

BANNED BOOKS

387 B.C. TO 1978 A.D.

BANNED BOOKS

387 B.C. to 1978 A.D.

Fourth Edition
of
Banned Books: Informal Notes . . .

By Anne Lyon Haight

Updated and Enlarged

By Chandler B. Grannis

With an Opening Essay by Charles Rembar, Esq.

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Preface

The number of people who want to prevent other people from reading or seeing certain things is truly amazing; amazing, that is, unless we admit that there is a censorious impulse, latent or overt, in most of us. Power gives the impulse free rein, but people without power are also tempted by the wish to censor, partly to obtain some measure of influence over others, and partly to strike out against something they fear.

Censorship by religious, kingly, and parliamentary authorities was familiar in the past. Actual or attempted repression by governmental authorities at every level is all too familiar in the present. This is true even in the relatively free societies. Britain has its severe Official Secrets Act; the United States, with some difficulty, escaped having one passed in 1976. Both nations experience localized efforts to restrict freedom.

In the United States, changes in public attitudes have been continuous, especially in the past couple of decades. Looking back, one sees what may have been a relatively simple picture in 1935 when Bowker's *Banned Books* appeared in its first form as the record of an exhibition by the Junior League of New York City. The situation was more serious both in 1955, when the second edition cited the ravages of McCarthyism, and in 1970, at the time of the third edition, when new court decisions were being digested and political and sexual issues were being angrily debated.

Since 1970, questions about undue governmental secrecy have taken on immensely increased importance, and decisions regarding obscenity, far from settling that issue, have been followed by wide confusion.

Issues of the freedom to write and publish material about public affairs have come repeatedly into focus in connection with the Vietnam War and its final stages, the "Pentagon Papers" case, the Watergate revelations, and the disclosures of wrongdoing in the Federal Bureau of Investigation and the Central Intelligence Agency. Access to materials formerly classified or suppressed has been opened by court decisions and freedom-of-information laws. Debate has sharpened over the application of rights to privacy and of the public's "right to know."

Other issues involving the freedom to publish and to read relate to changes in personal and social attitudes. The defiance of some former values—about sex, family, use of language, patterns of living—was shocking or highly disturbing in the 1960s; it had become commonplace by the late 1970s. But it remained upsetting to some and therefore led to

continuing attempts at censorship, especially in relatively conservative communities.

The U.S. Supreme Court decisions of June 1973 seemed to give renewed regulatory authority to local and state bodies, and this was welcomed especially by those who wished to shield not only young children but high school and college students and adults from materials presumably offensive to community standards—whatever “community” was taken to mean.

All these trends are necessarily reflected in this new edition of *Banned Books*.

To bring the legal picture up-to-date, in fact up to early May 1978, Charles Rembar has written a provocative, deeply informed opening essay for this book, challenging not only to all-out conservatives, but also to fervent libertarians. Mr. Rembar was the successful defender of *Lady Chatterley's Lover*, *Tropic of Cancer*, and *Memoirs of a Woman of Pleasure (Fanny Hill)*, and has given a lively account of these cases in state and federal courts and the U.S. Supreme Court in his book *The End of Obscenity* (Random House, Bantam Books).

This edition of *Banned Books* presents, for the most part, examples of actual or attempted book bannings over the centuries, worldwide, but with emphasis on recent U.S. episodes. Many of the older notes have been revised, some considerably expanded, and about 60 new entries are added. Appendix 1, “Trends in Censorship,” has been greatly revised and expanded. Appendixes 2 and 3, respectively, present quotations from famous statements on censorship and from some significant court decisions—both modestly expanded.

Appendix 4, an added feature, is an extensive set of excerpts from *The Report of the Commission on Obscenity and Pornography*, a U.S. government document that has received far less attention than it deserves. Though issued in 1970 in editions from the Government Printing Office and from Random House and Bantam Books, it remains the only comprehensive study of the subject. Established by Congress, with members appointed by President Johnson, the Commission recommended among many other points (a minority dissenting) that sex education, discussion, and research should be promoted; that laws restricting sexual materials for adults should be repealed; but that restrictions on access by children be retained, along with restrictions on public displays and mailings unwanted by those subjected to them. The report’s “permissive” recommendations were repudiated by President Nixon and the majority of commissioners were vilified by him and others. Nevertheless, the document should be recognized as recording some of the most careful research and thought yet available in connection with sexually oriented materials.

Appendix 5 is a selection of federal statutes and Customs and postal regulations bearing on questions of censorship. In preparing this guide, up-to-date as of May 1978, Henry R. Kaufman, vice president and general counsel of the Association of American Publishers, has done a valuable service for the book world and the related communications industries.

The materials that publishers, booksellers, librarians, educators, writers—and readers, too—must defend in the everyday business of disseminating literature are more open, frank, and challenging than ever before. I hope that this edition of *Banned Books* will lead readers further into the issues it raises. The old basic areas of censorship remain—doctrine, sex, secrecy, security. The points of conflict keep shifting. The methods of censorship are various, and are imposed not only by bureaucracy, but also by the social climate; not only by official suppression, but by the writer's or editor's expurgation. (For a broad review of expurgation see Noel Perrin's entertaining *Dr. Bowdler's Legacy* [Atheneum, 1969].)

Many books that will reward the reader are named in "Selected Readings and References" at the end of this volume. Still other studies are awaited. In the international area of human rights, particularly the rights of silenced or otherwise persecuted writers, the P.E.N. American Center has begun issuing country-by-country studies. Amnesty International publishes periodic reports. In the area of claimed needs for secrecy and confidentiality, the issues are by no means clear-cut; they are at this writing being debated in the courts and in public media. All these areas call for careful, book-length analysis.

For the opportunity to work on the 4th edition of *Banned Books*, I am grateful to the R. R. Bowker Company and the heirs of Anne Lyon Haight, creator of the book, a woman of lively intellect and devotion to freedom in the classic American sense. I am grateful, equally, to the staff of Bowker's Frederic G. Melcher Library—Jean R. Peters, Librarian, and Iris Anderson, Asst. Librarian; the custodians of the *Publishers Weekly* reference files—Jean Norrington and her successor Miriam E. Phelps; and the staff of the Book Editorial Department at Bowker.

Some Notes on Organization and Style

Entries in the main portion of this book are arranged according to the birth dates of the authors. Where two or more authors were born in the same year, arrangement is alphabetical based on surname. In cases where the author's birth date is not known, each entry is placed according to the year of the event cited. The same is true of entries headed not with authors' names but with titles or place names.

Years of first publication are given, where known, after the titles listed below the author's name.

In several entries, the term *Index* appears. This refers to the Vatican's now terminated list of prohibited books, *Index Librorum Prohibitorum*.

Chandler B. Grannis

New York, N. Y.

May 1978

Censorship in America: The Legal Picture

by Charles Rembar

One of the interesting aspects of this volume, *Banned Books*, is that none of the books it names is banned. That is, at present, in the United States. And under the current state of the law none could be. I use the word "banned" in its ordinary sense: suppressed, suppressed by government. The word "book" too is used in its principal sense—the printed word in volume form.*

In the past, book banning has happened in two main ways. Books have been censored at the start and never seen the light of print. This was the method employed in England prior to the eighteenth century. Or their publication or sale or transportation has been made a crime, so that their distribution is perilous and their reading generally sneaky. This was the method in England from 1720 on, and in this country from early in the nineteenth century until 1966.

There have also been partial interferences. The closest to suppression is injunction, a curious hybrid that amounts to post-prior-censorship: the book comes out and then, if the government wins, further publication ceases, while copies already circulating keep right on circulating. There is the barrier to importation that Customs has interposed from time to time, which does not necessarily affect domestic publication. And exclusion from the mails, which does not necessarily foreclose delivery by other means of transportation. Injunction requires action by a court, as do the efforts of postal and customs officials if challenged. Finally, there is extrajudicial suppression, when police or other officials threaten prosecu-

*Books have had their publication stopped or altered at the suit or threat of suit by a private party for copyright infringement, for libel or privacy, or for breach of contract. This is quite different from government suppression, although recently we have had the odd example of the government, in the CIA cases, taking the role of private party and suing to restrain publication for breach of contract where the author has made a contract with the government not to disclose the information he puts in the book.

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Banned Books

Homer (c.850 B.C.)

The Odyssey

387 B.C. Greece: Plato suggested expurgating Homer for immature readers.

A.D. 35. Rome: Caligula tried to suppress *The Odyssey* because it expressed Greek ideals of freedom – dangerous in autocratic Rome.

Confucius (551–478 B.C.)

Analects (Sayings of Confucius and His Disciples)

c.250 B.C. China: The first ruler of the Chin dynasty, wishing to abolish the feudal system, consigned to the flames all books relating to the teachings of Confucius; he also buried alive hundreds of his disciples.

213 B.C. The Emperor Shih Huang Ti disapproved of the traditional culture of China, considered it moribund, and persecuted the literati who were its apostles. He burned the *Analects* and all extant books except practical works on medicine, divinations and husbandry, but preserved those in the Imperial Library.

Socrates (c.470–399 B.C.)

399 B.C. Socrates accused “firstly, of denying the gods recognized by the state and introducing new divinities, and, secondly of corrupting the young.” Found guilty, he was condemned to death. Accounts of the events are in Xenophon’s *Memorabilia* and Plato’s *Apology*. Western history of censorship begins here. Although Socrates left no writings, his forthrightness as teacher and philosopher exposed him to the punishments of the state.

Aristophanes (c.448–c.380 B.C.)

The Clouds, 423 B.C.

The Birds, 414 B.C.

Lysistrata, c.411 B.C.

Trends in Censorship

Control of Books and Reading by Religious and Political Powers

In the history of censorship, the oldest and most frequently recurring controls have been those designed to prevent the expression of unorthodox religious or political ideas. A notable example of the former, until very recently, was the Roman Catholic *Index Librorum Prohibitorum* (*Index of Prohibited Books*), which was intended to regulate the reading of the world's Catholic population.

The Church's regulation of books can be traced back to Apostolic times, when the Ephesian converts of St. Paul made a bonfire of hundreds of volumes which they viewed as catering to superstition.

Most of the early lists and decrees, however, were concerned with establishing which books were to be accepted as part of the Bible, which were recommended reading and which were heretical. In 1515 the Lateran Council established the principle of ecclesiastical licensing, a procedure which was formalized and given potency by the Council of Trent in 1546, with the forbidding of the sale or possession of anonymous religious books. It was Pope Paul IV who authorized the first list of banned books in 1557. For nearly 400 years, the list was issued in numerous editions, with occasional additions and deletions. The last edition was published in 1948, with a list of more than 4,000 titles, mostly obscure titles disapproved for doctrinal reasons, but including also some of the masterworks of the Western world. Publication of the *Index* ceased in 1966.

At about the time that the Vatican's *Index* was formalized, the Spanish Church established an *Index* of its own, as seen in several examples cited in this book. In modern times, the Republic of Ireland set up in 1929 a registry of books banned, mainly for moral reasons, and did not soften its application until 1967.

In this century, political censorship has consistently taken more dramatic forms and received far greater notoriety than religious bannings. However, recent episodes of suppression, although numerous, are quite limited in scope when compared to those of the Stalin period in the Soviet

Union and its satellites, and the National Socialist (Nazi) era in Germany and its conquered territories.

The first large-scale demonstration in Germany occurred on May 10, 1933, when students gathered 25,000 volumes by Jewish authors and burned them in the square in front of the University of Berlin. The bonfire was watched by 40,000 unenthusiastic people in a drizzling rain. Joseph Goebbels, the Minister of Public Enlightenment, delivered an address on "the symbolic significance of the gesture." Similar demonstrations were held at many other German universities. In Munich 5,000 school children, who had formerly seen Marxist literature publicly burned, were enjoined: "as you watch the fire burn these un-German books, let it also burn into your hearts love of the Fatherland." Students entered the bookstores and took without remuneration the books they considered eligible for the bonfire, and had to be prevented from confiscating books from the University Library.

The following list names some of the most important authors whose works were sacrificed at the fires:

Sholem Asch, Lion Feuchtwanger, Maxim Gorky, Stefan Zweig, Karl Marx, Sigmund Freud, Helen Keller, Jack London, Ernest Hemingway, John Dos Passos, Jakob Wasserman, Emil Ludwig, Arthur Schnitzler, Leon Trotsky, V. I. Lenin, Josef Stalin, Grigori S. Zinoviev, Alfred Adler, Gotthold Lessing, Franz Werfel, Hugo Munsterberg, Thomas Mann, Heinrich Mann, Erich Maria Remarque, Albert Einstein, Heinrich Heine, Felix Mendelssohn, Maximilian Harden, Kurt Eisner, Henri Barbusse, Rosa Luxemburg, Upton Sinclair, Judge Ben Lindsay, Arnold Zweig.

This great destruction of books by the Nazis continued until World War II. In 1938 they made a cultural purge of Austria. Booksellers were forced to clear their shelves of proscribed works, and either to conceal or destroy them. When word of the purge reached the United States, many offers to buy the books were sent to Vienna by universities and individuals. Some eventually did reach this country.

In Salzburg 15,000 people watched a "purification bonfire" of one copy each of 2,000 volumes, including Jewish and Catholic books. The ceremony was started by a schoolboy who threw a copy of Chancellor Schuschnigg's *Three Times Austria* on the gasoline-soaked pyre. Meanwhile the crowd sang "Deutschland Über Alles" in the gaily lighted square. The proceedings were under the auspices of the National Socialist (Nazi) Teachers' Association, which had appealed to the public to give up all "objectionable literature," and it was said that the destruction of 30,000 more volumes would follow.

In Leipzig many of the same titles that had been burned in the Nazi bonfire of 1933 were suppressed, and in Czechoslovakia the Education Ministry ordered all public libraries to remove and destroy all "unpatriotic" books, particularly by patriots including ex-President Beneš.

In 1944 the great "book city" of Leipzig suffered the loss of many valuable books by the Allied bombings, and in 1946 the Coordinating Council of the American Military Government in Germany ordered Nazi memorials to be destroyed. The object was to eliminate the "spirit of German militarism and Nazism as far as possible." This order to cleanse the German mentality was issued just as the eleventh anniversary of the Nazi "Burning of the Books" was being observed by the free world, and it caused much sharp comment. Included were the works of Hitler, Goebbels, Mussolini, and Karl Marx. The books were placed on the restricted lists in libraries, or in some instances pulped, but no burnings were known to have taken place. At the same time the Communists in East Germany were doing the same thing from their own point of view.

In 1953, in East Germany, the Communist cultural advisers removed from the libraries, schools, and bookshops at least five million volumes by German, Nazi, and foreign authors. Even Marx and Engels did not escape and were expurgated or rewritten "with historically important additions." It is said that books written before the war about the "good old days" were especially feared.

In 1953-1954 it was reported by refugees from East Berlin that all printed matter including picture papers and crossword puzzles sent to East Germany was confiscated at the border. As recently as 1969, East German guards at Rudolphstein refused passage to West Berlin of copies of Konrad Adenauer's memoirs and of road maps showing Germany's boundaries before World War II.

There is no room here to cite all the known specific instances of censorship in Communist nations. The right of the state to determine what shall or shall not be read is firmly established in Communist countries, and the catalog of banned or emasculated works is long. Soviet censorship is particularly fascinating because it appears to rise and fall in intensity in accordance with the currents of policy. Notable literary figures in the Soviet Union have experienced periods of freedom and repression. Some have been isolated from the Union of Soviet Writers, cut off from contact with peers, incarcerated in psychiatric institutions or labor camps. Others have conformed, at least outwardly.

The story of Soviet censorship has become known, though incompletely, since the time of Stalin's consolidation of power. The purge trials of the 1930s established political and cultural controls that have chilled independent literary and artistic production ever since. Similar controls have been reported generally from other "socialist" countries. Even in spite of a "thaw" after Stalin's death, and Khrushchev's denunciation of Stalinism, the spirit of repression still was reaffirmed in the crushing of the Hungarian uprising in 1956 and of the attempt to establish "communism with a human face" in Czechoslovakia in 1968. Nevertheless, in the Soviet Union and neighboring lands, original literary production,

unsanctioned by authority, has persisted in the form of underground writings—*samizdat*—circulated in typewritten or hectographed form.

The more spectacular censorship moves in the Soviet Union include the unsuccessful effort to prevent publication abroad of *Doctor Zhivago* by Boris Pasternak. The degree of effort that the Soviet Union is willing to expend to suppress information is astonishing to Westerners. Following the death of Stalin, Lavrenti Beria, the head of the Soviet Secret Police, was discredited and later executed. *The Great Soviet Encyclopedia*, which had already been published and distributed abroad, contained a lengthy article on Beria. This article was ordered to be excised from all existing copies and sheets containing an article on the Bering Sea were substituted.

In 1961 the Soviet Union permitted publication of Aleksandr Solzhenitsyn's book about Stalin's labor camps, *One Day in the Life of Ivan Denisovich* (Praeger). But after the author extended his criticisms, he was forced to publish abroad or not at all, and at last, having gained world attention, he was expelled from his native land (1974). At the same period, the activities of the distinguished physicist and dissident Andrei Sakharov were sharply restricted. In 1975 the Soviet Union was one of the signers of the international Helsinki Agreement, which included provisions to safeguard free and critical expression. Monitoring groups sprang up in Soviet cities to report on violations of this agreement, but authorities gradually broke them up.

