ruled against an order barring press and public from a civil trial hearing. Osceola County Circuit Judge Edwards had locked his courtroom and sealed the transcript of a post-trial hearing involving jury conduct during a personal injury case against the City of Orlando, citing the sanctity of jury deliberations. But the appeals court required Edwards to present the transcript to the trial court and, if no other basis for closure was found, to make it available to the press. In opposing the appeal by the *Orlando Sentinel Star*, Edwards supported his actions by referring to the 1979 U.S. Supreme Court decision in *Gannett v. DePasquale*, in which the court failed to find a public right of access to criminal proceedings. That decision, as reported in the September *Newsletter* (page 102), was virtually reversed in a subsequent Supreme Court ruling (*Richmond Newspapers, Inc., et al. v. Virginia, et al.*). Reported in: *Orlando Sentinel Star*, July 10.

newspapers

Los Angeles, California

On August 14, a federal Appeals Court in Los Angeles denied an attempt at prior restraint of publication made by Steve and Cyndy Garvey against the *Los Angeles Herald-Examiner*. Steve Garvey, the Dodger first baseman, and his wife, hostess of a local TV show, had claimed injury from the initial printing of an article in *Inside Sports* taken from interviews, and had moved

in U.S. District Court to restrain the *Herald-Examiner* from reprinting sections of that piece. According to the Garveys, comments on the couple's sex life attributed to Mrs. Garvey were taken out of context and presented in distorted fashion by the magazine.

A three-judge panel from the Ninth Circuit overturned a Los Angeles federal judge's August 11 decision to prohibit the reprinting, stating that "prior restraint of this publication is prohibited by the First Amendment." Tapes of the interview, previously demanded, were not ordered by the court, but *Inside Sports* publishers said they will produce them as evidence in trial of the Garveys' \$11.2 million libel suit against them.

The *Los Angeles Times* printed extensive excerpts from the article in its August 14 editions, even before the *Herald-Examiner* did. Reported in: *Los Angeles Herald-Examiner*, August 14; *San Francisco Examiner*, August 14; *New York Times*, August 15.

reporters' rights

Philadelphia, Pennsylvania

"Your honor, I am going to respectfully decline . . .". "You are directed to answer the question yes or no." ". . . All right, you are held in contempt." So went the testimony of *Philadelphia Inquirer* reporter Jan Schaffer during a pre-trial hearing in the FBI Abscam case being heard before federal District Judge John P. Fullam on July 10. Refusing to reveal sources of information, Schaffer was held in civil contempt of court, which, although not a criminal citation, may result in a jail sentence if her appeal is denied.

That appeal was filed in the U.S. Court of Appeals for the Third Circuit the day the court incident occurred. Judge Fullam commented in a written opinion that ". . . when a witness testifies about what he or she told a reporter, the reporter may . . . be required to testify on that subject . . ." Schaffer's attorney argued in court that the fact that one of her sources testified "does not waive the reporter's privilege of confidentiality."

Commenting on efforts to obtain confidential source material, *Inquirer* Executive Editor Eugene L. Roberts said, "If we start down that track, sooner or later, by process of elimination, information about confidential sources would be obtained." Reported in: *Philadelphia Inquirer*, July 11.

film

Hollywood, California

San Francisco's Mitchell brothers report that they have been awarded \$42,153 in damages, plus \$16,284

from a Dallas exhibitor in settlement of their landmark battle to claim copyright protection for adult films.

In 1979, a Federal appeals court upheld the Mitchells' right to sue theatre owner Kenneth Bora over a pirated copy of *Behind the Green Door*, noting that films of this type are as entitled to copyright protection as any other art. Following trial, Federal Judge Roy Hill awarded damages to the Mitchells, who estimate Bora also will be mandated to pay more than \$12,000 in attorney's fees. Reported in: *Variety*, August 6.

Wichita, Kansas

An adult theater patron who was detained and forced to identify himself during a police raid had a class-action suit for damages dismissed on August 19 by federal Judge Patrick Kelly, who stated that the District Attorney had prosecutorial immunity. A temporary injunction against taking names of patrons during similar raids is still in effect; its permanency will be decided later. The named plaintiff claimed that identification of patrons was an invasion of privacy and a prior restraint on freedom of communication and assembly. Reported in: *Wichita Eagle*, August 20.

