
The Library Bill of Rights—A Critique

GORDON B. BALDWIN

ABSTRACT

IN THIS ARTICLE, THE LIBRARY BILL OF RIGHTS will be viewed with both interest and skepticism. It will be argued that it promises more than it can deliver, and that in many respects it does not follow existing First Amendment doctrine. Law allows considerable freedom of choice and usually reaffirms the discretion of school and library administrators. The law, moreover, allows the imposition of large burdens upon the young; the Library Bill of Rights suggests otherwise.

A year ago, Wayne Wiegand of Wisconsin's Library School asked me to review the Library Bill of Rights as a lawyer. My first impression remains. Its vague, wooly, and ambiguous language promises more than anyone can deliver, and its commands do not equate with law. It also has gaps. For example, the Library Bill of Rights fails to note that the inculcation of values is a major purpose of an educational enterprise.

Within the Library Bill of Rights was found several themes creating tensions, if not contradictions, limiting its persuasive force. First, it reflects, in unspecific terms, an uncertain commitment rooted in our culture and history to intellectual freedom; second, it embodies the interests of librarians in resisting outside interference with their work; and third, it embodies only a few protections found in the First and Fourteenth Amendments to the U. S. Constitution.

The Library Bill of Rights cannot codify either First Amendment law or all interests of librarians for several reasons. First, law does not address all the policies forcibly and persistently advanced by the American

Gordon B. Baldwin, Law School, 975 Bascom Mall, University of Wisconsin, Madison, WI 53706

LIBRARY TRENDS, Vol. 45, No. 1, Summer 1996, pp. 7-27

© 1996 The Board of Trustees, University of Illinois

Library Association. Second, many free speech questions remain unclear because there is no general and agreed upon theory of the purpose of the First Amendment. Third, many issues—such as book selection decisions—evade court review and therefore never receive authoritative judicial review. Even if the Library Bill of Rights codified the law, it would generate criticism because no one unqualifiedly supports the First Amendment as the Supreme Court interprets it. Some say the United States unnecessarily protects more speech than any other nation or society; others stress the subjectivity and, hence, unpredictability of modern doctrine. No one claims we have a faultless interpretation of the First Amendment.

The Library Bill of Rights ignores the market forces that create the resources in collections. Decisions of publishers and authors rest on their values, interests, and judgment, which reflect differing degrees of subjectivity if not self-censorship. Librarians cannot obtain what producers decide not to write or not to publish. The Library Bill of Rights extolls the virtues of diversity but, for diversity of opinion, the public depends upon diverse and competing producers. Market forces limit variety. If a few large publishers and national bookstore chains dominate the market, the public cannot find the diversity of opinion that the Library Bill of Rights invites.

Law allows self-censorship. We cannot assume that everything valuable will find a publisher. Indeed we have evidence that educated audiences as well as publishers shun offensive material. Amy Hielsberg (1994), a University of Wisconsin-Madison School of Library and Information Studies student, recently revealed the sensitivities of her peers who objected to a reading of an allegedly sexist novel, *American Psycho* by Bret Easton Ellis (1991). The book provoked the anger of the Los Angeles Chapter of the National Organization of Women (among others) (Hielsberg, 1994, p. 768). Ellis had difficulty in finding a publisher for this work, described by a British writer as a work of sexual violence published under the guise of social commentary (Gardner, 1994). Hielsberg reports the anger of her classmates when she read portions of the novel describing the mutilation of women. She notes that, although the book occupied the best-seller list for weeks, OCLC records show that only 417 American libraries purchased it. In this incident, Hielsberg finds self-censorship and conflict with the Library Bill of Rights. She observes that the Library Bill of Rights does not guide the practices of many (if not most) book selectors, and that self-censorship exists after publication just as it does before.

Self-censorship dominates the decisions of textbook publishers. If textbook publishers want to sell hundreds of thousands of history books to California or Texas schools, they must satisfy state reviewers whose decisions can rest on the fashions of the moment. History and government texts in the public schools appear bland in their avoidance of controversy. A text written in 1940 may record an 1890 event much differently than a text written in 1990. "The great tides and currents which engulf

the rest of men,” Benjamin Cardozo said in 1921, “do not turn in their course and pass the [educators] by.” Lines between censorship and judgment appear blurred. Self-censorship remains; the law permits it and good manners reinforce it, even if the Library Bill of Rights does not.