Meanwhile, however, the worldwide civil liberties organization, Amnesty International (winner of the Nobel Peace Prize in 1977), was focusing attention on specific violations of human rights in many countries. International P.E.N., the writers' organization, was also intervening to defend persecuted writers. It is believed that the lives of many writers and other dissidents or independents may have been saved by the publicity which these activities produced, and by floods of letters from many countries, appealing to leaders of authoritarian régimes.

Countries where freedom of thought and expression has been thus defended include the Soviet Union, Poland, South Korea; South Africa and other African régimes; Iran, Greece, Philippines, Chile, Argentina, Brazil, and many more.

Unfortunately there was no effective world pressure group to protect books and writers in Spain and Portugal during the years of military dictatorship from the 1930s to the 1970s. There was no influence strong enough to dissuade Yugoslavia's Marshall Tito from jailing his one-time associate Milovan Djilas in 1956 after Djilas wrote a critique of Communism, *The New Class* (Praeger, 1957), and supported the Hungarian freedom fighters. Human rights efforts were not organized in time to stop the suppression of classics in Greece under the military régime of 1966–1974. They did not prevent soldiers in Chile in the 1973 rightist

coup from burning books seized in citizens' homes (as was shown on American television, with an English-speaking officer explaining that it was necessary to destroy "harmful" books).

In the late 1970s, however, it appears that open protests against suppression can have positive results and can, at the very least, let independent spirits know that they are not alone. Undoubtedly these efforts on behalf of civil liberty are reinforced by the adoption of the human rights principle as a major, ongoing element of American foreign policy under President Jimmy Carter.

It is difficult to learn what specific books may have figured in the persecution of writers in any of the countries just mentioned. More important, it is impossible even to speculate what books were never written because the climate of a society was stifling to its potential writers.

Book Banning in Overseas Libraries

In 1953 a great outcry went up over book banning and alleged book burning in the approximately 200 U.S. Information Agency (USIA) libraries overseas. More than two million books stood on their shelves and they were visited by 36 million people a year. The purpose of these centers has been to provide a "balanced presentation" of American life and ideas through books and periodicals. Early in 1953 a Senate subcommittee, headed by Senator Joseph R. McCarthy, had been investigating the activities of the International Information Administration of the State Department. A series of confusing directives, which came from the State Department during that spring, led to different interpretations in libraries in the various capitals, the resulting book bannings causing serious damage to U.S. prestige abroad. During this time Senator McCarthy's staff men, Roy Cohn and David Schine, were making a hasty survey of USIA overseas libraries. They visited seven European countries in 18 days and turned in the spectacular report that there were 30,000 books by "pro-Communist" authors in the libraries. Upon examination this report turned out to be a gross exaggeration.

It was said that more than 40 authors were involved in the books withdrawn during this period. The debate over the selection of books for the overseas libraries culminated in July of that year with a directive from the State Department reaffirming the fundamental policy of selecting books which would reflect a representative picture of the United States. The books of eight known or avowed Communists were permanently banned. The books of some 20 other writers who had refused to testify as to their Communist affiliations before Senate investigating committees were banned "pending further examination."

Secretary of State John Foster Dulles testified that to his knowledge only 11 books had actually been burned by overzealous librarians, and that

the other books in question had been withdrawn from circulation for further consideration—a very small percentage of the two million books which have proved invaluable in the many countries where the libraries of the USIA have operated so efficiently and so successfully.

On June 14, 1953, President Eisenhower made his famous speech at Dartmouth College, "Don't join the book burners." He argued that Communism would be defeated only by our understanding of what it is and what it teaches. In order "to fight it with something better," we also should not attempt "to conceal the thinking of our own people . . . even if they think ideas that are contrary to ours." Excitement blazed anew and the press questioned the connection between the speech and the overseas library furor. The President, at a press conference, claimed that there was no connection between the two, that he was not familiar with the State Department directives to the libraries, but said he was against book burning and the suppression of ideas. However, to quote from the press conference record, the President also said that, "it is perfectly proper to bar certain books from the mails, as is done, and he would do it now"; that "he did not believe the standards of essential human dignity and decency ought to be violated," and that "Overseas, he saw no reason for bringing these (questionable) books out unless there was some area where we believed we had to show a particular group what Communism was, out of the mouths of the Communist leaders themselves. He added that he was not an apostle of the doctrine that all generalizations are always true."

Although the McCarthy episode had long passed, new accounts of library censorship overseas arose later on. The USIA banning of *The Ugly American* (Norton) by William J. Lederer from its overseas libraries generated a great deal of unfavorable publicity in 1958. A year later the ban was lifted. In December 1969, *Newsweek* magazine reported that the USIA had barred the distribution of some two dozen books to one of its European libraries. The magazine went on to explain that six full-time reviewers screen books for the USIA into three categories: (1) recommended, to be "pushed hard" for overseas use (about 70 titles a month make the grade); (2) noncontroversial books that any USIA library can get by specifically requesting them from Washington; (3) books that raise questions about American policy and that the USIA believes might be "misunderstood" or "offensive" overseas.

Some of the banned books and the official USIA reasons for refusing them follow:

Henry Steele Commager's *Freedom and Order* (Braziller; NAL): "The value of the rest of the book does not begin to overcome the liability of the 30-plus pages condemning American policies in Vietnam."

George R. Stewart's *Not So Rich as You Think* (Houghton Mifflin): "The book just wouldn't help to 'glamorize our program,' nor will it help other nations prevent or solve similar problems."

James Baldwin's *Tell Me How Long the Train's Been Gone* (Dial; Dell):

"A quote from Mr. Baldwin to the effect that 'My countrymen impressed me simply as being, on the whole, the emptiest and most unattractive people in the world.'"

Government Papers, the CIA, Official Materials

Court decisions affecting the Pentagon Papers; legislation providing means for the release of government reports and for the disclosure of "security" files about oneself; and congressional investigations of the Central Intelligence Agency (CIA)—all these have combined to bring new concepts into the whole complex field of government secrecy. The issues are often confused; policies and practices are still in flux.

The *New York Times* in 1971 printed extensive excerpts from the Department of Defense report on the history of America's embroilment in Vietnam, the report that quickly became known as the Pentagon Papers. The right of the *Times* to print the material was upheld by the U.S. Supreme Court. The court did not, however, find that the reading into the *Congressional Record* of the complete papers by a U.S. Senator was sufficient to permit their publication by the Beacon Press in four volumes, but Beacon was not prevented from issuing its edition.

Controls Applied by Government Bureaus

Censorship carried out as a function of government bureaus, particularly the Post Office and the Bureau of Customs, is a study in itself. Numerous instances of book banning by these agencies are cited in the main body of this book, under the names of the authors. For a proper understanding of this subject, the reader is referred to the profoundly researched, highly readable study, *Federal Censorship: Obscenity in the Mail* by James C. N. Paul and Murray L. Schwartz (The Free Press of Glencoe, 1961). These two legal scholars describe the roots of postal and customs (import) censorship in America; its growing application, at first to pictures, later to books; nineteenth-century laws culminating in the widely restrictive Comstock Act of 1873; changes under the Tariff Act of 1930, still restrictive; disputes in the courts; administrative changes after the obscenity decisions of 1957; and recommendations for reform.

A quite different kind of action against books, one involving allegations of fraud, is described in this book under the name of the author in question, the psychiatrist Wilhelm Reich. In that case the book banning agency was the Food and Drug Administration.

Censorship of Library Books, Attacks on Librarians

Libraries in the United States felt the pressure of censorship long before the overseas libraries were subjected to such investigation. As early as 1941 Governor Eugene Talmadge of Georgia ordered removed from college and

school libraries in his state books unfavorable to the South, the Bible, or the state of Georgia. He announced that he would ask the 1943 legislature to order the burning of library books advocating interracial cooperation. Although this particular censorship move did not materialize, others occurred. In 1959 the Georgia Board of Education voted to require a stamp of approval from its literary committee on all library books after a board member warned that pro-integration literature was worming its way into the libraries. Two years later, the Georgia Library Association was forced to appeal to Chatham County grand jurors and to the president of the county board of education to protect their libraries from what it called "witch hunts." The action stemmed from the removal by the grand jury of four titles from Savannah high school libraries because they allegedly contained immoral material.

In Iowa, early in 1951, city and county officers suddenly raided the Dubuque public library, under a warrant, and seized an assortment of books charged with being obscene. Among them were the works of Rabelais, Boccaccio's *The Decameron*, and Henry Fielding's *Tom Jones*.

The librarian of Bartlesville, Oklahoma, was dismissed in 1950 after 31 years of service because she had participated in local group discussions on race relations and had certain magazines on the library shelves which a Citizens' Committee considered undesirable. Although the library had been administered by an autonomous board, which supported the librarian's position in all but one respect, the City Commission passed a new ordinance gaining control of the library and dismissing the old library board. The librarian and a member of the old board carried the case to the Oklahoma Supreme Court where, in 1952, the court ruled against them.

In the fall of 1952 the Boston Public Library was attacked by the Boston *Post* for having Communist material, not on its open shelves, but in its reference collection. The director of the library argued that all aspects of political, international, and other questions must be available for the information of the citizens of the city. This established policy of the library was upheld by its board by a 3-2 vote.

Several other cities, notably San Antonio, Texas, and Dubuque, Iowa, faced similar censorship attacks on their public libraries in recent years. In Illinois some 400 titles, involving between 6,000 and 8,000 volumes, were removed from circulation in the state libraries in December 1953, after the mother of a 13-year-old girl complained that she obtained a book which was "offensive." However, these were all reclassified "for adult consumption" early in 1954. The State Librarian originally ordered books "of a salacious, vulgar or obscene" character to be taken out of circulation, but later stated that his order "was never intended to result in what has been termed a wholesale withdrawal of books."

Similarly, in 1959, *The Rabbits' Wedding* (Harper & Row), a book for children aged three to seven, was banished to the "reserved" shelf of the

Alabama Public Library Service Division after the Alabama State Senate charged that the book represented a sneaky appeal for racial integration. In it, a black rabbit and a white rabbit get married at a moonlight ceremony in a forest. On the "reserved" shelf, *The Rabbits' Wedding* joined other books considered pro-integration and books considered obscene.

An ugly incident that did not involve banning of books, but rather an attack on a librarian's freedom of opinion, illustrates the fear and repression caused by some congressional investigators. In January 1957, Mrs. Mary Knowles, the librarian of Plymouth Meeting, Pennsylvania, was found guilty of contempt of Congress in refusing to answer political questions put by the Senate's subcommittee on internal security. In 1953 she had invoked the Fifth Amendment to the Constitution and had been discharged from the position she held then as librarian in Norwood, Massachusetts, under pressure from financial supporters of the library.

Obscenity was the charge leveled against *The Arrangement* (Stein & Day; Avon), a novel by Elia Kazan, when it was barred from an Iowa municipal library in 1967. The publisher of the book, which at that time was on top of the nation's best-seller list, countered this action by offering a free copy to every adult head of family in the community of 8,600 residents. This countermeasure called on the town citizens to decide for themselves if their library board was "practicing a form of censorship inconsistent with American tradition." After more than 800 free copies were requested, the publisher said: "If there is a good deal of discussion, pro and con, whether or not the book is obscene, we will have reached our objective. The point is that a library board should not make any book unavailable to the members of a community."

For some time a slang dictionary was the object of controversy in California. Agitation against *A Dictionary of American Slang* (T. Y. Crowell) began in 1963 when Max Rafferty, Superintendent of Public Instruction, suggested that a "little bit of censorship" was necessary to remove the book from school libraries. To document their case that the book was "dirty," supporters of Mr. Rafferty combed through the dictionary's 8,000-odd entries, found the 150 dirtiest and listed them in a mimeographed publication. Although the book was banned in several communities and literally burned in at least one other, most libraries decided to keep the book for restricted use by serious students. Early in 1978, the banning of the *American Heritage Dictionary* was reported from a Missouri town, as cited in the main section of this book.

Zealous groups, believing themselves to be patriotic, bring up strangely mixed complaints. In 1964 a group in Long Beach, California, assailed the public library director's selection of *The American Way of Death* by Jessica Mitford (Simon & Schuster; Crest) as being procommunist and critical of morticians. They attacked Langston Hughes as a leftist poet, and they charged major book reviews -- *Library Journal*, *New York Times*

Book Review, *New York Herald Tribune Books*, and *Saturday Review*—with “brainwashing” their readers and unduly influencing the purchase of books. The Long Beach group also campaigned for several years against the Greek novelist, Nikos Kazantzakis. (See the note under his name.)

In 1970 another strange attack on libraries came to light. Protests against the Vietnam war were widespread, and authorities worried about bombings. The Internal Revenue Service (IRS) asked permission to look over the circulation records of libraries in order to see who had checked out books that might contain information on explosive devices. The American Library Association (ALA) said libraries should consider their circulation records confidential; the IRS dropped the idea, and returned to the collecting of revenues.

At the ALA's annual midwinter conference in January 1978, reports on censorship indicated that an array of right-of-center groups were making concerted efforts to restrict librarians and educators. Their methods were correct—the use of campaign mailings, letters of protest, petitions, and various forms of legal complaints. Subjects of their concern were listed as including subversion, art, civil rights, defense policies, education, fluoridation, mental health, and the press. Renewed criticism of textbooks was said to be especially strong in Florida, California, and Texas. Among specific books, very frequent targets were reported to be: *Our Bodies, Ourselves* by the Boston Women's Health Collective (Simon & Schuster); *Man, A Course of Study* by the National Science Foundation (Curriculum Development Associates); and *American Heritage Dictionary* (Grosset & Dunlap).

The use of reserved or restricted shelves has been one of several ways in which librarians have attempted to beat censors at their own game. The Fiske Report, *Book Selection and Censorship: A Study of School and Public Libraries in California*, published in 1959, clearly established a do-it-yourself movement among librarians. Of the 90 libraries and 204 librarians sampled in 26 localities, two-thirds of the respondents reported refusals to purchase because of the controversial nature of a book or its author, one-third reported the permanent removal or restriction of controversial materials, and a fifth reported an habitual avoidance of all controversial matter.

On a different level, a strong feeling among children's librarians that L. Frank Baum's *The Wizard of Oz* and related books were somehow unworthy kept those books out of children's libraries for many years. This practice was somewhat reduced after a public uproar over it developed in 1957.

School Textbooks and School Libraries

The question of the censorship of textbooks used in the public schools in recent years has not been so much one of banning as of rejection or

disapproval of certain texts as a result of pressure by local or national groups.

In the 1930s and 1940s the charge usually leveled against such texts had been that the books were designed to change the existing social order or to record changes in the American way of life. An outstanding instance was the attack in 1939 by the Advertising Federation of America against Harold O. Rugg's *An Introduction to Problems of American Culture* (Ginn). Professor Rugg, of Teachers College, Columbia University, was the author of many textbooks, of which more than two million copies had been sold within 20 years. In their campaign against Rugg's textbook, the Federation charged the author with "attacking business from every angle" and sneering "at the ideas and traditions of American democracy, making a subtle plea for abolition of our free enterprise system and the introduction of a new social order based on the principles of collectivism. . . ."

In 1940 the National Association of Manufacturers was aroused to action on textbooks and undertook an investigation of some 600 school texts to determine the social viewpoint expressed by the authors. The survey by Ralph West Robey aroused a storm of protest from varied quarters, from the American Historical Association to the Harvard Graduate School of Education. Within 15 years after these violent discussions practically all the books which featured in the controversies were either out of print or not in general use, but this was not necessarily the result of the furor, since books in these fields become outdated by the passage of time. In many cases, however, the new books were more cautiously written.

For several years the New York City Board of Superintendents banned *The Nation* from its list of approved publications for school libraries. The original ban was imposed in June 1948, because of a series of articles on the Roman Catholic Church by Paul Blanshard, subsequently expanded and published as *American Freedom and Catholic Power* (Beacon Press).

During the next two decades, attacks on textbooks were based frequently on the suspicion of subversive material. In 1952 the Texas State Board of Education authorized the Education Commission to request that each publisher submitting books for adoption state whether the authors, illustrators, and editors could qualify under the terms of the state's nonsubversive oath. At a hearing of the State Textbook Commission in 1953, critics asked the commission to bar from the schools the Garden City editions of Chaucer's *Canterbury Tales* and Melville's *Moby Dick* that were illustrated by Rockwell Kent, because of his alleged Communist connections. Some 600 titles were proposed for exclusion, purportedly for the same reason—books by Albert Einstein, Thomas Mann, Louis Untermeyer, Dorothy Canfield Fisher, Allan Lomax, Norbert Wiener, Dorothy Parker, Louis Adamic, Harlow Shapley, and Norman Corwin, among others.

Ten years later the Birch-like Texans for America were successful in dominating the state's textbook adoption hearings and subsequent legislative hearings. Prominent in the objections raised by Texans for America was favorable mention of the income tax, the TVA, Social Security, unemployment compensation, labor unions, racial integration, General of the Armies George C. Marshall and the U.S. Supreme Court. Among 50 textbooks that Texans for America wanted banned from classrooms were: *America: Land of Freedom* (Heath); *A History of the United States* (American Book Co.); *The Story of Our Country* (Allyn & Bacon); *American History* (Ginn); *Living World History* (Scott, Foresman); *Rise of the American Nation* (Harcourt); *Story of America* (Holt, Rinehart & Winston); *This Is Our Nation* (Webster); *The Record of Mankind* (Heath); *United States History* (Heath) (attacked because it failed to mention, among other patriot-statesmen, Davy Crockett); and *The Adventure of the American People* (Rand-McNally).