Boston, Massachusetts

The film *Caligula*, seized by Boston vice squad members on June 13 (see *Newsletter*, September 1980, p. 101), was declared not obscene by Boston Municipal Court Judge Harry Elam. In his August 1st decision, Judge Elam acquitted the Saxon Theater, the producer, Penthouse International, and theater lessor Newsconcorp, Inc., of charges of disseminating obscene matter. Though lacking in literary or artistic value, the film, according to Elam, contained a "serious political theme" and therefore met the 1973 Supreme Court standards for nonobscenity. The film portrays torture and sexual abuse during the reign of Roman Emperor Caligula and, according to one of fourteen expert witnesses who testified during the trial, presented lessons relating to political corruption and power placed in the wrong hands. Reported in: *Boston Globe*, August 2.

Middlesex County, Massachusetts

The film *Deep Throat* was declared "not obscene" on July 29, in a ruling by County Superior Court Judge Thomas R. Morse Jr. The decision made legal the film's showing on May 16 by Harvard University students Nathan Hagan and Carl Stork. The two were arrested after screening the film. Reported in: *Boston Herald-American*, July 30.

broadcasting

Alabama

On July 3, U.S. District Judge J. Foy Guin, Jr. ruled the Alabama Public Television Network cannot be

forced to broadcast the controversial film, *Death of a Princess* (see *Newsletter*, July 1980, p. 71; September 1980, p. 96). Replying to plaintiffs' arguments that the network acted as a group of censors by pulling the documentary off the air, Judge Guin wrote, "There is nothing in the right to receive information which conditionally compels others to speak, since the First Amendment also protects coextensively the right to speak freely and the right to refrain from speaking at all."

Furthermore, the judge argued that there is no First Amendment right of access to broadcast stations. He suggested plaintiffs take their complaints to the FCC.

Other suits have been filed across the country over the broadcasting of *Death of a Princess*. Reported in: *Birmingham Post-Herald*, July 4; *Birmingham News*, July 4.

obscenity

Los Angeles, California

On August 7, the California Supreme Court voided a Los Angeles ordinance requiring the closing of adult picture arcades between 2:00 a.m. and 9:00 a.m. The justices ruled 4-3 that the ordinance violated the First Amendment right to free expression. The majority opinion, written by Chief Justice Rose Bird, reversed a Los Angeles Superior Court ruling that the law was constitutional. Bird wrote that there were less restrictive ways of achieving the purpose of the ordinance—to prevent masturbation in arcades.

Colorado

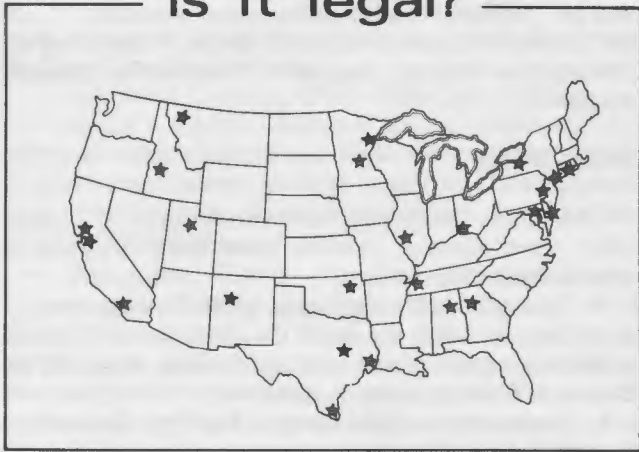
Colorado's obscenity law, passed in 1977 to define obscene material and make its sale, promotion and distribution a crime, was declared unconstitutional on August 18 by the Colorado Supreme Court. In a single, 7-0 opinion rendered on six separate cases, the court struck down the obscenity law because it excluded from its definition "any printed or written textual matter which accompanies the allegedly obscene photographs or is included in the same work."

The court said that although the U.S. Supreme Court has abandoned the old standard that to be obscene a work must be utterly without redeeming social value, the highest court still holds to the idea that material must be considered in its entirety. Under Colorado's law, the court said, "A medical treatise, where the text was illustrated with explicit anatomical photographs, could possibly fall within the statutory definition of obscenity."

Obscenity cases from Boulder, Colorado Springs, Pueblo, Grand Junction, Denver and Greeley were consolidated by the court and sent back to their respective district courts for dismissal. A number of other obscenity cases will probably be dismissed as a result of the ruling. But Senator Ted Strickland of West-

(Continued on page 139)

is it legal?



church and state

Albuquerque, New Mexico

The Albuquerque Chapter of the American Civil Liberties Union will sue Bernalillo County for its use of the Christian symbol of the cross on the official county seal. The ACLU contends the seal violates the First Amendment prohibition on establishment of a religion.