Contracts, or their equivalent, control access. The Library Bill of Rights does not forbid libraries from limiting access to patrons based on employment, residence, or membership in the group for whom the library exists,¹ nor does the Library Bill of Rights touch on contractual limitations that donors commonly attach. When Joseph Rauh, a prominent civil rights lawyer, donated his personal papers to the Library of Congress, he required a reader to obtain his consent if they wished to publish (Kaplan, 1988). Former Secretary of State Henry Kissinger deeded his notes to the Library of Congress, but he insisted on retaining power to control access (*Kissinger v. Reporter’s Committee for Freedom of the Press*, 1980). In contrast, Justice Thurgood Marshall’s files held by the Library of Congress are available to “serious scholars,” and the library broadly confers that status. The Library Bill of Rights does not purport to confer rights on library users but, even if it did, courts commonly decline to find a legal interest violated merely because a library declines to follow its own policies (*Boothe v. Hammock*, 1979; *Frison v. Franklin County Board of Education*, 1979; *Cofone v. Manson*, 1979).

The law—but not the Library Bill of Rights—draws a distinction between government and private action. The First Amendment only limits government. Private groups and individuals can, and regularly do, forbid speech. Thus a church can expel a member because of his or her speech and opinions; private schools may punish their students and their employees because of their speech; other private associations remain free from constitutional restraints. Therefore, the Auxiliary Bishop of St. Paul committed no constitutional violation when he ordered birth control advocate Margaret Sanger’s picture removed from the University of St. Thomas library in 1993. The modest book removal limitations applicable to public schools do not apply to private schools, colleges, and libraries. Distinctions between private and state action rest more on history, tradition, and on policy preferences than on logic.

The recent Hurley decision illustrates a command to honor private choice. The St. Patricks-Evacuation Day parade, a regular and treasured event in Boston, looks very public because as many as 20,000 marchers and a million viewers celebrate the city’s Irish heritage and the British retreat in 1776. A state court ruled that its organizers, the South Boston Allied Veterans Council, could not bar a gay/lesbian group from participating because Massachusetts law forbids even private discrimination based on sexual orientation. However, the Supreme Court unanimously reversed that decision in 1995, saying that the First Amendment forbade government from forcing the veterans to give a place to the gay/lesbian

marchers (*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 1995). "The state court's application of the statute had the effect of declaring the sponsor's speech itself to be the public accommodation." The Court ruled that "this use of the State's power violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message" (*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 1995). State law cannot force the Veterans Council to carry a message it disapproved of because "parades are...a form of expression, not just motion" (*Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 1995). Thus, the Supreme Court ratified the right of a group to make private choices.

Law limits what government can demand. Law cannot require newspapers to publish a reply to a critical article (*Miami Herald v. Tornillo*, 1974), and a corporation cannot be forced to distribute critical advertisements (*Pacific Gas & Electric Co. v. Public Utilities Commission*, 1986). On the other hand, courts appear more willing to tolerate government commands upon the electronic media, including cable TV.

Private premises enjoy immunity from constitutional control but remain subject to reasonable public regulation (*PruneYard Shopping Center v. Robbins*, 1980). However, if the private group organizes itself to become a "place of public accommodation," it becomes subject to regulations banning discriminatory behavior. Identifying such a place presents difficulties, and large uncertain grey areas exist. The Supreme Court has ruled that Rotary Clubs (*Board of Directors of Rotary Club International v. Rotary Club of Duarte*, 1987), the Jaycees (*Roberts v. United States Jaycees*, 1984), and other large clubs (*New York State Club Assoc., Inc. v. The City of New York*, 1988) having open membership policies qualify as places of public accommodation and cannot engage in gender discrimination, but the South Boston Allied Veterans Council, the court rules, differs. It appears, therefore, that a library in a religious school might limit access to believers.

Where a public library offers rooms for meetings, it usually follows that the library supplies a "limited place of public accommodation" and its power to restrict access becomes qualified by the command to avoid invidious discrimination. Must libraries open their facilities to "all" as the Library Bill of Rights promises? What if the request for a meeting room comes from a group such as NAMBLA (the North American Man-Boy Love Association)? A library might resist offering a meeting place to a group advocating, if not practicing, violation of law, but paragraph six of the Library Bill of Rights suggests otherwise.

Lambs Chapel v. Center Moriches Union Free School Dist. (1993) and *Widmar v. Vincent* (1981) underscore the open access rule. These decisions hold that if access to facilities are given to groups generally, access cannot be denied simply because users engage in religious activities. All religious activities? What if a religious group in which animal sacrifices play a significant role seeks to use the library meeting rooms? The Constitution would probably not forbid a library rule prohibiting animal sacri-

fices on its premises (*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 1993), but it is very doubtful that library rules could constitutionally forbid a Mass or a communion service in their meeting rooms if it permitted other groups to worship.