In 1953 the State Legislature of Alabama adopted an anti-Communist law governing the adoption of textbooks in the state's public schools which was to become effective January 1, 1954. It provided that no textbook "will be adopted . . . without a statement by the publisher or author indicating that the author is or is not a known advocate of Communism or Marxist Socialism." This proved to be a law with which publishers found it impossible to comply, and under the leadership of the American Textbook Publishers Institute, 25 textbook publishers joined in a suit against the Alabama State Board of Education and the State Textbook Commission. On May 10, 1954, the Circuit Court of Montgomery County adjudged the act void, unenforceable and in violation of the Fourteenth Amendment of the Constitution of the United States.

UNESCO and the UN Declaration of Human Rights have also come in for criticism. In 1954 in El Paso, Texas, the school board banned the use of a history textbook which printed without comment the UN Declaration of Human Rights and the Declaration of Independence. The State Board of Education, however, rejected a demand to drop the book from its list.

Frank Magruder's *American Government* (Allyn & Bacon) was often under attack. A campaign against it was led by two strongly right-wing advocates, neither one an accredited educator. One was Allen Zoll, a well-financed pamphleteer. The other was Louise Cardin Crain, who edited the *Educational Reviewer*, a quarterly published by the Conference of American Small Business Organizations. Among the cities where the Magruder book was under fire were Chicago, Houston, Little Rock, and Arlington, Virginia. In Georgia the book was attacked as "unfit for use as a social studies textbook because it advocates strengthening the United Nations Charter."

Publishers' Weekly reported that in 1953, "An Indiana state textbook commissioner achieved international notoriety by urging bans on books

about Robin Hood and the Quakers as 'helpful to the Communist policy.'" No action resulted from her efforts.

In 1959 the Daughters of the American Revolution issued their first master list of textbooks, classifying them as "satisfactory" or "unsatisfactory." Only 50 satisfactory books were listed, as opposed to 165 unsatisfactory ones being used in schools at that time. The DAR influence was largely responsible for the 1960 Mississippi legislation which gave Governor Ross Barnett the power to select all of the state's textbooks. Taking up his new responsibilities, the governor urged: "Clean up our textbooks. Our children must be properly informed of the Southern and true American way of life."

As the civil rights movement gained momentum, black studies were instituted in many schools and colleges. Some recent books in this area were realistic works, often including "street language" that was true and appropriate for their settings. In some communities in the late 1960s, these books were banned, even for elective reading, on grounds of vulgarity. In Connecticut, late in 1972, conservatives in Ridgefield objected to Eldridge Cleaver's *Soul on Ice* (McGraw-Hill; Dell); however, all but one of many residents at a school board hearing defended it vigorously.

In the late 1970s an upsurge of militantly fundamentalist Protestantism was reflected in a demand that the "creationist" theory of the development of species—the view of Biblical literalists—be included in schoolbooks. Despite opposition by major religious bodies and by scientists, the California Board of Education voted at the end of 1972 that science textbooks used in the state must be edited along this line and that "scientific dogmatism" must be eliminated.

In 1973, scattered attacks on books and teachers followed the June 21 U.S. Supreme Court decisions making censorship subject to local standards. A teacher in Drake, Iowa, who had assigned *Slaughterhouse-Five* to high school English classes was threatened with dismissal; and for assigning the same book in McBee, South Carolina, a teacher was charged with circulating obscenity.

In 1974, rural fundamentalist parents in Kanawha County, West Virginia, picketed schools and school buses to protest what seemed to them to be "trashy" and "godless" textbooks thrust upon their children. These books were for the most part anthologies of poetry, drama, fiction, and journalistic writing, used mostly in the upper grades and as discretionary, supplementary reading. Coal mines and schools in the area were closed while the picketing was in progress.

Among episodes in 1975, the Butler, Pennsylvania, school board banned a Fawcett anthology, *Contemporary American Short Stories*, because of an excerpt from *Invisible Man* by Ralph Ellison. Toward the end of the same year, in Mississippi, the Catholic and Episcopal dioceses jointly sued the state school authorities for permission to use a Pantheon

textbook, *Mississippi: Conflict and Change* by Loewen and Sallis, since the only state history books already authorized ignored the problem of white supremacy.

Selection of books to be used as course material, supplementary reading, or reference had led to various attacks upon school libraries, not only on the books. In Alabama, for instance, in 1959, the state legislature censured the state's public library service division for distributing an issue of the American Library Association's annual list, *Notable Books*, because it named Martin Luther King's *Stride Toward Freedom* (Harper); and the state's Ku Klux Klan cited *Two Is a Team* by Lorraine and Jerrold Beim (Harcourt), among other "pro-integration" books. About ten years later, the school board of a northern town, Roselle, New Jersey, barred the high school librarian from circulating J. K. Galbraith's *The Affluent Society* (Houghton Mifflin, NAL); Robert Lekachman's *The Age of Keynes* (McGraw-Hill); and William Ebenstein's *Today's Isms* (Prentice-Hall). In 1972, a district board in New York City (Borough of Queens) required a junior high school library to remove *Down These Mean Streets* by Piri Thomas (Knopf, NAL).

Early in 1976, Howard County, Maryland, authorities required school media centers to remove, among other books, Tom Wolfe's *The Electric Kool-Aid Acid Test* (Farrar, Straus & Giroux; Bantam), and *Drug Abuse and What We Can Do about It* by Bennett and Demos, from a medical publisher, C. C. Thomas. In 1972 the school board of Strongsville, Ohio, forced withdrawal of Joseph Heller's *Catch 22* (Simon & Schuster; Dell) and Kurt Vonnegut, Jr.'s *Cat's Cradle* and *God Bless You, Mr. Rosewater* (Dell) from school libraries; but the faculty's power to use the books was upheld by a circuit court decision in 1976.

In March 1975, the Island Trees School District on Long Island, in New York, gained notoriety by making unavailable, for several months, various Vonnegut titles, *The Naked Ape* by Desmond Morris (McGraw-Hill; Dell); *The Fixer* by Bernard Malamud (Farrar, Straus & Giroux; Dell); and *Black Boy* by Richard Wright (Harper & Row).

That incidents of these kinds were still occurring in 1977 was shown by the Chelsea, Massachusetts, school library banning of the Larrick-Merriam anthology, *Male and Female under 18* (Avon), and by other episodes: the removal of all sex education books from the Brighton, Michigan, school libraries; removal from the Morgantown, West Virginia, high school library of *Our Bodies, Ourselves* by the Boston Women's Health Collective (Simon & Schuster); and a six-county school board ruling in Maine that John Updike's *Rabbit Run* (Knopf, Crest) could be circulated only by parental permission.

Censorship of Mass-Market Paperbound Books

Mass-market paperbacks, because of their easy accessibility through a vast number and diversity of outlets, and their relatively low prices, have

had an immense though unmeasured effect upon American culture and in the process have induced cultural shock in many a community. The most popular releases sell high into the hundreds of thousands, sometimes into the millions. They are therefore ubiquitous, inescapable—and, when some groups are offended or troubled by them—vulnerable.

But it is not usually those with the most lurid and obvious covers—a little passé, anyway, by 1978—that invite attempts to censor. More often, objections are raised to books which have had serious critical acclaim, some of which employ the common language, four-letter words and all, and present clearly the realities of sex and society.

As sections of this appendix show, paperbacks used in schools in one way or another are the books most likely to disturb some parents and others. Teachers and librarians have taken much abuse for recommending certain books, and parents have been divided in vehement debate over desirability of making certain paperback editions of modern literature available to young readers.

The attack on paperbacks goes back many years. In 1950, the James Morton News Agency in Des Moines, Iowa, was raided by local authorities for possessing “obscene” books. These turned out to be titles in paperback by John Steinbeck, Mackinlay Kantor, and W. Somerset Maugham, and a volume in the Pocket Books art series, *Old Master Paintings*. A group of local church women had become overheated about paperbacks; politicians overresponded; and the city’s press poured ridicule on the whole proceeding.

In the spring of 1961, an Oklahoma City group called Mothers United for Decency hired a trailer, dubbed it a “smutmobile” and set up an interior display of paperbound books they deemed objectionable. The “smutmobile” was pointedly parked in front of the State Legislature building and thrown open to the adult public. Among the paperbacks on view inside were *Lust for Life* (Pocket Books), *Sons and Lovers* (Modern Library), *Tobacco Road* (NAL), *God’s Little Acre* (NAL), and *Male and Female* (NAL), by Margaret Mead.

At least four Chicago paperback outlets were involved in a 1962 three-month, one-woman crusade against smut. The deeply religious mother of a grown son and teenage daughter was eventually arrested for gluing shut the pages of dozens of paperbacks she felt should not be opened by children.

In 1963 the Supreme Court made clear the minimum condition under which a state or local censorship committee’s or commission’s activities can remotely be considered constitutional. The case centered around a Rhode Island statute which three years earlier had created a Commission to Encourage Morality in Youth. The Commission issued lists of publications it considered harmful to youth, with the result that books were removed from sale without adjudication of whether or not they were in fact obscene. Four paperback publishers challenged the Rhode Island

system through two rounds in the state courts and into the Supreme Court, which ruled the censorship activities of the Commission unconstitutional in an 8-1 decision. The majority opinion stated: "We are not the first court to look through forms to the substance and recognize that informal censorship may sufficiently inhibit the circulation of publications to warrant injunctive relief. . . . It would be naïve to credit the State's assertion that these blacklists are in the nature of mere legal advice, when they plainly serve as instruments of regulation independent of the laws against obscenity." A commission such as the Rhode Island one, the Court concluded, must at the very least be under direct supervision of the judiciary, and judicial review of such a commission's decisions must be immediately available.

Bawdy satire made accessible through a paperback aroused the anger of some police groups in 1967. The book was *The Sex Life of a Cop* by Oscar Peck, issued by a small publisher, Saber Books, in Los Angeles. News wholesalers who handled it in Grand Rapids, Michigan, were convicted and severely sentenced; the sentences were quashed by the U.S. Supreme Court.

In 1973, one initial reaction to the high court's local-standards decisions was the shredding of the Greenleaf paperback editions of books by Henry Miller. The publisher evidently felt he could no longer sell the books; but other paperback editions remain available.

For other comment on the banning of paperbacks, see the section entitled "School Textbooks and School Libraries" immediately preceding this section.

Censorship in "A Good Cause"

In one sense, virtually all censorship is for "a good cause" in the eyes of the would-be censor, whether it be to maintain purity of religious doctrine or of morals; to protect a nation from subversion, frustrate a military enemy, or preserve civil harmony; or to serve other purposes that are thought to be proper. Yet, as the late attorney Morris L. Ernst pointed out in an earlier edition of this book, all the efforts are the result of fear; and civil libertarians believe that this fear is needless in many cases, exaggerated in most. In this view, there is usually more to be feared from censorship itself than from the things censored.

Whether the civil libertarians are right about this is a subject of heartfelt debate when it comes to writings or other communication that could, conceivably, incite or sustain racial, religious, or ethnic prejudice.

To cite one example in this connection, the constitution of the National Association for the Advancement of Colored People directs local branches to study "material used in the schools and seek to eliminate material therefrom which is racially derogatory." Under this directive, the NAACP has mounted attacks on Stephen Foster songs in music books, sections of

history books pertaining to the Civil War, and literature anthologies containing *Huckleberry Finn*.

Like the NAACP, the Anti-Defamation League of B'nai B'rith has sought to eliminate racial stereotypes in school materials. In the past, ADL has opposed school use of *Merchant of Venice* and *Oliver Twist*, containing characterizations often seen as anti-Semitic. On the positive side, the organization has joined with others in urging greater public and in-school education about the mass genocide - the Holocaust - practiced by Nazi Germany against the Jews.

In 1976, an Italian-American group spoke out against Mario Puzo's *The Godfather* (Putnam; Crest) for its use of the term *mafia* in a way that was felt by critics to place Italians generally under this unpleasant label. At about the same time, the Anti-Defamation League criticized *Lansky* by Hank Messick (Putnam), also on grounds of furthering ethnic prejudice.

The women's liberation movement in the 1960s and 1970s was meanwhile raising consciousness of the fact that many schoolbooks and other books for children reinforced traditional gender roles of both girls and boys, roles that tended to set limits on the capacities of each, and preserve an inferior status for girls and women. Similar insensitivity, it was argued, was shown not only in attitudes toward racial and ethnic groups, but also toward age groups, the physically disadvantaged, urban versus rural and suburban ways of life, and so on. During the 1970s, many new titles and new editions of school textbooks and children's books reflected these perceptions. Few if any informed persons regarded the resulting textual changes as censorship.

However, when the Council on Interracial Books for Children (which has played a valuable role in fostering more sensitive attitudes) recommended that certain established books be removed entirely from open shelves, some observers complained that the search for balance was veering over into censorship. Cases in point were some long-beloved books for children. Among those attacked were the folktale about an East Indian child, *Little Black Sambo* by Helen Bannerman (Platt & Munk); the *Doctor Doolittle* books by Hugh Lofting (Lippincott); and *Five Chinese Brothers* by Claire Huchet Bishop (Coward, McCann & Geoghegan).

Racial, sexual, and ethnic interests are not the only ones that demand what others might call censorship. Some business groups have campaigned against textbooks that offended their interpretations of free enterprise or exposed unsavory business practices. In a few cases, people concerned with upholding respect for the police have raised objections. Books supposedly offensive to policemen included, in 1972, *Boss*, Mike Royko's biography of Mayor Daley of Chicago (Dutton; NAL), attacked in Connecticut; *The Inner City Mother Goose* by Eve Meriam (Simon & Schuster), a target in several cities; and, in 1977, William Steig's *Sylvester and the Magic Pebble* (Simon & Schuster; Dutton).

Finally, some prominent individuals and one great university have

complained about books that they felt invaded their privacy or cast aspersions upon their reputations or those of their forebears. Several cases of this sort (some are cited in the body of this book) turned up in the mid-sixties. They involved: a Citadel Press book about Bob Dylan; *Howard Hughes* by John Keats (Random); *Papa Hemingway* by A. E. Hotchner (Random); *The Warren Spahn Story* by Milton J. Shapiro (Messner); material about Henry Clay Frick in a textbook by Sylvester Stevens (Random); *The Death of a President* by William Manchester (Harper & Row); a biography of President Harding by Francis Russell (McGraw-Hill); *Life with Picasso* by Françoise Gilot (McGraw-Hill); and a comic novel about the University of Notre Dame, *John Goldfarb, Please Come Home* by William Peter Blatty (Doubleday). (The university thought Blatty's book and the related movie exploited its name and prestige, but a U.S. Court of Appeals declined to bar distribution.)

APPENDIX 2

Statements on Freedom of the Press

From *Areopagitica*

The Preciousness of a Good Book — I deny not, but that it is of greatest concernment in the Church and Commonwealth, to have a vigilant eye how Bookes demeane themselves as well as men; and thereafter to confine, imprison, and do sharpest justice on them as malefactors: For Books are not absolutely dead things, but doe contain a potencie of life in them to be as active as that soule was whose progeny they are; nay, they do preserve as in a violl the purest efficacie and extraction of that living intellect that bred them. I know they are as lively, and as vigorously productive, as those fabulous Dragons teeth; and being sown up and down, may chance to spring up armed men. And yet on the other hand unlesse warinesse be us'd, as good almost kill a man as kill a good Book; who kills a man kills a reasonable creature, God's Image; but he who destroyes a good Booke, kills reason itselfe, kills the Image of God, as it were in the eye. Many a man lives a burden to the Earth; but a good Booke is the pretious life-blood of a master spirit, imbalm'd and treasur'd up on purpose to a life beyond life. 'Tis true, no age can restore a life, whereof perhaps there is no great losse; and revolutions of ages doe not oft recover the losse of a rejected truth, for the want of which whole Nations fare the worse. We should be wary therefore what persecution we raise against the living labours of publick men, how we spill that season'd life of man preserv'd and stor'd up in Books; since we see a kind of homicide may be thus committed, sometimes a martyrdom: and if it extend to the whole impression, a kinde of massacre, whereof the execution ends not in the slaying of an elementall life, but strikes at that ethereall and fift(h) essence, the breath of reason itselfe, slaies an immortality rather than a life.

*A Speech by John Milton for the Liberty of Unlicenced
Printing to the Parliament of England, London 1644*

From Thomas Jefferson's Writings

I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man.

Letter to Benjamin Rush, 1800

Equal and exact justice to all men, of whatever state or persuasion, religious or political; . . . freedom of religion; freedom of the press; freedom of person under the protection of the habeas corpus; and trials by juries impartially selected. . . these principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation.

First Inaugural Address, 1801

From *On Liberty*

Who can compute what the world loses in the multitude of promising intellects combined with timid characters, who dare not follow out any bold, vigorous, independent train of thought, lest it should land them in something which would admit of being considered irreligious or immoral? . . . No one can be a great thinker who does not recognize that as a thinker it is his first duty to follow his intellect to whatever conclusions it may lead . . .