County Attorney Joe Diaz claimed, "We're entitled to keep it factually and legally." David Santillanes, chairperson of the County Commission, insists that the seal predates New Mexico's admission to the union in 1912 and that its use is guaranteed by the Treaty of Guadalupe Hidalgo between the United States and Mexico, which ended the Mexican War in 1848. Reported in: *New York Times*, August 31.

student press

Minneapolis, Minnesota

A decision by the University of Minnesota Board of Regents to make optional student funding of the often controversial *Minnesota Daily* student newspaper, has been labeled a violation of freedom of the press and speech, and of due process and equal protection provisions, by the publication's editors. The newspaper filed suit against the Regents in U.S. District Court on July 30, claiming that there is no appeal process for a Board of Regents decision. With optional funding, the paper stands to lose an estimated fourteen percent of its operating funds. Reported in: *St. Paul Dispatch*, July 30; *Duluth News-Tribune*, July 31.

press rights

Concord, California

Film crew members of San Francisco television station KQED may face prosecution for making an

unauthorized film at the U.S. Naval Weapons Station in Concord. Working on a report that nuclear weapons were stored at the base, the crew did not obtain permission to film from the commanding officer. Following the August 21 arrest, confiscated film was returned to KQED, since Navy authorities found the footage did not threaten national security. Reported in: *Access Reports*, September 9.

Washington, D.C.

Following the Justice Department's June 3 subpoena of the telephone records of the *New York Times*' Atlanta bureau, Attorney General Benjamin R. Civiletti ordered a review of regulations governing such activities. Phillip B. Heymann, Assistant Attorney General, had issued the subpoena without Civiletti's knowledge. Records were needed for a federal grand jury investigation in the District of Columbia. A spokesman for the Justice Department, Robert M. Smith, commented, "Very few things are more chilling of news gathering than trying to find out the sources of reporters through phone records." reported in: *New York Times*, September 6; *Washington Post*, September 9.

Boise, Idaho

Television Station KBCI filed suit in the state courts on August 1 against a local prosecutor, claiming that a search of the station's newsroom and the seizure of videotapes violated the U.S. and Idaho constitutions. The tapes were made at the Idaho State Penitentiary during rioting there and are considered "the best available evidence" in prosecuting inmates, according to County Prosecutor Jim C. Harris. But the station's attorney alleges freedom of press rights were violated in the search. In 1978, the U.S. Supreme Court ruled the press enjoyed no special immunity from court-ordered searches by police.

The tapes can no longer be used by the prosecutor. They will be sealed until the station's suit is decided, then turned over to the courts. Harris' stated intention to call reporter Bob Loy, who made the tapes, as a key prosecution witness in prisoner trials brought strong statements from Loy: "I'm absolutely prepared to do jail time on this. I'm in no way going to freely give up my First Amendment rights, nor am I going to give up the First Amendment rights of the prisoners who were subjects of my interviews." Reported in: *Washington Post*, August 2; *New York Times*, July 28; *Access Reports*, September 9.

Duluth, Minnesota

City officials have denied charges made in a District Court suit filed in July by Duluth newspapers that a sales tax levied on newspapers abridges freedom of the

press and equal protection under the law. The *Duluth News-Tribune* and *Herald* claim that the tax discriminates against newspapers by singling them out for taxation. Reported in: *Duluth News-Tribune*, August 15.

open hearings

San Diego, California

The City Council's closed session on June 19th, in which top appointed city executives' salaries were reviewed, stirred *San Diego Union* editor Gerald L. Warren to challenge the closure in court. "The fixing of salaries of top city officials is the public's business," said Warren. A focal point of the argument will be the Brown Act which has a variously interpreted segment on open meeting requirements. Reported in: *San Diego Union*, June 20.

teachers' rights

Orange, Texas

A West Orange-Cove School District teacher and president of the local American Federation of Teachers affiliate filed suit on August 6th against the district, claiming it had interfered with his right to free speech. The teacher, Michael Hoke, had earlier been reprimanded by Superintendent Frank Kudlaty for charging the district with covering up the discovery of asbestos in the ceiling of an elementary school. Hoke, in his suit, asked that the reprimanding letter be removed from his personnel file, claiming that the district's actions impaired his credibility and his reputation. Reported in: *Beaumont Enterprise*, August 8.