Law allows libraries room to regulate access. In 1992, the U. S. Court of Appeals in Philadelphia ruled that the public library of Morristown, New Jersey, could exclude a homeless man who loitered in the facility and whose “odor was often so offensive that it prevented the library patrons from using certain areas of the Library” (*Kreimer v. Bureau of Police for Town of Morristown*, 1992). The Court of Appeals reversed a radical decision by a district judge who had held that the library rules were too vague and allowed the library staff too much discretion. The decision reversing the lower court embodies several critical points.

The Court found that library rules implied “a right to receive information” based on the First Amendment. Then the Court added another, and more problematic, observation saying that the First Amendment “additionally encompasses the positive right of public access to information and ideas” (*Kreimer v. Bureau of Police for Town of Morristown*, 1992). The Court gave careful attention to the rules and rationale resulting in the library’s exclusion of Kreimer, a homeless man and not a serious book lover, who used the library merely as a shelter. The District Court found this use permissible, but the Court of Appeals wisely disagreed and ruled that access to the library might be limited to fulfill the purposes for which the library exists—namely, for communicating written words. Libraries are not like parks or sidewalks, where speech enjoys the greatest protection. As a designated (not open) public forum, a library need not be open to the public at large but may be opened only for those who abide by the library’s reasonable rules.

A public library may decide to restrict users to residents and even require a fee as a prerequisite. Courts uphold reasonable fees as a condition to file for bankruptcy, or to appeal a civil judgment, or to seek election to public office, but libraries do not qualify as an essential public service to which indigents have a right without cost.

In examining the library’s rules, the Court applied a reasonableness test and concluded that, because the rules fostered a quiet and orderly atmosphere conducive to every patron’s exercise of the right to receive and read written communication, they passed. The Kreimer decision vindicates the exercise of wise discretion by library administrators. That discretion, however, must rest on principles of equality. The Court of Appeals for the First Circuit, upholding the right of a library to exclude an unruly patron, says (*Wayfield v. Town of Tisbury*, 1994):

[While a] State or its instrumentality may, of course, regulate the use of its libraries or other public facilities ... it must do so in a reasonable and nondiscriminatory manner, equally applicable to all and administered with equality to all....And it may not invoke regulations as to use—whether they are ad hoc or general—as a pretext for

pursuing those engaged in lawful, constitutionally protected exercise of their fundamental rights. (citing *Brown v. Louisiana*, 1966)

A June 1995 decision of the U. S. Supreme Court confirms the equality dimension of First Amendment law in holding that, if a public university funds student groups, the university may not deny access to those funds simply because the group has a religious purpose (*Rosenberger v. Rector and Visitors of the University of Virginia*, 1995). If a student activity fund helps organizations that promote study of Islam or Judaism, school authorities may not refuse grants to a Christian group. Rosenberger emphasizes equality in saying that the school cannot deny assistance by claiming that assistance would violate the First Amendment's prohibition against establishing a religion.

This 5-4 Establishment Clause decision calls for a review of state university policies on funding student extracurricular activities (*Rosenberger v. Rector and Visitors of the University of Virginia*, 1995). The decision also invites analysis of a hypothetical situation. Assume a campus group buys books that it intends to give to the campus library "to counteract the theological liberalism, and the anti-religious bias that permeates this campus." Assume also that the college makes small bloc grants to campus organizations to enable each to operate. Can the college refuse to give money to an organization with a religious purpose? The Rosenberger decision says it may not. Perhaps the college can decline to allow its funds for all book buying. That policy passes because a book ban applies to all.

A public library book selection policy that broadly rejects inclusion of "theological texts, treatises, or tracts" (*Rosenberger v. Rector and Visitors of the University of Virginia*, 1995) faces a Constitutional challenge under the reasoning of *Rosenberger*. However, the book selectors ought to be able to select books of interest to patrons. If so, the policy, as applied, would be consistent with a policy to stock books of interest to patrons and, although vulnerable under a strict reading of *Rosenberger*, would not violate the Library Bill of Rights. Since *Rosenberger* involves spending public money, it stands as a unique example of the Constitution requiring government funding of religious activities. The Supreme Court recognized *and rejected* a distinction between government funding and government giving access to facilities. The decision may signal a major and needed shift in Establishment Clause doctrine (Choper, 1995).