By John Stuart Mill, 1859

From Amendments to the Constitution of the United States

Article I

Freedom of religion, of speech, of the press, and right of petition. — Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article XIV. Section 1

Citizenship defined; privileges of citizens.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Library Bill of Rights

The Council of the American Library Association reaffirms its belief in the following basic policies which should govern the services of all libraries:

1. As a responsibility of library service, books and other library materials selected should be chosen for values of interest, information, and enlightenment of all the people of the community. In no case should library materials be excluded because of the race or nationality or the social, political, or religious views of the authors.

2. Libraries should provide books and other materials presenting all points of view concerning the problems and issues of our times; no library materials should be proscribed or removed from libraries because of partisan or doctrinal disapproval.

3. Censorship should be challenged by libraries in the maintenance of their responsibility to provide public information and enlightenment.

4. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

5. The rights of an individual to the use of a library should not be denied or abridged because of age, race, religion, national origins or social or political views.

6. As an institution of education for democratic living, the library should welcome the use of its meeting rooms for socially useful and cultural activities and discussion of current public questions. Such meeting places should be available on equal terms to all groups in the community regardless of the beliefs and affiliations of their members, provided that the meetings be open to the public.

Adopted June 18, 1948, amended February 1, 1961 and June 27, 1967, by the ALA Council. By official action of the council on February 3, 1951, the Library Bill of Rights shall be interpreted to apply to all materials and media of communication used or collected by libraries.

The President's Letter on Intellectual Freedom to the ALA Meeting in Annual Convention at Los Angeles, 1953

The White House,
Washington, D.C.
June 24, 1953

Dear Dr. Downs:

Thank you for your letter of June 15. I am glad to know of the annual conference of the American Library Association convening this week, and of the spirit of conscientious citizenship ruling its deliberations.

Our librarians serve the precious liberties of our nation: freedom of inquiry, freedom of the spoken and the written word, freedom of exchange of ideas.

Upon these clear principles, democracy depends for its very life, for they are the great sources of knowledge and enlightenment. And knowledge—full, unfettered knowledge of its own heritage, of freedom's enemies, of the whole world of men and ideas—this knowledge is a free people's surest strength.

The converse is just as surely true. A democracy smugly disdainful of new ideas would be a sick democracy. A democracy chronically fearful of new ideas would be a dying democracy.

For all these reasons, we must in these times be intelligently alert not only to the fanatic cunning of Communist conspiracy—but also to the grave dangers in meeting fanaticism with ignorance. For, in order to fight totalitarians who exploit the ways of freedom to serve their own ends, there are some zealots who—with more wrath than wisdom—would adopt a strangely unintelligent course. They would try to defend freedom by denying freedom's friends the opportunity of studying Communism in its entirety—its plausibilities, its falsities, its weaknesses.

But we know that freedom cannot be served by the devices of the tyrant. As it is an ancient truth that freedom cannot be legislated into existence, so it is no less obvious that freedom cannot be censored into existence. And any who act as if freedom's defenses are to be found in suppression and suspicion and fear confess a doctrine that is alien to America.

The libraries of America are and must ever remain the homes of free, inquiring minds. To them, our citizens—of all ages and races, of all creeds and political persuasions—must ever be able to turn with clear confidence that there they can freely seek the whole truth, unwarped by fashion and uncompromised by expediency. For in such whole and healthy knowledge alone are to be found and understood those majestic truths of man's nature and destiny that prove, to each succeeding generation, the validity of freedom.

Sincerely,
Dwight D. Eisenhower

The Freedom to Read

[Concerned about threats to free communication of ideas, more than 30 librarians, publishers, and others conferred at Rye, N.Y., May 2-3, 1953. Luther Evans was chairman. A committee was appointed to prepare a statement to be made public. This was endorsed officially by the American Library Association Council on June 25, 1953, and subsequently by the American Book Publishers Council (ABPC), American Booksellers Association, Book Manufacturers' Institute, and other national groups. In the light of later developments, a somewhat revised version was prepared after much consultation, and was approved in 1972 by the ALA Council, Association of American Publishers (successor to ABPC and American Educational Publishers Institute), and subsequently by many other book industry, communications, educational, cultural, and public service organizations. (See *Intellectual Freedom Manual*, ALA, 1974 and 1975. The 1972 revision follows.)]

The freedom to read is essential to our democracy. It is continuously under attack. Private groups and public authorities in various parts of the country are working to remove books from sale, to censor textbooks, to label "controversial" books, to distribute lists of "objectionable" books or authors, and to purge libraries. These actions apparently rise from a view that our national tradition of free expression is no longer valid; that censorship and suppression are needed to avoid the subversion of politics and the corruption of morals. We, as citizens devoted to the use of books and as librarians and publishers responsible for disseminating them, wish to assert the public interest in the preservation of the freedom to read.

We are deeply concerned about these attempts at suppression. Most such attempts rest on a denial of the fundamental premise of democracy: that the ordinary citizen, by exercising his critical judgment, will accept the good and reject the bad. The censors, public and private, assume that they should determine what is good and what is bad for their fellow-citizens.

We trust Americans to recognize propaganda, and to reject it. We do not believe they need the help of censors to assist them in this task. We do not believe they are prepared to sacrifice their heritage of a free press in order to be "protected" against what others think may be bad for them. We believe they still favor free enterprise in ideas and expression.

We are aware, of course, that books are not alone in being subjected to efforts at suppression. We are aware that these efforts are related to a larger pattern of pressures being brought against education, the press, films, radio, and television. The problem is not only one of actual censorship. The shadow of fear cast by these pressures leads, we suspect, to an even larger voluntary curtailment of expression by those who seek to avoid controversy.

Such pressure toward conformity is perhaps natural to a time of uneasy

change and pervading fear. Especially when so many of our apprehensions are directed against an ideology, the expression of a dissident idea becomes a thing feared in itself, and we tend to move against it as against a hostile deed, with suppression.

And yet suppression is never more dangerous than in such a time of social tension. Freedom has given the United States the elasticity to endure strain. Freedom keeps open the path of novel and creative solutions, and enables change to come by choice. Every silencing of a heresy, every enforcement of an orthodoxy, diminishes the toughness and resilience of our society and leaves it the less able to deal with stress.

Now as always in our history, books are among our greatest instruments of freedom. They are almost the only means for making generally available ideas or manners of expression that can initially command only a small audience. They are the natural medium for the new idea and the untried voice from which come the original contributions to social growth. They are essential to the extended discussion which serious thought requires, and to the accumulation of knowledge and ideas into organized collections.

We believe that free communication is essential to the preservation of a free society and a creative culture. We believe that these pressures towards conformity present the danger of limiting the range and variety of inquiry and expression on which our democracy and our culture depend. We believe that every American community must jealously guard the freedom to publish and to circulate, in order to preserve its own freedom to read. We believe that publishers and librarians have a profound responsibility to give validity to that freedom to read by making it possible for the reader to choose freely from a variety of offerings.

The freedom to read is guaranteed by the Constitution. Those with faith in free men will stand firm on these constitutional guarantees of essential rights and will exercise the responsibilities that accompany these rights. We therefore affirm these propositions:

1. *It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those which are unorthodox or unpopular with the majority.*

Creative thought is by definition new, and what is new is different. The bearer of every new thought is a rebel until his idea is refined and tested. Totalitarian systems attempt to maintain themselves in power by the ruthless suppression of any concept which challenges the established orthodoxy. The power of a democratic system to adapt to change is vastly strengthened by the freedom of its citizens to choose widely from among conflicting opinions offered freely to them. To stifle every nonconformist idea at birth would mark the end of the democratic process. Furthermore, only through the constant activity of weighing and selecting can the democratic mind attain the strength demanded by times like these. We need to know not only what we believe but why we believe it.

2. *Publishers, librarians, and booksellers do not need to endorse every idea or presentation contained in the books they make available. It would conflict with the public interest for them to establish their own political, moral, or aesthetic views as the sole standard for determining what books should be published or circulated.*

Publishers and librarians serve the educational process by helping to make available knowledge and ideas required for the growth of the mind and the increase of learning. They do not foster education by imposing as mentors the patterns of their own thought. The people should have the freedom to read and consider a broader range of ideas than those that may be held by any single librarian or publisher or government or church. It is wrong that what one man can read should be confined to what another thinks proper.

3. *It is contrary to the public interest for publishers or librarians to determine the acceptability of a book solely on the basis of the personal history or political affiliations of the author.*

A book should be judged as a book. No art or literature can flourish if it is to be measured by the political views or private lives of its creators. No society of free men can flourish which draws up lists of writers to whom it will not listen, whatever they may have to say.

4. *There is no place in our society for extra-legal efforts to coerce the taste of others, to confine adults to the reading matter deemed suitable for adolescents, or to inhibit the efforts of writers to achieve artistic expression.*

To some, much of modern literature is shocking. But is not much of life itself shocking? We cut off literature at the source if we prevent serious artists from dealing with the stuff of life. Parents and teachers have a responsibility to prepare the young to meet the diversity of experiences in life to which they will be exposed, as they have a responsibility to help them learn to think critically for themselves. These are affirmative responsibilities, not discharged simply by preventing them from reading works for which they are not yet prepared. In these matters taste differs, and taste cannot be legislated; nor can machinery be devised which will suit the demands of one group without limiting the freedom of others.

5. *It is not in the public interest to force a reader to accept with any book the prejudgment of a label characterizing the book or author as subversive or dangerous.*

The idea of labelling presupposes the existence of individuals or groups with wisdom to determine by authority what is good or bad for the citizen. It presupposes that each individual must be directed in making up his mind about the ideas he examines. But Americans do not need others to do their thinking for them.

6. *It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom*

by individuals or groups seeking to impose their own standards or tastes upon the community at large.

It is inevitable in the give and take of the democratic process that the political, the moral, or the aesthetic concepts of an individual or group will occasionally collide with those of another individual or group. In a free society each individual is free to determine for himself what he wishes to read, and each group is free to determine what it will recommend to its freely associated members. But no group has the right to take the law into its own hands, and to impose its own concept of politics or morality upon other members of a democratic society. Freedom is no freedom if it is accorded only to the accepted and the inoffensive.

7. *It is the responsibility of publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality of thought and expression. By the exercise of this affirmative responsibility, bookmen can demonstrate that the answer to a bad book is a good one, the answer to a bad idea is a good one.*

The freedom to read is of little consequence when expended on the trivial; it is frustrated when the reader cannot obtain matter fit for his purpose. What is needed is not only the absence of restraint, but the positive provision of opportunity for the people to read the best that can be thought and said. Books are the major channel by which the intellectual inheritance is handed down, and the principal means of its testing and growth. The defense of their freedom and integrity, and the enlargement of their service to society, requires of all bookmen the utmost of their faculties, and deserves of all citizens the fullest of their support.

We state these propositions neither lightly nor as easy generalizations. We here stake out a lofty claim for the value of books. We do so because we believe that they are good, possessed of enormous variety and usefulness, worthy of cherishing and keeping free. We realize that the application of these propositions may mean the dissemination of ideas and manners of expression that are repugnant to many persons. We do not state these propositions in the comfortable belief that what people read is unimportant. We believe rather that what people read is deeply important; that ideas can be dangerous; but that the suppression of ideas is fatal to a democratic society. Freedom itself is a dangerous way of life, but it is ours.

[The members of the 1953 drafting committee and signers of the statement were Luther Evans, Librarian of Congress; ALA President Robert Downs, librarian, University of Illinois; Douglas Black, president, Doubleday & Co.; Arthur Houghton, Jr., president, Steuben Glass; Harold Lasswell, professor of law and political science, Yale Law School; John M. Cory, chief, Circulation Department, New York Public Library; William Dix, chairman, ALA Committee on Intellectual Freedom, and librarian, Princeton University; and Dan Lacy, managing director, ABPC.

Signers of the statement in addition to those who prepared it were: Bernard Berelson, director, Behavioral Sciences division, Ford Foundation; Mrs. Barry Bingham, Louisville *Courier-Journal*; Paul Bixler, librarian, Antioch College; Charles G. Bolté, executive secretary, ABPC; Cass Canfield, chairman, Harper & Bros., member, ABPC Committee on Reading Development; Robert Carr, professor of law and politics, Dartmouth; David H. Clift, executive secretary, ALA; Harold K. Guinzburg, president, Viking Press, chairman ABPC Committee on Reading Development; Richard Barnes Kennan, secretary, Commission for the Defense of Democracy through Education, National Education Association; Chester Kerr, secretary, Yale University Press, chairman, Committee on Freedom to Publish, Association of American University Presses; Lloyd King, executive secretary, American Textbook Publishers Institute; Donald S. Klopfer, secretary and treasurer, Random House, chairman, ABPC Anti-Censorship Committee; Alfred A. Knopf, president, Alfred A. Knopf, Inc.; David E. Lilienthal, lawyer; Milton Lord, librarian, Boston Public Library; Flora Belle Ludington, librarian, Mt. Holyoke College, newly-installed president, ALA; Horace Manges, counsel, ABPC; Ralph McGill, editor, Atlanta *Constitution*; Robert K. Merton, professor of sociology, Columbia; John O'Connor, president, Grosset & Dunlap, immediate past president, ABPC; Leo Rosten, author; A. Ruth Rutzen, director, Home Reading Services, Detroit Public Library; Francis St. John, librarian, Brooklyn Public Library; Whitney North Seymour, former president, Association of the Bar of the City of New York; Theodore Waller, editorial vice-president, New American Library, former managing director, ABPC; Bethuel M. Webster, Association of the Bar of the City of New York, counsel, the Fund for the Republic; Victor Weybright, chairman and editor, NAL, chairman, ABPC Reprinters Committee; Thomas J. Wilson, director, Harvard University Press, immediate past president, AAUP.]

APPENDIX 3

Excerpts from Important Court Decisions

From the Opinion of Alexander Cockburn, Lord Chief Justice of England

Queen v. Hicklin and The Confessional Unmasked, 1868
(Known as the Hicklin Rule on Obscenity)

I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

From the Opinion of Judge Learned Hand, U.S. District Court, Southern District of New York

*United States v. Mitchell Kennerley and Hagar
Revelly*, 1913
(Protest against the Hicklin Rule)

. . . I hope it is not improper for me to say that the rule as laid down, however consonant it may be with mid-Victorian morals. (Cockburn opinion) does not seem to me to answer to the understanding and morality of the present time . . . I question whether in the end men will regard that as obscene which is honestly relevant to the adequate expression of innocent ideas, and whether they will not believe that truth and beauty are too precious to society at large to be mutilated in the interests of those most likely to pervert them to base uses. Indeed, it seems hardly likely that we are even to-day so lukewarm in our interest in letters or serious discussion as to be content to reduce our treatment of sex to the standard of a child's library in the supposed interest of a salacious few, or that shame will for long prevent us from adequate portrayal of some of the most serious and beautiful sides of human nature . . .

Yet, if the time is not yet when men think innocent all that which is honestly germane to a pure subject, however little it may mince its words,

still I scarcely think that they would forbid all which might corrupt the most corruptible, or that society is prepared to accept for its own limitations those which may perhaps be necessary to the weakest of its members. If there be no abstract definition, such as I have suggested, should not the word "obscene" be allowed to indicate the present critical point in the compromise between candor and shame at which the community may have arrived here and now? . . . To put thought in leash to the average conscience of the time is perhaps tolerable, but to fetter it by the necessities of the lowest and least capable seems a fatal policy.

**From the Opinion of Judge John Woolsey,
U.S. District Court, Southern District of New York**

United States v. Ulysses and Random House, Inc.,
December 6, 1933

. . . in any case where a book is claimed to be obscene it must first be determined, whether the intent with which it was written was what is called, according to the usual phrase, pornographic,—that is, written for the purpose of exploiting obscenity.

. . . But in *Ulysses*, in spite of its unusual frankness, I do not detect anywhere the leer of the sensualist. I hold, therefore, that it is not pornographic.

. . . although it contains . . . many words usually considered dirty, I have not found anything that I consider to be dirt for dirt's sake.

. . . when such a real artist in words, as Joyce undoubtedly is, seeks to draw a true picture of the lower middle class in a European city, ought it to be impossible for the American public legally to see that picture?

. . . The statute under which the libel is filed only denounces, in so far as we are here concerned, the importation into the United States from any foreign country of "any obscene book."

. . . The meaning of the word "obscene" as legally defined by the Courts is: tending to stir the sex impulses or to lead to sexually impure and lustful thoughts.

. . . Whether a particular book would tend to excite such impulses and thoughts must be tested by the Court's opinion as to its effect on a person with average sex instincts.

. . . It is only with the normal person that the law is concerned.

. . . a book like *Ulysses* . . . is a sincere and serious attempt to devise a new literary method for the observation and description of mankind.

. . . I am quite aware that owing to some of its scenes *Ulysses* is a rather strong draught to ask some sensitive, though normal, persons to take. But my considered opinion, after long reflection, is that whilst in many places the effect of *Ulysses* on the reader undoubtedly is somewhat emetic, no where does it tend to be an aphrodisiac.

Ulysses may, therefore, be admitted into the United States.

**From the Opinion of Judge Augustus N. Hand,
New York Circuit Court of Appeals**

On an Appeal of the *Ulysses* Case, 1934

While any construction of the statute that will fit all cases is difficult, we believe that the proper test of whether a given book is obscene is its dominant effect. In applying this test, relevancy of the objectionable parts to the theme, the established reputation of the work in the estimation of approved critics, if the book is modern, and the verdict of the past, if it is ancient, are persuasive pieces of evidence; for works of art are not likely to sustain a high position with no better warrant for their existence than their obscene content.