advertising

Philadelphia, Pennsylvania

Anti-draft posters were removed from Philadelphia subways and elevated trains on August 4th, and plans have been made to sue the South East Pennsylvania Transit Authority for violating constitutional rights. The posters, which asked readers to "think before you register for the draft," were sponsored by the Women's International League for Peace and Freedom, who bought advertising space from an agency, Transit America. Transit America is on contract with SEPTA, but SEPTA reserved the right to reject any advertisement it considered objectionable. SEPTA felt the posters implied that the transit authority condoned opposition to a government program. On August 21, the American Civil Liberties Union, representing the Women's International League, asked the U.S. District Court to order the posters put back up. Their removal, the suit charged, constituted a breach of contract and

was an "arbitrary and discriminatory restraint . . . on the plaintiff's access to a public forum." Reported in: *Philadelphia Inquirer*, August 9; *Philadelphia Bulletin*, August 21.

obscenity

Ordinances restricting adult bookstores and other adult entertainment centers have been adopted in several areas of the country:

- Springfield, Pennsylvania—The Township code, as of August 14th, regulates the distance adult bookstores may operate from residential areas. Reported in: *Delaware County Times*, August 14.

- Lemon Grove, California—The City Council approved a ban on new adults-only businesses for the next four months. Reported in: *San Diego Tribune*, August 20.

- Bryan, Texas—The City Council adopted an ordinance regulating massage parlors' hours of operation, distance from schools, churches and the like, and the massage of persons of the opposite sex, effective late in August. Reported in: *Houston Chronicle*, August 13.

- Tulsa, Oklahoma—The City Commission, on July 22nd, adopted an ordinance prohibiting clustering of adult bookstores, bars with topless dancing, X-rated theaters, and massage parlors as well as regulating distance of such establishments from churches and schools. The city expects to be challenged in court. Reported in: *Tulsa Tribune*, July 23.

- Brownsville, Texas—The City Commission is preparing an ordinance prohibiting sale, display, loan or exhibition of sexual material to minors, the sale of tickets to X-rated movies to minors, and the sale of recordings or drawings of sexual nudity, conduct or sadomasochistic abuse. Reported in: *Brownsville Herald*, August 6.

- New Castle County, Delaware—The City Council voted in restrictions against massage parlors, adult bookstores, peep shows, X-rated theaters, and bars and restaurants with topless dancing: such businesses are not permitted to locate in certain commercial zones, or within a proscribed distance from residential areas, churches, and schools and from each other. Reported in: *Wilmington News*, June 24.

- New Haven, Connecticut—A city ordinance was signed into law zoning adult material stores and drug paraphernalia stores. Reported in: *New Haven Journal Courier*, August 18.

- Kalispell, Montana—The City Council adopted an ordinance on July 7 making it a local misdemeanor to sell or give obscene materials to persons under 19 years of age. A local anti-pornography citizens' group had tried unsuccessfully to have passed an ordinance

banning sale of obscene materials to anyone. Reported in: *The Missoulian*, July 9.

- Salt Lake County, Utah—The County Commission passed a highly restrictive zoning ordinance applying to adult theaters and bookstores—certain types of zones are available to these businesses, and distance from churches and schools is proscribed. Reported in: *Salt Lake City Tribune*, August 11.

- Springfield, Illinois—The City Council on August 12 approved a zoning ordinance restricting new adult bookstores and theaters. There are distance regulations pertaining to residential areas, an anti-clustering restriction, and limitations on sites, restricting them to general business, shopping districts and highway business-zoned areas. The local American Civil Liberties Union is remaining watchful and considers the constitutionality of the ordinance questionable. Reported in: *Springfield State Journal Register*, August 13.

Atlanta, Georgia

A new state law, the Racketeering Influence and Corrupt Organizations Law, is being fought—thus far unsuccessfully—by area adult bookstores and theater owners. In mid-July, a federal judge refused to grant a temporary restraining order stopping law enforcement officers from enforcing the statute, although plaintiffs claimed it violates their constitutional right to freedom of speech. The law, among other things, allows law enforcers to seize materials from stores and close them with no prior decision by a judge that the material is obscene. Reported in: *Atlanta Journal*, July 16.

Atlanta, Georgia

The city allowed the deadline to pass for filing an appeal of a federal court ruling overturning Atlanta's Adult Entertainment Licensing ordinance. The multi-point ordinance, designed to keep criminal elements out of the adult entertainment business, was signed into law in 1977 but held unconstitutional last May by U.S. District Judge William O'Kelley. Although city officials did not appeal the ruling, they intend to amend the ordinance and retained the authority to issue licenses. Reported in: *Atlanta Journal*, June 12.

Chili, New York

The town board unanimously adopted a law banning films depicting sexual intercourse and sadomasochistic abuse on theater screens visible to passersby. The law pertains directly to the town's only movie theater, the Rochester Drive-in, which shows X-rated films; complainants claim that movies can be viewed by underage persons from an adjacent parking lot. The law,

however, also could be applied to indoor movie houses at which films might be viewed from an open door or window. Reported in: *Rochester Times-Union*, August 14.

Cincinnati, Ohio

On August 5, Cincinnati vice squad officers raided nine liquor stores and confiscated at least 500 magazines, including issues of *Eros*, *Oui*, and *Sir*. The stores' owners, who face liquor law citations for selling allegedly pornographic magazines, must appear before the Ohio Liquor Control Commission. Reported in: *Cincinnati Enquirer*, August 5; *Cincinnati Post*, August 5.

Memphis, Tennessee

Shirley's Nightclub, which allowed nude dancing, had its license suspended "on an emergency basis," prompting the club to file suit in U.S. District Court, challenging the relevant Tennessee statute. The law prohibits nude and topless dancing within 6.5 feet of a club table. A similar law in California was declared constitutional by the U.S. Supreme Court.

A hearing on the formal revocation of the club's license was scheduled for October 16. Reported in: *Memphis Press-Scimitar*, August 27.

etc.

Anniston, Alabama

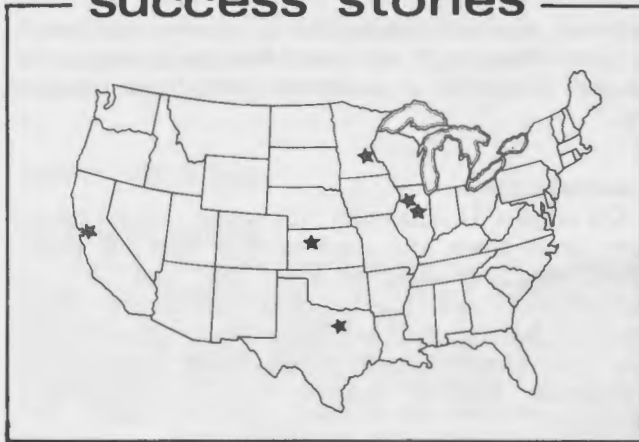
An Alabama National Guardsman was threatened with discharge if he participated in an ABC film about the 1970 Kent State University shooting. Colonel Eugene Burham, the commanding officer, said he had advised Spec. 5 John Basnett in mid-August to choose between a movie career or a career in the 1st Battalion, 152nd Armor. Burham added that the film would show the Guard "in a bad light." Reported in: *New York Post*, August 19.

San Francisco, California

The San Francisco Civil Service Commission adopted a far-ranging, apparently unprecedented policy on August 19 under which city officials and employees may be demoted or dismissed for using a "slur" while on duty. While the measure was aimed mainly at racial remarks, both sides in the debate over the rule agreed that using terms such as "old coot," "dumb broad" or "son of a bitch" could fall within the policy's guidelines. Critics of the policy doubt its constitutionality. Reported in: *Los Angeles Times*, August 20.

(Continued on page 140)

success stories



libraries

Hays, Kansas

On August 19, the Board of Directors of the Hays Public Library voted 6-0 to leave the book, *Learning About Sex: A Guide for Children and Their Parents*, by Jennifer Aho and John Petras, in the children's section of the library. Mrs. Bernadine Schumacher had filed a complaint against the book after securing over 120 signatures on a petition demanding either the book's removal or its transfer to the adult section.

According to Mrs. Schumacher's complaint, the book encourages "an immoral attitude toward sex. More than three-fourths of the book is bad," she said. "It's saying if it feels good, do it. I'd just as soon see it out of the library, but getting it removed from the children's section is probably about the best I can hope for."

In response to the complaint, other community members circulated a petition in support of the library staff and for "a free choice of literature available in both the adult and children's sections." 800 signatures were collected. In explaining its decision, the Board, and Library Director Duncan McCoy, pointed out that the American Library Association's *Library Bill of Rights* and *Freedom to Read* statement lie at the heart of the Hays Library's selection policy.