**From the Opinion of Judge Curtis Bok,
Court of Quarter Sessions, Philadelphia**

State of Pennsylvania v. Five Booksellers,
March 18, 1949

. . . I hold that Section 524 may not constitutionally be applied to any writing unless it is sexually impure and pornographic. It may then be applied, as an exercise of the police power, only where there is a reasonable and demonstrable cause to believe that a crime or misdemeanor has been committed or is about to be committed as the perceptible result of the publication and distribution of the writing in question: the opinion of anyone that a tendency thereto exists or that such a result is self-evident is insufficient and irrelevant. The causal connection between the book and the criminal behavior must appear beyond a reasonable doubt.

. . . There is no such proof in the instant case.

. . . Section 524, for all its verbiage, is very bare. The full weight of the legislative prohibition dangles from the word "obscene" and its synonyms. Nowhere are these words defined; nowhere is the danger to be expected of them stated; nowhere is a standard of judgment set forth. I assume that "obscenity" is expected to have a familiar and inherent meaning, both as to what it is and as to what it does.

It is my purpose to show that it has no such inherent meaning; that different meanings given to it at different times are not constant, either historically or legally; and that it is not constitutionally indictable unless it takes the form of sexual impurity, i.e., "dirt for dirt's sake" and can be traced to actual criminal behavior, either actual or demonstrably imminent.

. . . I believe that the consensus of preference today is for disclosure and not stealth, for frankness and not hypocrisy, and for public and not secret distribution. That in itself is a moral code.

It is my opinion that frank disclosure cannot legally be censored, even as

an exercise of the police power, unless it is sexually impure and pornographic.

. . . Who can define the clear and present danger to the community that arises from reading a book? If we say it is that the reader is young and inexperienced and incapable of resisting the sexual temptations that the book may present to him, we put the entire reading public at the mercy of the adolescent mind and of those adolescents who do not have the expected advantages of home influence, school training, or religious teaching. Nor can we say into how many such hands the book may come. . . . If the argument be applied to the general public, the situation becomes absurd, for then no publication is safe. . . .

From the Opinion of the U.S. Supreme Court

Roth v. United States, June 24, 1957

. . . All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. This rejection for that reason is mirrored in the universal judgment that obscenity should be restrained, reflected in the international agreement of over 50 nations, in the obscenity laws of all of the 48 states, and in the 20 obscenity laws enacted by the Congress from 1842 to 1956. . . . We hold that obscenity is not within the area of constitutionally protected speech or press.

. . . However, sex and obscenity are not synonymous. Obscene material is material which deals with sex in a manner appealing to prurient interest. The portrayal of sex, e.g., in art, literature and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press. Sex, a great and mysterious motive force in human life, has indisputably been a subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern.

[The test for obscenity is] . . . whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.

From the Opinion of the U.S. Supreme Court

Stanley v. Georgia, 1969

. . . If the First Amendment means anything, it means that the State has no business telling a man, sitting alone in his own house, what books he

may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds.

From the Opinion of the U.S. Supreme Court

United States v. New York Times Company et al.

United States v. Washington Post Company et al.

June 30, 1971

“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963); see also *Near v. Minnesota*, 283 U.S. 697 (1931). The Government “thus carries a heavy burden of showing justification for the enforcement of such a restraint.” . . .

The District Court for the Southern District of New York in the *New York Times* case and the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit in the *Washington Post* case held that the Government had not met that burden. We agree.

Guidelines Stated in the Opinion of the U.S. Supreme Court

Miller v. California, June 21, 1973

[Guidelines for the determination of obscenity]

a. whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest . . .

b. whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and

c. whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

[Also] To require a State to structure obscenity proceedings around evidence of a national “community standard” would be an exercise in futility. . . . people in different states vary in their tastes and attitudes and this diversity is not to be strangled by the absolutism of imposed uniformity.

APPENDIX 4

Commission on Obscenity and Pornography (Excerpts from the Report)

[*Editor's Note:* The excerpts presented here are taken from *The Report of the Commission on Obscenity and Pornography*, an uncopyrighted U.S. government document, as printed in an edition published in 1970 by Random House in hardcover and by Bantam Books in paperback. The Random-Bantam edition includes copyrighted material, primarily a special introduction by Clive Barnes, then of the *New York Times*, which also published the government report.

The full official report (following a letter of transmittal to the President and Congress of the United States, and a list of Commission members and staff) consists of a preface and four parts: an overview of the findings, recommendations by the Commission as a whole, reports of special panels, and separate statements by Commission members—700 pages in all, from which a few highlights are given here.

The Commission consisted of 18 members, a senior staff of three, a professional staff of nine, and a support staff of nine. The various final recommendations were supported by majorities of different sizes, and there were some dissents on specific points; space does not permit their inclusion in these excerpts, nor does it permit selections from the interesting and detailed special reports by the staff.

Three members vehemently opposed the Commission majority report as a whole. Their views were included in the report among the separate statements by members, and are represented in the last section of this appendix.

The entire report deserves close attention by all who have faith in freedom. It is hoped that these selections will lead readers to the complete Random House or Bantam Books edition.—*C. B. G.*]

Preface

Congress, in Public Law 90-100, found the traffic in obscenity and pornography to be "a matter of national concern." The Federal Government was deemed to have a "responsibility to investigate the gravity of this situation and to determine whether such materials are harmful to the public, and particularly to minors, and whether more effective methods should be devised to control the transmission of such materials." To this end, the Congress established an advisory commission whose purpose was "after a thorough study which shall include a study of the causal relationship of such materials to antisocial behavior, to recommend advisable, appropriate, effective, and constitutional means to deal effectively with such traffic in obscenity and pornography."

Congress assigned four specific tasks:

"(1) with the aid of leading constitutional law authorities, to analyze the laws pertaining to the control of obscenity and pornography; and to evaluate and recommend definitions of obscenity and pornography;

"(2) to ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the nature and volume of traffic in such materials;

"(3) to study the effect of obscenity and pornography upon the public, and particularly minors, and its relationship to crime and other antisocial behavior; and

"(4) to recommend such legislative, administrative, or other advisable and appropriate action as the Commission deems necessary to regulate effectively the flow of such traffic, without in any way interfering with constitutional rights."

Public Law 90-100 became law in October, 1967, and the President appointed members to the Commission in January, 1968. Funds were appropriated for the Commission's operation in July, 1968; at the same time the tenure of the Commission was extended to provide it the originally intended two years for its studies.

The Commission elected William B. Lockhart as chairman and Frederick H. Wagman as vice-chairman. The Commission then organized itself into four working panels: (1) Legal; (2) Traffic and Distribution; (3) Effects; and (4) Positive Approaches. It appointed a committee to recommend a director and a general counsel for the Commission's staff. . . .

The Commission fully subscribed from the beginning to the Congressional directive to make recommendations only after thorough study. To implement this approach, it was determined that confidentiality by Commission members should be maintained. This was felt to be necessary to encourage maximum exploration and free discussion of opinions, data

and new ideas at meetings of the Commissioners, to enhance open and unbiased investigations in sensitive areas, to avoid public misinterpretations of research data and to prevent premature conclusions. Moreover, the Commissioners felt it was important, in order to avoid confusion as to the activities of the Commission, to have but one spokesman prior to the completion of its Report. Commissioner Charles H. Keating, Jr., a replacement [named by President Nixon] for one of the original Commissioners, did not subscribe to this decision after his appointment.

Because its initial survey of available information relating to the various tasks assigned by Congress amply demonstrated the insufficiency of existing factual evidence as a basis for recommendations, the Commission initiated a program of research designed to provide empirical information relevant to its tasks. The responsibility for the details of the research program was delegated to the four working panels which reported to the Commission on their progress and direction from time to time. The Commission's energies were devoted at the beginning principally to the design and implementation of the research program, at a later point to the assimilation and integration of the results of the research, and finally to the discussion of alternatives and the making of decisions regarding recommendations.

Some members of the Commission suggested that public hearings be held at the beginning of the Commission's life. The Commission concluded, however, that in the first stage of its work public hearings would not be a likely source of accurate data or a wise expenditure of its limited resources. Approximately 100 national organizations were invited to express their views on the problems of obscenity and pornography by submitting written statements, and views were also solicited from those involved in law enforcement, from the legal profession generally, and from constitutional law experts. The Commission left open the possibility of holding public hearings at a later date when it would be possible to invite witnesses to focus on particular issues and proposals as those evolved from the Commission's studies and discussions. Public hearings were held in Los Angeles, California, on May 4 and 5, 1970, and in Washington, D. C. on May 12 and 13, 1970. Fifty-five persons, representing law enforcement agencies, courts, government at many levels, civic organizations, writers, publishers, distributors, film producers, exhibitors, actors, librarians, teachers, youth organizations, parents and other interested groups, were invited to appear before the Commission. Thirty-one of these persons accepted the Commission's invitation. In addition, the Commission heard statements from numerous private citizens who attended the hearings. A broad spectrum of views was presented to the Commission through these hearings. . . .

Material may be deemed "obscene" because of a variety of contents:

religious, political, sexual, scatological, violent, etc. The Commission has limited its concern to sexual obscenity, including sadomasochistic material, because the legislative history indicated this as the focus of congressional concern as reflected by the linking of obscenity with pornography in the Act creating the Commission. The application of obscenity laws has been directed in recent times almost exclusively to sexual obscenity; indeed, court decisions regarding permissible legal definitions of the term "obscene" have appeared in recent years to delimit its application to such sexual obscenity. Thus, the Commission's inquiry was directed toward a wide range of explicit sexual depictions in pictorial and textual media.

Just as obscenity may involve a variety of contents and judgments, so also may "antisocial" behavior and moral character. A declining concern with established religions, new questions as to the wisdom and morality of war, changes in attitudes toward races and minorities, and conflicts regarding the responsibility of the state to the individual and the individual to the state may all be considered to represent changes in the moral fiber of the nation. To some, these phenomena are considered to be signs of corroding moral decay; to others, signs of change and progress. It was impossible during the brief life of the Commission to obtain significant data on the effects of the exposure to pornography on nonsexual moral attitudes. Consequently, the Commission has focused on that type of antisocial behavior which tends to be more directly related to sex. This includes premarital intercourse, sex crimes, illegitimacy, and similar items.

Discussions of obscenity and pornography in the past have often been devoid of fact. Popular rhetoric has often contained a variety of estimates of the size of the "smut" industry and assertions regarding the consequences of the existence of these materials and exposure to them. Many of these statements, however, have had little anchoring in objective evidence. Within the limits of its time and resources, the Commission has sought, through staff and contract research, to broaden the factual basis for future continued discussion. The Commission is aware that not all issues of concern have been completely researched nor all questions answered. It also recognizes that the interpretations of a set of "facts" in arriving at policy implications may differ even among men of good will. Nevertheless, the Commission is convinced that on most issues regarding obscenity and pornography the discussion can be informed by important and often new facts. It presents its Report, hopeful that it will contribute to this discussion at a new level. Since it may be anticipated that in any controversial area some of the research will be questioned as to method and the validity and reliability of the results, the Commission hopes that responsible scientific organizations will carefully scrutinize these studies and that new and continuing research will result. . . .

Overview of Findings

Law and Law Enforcement*

FEDERAL STATUTES

. . . The cost to the federal government of enforcing the five federal statutes generally prohibiting the distribution of obscene materials appears to be at least \$3 to \$5 million per year. Enforcement of the Anti-Pandering Act has cost the Post Office about an additional \$1 million per year. . . .

ADULT OBSCENITY STATUTES

Although upholding the constitutionality of broad prohibitions upon the dissemination of obscene materials, the Roth decision imposed a narrow standard for defining what is "obscene" under such prohibitions. Subsequent decisions have narrowed the permissible test even further.

The prevailing view today [until June 21, 1973—*Ed.*] in the Supreme Court of the United States, the lower federal courts and the courts of the States is that three criteria must all be met before the distribution of material may be generally prohibited for all persons, including adults, on the ground that it is "obscene." These criteria are: (1) the dominant theme of the material, taken as a whole, must appeal to a "prurient" interest in sex; (2) the material must be "patently offensive" because it affronts "contemporary community standards" regarding the depiction of sexual matters; and (3) the material must lack "redeeming social value." All three criteria must coalesce before material may be deemed "obscene" for adults. . . .

The results of empirical research regarding the application of the three constitutional criteria confirm the difficulties of application as well as their exceedingly narrow scope. Several studies have found that "arousingness" and "offensiveness" are independent dimensions when applied to sexual materials; that is, material that is offensive may or may not be arousing, and material that is arousing may or may not be offensive. Only a very restricted range of material seems to be capable of meeting both of these criteria for most people. Further, there is very little consensus among people regarding either the "arousingness" or the "offensiveness" of a given sexual depiction. . . .

*Other parts of this "Overview" deal with: volume of traffic and patterns of distribution of sexually oriented materials; effects of explicit sexual materials; and positive approaches—sex education, industry self-regulation, and citizens' action groups.

An additional and very significant limiting factor is introduced by the criterion of social value. In the national survey of American public opinion sponsored by the Commission, substantial portions of the population reported effects which might be deemed socially valuable from even the most explicit sexual materials. For example, about 60% of a representative sample of adult American men felt that looking or reading such materials would provide information about sex . . . [Among women] 35%, 24% and 21% reported, respectively, information, entertainment, and improved sexual relations in themselves or someone they personally knew as a result of looking at or reading very explicit sexual materials . . . two experimental studies found that a substantial number of married couples reported more agreeable and enhanced marital communication and an increased willingness to discuss sexual matters with each other after exposure to erotic stimuli.

In pursuit of its mandate from Congress to recommend definitions of obscenity which are consistent with constitutional rights, the Commission considered drafting a more satisfactory definition of "obscene" for inclusion in adult obscenity prohibitions, should such prohibitions appear socially warranted. To be satisfactory from the point of view of its enforcement and application, such a definition would have to describe the material to be proscribed with a high degree of objectivity and specificity, so that those subject to the law could know in advance what materials were prohibited and so that judicial decisions would not be based upon the subjective reactions of particular judges or jurors. In light of the empirical data, described above, showing both the lack of consensus among adults as to what is both arousing and offensive and the values attributed by substantial numbers of adults to even the most explicit sexual materials, the construction of such a definition for adults within constitutional limits would be extremely difficult. In any event, the Commission, as developed in its legislative recommendations set forth later in this Report, does not believe that a sufficient social justification exists for the retention or enactment of broad legislation prohibiting the consensual distribution of sexual materials to adults. . . .

SPECIFIC OBSCENITY STATUTES

. . . The areas of latitude for greater control overlap the areas of greatest public concern. Prosecuting attorneys who reported a serious community concern about obscenity to the Commission attributed this concern primarily to the thrusting of offensive materials upon unwilling recipients and to fear that materials would be distributed to minors. It is in these areas that effective legislative prohibitions may be formulated and enforced. . . .

PUBLIC OPINION . . .

A national survey of American public opinion sponsored by the Commission shows that a majority of American adults believe that adults should be allowed to read or see any sexual materials they wish. On the other hand, a substantial consensus of American adults favors prohibiting young persons access to some sexual materials. Almost half the population believes that laws against sexual materials are impossible to enforce. Americans also seem to have an inaccurate view of the opinions of others in their communities; the tendency is to believe that others in the community are more restrictive in outlook than they actually are.

Public opinion regarding restrictions on the availability of explicit sexual materials is, however, quite divided in several ways. Principally this split of opinion is related to the characteristics of the person expressing the attitude and the issue of potential harmfulness of the material. . . .

POTENTIALITY OF HARMFUL EFFECTS

When questioned as to whether they favored access of adults or young persons to sexually explicit materials, about 40% of all the respondents on the national survey made their responses contingent on the issue of whether or not such materials cause harm. About two-thirds of the persons who favor no legal restrictions said their views would be changed if it were clearly demonstrated that certain materials have harmful effects. On the other hand, about one-third of the persons who favor some restrictions or extensive restrictions would change their views if it were clearly demonstrated that sexual materials have no harmful effects.

OBSCENITY LAWS IN OTHER COUNTRIES

. . . Advisory commissions in countries other than the United States have, like this Commission, all concluded that consensual exposure of adults to explicit sexual materials causes no demonstrable damaging individual or social effects.

Recommendations of the Commission**Non-Legislative Recommendations**

The Commission believes that much of the "problem" regarding materials which depict explicit sexual activity stems from the inability or reluctance of people in our society to be open and direct in dealing with sexual matters. This most often manifests itself in the inhibition of talking openly and directly about sex. Professionals use highly technical language when they discuss sex; others of us escape by using euphemisms—or by not

talking about sex at all. Direct and open conversation about sex between parent and child is too rare in our society.

Failure to talk openly and directly about sex has several consequences. It overemphasizes sex, gives it a magical, nonnatural quality, making it more attractive and fascinating. It diverts the expression of sexual interest out of more legitimate channels, into less legitimate channels. Such failure makes teaching children and adolescents to become fully and adequately functioning sexual adults a more difficult task. And it clogs legitimate channels for transmitting sexual information and forces people to use clandestine and unreliable sources.