"The message of these two documents, as they pertain to this case, is clear," McCoy informed Mrs. Schumacher. "The library does not restrict access to its materials to anyone; and, it is not the function of the library to impose moral standards, through selection or availability of library materials, on individuals or their children."

schools

Lafayette, California

On July 30, the governing board of the Acalanes High School District unanimously rejected a proposal

to ban *Ms.* magazine from school libraries. Although its neighboring district, Mt. Diablo, had earlier voted to keep *Ms.* on library shelves "with restrictions" (see *Newsletter*, September 1980, p. 97), the Acalanes Board refused to place any qualifications on the magazine's use. Opposing parents have threatened to recall board members and also have asked the board to establish a Textbook Review Committee. But Assistant Superintendent Alex Winchester reminded parents that they have the right to withhold their children from courses such as sex education and can demand alternative reading material if they object to what is assigned. Reported in: *Oakland Tribune*, July 31.

Mahomet, Illinois

In a 6-1 decision on August 26, the Mahomet-Seymour School Board retained Gary Hoenig's non-fiction book about a New York teen-age street gang leader. A local citizen had complained about the street language used in *Reaper* and descriptions of drug abuse. Teacher Mike Tilford and librarian Geraldine Schriefer defended the book's content as essential to the story's validity. Schriefer said, "The question is more than just one book, it is a question of censorship." Reported in: *Champaign-Urbana News-Gazette*, August 27.

Northern Illinois

At its July meeting, the Board of Regents for three Illinois universities approved a ban on the screening of X-rated films on its campuses. Student leaders at Illinois State, Northern Illinois, and Sangamon State Universities spoke out against the ban, and the Central Illinois Chapter of the American Civil Liberties Union supported their protest. At its September meeting, the board responded by voting to interpret the ban as "a feeling of the board, not a rule of the University to enforce," according to chairman David Murray. An annual erotic film festival, which has been held at NIU for the last nine years, will go on this Spring as scheduled. Reported in: *Normal Vidette*, August 28, *Chicago Tribune*, September 27.

St. Paul, Minnesota

In late July, a Stillwater School District mother complained to the school board about the picture book, *Father Christmas*. Her claim, that a book which shows Santa Claus smoking, drinking, and sitting on a toilet is a bad influence on children, nevertheless resulted in a 6-0 vote in favor of retaining Raymond Briggs' popular Christmas book on the shelves. Though the school board added a restriction, that of removing the title from first, second, and third graders' shelves, Superintendent Robert Miller publicly stated: "It's only in a

free society that you can have morality. Start controlling and we aren't free anymore. That's immoral." Reported in: *St. Paul Dispatch*, July 15 and 25; *Pioneer Press*, July 25.

broadcasting

Mesquite, Texas

In a city referendum that set a voter turnout record, 4,095 people voted on August 9 to retain R-rated movies as part of cable television programming. Despite vigorous campaigning by opposition church leaders, the Citizens for Cable T.V. won its fight. Said Dave Bond, the Cable T.V. organization's campaign treasurer, "... we want to be able to determine our own viewing habits on an individual basis rather than a community basis. I think people are a little weary of more and more individual freedom being taken away from them." Reported in: *Dallas Times-Herald*, August 11.

(Censorship dateline . . . from page 131)

London, England

Britain's euthanasia society—Exit, The Society for the Right to Die with Dignity—gave up plans to publish a suicide method guide when lawyers advised the group it would be prosecuted. The guide was intended mainly for the painfully and incurably ill and the bed-ridden aged. Reported in: *Washington Post*, August 13.

Athens, Greece

On September 4, an Athens court sentenced a Greek actress to five months in prison for offending public morals by appearing nude on stage. The writer and producer of the play received a similar sentence, convicted of being morally responsible for her act. Both the actress and the writer were released pending appeal. Reported in: *Philadelphia Inquirer*, September 5.

Jerusalem, Israel

A parliamentary proposal to make illegal the copying, publishing or reading of private correspondence without permission, has come under attack by the Israeli and foreign press. The bill would also make it a crime to photograph anyone in an "embarrassing situation" unless it could be proved that this was done in the "public interest." The *Jerusalem Post* responded "it is easy to foresee the impact this tilting of the burden of proof could have on the press." Reported in: *New York Times*, July 21.

Sapporo, Japan

In March, the Sapporo District Court ruled that customs inspection of pornographic material entering

the country violated the constitution. The presiding judge added that censorship was permissible only when there was a danger that public morals could be corrupted by importing pornography. Individual possession of pornography, even for the purpose of export, was ruled legal by the Japanese Supreme Court in 1977. Reported in: *Baltimore Sun*, September 2.

etc.

Pekin, Illinois

Led by two pastors from St. Paul, Minnesota, two hundred members and friends of the First Assembly of God Church of Pekin destroyed \$30,000 worth of rock 'n' roll albums and tapes, and then ceremonially burned some 2,000 rock album covers, allegedly pornographic magazines, and astrology and horoscope books October 4. Said one of the visiting pastors, "Knowing that many rock musicians stand for atheistic and satanic principles . . . we burn these albums in the name of Jesus Christ." Reported in: *Chicago Sun-Times*, October 6.

(From the bench . . . from page 134)

minster vowed to draft a new law when the legislature reconvenes in January, and Robert Barker, Republican candidate for district attorney in Denver, requested a special session of the legislature to deal with the issue. Reported in: *Denver Post*, August 18; *Rocky Mountain News*, August 20.

right to privacy

New York, New York

U.S. District Judge Gerard L. Goettel dismissed actress Ann Margaret's suit against *High Society* magazine which had published a semi-nude photograph of her taken from one of her motion pictures. The actress' suit claimed her rights to privacy and to control her own publicity had been violated, but in his opinion Judge Goettel wrote that "... when an individual consents to be viewed in a certain manner during the course of a public performance, such as in a movie, it cannot then be argued that a subsequent faithful reproduction . . . constitutes an invasion of privacy." Reported in: *Washington Post*, August 28.

free speech

Washington, D.C.

A three-judge panel of the District of Columbia Court of Appeals upheld the conviction of ten anti-nuclear protestors who were arrested in 1978 in a protest

on the White House lawn. Among the protestors was short story writer Grace Paley.

The demonstrators were convicted in late 1978 of refusing to leave the White House property. The September 5 decision, written by Court of Appeals Judges John W. Kern II and George R. Gallagher and Superior Court Judge Margaret A. Haywood, affirmed the convictions on the basis that restricting public access to portions of the White House lawn is not an unreasonable restraint on First Amendment rights. Reported in: *Washington Post*, September 6.

etc.

San Francisco, California

Anti-war and anti-nuclear literature, placards and short films can now be displayed at the visitor's center of the University of California's Lawrence Livermore Laboratory, which, among other activities, produces nuclear weapons. The decision, in a suit filed in July in the California State Court of Appeal by the ACLU of Northern California, represents a unique extension of the right of free speech by designating the visitor's center at the Laboratory a "public forum." An appeal by the University of California is expected. Reported in: *Los Angeles Times*, July 29.

Chicago, Illinois

A federal judge ruled September 4 that most of the previously sealed testimony from the Justice Department's unsuccessful attempt to stop *Progressive* magazine from publishing its controversial H-bomb article last year will be made part of the public record. A small portion of the material will remain secret for another five years. *Progressive* editor Edwin Knoll agreed to the court's stipulation, although he said the *Progressive* was opposed to keeping any of the material secret. Reported in: *Access Reports*, September 16.

Waukegan, Illinois

In mid-August a three-judge panel of the Illinois Appellate Court reversed a Waukegan man's rape conviction due to the improper use of the man's personal library as trial evidence. The justices said that using the books (whose titles suggested they were pornographic material), against the defendant "presents a subtle threat to private possession of reading materials and strikes dangerously close to the heart of cherished First Amendment freedom."

The judges ordered a new trial for defendant Edward Malkievicz, concluding in their written decision: "Such a threat is not now and will not ever be taken lightly by this court. We determine that it was prejudicial and harmful error to allow the admission of such testimony." Reported in: *Chicago Tribune*, August 17.

Pittsburgh, Pennsylvania

A request by defense attorneys in a rape-slaying case to close the courtroom during the reading of the suspect's apparent confession was denied on September 3. Common Pleas Judge Zoran Popovich rejected the defense bid, citing state Supreme Court guidelines which require proof of a "serious threat" to the right to a fair trial. The judge, however, did ask the press not to publish the defendant's confession made to the police (defendant later denied the truth of the confession in court), but reporters did not honor the request. Reported in: *Pittsburgh Post-Gazette*, September 4.

(Is it legal? . . . from page 137)

New York

On July 11, New York Representative John M. Murphy asked U.S. District Judge Jacob Mishler to release FBI videotapes in Operation Abscam, on the grounds that the public's First Amendment rights are at stake. Murphy's attorneys filed papers with Judge Mishler claiming that in light of news leaks about Abscam, all facts, including the tapes, should be made public. Reported in: *Washington Star*, July 11.

(Zykan . . . from page 119)

obscene or pornographic and, of course, therefore unprotected by the First Amendment. Rather, the materials and curricula related primarily, if not exclusively, to perceptions of the political and social roles and relationships of women in American society.