The Commission believes that interest in sex is normal, healthy, good. Interest in sex begins very early in life and continues throughout the life cycle although the strength of this interest varies from stage to stage. With the onset of puberty, physiological and hormonal changes occur which both quicken interest and make the individual more responsive to sexual interest. The individual needs information about sex in order to understand himself, place his new experiences in a proper context, and cope with his new feelings. . . .

The Commission believes that accurate, appropriate sex information provided openly and directly through legitimate channels and from reliable sources in healthy contexts can compete successfully with potentially distorted, warped, inaccurate, and unreliable information from clandestine, illegitimate sources; and it believes that the attitudes and orientations toward sex produced by the open communication of appropriate sex information from reliable sources through legitimate channels will be normal and healthy, providing a solid foundation for the basic institutions of our society.

The Commission, therefore, presents the following positive approaches to deal with the problem of obscenity and pornography.

1. The Commission recommends that a massive sex education effort be launched. . . .

(a) its purpose should be to contribute to healthy attitudes and orientations to sexual relationships so as to provide a sound foundation for our society's basic institutions of marriage and family;

(b) it should be aimed at achieving an acceptance of sex as a normal and natural part of life and of oneself as a sexual being;

(c) it should not aim for orthodoxy; rather it should be designed to allow for a pluralism of values;

(d) it should be based on facts and encompass not only biological and physiological information but also social, psychological, and religious information;

(e) it should be differentiated so that content can be shaped appropriately for the individual's age, sex, and circumstances;

(f) it should be aimed, as appropriate, to all segments of our society, adults as well as children and adolescents;

(g) it should be a joint function of several institutions of our society: family, school, church, etc.;

(h) special attention should be given to the training of those who will have central places in the legitimate communication channels—parents, teachers, physicians, clergy, social service workers, etc.;

(i) it will require cooperation of private and public organizations at local, regional, and national levels with appropriate funding;

(j) it will be aided by the imaginative utilization of new educational technologies for example, educational television could be used to reach several members of a family in a family context.

The Commission feels that such a sex education program would provide a powerful positive approach to the problems of obscenity and pornography. By providing accurate and reliable sex information through legitimate sources, it would reduce interest in and dependence upon clandestine and less legitimate sources. By providing healthy attitudes and orientations toward sexual relationships, it would provide better protection for the individual against distorted or warped ideas he may encounter regarding sex. By providing greater ease in talking about sexual matters in appropriate contexts, the shock and offensiveness of encounters with sex would be reduced.

2. The Commission recommends continued open discussion, based on factual information, on the issues regarding obscenity and pornography.

Discussion has in the past been carried on with few facts available and the debate has necessarily reflected, to a large extent, prejudices and fears. Congress asked the Commission to secure more factual information before making recommendations. Some of the facts developed by the Commission are contrary to widely held assumptions. These findings provide new perspectives on the issues.

The information developed by the Commission should be given wide distribution, so that it may sharpen the issues and focus the discussion.

3. The Commission recommends that additional factual information be developed.

The Commission's effort to develop information has been limited by time, financial resources, and the paucity of previously existing research. Many of its findings are tentative and many questions remain to be answered. We trust that our modest pioneering work in empirical research into several problem areas will help to open the way for more extensive and long-term research based on more refined methods directed to answering more refined questions. We urge both private and public sources to provide the financial resources necessary. . . .

4. The Commission recommends that citizens organize themselves at

local, regional, and national levels to aid in the implementation of the foregoing recommendations.

The sex education effort recommended by the Commission can be achieved only with broad and active citizen participation. Widespread discussion of the issues regarding the availability of explicit sexual materials implies broad and active citizen participation. A continuing research program aimed at clarifying factual issues regarding the impact of explicit sexual materials on those who encounter them will occur only with the support and cooperation of citizens. . . .

Legislative Recommendations

. . . In general outline, the Commission recommends that federal, state, and local legislation should not seek to interfere with the right of adults who wish to do so to read, obtain, or view explicit sexual materials. On the other hand, we recommend legislative regulations upon the sale of sexual materials to young persons who do not have the consent of their parents, and we also recommend legislation to protect persons from having sexual materials thrust upon them without their consent through the mails or through open public display. . . .

STATUTES RELATING TO ADULTS

The Commission recommends that federal, state, and local legislation prohibiting the sale, exhibition, or distribution of sexual materials to consenting adults should be repealed. Twelve of the 17 participating members of the Commission join in this recommendation. Two additional Commissioners subscribe to the bulk of the Commission's Report, but do not believe that the evidence presented at this time is sufficient to warrant the repeal of all prohibitions upon what adults may obtain. Three Commissioners dissent from the recommendation to repeal adult legislation and would retain existing laws prohibiting the dissemination of obscene materials to adults.

The Commission believes that there is no warrant for continued governmental interference with the full freedom of adults to read, obtain or view whatever such material they wish. Our conclusion is based upon the following considerations:

1. Extensive empirical investigation, both by the Commission and by others, provides no evidence that exposure to or use of explicit sexual materials play a significant role in the causation of social or individual harms such as crime, delinquency, sexual or nonsexual deviancy or severe emotional disturbances. This research and its results are described in detail in the report of the Effects Panel of the Commission. . . .

In sum, empirical research designed to clarify the question has found no evidence to date that exposure to explicit sexual materials plays a sig-

nificant role in the causation of delinquent or criminal behavior among youth or adults.

2. On the positive side, explicit sexual materials are sought as a source of entertainment and information by substantial numbers of American adults. At times, these materials also appear to serve to increase and facilitate constructive communication about sexual matters within marriage. The most frequent purchaser of explicit sexual materials is a college-educated, married male, in his thirties or forties, who is of above average socio-economic status. Even where materials are legally available to them, young adults and older adolescents do not constitute an important portion of the purchases of such materials.

3. Society's attempts to legislate for adults in the area of obscenity have not been successful. Present laws prohibiting the consensual sale or distribution of explicit sexual materials to adults are extremely unsatisfactory in their practical application. The Constitution permits material to be deemed "obscene" for adults only if, as a whole, it appeals to the "prurient" interest of the average person, is "patently offensive" in light of "community standards," and lacks "redeeming social value." These vague and highly subjective aesthetic, psychological and moral tests do not provide meaningful guidance for law enforcement officials, juries or courts. As a result, law is inconsistently and sometimes erroneously applied. . . .

4. Public opinion in America does not support the imposition of legal prohibitions upon the right of adults to read or see explicit sexual materials. While a minority of Americans favors such prohibitions, a majority of the American people presently are of the view that adults should be legally able to read or see explicit sexual materials if they wish to do so.

5. The lack of consensus among Americans concerning whether explicit sexual materials should be available to adults in our society, and the significant number of adults who wish to have access to such materials, pose serious problems regarding the enforcement of legal prohibitions upon adults, even aside from the vagueness and subjectivity of present law. Consistent enforcement of even the clearest prohibitions upon consensual adult exposure to explicit sexual materials would require the expenditure of considerable law enforcement resources. In the absence of a persuasive demonstration of damage flowing from consensual exposure to such materials, there seems no justification for thus adding to the overwhelming tasks already placed upon the law enforcement system. . . .

6. The foregoing considerations take on added significance because of the fact that adult obscenity laws deal in the realm of speech and communication. Americans deeply value the right of each individual to determine for himself what books he wishes to read and what pictures or films he wishes to see. Our traditions of free speech and press also value

and protect the right of writers, publishers, and booksellers to serve the diverse interests of the public. The spirit and letter of our Constitution tell us that government should not seek to interfere with these rights unless a clear threat of harm makes that course imperative. Moreover, the possibility of the misuse of general obscenity statutes prohibiting distributions of books and films to adults constitutes a continuing threat to the free communication of ideas among Americans—one of the most important foundations of our liberties.

7. . . . The Commission carefully considered the view that adult legislation should be retained in order to aid in the protection of young persons from exposure to explicit sexual materials. We do not believe that the objective of protecting youth may justifiably be achieved at the expense of denying adults materials of their choice. It seems to us wholly inappropriate to adjust the level of adult communication to that considered suitable for children. Indeed, the Supreme Court has unanimously held that adult legislation premised on this basis is a clearly unconstitutional interference with liberty.

8. There is no reason to suppose that elimination of governmental prohibitions upon the sexual materials which may be made available to adults would adversely affect the availability to the public of other books, magazines, and films. . . .

9. The Commission has also taken cognizance of the concern of many people that the lawful distribution of explicit sexual materials to adults may have a deleterious effect upon the individual morality of American citizens and upon the moral climate in America as a whole. This concern appears to flow from a belief that exposure to explicit materials may cause moral confusion which, in turn, may induce antisocial or criminal behavior. As noted above, the Commission has found no evidence to support such a contention. Nor is there evidence that exposure to explicit sexual materials adversely affects character or moral attitudes regarding sex and sexual conduct.

The concern about the effect of obscenity upon morality is also expressed as a concern about the impact of sexual materials upon American values and standards. Such values and standards are currently in a process of complex change, in both sexual and nonsexual areas. The open availability of increasingly explicit sexual materials is only one of these changes. The current flux in sexual values is related to a number of powerful influences, among which are the ready availability of effective methods of contraception, changes of the role of women in our society, and the increased education and mobility of our citizens. The availability of explicit sexual materials is, the Commission believes, not one of the important influences on sexual morality.

The Commission is of the view that it is exceedingly unwise for government to attempt to legislate individual moral values and standards

independent of behavior, especially by restrictions upon consensual communication. . . .

The Commission recognizes and believes that the existence of sound moral standards is of vital importance to individuals and to society. To be effective and meaningful, however, these standards must be based upon deep personal commitment flowing from values instilled in the home, in educational and religious training, and through individual resolutions of personal confrontations with human experience. Governmental regulation of moral choice can deprive the individual of the responsibility for personal decision which is essential to the formation of genuine moral standards. Such regulation would also tend to establish an official moral orthodoxy, contrary to our most fundamental constitutional traditions.

Therefore, the Commission recommends the repeal of existing federal legislation which prohibits or interferes with consensual distribution of "obscene" materials to adults. . . .

STATUTES RELATING TO YOUNG PERSONS

The Commission recommends the adoption by the States of legislation . . . prohibiting the commercial distribution or display for sale of certain sexual materials to young persons. Similar legislation might also be adopted, where appropriate, by local governments and by the federal government for application in areas, such as the District of Columbia, where it has primary jurisdiction over distributional conduct.

The Commission's recommendation of juvenile legislation is joined in by 14 members of the Commission. . . .

A primary basis for the Commission's recommendation for repeal of adult legislation is the fact that extensive empirical investigations do not indicate any causal relationship between exposure to or use of explicit sexual materials and such social or individual harms such as crime, delinquency, sexual or nonsexual deviancy, or severe emotional disturbances. The absence of empirical evidence supporting such a causal relationship also applies to the exposure of children to erotic materials. However, insufficient research is presently available on the effect of the exposure of children to sexually explicit materials to enable us to reach conclusions with the same degree of confidence as for adult exposure. Strong ethical feelings against experimentally exposing children to sexually explicit materials considerably reduced the possibility of gathering the necessary data and information regarding young persons.

In view of the limited amount of information concerning the effects of sexually explicit materials on children, other considerations have assumed primary importance in the Commission's deliberations. The Commission has been influenced, to a considerable degree, by its finding that a large majority of Americans believe that children should not be exposed to

certain sexual materials. In addition, the Commission takes the view that parents should be free to make their own conclusions regarding the suitability of explicit sexual materials for their children and that it is appropriate for legislation to aid parents in controlling the access of their children to such materials during their formative years. The Commission recognizes that legislation cannot possibly isolate children from such materials entirely; it also recognizes that exposure of children to sexual materials may not only do no harm but may, in certain instances, actually facilitate much needed communication between parent and child over sexual matters. The Commission is aware, as well, of the considerable danger of creating an unnatural attraction or an enhanced interest in certain materials by making them "forbidden fruit" for young persons. The Commission believes, however, that these considerations can and should be weighed by individual parents in determining their attitudes toward the exposure of their children to sexual materials, and that legislation should aid, rather than undermine, such parental choice.

Taking account of the above considerations, the model juvenile legislation recommended by the Commission applies only to distributions to children made without parental consent. The recommended legislation applies only to commercial distributions and exhibitions; in the very few instances where noncommercial conduct in this area creates a problem, it can be dealt with under existing legal principles for the protection of young persons, such as prohibitions upon contributing to the delinquency of minors. The model legislation also prohibits displaying certain sexual materials for sale in a manner which permits children to view materials which cannot be sold to them. . . .

The Commission, pursuant to Congressional direction, has given close attention to the definitions of prohibited material included in its recommended model legislation for young persons. A paramount consideration in the Commission's deliberations has been that definitions of prohibited materials be as specific and explicit as possible. Such specificity aids law enforcement and facilitates and encourages voluntary adherence to law on the part of retail dealers and exhibitors, while causing as little interference as possible with the proper distribution of materials to children and adults. The Commission's recommended legislation seeks to eliminate subjective definitional criteria insofar as that is possible and goes further in that regard than existing state legislation.

The Commission believes that only pictorial material should fall within prohibitions upon sale or commercial display to young persons. An attempt to define prohibited textual materials for young persons with the same degree of specificity as pictorial materials would, the Commission believes, not be advisable. Many worthwhile textual works, containing considerable value for young persons, treat sex in an explicit manner and are presently available to young persons. There appears to be no satisfactory way to distinguish, through a workable legal definition,

between these works and those which may be deemed inappropriate by some persons for commercial distribution to young persons. . . .

The definition recommended by the Commission for inclusion in juvenile legislation covers a range of explicit pictorial and three-dimensional depictions of sexual activity. It does not, however, apply to depictions of nudity alone, unless genital areas are exposed and emphasized. The definition is applicable only if the explicit pictorial material constitutes a dominant part of a work. An exception is provided for works of artistic or anthropological significance.

Seven Commissioners would include verbal materials within the definition of materials prohibited for sale to young persons. They would, however, also include a broad exception for such textual materials when they bear literary, historical, scientific, educational, or other similar social value for young persons.

Because of changing standards as to what material, if any, is inappropriate for sale or display to children, the Commission's model statute contains a provision requiring legislative reconsideration of the need for, and scope of, such legislation at six-year intervals.

The model statute also exempts broadcast or telecast activity from its scope. . . .

The Commission has not fixed upon a precise age limit for inclusion in its recommended juvenile legislation, believing that such a determination is most appropriately made by the States and localities which enact such provisions in light of local standards. All States now fix the age in juvenile obscenity statutes at under 17 or under 18 years. The recommended model statute also excludes married persons, whatever their age, from the category of juveniles protected by the legislation.

The Commission considered the possibility of recommending the enactment of uniform federal legislation requiring a notice or label to be affixed to materials by their publishers, importers or manufacturers, when such materials fall within a definitional provision identical to that included within the recommended state or local model juvenile statute. . . .

Finally, the Commission considered, but does not affirmatively recommend, the enactment by the federal government of juvenile legislation which would prohibit the sale of certain explicit materials to juveniles through the mails. Such federal legislation would, the Commission believes, be virtually unenforceable since the constitutional requirement of proving the defendant's guilty knowledge means that a prosecution could be successful only if proof were available that the vendor knew that the purchaser was a minor. . . .

PUBLIC DISPLAY AND UNSOLICITED MAILING

The Commission recommends enactment of state and local legislation prohibiting public displays of sexually explicit pictorial materials, and approves in principle of the federal legislation, enacted as part of the 1970

Postal Reorganization Act, regarding the mailing of unsolicited advertisements of a sexually explicit nature. The Commission's recommendations in this area are based upon its finding, through its research, that certain explicit sexual materials are capable of causing considerable offense to numerous Americans when thrust upon them without their consent. The Commission believes that these unwanted intrusions upon individual sensibilities warrant legislative regulation and it further believes that such intrusions can be regulated effectively without any significant interference with consensual communication of sexual material among adults.

The Commission's recommendations in the public display area have been formulated into a model state public display statute. . . .

The model statute recommended by the Commission (which would also be suitable for enactment in appropriate instances by local government units and by the federal government for areas where it has general legislative jurisdiction) prohibits the display of certain potentially offensive sexually explicit pictorial materials in places easily visible from public thoroughfares or the property of others. . . . In addition, the fact that there are few, if any, "dirty" words which do not already appear fairly often in conversation among many Americans and in some very widely distributed books and films indicates that such words are no longer capable of causing the very high degree of offense to a large number of persons which would justify legislative interference. Five Commissioners disagree and would include verbal materials in the display prohibition because they believe certain words cause sufficient offense to warrant their inclusion in display prohibitions. . . .

The Commission, with three dissents, also approves of federal legislation to prevent unsolicited advertisements containing potentially offensive sexual material from being communicated through the mails to persons who do not wish to receive such advertisements. The Federal Anti-Pandering Act, which went into effect in 1968, imposes some regulation in this area, but it permits a mail recipient to protect himself against such mail only after he has received at least one such advertisement and it protects him only against mail emanating from that particular source. The Commission believes it more appropriate to permit mail recipients to protect themselves against all such unwanted mail advertisements from any source. . . .

DECLARATORY JUDGMENT LEGISLATION

The Commission recommends the enactment, in all jurisdictions which enact or retain provisions prohibiting the dissemination of sexual materials to adults or young persons, of legislation authorizing prosecutors to obtain declaratory judgments as to whether particular materials fall within existing legal prohibitions and appropriate injunctive relief. A

model statute embodying this recommendation is presented in the Drafts of Proposed Statutes. . . .