Far from accepting the opportunities presented by the *Warsaw* case, the Court's decision appears to have been carefully drawn to provide every proponent of every perspective of the problem of secondary school censorship cause for both hope and discouragement, without suggesting the order of magnitude of either. This ambiguity is readily illustrated. Thus,

1. The Court rejects the School Board's contention that the case is moot but at the same time holds that the plaintiffs' complaint does not state a constitutional claim.

2. The Court recognizes a student's right to academic freedom but immediately suggests that such right, and even the need for it, exists primarily in "the rarified atmosphere of the college or university."

3. The Court recognizes that the discretion placed in school boards to control curricula and secondary education is not "unfettered by constitutional considerations," but proceeds to hold that any challenge to such discretion must "cross a relatively high threshold" before it constitutes a cognizable constitutional claim.

4. The Court recognizes the repeated Supreme Court injunctions against conduct which would cast a "pall of orthodoxy" over the classroom, but then appears to view the function of the secondary school as the "nurturing of those fundamental social, political and moral values that will permit a student to take his place in the community."

While the *Warsaw* decision has little or no significance as a legal precedent, it is impossible to dismiss the decision as without lessons to teach.

The first lesson is that academic freedom rights are probably more effectively asserted by teachers and librarians than by students.

The second lesson is that a complaint of secondary school censorship must be carefully and precisely drawn to include those "magical legal and factual assertions and conclusions" which appear to be the *sine qua non* of staying in court.

The third lesson, and perhaps the hardest to accept, is that, somehow, the indoctrinative function of the secondary school has become the judicial rationale for Constitutionally protected "educational elitism." This rationale is clearly articulated by the Court in its assertion that academic freedom has limited "relevance" at the secondary school level and that those limits are defined in the following terms:

First, "the high school students lack of the intellectual skills necessary for taking full advantage of the marketplace of ideas . . ." and

Second, the student's need for academic freedom "is bounded by the level of his or her intellectual development."

The theory that access to the marketplace of ideas is reserved to those who have the financial, physical or mental capacity to enter, in the words of the Court, "the rarified atmosphere of the college or university . . ." seems fundamentally at variance with the tradition of American education. But, perhaps of greatest concern, is the idea that the "need" for academic freedom is a function of intellectual development when most educators recognize academic freedom as indispensable to intellectual development.

It is possible to sympathize with the Court's reluctance to "second-guess" school board curricular decisions or to repudiate the indoctrinative function of secondary schools. But it is difficult to sympathize with the Court's refusal to recognize the minimal safeguards required to preserve secondary education from becoming primary brainwashing. Those safeguards should include, at least, two elements.

First, absolute insistence that the school board establish and observe a curricular and materials review procedure to assure broad and considered evaluation, and

Second, repudiation of those indoctrinative techniques which involve the suppression of "unacceptable values" as opposed to those techniques which involve the encouragement and nurturing of "acceptable values."

The academic and intellectual communities must take heed of the *Warsaw* decision even if they cannot take heart from it.

mail bag

To the editor:

During ALA's [1980] Annual Conference, Mr. Robert L. Bernstein, President of Random House, asked librarians in the U.S. to write to librarians in the Soviet Union about the plight of Elena Bonner Sakharov, wife of the dissident Soviet author Andrei Dmitrievich Sakharov. Mrs. Sakharov is quickly going blind, according to information which has just reached Random House, her husband's publisher, but her requests for treatment by her doctor have not been acted on by Soviet authorities. Mrs. Sakharov suffers from an acute eye disease that requires specialized and immediate medical treatment. She has had treatment twice in Siena, Italy, but is now residing with her husband in exile in Gorki where the treatment she needs is unavailable. Her requests to see her specialist, Dr. Frezzotti of Siena, have elicited no response from Soviet authorities, who apparently are in this way punishing Mr. Sakharov, in violation of the Helsinki accord of 1975 on human rights.

Mr. Bernstein suggested that librarians, as fighters for freedom of speech and publishing, may have a great effect on Mrs. Sakharov's treatment by showing their concern to colleagues in the Soviet Union. Several librarians have agreed as individuals to make such an effort and to seek appropriate publicity that might help the cause.

All who share their interest in saving Mrs. Sakharov's sight should write immediately to their counterparts in the Soviet Union to focus the Soviet government's attention on the matter.

Thank you for whatever help you can give to help Mrs. Sakharov.

David C. Taylor
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Chapel Hill

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