A declaratory judgment procedure such as the Commission recommends would permit prosecutors to proceed civilly, rather than through the criminal process, against suspected violations of obscenity prohibition. . . .

WITHDRAWAL OF APPELLATE JURISDICTION

The Commission recommends against the adoption of any legislation which would limit or abolish the jurisdiction of the Supreme Court of the United States or of other federal judges and courts in obscenity cases. Two Commissioners favor such legislation; one deems it inappropriate for the Commission to take a position on this issue. . . .

Report of [Three] Commissioners*

Overview

The Commission's majority report is a Magna Carta for the pornographer.

It is slanted and biased in favor of protecting the business of obscenity and pornography, which the Commission was mandated by the Congress to regulate.

The Commission leadership and majority recommend that most existing legal barriers between society and pornography be pulled down. In so doing, the Commission goes far beyond its mandate and assumes the role of counsel for the filth merchant—a role not assigned by the Congress of the United States.

The Commission leadership and majority recommend repeal of obscenity law for "consenting adults." It goes on, then, to recommend legislation for minors, public display and thrusting of pornography on persons through the mails.

The American people should be made aware of the fact that this is precisely the situation as it exists in Denmark today. The Commission, in short, is presumptuously recommending that the United States follow Denmark's lead in giving pornography free rein.

We feel impelled to issue this report in vigorous dissent.

The conclusions and recommendations in the majority report will be found deeply offensive to Congress and to tens of millions of Americans. And what the American people do not know is that the scanty and

*This report is by Morton A. Hill, S. J., Winfrey C. Link, and concurred in by Charles H. Keating, Jr. It is one of eight separate statements filed by Commission members. This one, and two others, denounced the majority recommendations as too permissive. The other five generally approved the majority findings or urged less restrictive recommendations—*Ed.*

manipulated evidence contained within this report is wholly inadequate to support the conclusions and sustain the recommendations. Thus, both conclusions and recommendations are, in our view, fraudulent.

What the American people have here for the two million dollars voted by Congress, and paid by the taxpayer, is a shoddy piece of scholarship that will be quoted ad nauseam by cultural polluters and their attorneys within society. . . .

In sum, the conclusions and recommendations of the Commission majority represent the preconceived views of the Chairman and his appointed counsel that the Commission should arrive at those conclusions most compatible with the viewpoint of the American Civil Liberties Union. Both men singlemindedly steered the Commission to this objective. . . .

Our Position

We stand in agreement with the Congress of the United States: the traffic in obscenity and pornography is a matter of national concern.

We believe that pornography has an eroding effect on society, on public morality, on respect for human worth, on attitudes toward family love, on culture.

We believe it is impossible, and totally unnecessary, to attempt to prove or disprove a cause-effect relationship between pornography and criminal behavior.

Sex education, recommended so strongly by the majority, is the panacea for those who advocate license in media. The report suggests sex education, with a plaint for the dearth of instructors and materials. It notes that three schools have used "hard-core pornography" in training potential instructors. The report does not answer the question that comes to mind immediately: Will these instructors not bring the hard-core pornography into the grammar schools? Many other questions are left unanswered: How assure that the instructor's moral or ethical code (or lack of same) will not be communicated to children? Shouldn't parents, not children, be the recipients of sex education courses?

Children cannot grow in love if they are trained with pornography. . . . And if this Commission majority's recommendations are heeded, there will be a glut of pornography for teachers and children.

In contrast to the Commission report's amazing statement that "public opinion in America does not support the imposition of legal prohibitions upon the consensual distribution" of pornography to adults, we find, as a result of public hearings conducted by two of the undersigned in eight cities throughout the country, that the majority of the American people favor tighter controls. Twenty-six out of twenty-seven witnesses at the hearing in New York City expressed concern and asked for remedial measures. . . .

Recommendations

DEFINITION OF OBSCENITY

A thing is "obscene" if, by contemporary community standards, and considered as a whole, its predominant appeal is to the prurient interest. As a matter of public policy, anything which is obscene by this definition shall be conclusively deemed to be utterly without redeeming social importance. Any slight social value in such obscenity shall be deemed outweighed by the social interest in order and morality.

"Prurient interest" is defined as a shameful or morbid interest in nudity, sex or excretion which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for, or directed to a specially susceptible audience, the subject matter shall be judged with reference to such audience. When the subject matter is distributed or exhibited to minors who have not attained their 18th birthday, the subject matter shall be judged with reference to an average person in the community of the actual age of the minor to whom such material is distributed or exhibited. In all other cases, the subject matter shall be judged with reference to the average person in the community. . . .

FEDERAL LEGISLATION

. . . We recommend legislation or a Presidential Directive establishing a Division, in the Office of the Attorney General of the United States, under the direction of a Deputy Attorney General, made up of a team of skilled lawyers ready and able to assist District Attorneys throughout the nation in prosecutions against sex exploiters. . . .

We recommend the establishment, by Federal legislation, of a National Crime Research and Reference Library on the Law of Obscenity. The Library will be unique, since the Librarian of Congress has indicated that after diligent search, "no reference to any special law library in this area has been found, and . . . such a library would be unique and unduplicated as a single collection."

The purpose of the library will be to service prosecutors nationwide to expedite preparation of cases. It will be available also to the judiciary, behavioral scientists, clergymen, writers and other professionals who can contribute to stem the flow of obscene material. . . .

STATE LEGISLATION

(a) *Model State Obscenity Statute.* Attached to this Report . . . is our recommended Model State Obscenity Statute based on the concept of variable obscenity and taking into consideration all U.S. Supreme Court cases. . . .

(b) We also recommend to the States that they establish, by legislation, a Board of Film Review. . . .

(c) In addition, we suggest that some States might desire to permit local ordinances for the establishment of Film Review Boards. . . .

(d) We recommend the employment of the injunctive remedy. . . . This is a most effective weapon sanctioned by the decisions of the U.S. Supreme Court, and will reach all types of obscenity.

(e) We recommend that the Attorney General's Office be required to review for possible prosecution any type of suspected obscenity distributed or about to be distributed, of which he gains knowledge, and which falls into any of the descriptive categories listed below:

[A list of 22 categories is given, including: "paperbacks with themes of homosexuality, sado-masochism, incest, bestiality; hardcover books devoted to homosexuality, sado-masochism, incest"; stag films; commercial x-rated and unrated films and advertising for them; "underground newspapers"; "pseudo-scientific sex publications"; "sensational tabloids"; "lyrics on commercially distributed rock records"; and other items.—*Ed.*]

(f) We advocate the establishment in the office of the Attorney General of each State, a team of one or more skilled attorneys, under the direction of a Deputy Attorney General, to be used to assist in the local prosecutions where intrastate commerce is involved or where federal assistance from the Department of Justice is not readily available.

(g) We advocate the establishment in State Police headquarters of a similar division, working closely with the legal staff just mentioned. The state police have experts in arson, ballistics and other specialties. The formation of a special unit on pornography is long overdue.

(h) We advocate the establishment of [a] permanent State Commission to examine the laws on obscenity, to make recommendations to the legislature, and recommendations for more effective means of enforcement. . . .

(i) We recommend the establishment of a State Commission to review and classify Motion Pictures and printed materials for minors. . . .

(j) As minimum legislation, we advocate elimination of the phrase "utterly without redeeming social value" in any State statute. . . .

LOCAL ORDINANCES

(a) We recommend a review of existing ordinances in the light of our review of U.S. Supreme Court decisions . . . and the modifying or amending of some to comply therewith, including the elimination of the phrase, "utterly without redeeming social value" whenever found.

(b) We recommend the adoption of local ordinances (wherever the State has not adopted a Film Review Statute) to review Motion Pictures. . . .

(c) On an optional basis, or as part of a general ordinance on motion

picture review, we recommend a Film Review and Classification Ordinance for minors. . . .

(d) We recommend an ordinance designed to protect minors from being exposed, on the highway or street, to drive-in movie scenes of motion pictures that are unsuitable for children.

(e) We recommend a local ordinance to penalize the showing of obscene motion pictures, and to penalize the licensee found guilty. . . .

PRIVATE ACTION BY THE PUBLIC

(a) We recommend that private citizens join with or form private, non-sectarian, community organizations that take organized, but constitutional action against obscenity.

(b) We recommend citizens bring official legal complaints whenever evidence of obscenity comes to their attention.

(c) We recommend that citizens continually urge their municipal, State and federal officials, to prosecute obscenity cases. Here, again, this is best accomplished in an organized manner, working through an existing community organization.

APPENDIX 5

Selected U.S. Laws and Regulations Compiled by Henry R. Kaufman

Criminal Statutes

18 U.S.C. 552 Officers Aiding Importation of Obscene or Treasonous Books and Articles

Whoever, being an officer, agent, or employee of the United States, knowingly aids or abets any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or means for procuring abortion, or other articles of indecent or immoral use or tendency, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

18 U.S.C. 1461 Mailing Obscene or Crime-Inciting Matter

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and—

Every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and

Every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered to the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof; or of aiding in the circulation or disposition thereof, shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first such offense, and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

The term "indecent," as used in this section, includes matter of a character tending to incite arson, murder, or assassination.

18 U.S.C. 1462 Importation or Transportation of Obscene Matters

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or

(b) any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(c) any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes from such express company or other common carrier any matter or thing the carriage of which is herein made unlawful—

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first such offense and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

18 U.S.C. 1463 Mailing Indecent Matter on Wrappers or Envelopes

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, and all postal cards upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, or obscene character are written

or printed or otherwise impressed or apparent, are nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

18 U.S.C. 1464 Broadcasting Obscene Language

Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined no more than \$10,000 or imprisoned not more than two years, or both.

18 U.S.C. 1465 Transportation of Obscene Matters for Sale or Distribution

Whoever knowingly transports in interstate or foreign commerce for the purpose of sale or distribution any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

When any person is convicted of a violation of this Act, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his arrest.

18 U.S.C. 1717 Letters and Writings as Nonmailable; Opening Letters

(a) Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, in violation of sections 499, 506, 793, 794, 915, 954, 956, 957, 960, 964, 1017, 1542, 1543, 1544 or 2388 of this title or which contains any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States is nonmailable and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

(b) Whoever uses or attempts to use the mails or Postal Service for the transmission of any matter declared by this section to be nonmailable, shall be fined not more than \$5,000 or imprisoned not more than ten years or both.

As amended Aug. 12, 1970, Pub.L. 91-375, §6(j)(27), 84 Stat. 780.

18 U.S.C. 1718 Libelous Matter on Wrappers or Envelopes

All matters otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which is written or printed or otherwise impressed or apparent any delineation, epithet, term, or language of libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, is nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

As amended Aug. 12, 1970, Pub.L. 91-375, §6(j)(27), 84 Stat. 780.

18 U.S.C. 1735 Sexually Oriented Advertisements

(a) Whoever -

(1) willfully used the mails for the mailing, carriage in the mails, or delivery of any sexually oriented advertisement in violation of section 3010 of title 39, or willfully violates any regulations of the Board of Governors issued under such section; or

(2) sells, leases, rents, lends, exchanges, or licenses the use of, or, except for the purpose expressly authorized by section 3010 of title 39, uses a mailing list maintained by the Board of Governors under such section; shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense.

(b) For the purposes of this section, the term "sexually oriented advertisement" shall have the same meaning as given it in section 3010(d) of title 39.

Added Pub.L. 91-375, §6(j)(37)(A), Aug. 12, 1970, 84 Stat. 781.

18 U.S.C. 1737 Manufacturer of Sexually Related Mail Matter

(a) Whoever shall print, reproduce, or manufacture any sexually related mail matter, intending or knowing that such matter will be deposited for mailing or delivery by mail in violation of section 3008 or 3010 of title 39, or in violation of any regulation of the Postal Service issued under such section, shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense.

(b) As used in this section, the term "sexually related mail matter" means any matter which is within the scope of section 3008(a) or 3010(d) of title 39.

Added Pub.L. 91-375, §6(j)(37)(A), Aug. 12, 1970, 84 Stat. 781.

18 U.S.C. 1842 *Disseminating Obscene Material**

- (a) *Offense.*—A person is guilty of an offense if he:
- (1) disseminates obscene material:
 - (A) to a minor; or
 - (B) to any person *in a manner affording no immediately effective opportunity to avoid exposure to such material*; or
 - (2) commercially disseminates obscene material to any person.
- (b) *Definitions.*—As used in this section:
- (1) “commercially disseminate” means to disseminate for profit and shall include nonprofit means of mass communication;
 - (2) “community” means the state or local community in which the obscene material is disseminated;
 - (3) “disseminate” means:
 - (A) to transfer, distribute, dispense, lend, display, exhibit, send, or broadcast, whether for profit or otherwise; or
 - (B) to produce, transport, or possess with intent to do any of the foregoing;
 - (4) “minor” means an unmarried person less than seventeen years old;
 - (5) “obscene material” means material that:
 - (A) sets forth in a patently offensive way:
 - (i) an explicit representation, or a detailed written or verbal description, of an act of sexual intercourse, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal; of masturbation; or of flagellation, torture, or other violence indicating a sado-masochistic sexual relationship; or
 - (ii) an explicit, close-up representation of a human genital organ;
 - (B) taken as a whole, appeals predominantly to the prurient interest of:
 - (i) the average person, applying contemporary community standards; or
 - (ii) the average person within a sexually deviant class of persons, if such material is designed for dissemination to such class of persons; and
 - (C) taken as a whole, lacks serious artistic, scientific, literary, or political value.
- (c) *Affirmative Defense.*—It is an affirmative defense to a prosecution under subsection (a) (1) (B) or (a) (2) that dissemination of the material was legal in the political subdivision or locality in which it was disseminated.
- (d) *Affirmative Defenses.*—It is an affirmative defense to a prosecution under this section that dissemination of the material was restricted to:
- (1) a person associated with an institution of higher learning, either as a member of the faculty or as an enrolled student, teaching or pursuing a bona fide course of study, or conducting or engaging in a bona fide research program, to which such material is pertinent; or

*Proposed revisions of Title 18, U.S. Code, regarding obscenity, passed by the U.S. Senate in S. 1437, January 30, 1978.

- (2) a person whose receipt of such material was authorized in writing by a licensed or certified psychiatrist, psychologist, or medical practitioner.
- (e) *Grading.* An offense described in this section is a Class E felony.
- (f) *Jurisdiction.* There is federal jurisdiction over an offense described in this section if:
- (1) the offense is committed within the special jurisdiction of the United States;
 - (2) the United States mail or a facility of interstate or foreign commerce is used in the commission of the offense; or
 - (3) the material is moved across a state or United States boundary.

18 U.S.C. 6035 Mailing, Importing, or Transporting Obscene Matter

(a) Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means abortion may be produced, whether sealed or unsealed; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this subsection or section 3001 (3) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be guilty of a Class D felony.

The term "indecent" as used in this subsection includes matter of a character tending to incite arson, murder, or assassination.

(b) Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate commerce or foreign commerce any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or whoever knowingly takes

from such express company or other common carrier any matter or thing the carriage of which is herein made unlawful shall be guilty of a Class D felony.

Civil Statutes and Regulations

Postal

39 U.S.C. 3001 *Nonmailable Matter*

(a) Matter the deposit of which in the mails is punishable under section 1302, 1341, 1342, 1461, 1463, 1714, 1715, 1716, 1717 or 1718 of title 18 is nonmailable.

(b) Except as provided in subsection (c) of this section, nonmailable matter which reaches the office of delivery, or which may be seized or detained for violation of law, shall be disposed of as the Postal Service shall direct.

(c) (1) Matter which—

(A) exceeds the size and weight limits prescribed for the particular class of mail; or

(B) is of a character perishable within the period required for transportation and delivery;

is nonmailable.

(2) Matter made nonmailable by this subsection which reaches the office of destination may be delivered in accordance with its address, if the party addressed furnishes the name and address of the sender.

(d) Matter otherwise legally acceptable in the mails which—

(1) is in the form of, and reasonably could be interpreted or construed as, a bill, invoice, or statement of account due; but

(2) constitutes, in fact, a solicitation for the order by the addressee of goods or services, or both;

is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe—

(A) the following notice: "This is a solicitation for the order of goods or services, or both, and not a bill, invoice, or statement of account due. You are under no obligation to make any payments on account of this offer unless you accept this offer."; or

(B) in lieu thereof, a notice to the same effect in words which the Postal Service may prescribe.

(e) (1) Any matter which is unsolicited by the addressee and which is designed, adapted, or intended for preventing conception (except unsolicited samples thereof mailed to a manufacturer thereof, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic) is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs.

(2) Any unsolicited advertisement of matter which is designed, adapted, or intended for preventing conception is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs unless the advertisement—

(A) is mailed to a manufacturer of such matter, a dealer therein, a licensed physician or surgeon, or a nurse, pharmacist, druggist, hospital, or clinic; or

(B) accompanies in the same parcel any unsolicited sample excepted by paragraph (1) of this subsection.

An advertisement shall not be deemed to be unsolicited for the purposes of this paragraph if it is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive.

(f) Except as otherwise provided by law, proceedings concerning the mailability of matter under this chapter and chapters 71 and 83 of title 18 shall be conducted in accordance with chapters 5 and 7 of title 5.

(g) The district courts, together with the District Court of the Virgin Islands and the District Court of Guam, shall have jurisdiction, upon cause shown, to enjoin violations of section 1716 of title 18.

39 U.S.C. 3006 Unlawful Matter

Upon evidence satisfactory to the Postal Service that a person is obtaining or attempting to obtain remittances of money or property of any kind through the mail for an obscene, lewd, lascivious, indecent, filthy, or vile thing or is depositing or causing to be deposited in the United States mail information as to where, how, or from whom such a thing may be obtained, the Postal Service may—

(1) direct any postmaster at an office at which mail arrives, addressed to such a person or to his representative, to return the mail to the sender marked "Unlawful"; and

(2) forbid the payment by a postmaster to such a person or his representative of any money order or postal note drawn to the order of either and provide for the return to the remitter of the sum named in the money order.

39 U.S.C. 3007 Detention of Mail for Temporary Periods

(a) In preparation for or during the pendency of proceedings under sections 3005 and 3006 of this title, the United States district court in the district in which the defendant receives his mail shall, upon application therefor by the Postal Service and upon a showing of probable cause to believe either section is being violated, enter a temporary restraining order and preliminary injunction pursuant to rule 65 of the Federal Rules of Civil Procedure directing the detention of the defendant's incoming mail by the postmaster pending the conclusion of the statutory proceedings and any appeal therefrom. The district court may provide in the order that the detained mail be open to examination by the defendant and such mail be delivered as is clearly not connected with the alleged unlawful activity. An action taken by a court hereunder does not affect or determine any fact at issue in the statutory proceedings.

(b) This section does not apply to mail addressed to publishers of newspapers and other periodical publications entitled to a periodical publication rate or to mail addressed to the agents of those publishers.

39 U.S.C. 3008 *Prohibition of Pandering Advertisements*

(a) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postal Service to refrain from further mailings of such materials to designated addresses thereof.

(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postal Service shall issue an order, if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailing to the named addressees.

(c) The order of the Postal Service shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addresses, effective on the thirtieth calendar day after receipt of the order. The order shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

(d) Whenever the Postal Service believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, it shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for its belief and request that any response thereto be filed in writing with the Postal Service within 15 days after the date of such service. If the Postal Service, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, it is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punishable by the court as contempt thereof.

(f) Receipt of mail matter 30 days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

(g) Upon request of any addressee, the order of the Postal Service shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

(h) The provisions of subchapter II of chapter 5, relating to administrative procedure, and chapter 7, relating to judicial review, of title 5, shall not apply to any provisions of this section.

(i) For purposes of this section—

(1) mail matter, directed to a specific address covered in the order of the

Postal Service, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postal Service's order; and

(2) the term "children" includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.

39 U.S.C. 3010 Mailing of Sexually Oriented Advertisements

(a) Any person who mails or causes to be mailed any sexually oriented advertisement shall place on the envelope or cover thereof his name and address as the sender thereof and such mark or notice as the Postal Service may prescribe.

(b) Any person, on his own behalf or on the behalf of any of his children who has not attained the age of 19 years and who resides with him or is under his care, custody, or supervision, may file with the Postal Service a statement, in such form and manner as the Postal Service may prescribe, that he desires to receive no sexually oriented advertisements through the mails. The Postal Service shall maintain and keep current, insofar as practicable, a list of the names and addresses of such persons and shall make the list (including portions thereof or changes therein) available to any person, upon such reasonable terms and conditions as it may prescribe, including the payment of such service charge as it determines to be necessary to defray the cost of compiling and maintaining the list and making it available as provided in this sentence. No person shall mail or cause to be mailed any sexually oriented advertisement to any individual whose name and address has been on the list for more than 30 days.

(c) No person shall sell, lease, lend, exchange, or license the use of, or, except for the purpose expressly authorized by this section, use any mailing list compiled in whole or in part from the list maintained by the Postal Service pursuant to this section.

(d) "Sexually oriented advertisement" means any advertisement that depicts, in actual or simulated form, or explicitly describes, in a predominantly sexual context, human genitalia, any act of natural or unnatural sexual intercourse, any act of sadism or masochism, or any other erotic subject directly related to the foregoing. Material otherwise within the definition of this subsection shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalog, book, periodical, or other work the remainder of which is not primarily devoted to sexual matters.

39 U.S.C. 3011 Judicial Enforcement

(a) Whenever the Postal Service believes that any person is mailing or causing to be mailed any sexually oriented advertisement in violation of section 3010 of this title, it may request the Attorney General to commence a civil action against such person in a district court of the United States. Upon a finding by the court of a violation of that section, the court may issue an order including one or more of the following provisions as the court deems just under the circumstances:

(1) a direction to the defendant to refrain from mailing any sexually oriented advertisement to a specific addressee, to any group of addressees, or to all persons;

(2) a direction to any postmaster to whom sexually oriented advertisements originating with such defendant are tendered for transmission through the mails to refuse to accept such advertisements for mailing; or

(3) a direction to any postmaster at the office at which registered or certified letters or other letters or mail arrive, addressed to the defendant or his representative, to return the registered or certified letters or other letters or mail to the sender appropriately marked as being in response to mail in violation of section 3010 of this title, after the defendant, or his representative, has been notified and given reasonable opportunity to examine such letters or mail and to obtain delivery of mail which is clearly not connected with activity alleged to be in violation of section 3010 of this title.

(b) The statement that remittances may be made to a person named in a sexually oriented advertisement is prima facie evidence that such named person is the principal, agent, or representative of the mailer for the receipt of remittances on his behalf. The court is not precluded from ascertaining the existence of the agency on the basis of any other evidence.

(c) In preparation for, or during the pendency of, a civil action under subsection (a) of this section, a district court of the United States, upon application therefor by the Attorney General and upon a showing of probable cause to believe the statute is being violated, may enter a temporary restraining order or preliminary injunction containing such terms as the court deems just, including, but not limited to, provisions enjoining the defendant from mailing any sexually oriented advertisement to any person or class of persons, directing any postmaster to refuse to accept such defendant's sexually oriented advertisements for mailing, and directing the detention of the defendant's incoming mail by any postmaster pending the conclusion of the judicial proceedings. Any action taken by a court under this subsection does not affect or determine any fact at issue in any other proceeding under this section.

(d) A civil action under this section may be brought in the judicial district in which the defendant resides, or has his principal place of business, or in any judicial district in which any sexually oriented advertisement mailed in violation of section 3010 has been delivered by mail according to the direction thereon.

(e) Nothing in this section or in section 3010 shall be construed as amending, preempting, limiting, modifying, or otherwise in any way affecting section 1461 or 1463 of title 18 or section 3006, 3007, or 3008 of this title.

*P.S.M. 123.5. Sexually Oriented Advertisements**

.51 General

.511 Section 3010 of title 39, United States Code, provides a means by which a member of the public can act to protect himself and his minor children from receiving unsolicited sexually oriented advertisements through the mails. This section permits any person who is served by the U.S. Postal Service to file with the Postal Service a statement that he does not desire to receive any sexually oriented advertisements through the mails. Any mailer who sends that person an unsolicited

* *Postal Service Manual*, 2-7-75, Issue 97.

sexually oriented advertisement more than 30 days after the date on which the Postal Service adds his name to its reference List of those who desire this protection, may be subject to both civil and criminal sanctions, as provided in 39 U.S.C. 3011 and in 18 U.S.C. 1735-37.

.512 39 U.S.C. 3010 (d) defines a "sexually oriented advertisement" as "any advertisement that depicts, in actual or simulated form, or explicitly describes, in a predominantly sexual context, human genitalia, any act of natural or unnatural sexual intercourse, any act of sadism or masochism, or any other erotic subject directly related to the foregoing." It further provides that "material otherwise within the definition of this subsection shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalog, book, periodical or other work the remainder of which is not primarily devoted to sexual matters."

.513 The responsibility for ensuring that no unsolicited sexually oriented advertisement is sent through the mails to any person in violation of section 3010 is placed by that section on the mailers of sexually oriented advertisements. No provision of Postal Service regulations may be used to place this responsibility upon the Postal Service. For example, the privilege of a sender to recall a piece of mail provided by section 153.5 may not be so used, although it may be used in good faith to request the recall of a specific piece of mail inadvertently deposited in the mails addressed to a person on the List.

.52 Application for Listing

.521 A person may invoke the protection of section 3010 by completing and filing, with any postmaster or other designated Postal Service representative, Part II of Application for Listing Pursuant to 39 U.S.C. 3010, Form 2201, which may be obtained at any post office. Form 2201 bears a preprinted identifying number in two places: On the instruction portion (part I) and on the application portion (part II). After filing the application portion the customer should retain the instruction portion and should use the identifying number in any subsequent communication with the Postal Service concerning his application.

.522 A person may file on his own behalf and on behalf of any of his children under the age of 19 years who reside with him or are under his care, custody or supervision. An authorized officer, agent, fiduciary, surviving spouse or other representative, may file in behalf of a corporation, firm, association, estate, or deceased or incompetent addressee.

.523 Each postmaster shall transmit all applications received at his post office to the Office of ADP Services, Management Information Systems Department, U.S. Postal Service, Box 677, Washington DC 20044 on a daily basis. The applications shall be packaged so that they will not be subject to folding, bending or other mutilation or damage.

.524 The Office of Mail Classification, Rates and Classification Department, as soon as practical after receipt of a Form 2201, shall place the customer's name and address, the names and addresses of his minor children if any are included on the application, on the Postal Service's List (hereafter, "List") of persons desiring not to receive sexually oriented advertising. This information will be processed during the month, and at the end of each month a revised or supplemental list will

be prepared. The List will be dated the 10th day of the month following the month in which the Forms 2201 were processed. The 30-day period provided by section 3010(b) starts on the effective date of the List on which the person's name first appears.

.525 A person's name and address will be retained on the List for a period of 5 years, unless a request for revocation is sooner filed by that person. A person must file a new application at the end of the 5-year period if he desires to continue his name on the List. The names and addresses of minor children will be automatically removed from the List when they attain 19th years of age. A minor must file an original application in his own behalf if he desires to continue his name on the List after reaching 19 years of age.

Customs

19 U.S.C. 1305 Immoral Articles; Prohibition of Importation

(a) All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further*, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officer to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Customs Court from the decision of such customs officer. Upon the seizure of such book or matter such customs officer shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the

adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

22 U.S.C. 611 (j) Definitions

As used in and for the purpose of this subchapter

(j) The term "political propaganda" includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence. As used in this subsection the term "disseminating" includes transmitting or causing to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce or offering or causing to be offered in the United States mails.

22 U.S.C. 614 Filing and Labeling of Political Propaganda

(a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this subchapter and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, file with the Attorney General two copies thereof and a statement, duly signed by or on behalf of such agent, setting forth full information as to the places, times, and extent of such transmittal.

(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this subchapter to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda for or in the interests of such foreign principal (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be or which he intends to be, disseminated or circulated among two or

more persons, unless such political propaganda is conspicuously marked at its beginning with, or prefaced or accompanied by, a true and accurate statement, in the language or languages used in such political propaganda, setting forth the relationship or connection between the person transmitting the political propaganda or causing it to be transmitted and such propaganda; that the person transmitting such political propaganda or causing it to be transmitted is registered under this subchapter with the Department of Justice, Washington, District of Columbia, as an agent of a foreign principal, together with the name and address of such agent of a foreign principal and of such foreign principal; that, as required by this subchapter, his registration statement is available for inspection at and copies of such political propaganda are being filed with the Department of Justice; and that registration of agents of foreign principals required by the subchapter does not indicate approval by the United States Government of the contents of their political propaganda. The Attorney General, having due regard for the national security and the public interest, may by regulation prescribe the language or languages and the manner and form in which such statement shall be made and require the inclusion of such other information contained in the registration statement identifying such agent of a foreign principal and such political propaganda and its sources as may be appropriate.

(c) The copies of political propaganda required by this subchapter to be filed with the Attorney General shall be available for public inspection under such regulations as he may prescribe.

(d) For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the Postmaster General are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined to be prohibited entry under the provisions of section 1305 of Title 19 and of all foreign prints excluded from the mails under authority of section 343 of Title 18.

Notwithstanding the provisions of section 1305 of Title 19 and of section 343 of Title 18, the Secretary of the Treasury is authorized to permit the entry and the Postmaster General is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

(e) It shall be unlawful for any person within the United States who is an agent of a foreign principal required to register under the provisions of this subchapter to transmit, convey, or otherwise furnish to any agency or official of the Government (including a Member or committee of either House of Congress) for or in the interests of such foreign principal any political propaganda or to request from any such agency or official for or in the interests of such foreign principal any information or advice with respect to any matter pertaining to the political or public interests, policies or relations of a foreign country or of a political party or pertaining to the foreign or domestic policies of the United States unless the propaganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this subchapter.

(f) Whenever any agent of a foreign principal required to register under this subchapter appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the

Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony. As amended July 4, 1966, Pub.L. 89-486, §4, 80 Stat. 246.

22 U.S.C. 618 (d) Nonmailable matter

(d) The Postmaster General may declare to be nonmailable any communication or expression falling within clause (2) of section 611(j) of this title in the form of prints or in any other form reasonably adapted to, or reasonably appearing to be intended for, dissemination or circulation among two or more persons, which is offered or caused to be offered for transmittal in the United States mails to any person or persons in any other American republic by any agent of a foreign principal, if the Postmaster General is informed in writing by the Secretary of State that the duly accredited diplomatic representative of such American republic has made written representation to the Department of State that the admission or circulation of such communication or expression in such American republic is prohibited by the laws thereof and has requested in writing that its transmittal thereto be stopped.

*19 C.F.R. 12.40 Immoral Articles: Seizure; Disposition of Seized Articles; Reports to U.S. Attorney**

(a) Any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, seized under section 305, Tariff Act of 1930, shall be transmitted to the United States attorney for his consideration and action.

(b) Upon the seizure of articles or matter prohibited entry by section 305, Tariff Act of 1930 (with the exception of the matter described in paragraph (a) of this section), a notice of the seizure of such articles or matter shall be sent to the consignee or addressee.

(c) When articles of the class covered by paragraph (b) of this section are of small value and no criminal intent is apparent, a blank assent to forfeiture, Customs Form 4607, shall be sent with the notice of seizure. Upon receipt of the assent to forfeiture duly executed, the articles shall be destroyed if not needed for official use and the case closed.

(d) In the case of a repeated offender or when the facts indicate that the importation was made deliberately with intent to evade the law, the facts and evidence shall be submitted to the United States attorney for consideration of prosecution of the offender as well as an action in rem under section 305 for condemnation of the articles.

(e) If the importer declines to execute an assent to forfeiture of the articles other than those mentioned in paragraph (a) of this section and fails to submit, within 30 days after being notified of his privilege so to do, a petition under section 618, Tariff

*Customs Federal Regulations.

Act of 1930, for the remission of the forfeiture and permission to export the seized merchandise, information concerning the seizure shall be submitted to the United States attorney in accordance with the provisions of the second paragraph of section 305 (a), Tariff Act of 1930, for the institution of condemnation proceedings.

(f) If seizure is made of books or other articles which do not contain obscene matter but contain information or advertisements relative to means of causing abortion, the procedure outlined in paragraphs (b), (c), (d), and (e) of this section shall be followed.

(g) In any case when a book is seized as being obscene and the importer declines to execute an assent to forfeiture on the ground that the book is a classic, or of recognized and established literary or scientific merit, a petition addressed to the Secretary of the Treasury with evidence to support the claim may be filed by the importer for release of the book. Mere unsupported statements or allegations will not be considered. If the ruling is favorable, release of such book shall be made only to the ultimate consignee.

(h) Whenever it clearly appears from information, instructions, advertisements enclosed with or appearing on any drug or medicine or its immediate or other container, or otherwise that such drug or medicine is intended for inducing abortion, such drug or medicine shall be detained or seized.

(Secs. 305, 624, 46 Stat. 688, as amended, 759; 19 U.S.C. 1305, 1624) [28 F.R. 14710, Dec. 31, 1963, as amended by T.D. 71-165, S6 F.R. 12209, June 29, 1971; T.D. 76-261, 41 FR 39022, Sept. 14, 1976]

19 C.F.R. 12.41 Prohibited Films

(a) Importers of films, shall certify on Customs Form 3291 that the imported films contain no obscene or immoral matter, nor any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, nor any threat to take the life or inflict bodily harm upon any person in the United States. When imported films are claimed to be free of duty as American goods returned, this certification may be made on Customs Form 3311 in the space designated "Remarks" in lieu of on Form 3291.

(b) Films exposed abroad by a foreign concern or individual shall be previewed by a qualified employee of the Customs Service before release. In case such films are imported as undeveloped negatives exposed abroad, the approximate number of feet shall be ascertained by weighing before they are allowed to be developed and printed and such film shall be previewed by a qualified employee of the Customs Service after having been developed and printed.

(c) Any objectionable film shall be detained pending instructions from Headquarters, U.S. Customs Service or a decision of the court as to its final disposition.

(Sec. 305, 46 Stat. 688, as amended: 19 U.S.C. 1305)

Selected Readings and References

The following list of periodicals, books, and pamphlets represents a mere sample of the vast literature concerning censorship. Emphasis here is on U.S. publications that are in print or easily available as this edition of *Banned Books* goes to press. Many additional, older sources will be found in the bibliography of the 1970 edition. Those titles that were especially helpful in preparing this revised edition are marked with an asterisk (*).

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