Commonplace and necessary removal of books from libraries makes the American Library Association nervous, reports the *Orlando Sentinel Tribune* on July 21, 1991. The paper recounts the removal of library books based on racial, ethnic, and sex biases. Should librarians remove books because they portray only women as nurses or because they use the male pronoun in referring to police and fire fighters? If libraries consistently follow the policy of avoiding gender stereotypes, then libraries should

not shelve a Bible calling God “he.” However, Courts will not forbid the sifting and winnowing of collections based on taste and judgment, because judges must not substitute their own subjective views for those of others. Books obviously become dated, and that ground alone justifies removal without violating any principle in the Library Bill of Rights. However, when libraries remove books because of “lacking educational value,” the rationale may only mask more insidious purposes. Occasionally, but rarely, book removal decisions receive judicial review. *Delcarpio versus St. Tammany Parish School Board* (1994), for example, presents librarians with a victory, although only in a lower federal court in Louisiana. Whether the Supreme Court of the United States would approve appears less certain.

In *Delcarpio*, the District Court ruled that a school board decision to remove books containing detailed descriptions of voodoo spells violated the First Amendment and also the Constitution of Louisiana. By relying on the Louisiana Constitution, the Court guarded against Supreme Court review (because *Michigan v. Long*, 1983 lets decisions resting on state grounds to stand unless the decision violates constitutional standards). The story behind the decision is quite simple. The board removed a book from its libraries by Jim Haskins (1978) entitled *Voodoo & Hoodoo*. The book traces the development of tribal religion in Africa and describes its transfer to African-American communities in America, including Louisiana. About 97 of its 218 pages are devoted to graphic (and, to the board, rebarbative) descriptions of common voodoo “spells” or practices which the author included to preserve the folklore and knowledge. A petition containing 1,600 signatures claimed the practices grossly offensive, which they doubtless were to most eyes. A school committee declined to remove the book because it served an educational purpose and supplied information on a topic included in the eighth grade curriculum. However, after extensive discussion, the school board decided to remove the book by a 12 to 2 vote because they feared a reader might follow the recipes. Several parents, on behalf of their children, challenged that removal in federal court, and they prevailed.

The District Court rejected the school board’s defense that their decision rested on a discretionary curricular judgment. The record belied that claim, the Court found, because opposition to the book rested on its contents and on a belief that the ideas in the book conflicted with the board’s religious beliefs. The board’s motivation and its purpose to promote their personal religious views flunked the constitutional test of neutrality. Depositions taken from school board members and from the minutes of their meeting clearly showed the religious motivations behind the removal. Disapproval of the book alone might not have mattered. It did matter that notions of Christianity drove their decision. Thus the District Court viewed the board action as fatal not merely because of animosity

toward ideas, but because the board evinced a fatal favoritism for particular political, social, and moral ideas. However, most school boards could dress their policies in tolerable neutral language to allow the removal.

The Court noted several important features in the removal decision. First, the school board removed the whole book. The board did not simply restrict circulation to "the younger students whose safety the Board purported to be concerned with" (*Delcarpio v. St. Tammany Parish School Board*, 1994). Nor did the school relegate the book to a reserve shelf where children could read it with parental consent. The driving force underlying the decision rested on finding an official effort to promote a particular idea by excluding the competition. Second, flaws marked the board's decision making. Six members of the board had read only excerpts supplied by protestors and not the entire book, thus the board acted ignorantly. Third, the actions appeared greater than any risk of danger warranted. No evidence showed that any student sought to replicate the voodoo spells.

Perhaps lawyers for the school board erred in arguing on appeal that the book should be considered "pervasively vulgar." The Court found little basis for that conclusion because nothing in the record suggested that vulgarity formed the basis for the board decision, and the offensive portions hardly pervaded the entire volume.

Lawyers served the successful *Delcarpio* plaintiffs well. They had prepared a record clearly proving that the motivation for the removal decision rested on an impermissible wish to deny access to particular ideas because of the beliefs of the board members. What if they had only focused on the claim of vulgarity? Other removal decisions may not prove so easy to contest because, as the Supreme Court stated in the leading case of *Cohen versus California* (1971), "the Constitution leaves matters of taste and style...largely to the individual."

Delcarpio differs from another relevant, but important, decision rendered fifteen years earlier. In 1980, the 7th Circuit Court upheld administrative book selection policies in dismissing a complaint that a school removed books expressing feminist viewpoints from its teaching program (*Zykan v. Warsaw Community School Corp.*, 1980). The case involved the selection of teaching materials, not merely a review of library collection policy. The 7th Circuit Court panel found insufficient an allegation that the removal rested on the school board's social, political, and moral tastes. If the plaintiff argued that the board was "guided by an interest in imposing some religious or scientific orthodoxy" or sought to "eliminate a particular kind of inquiry" the result would be different (*Zykan v. Warsaw Community School Corp.*, 1980). No legal violation occurred because feminist ideas were otherwise available. As of this writing, the decision stands as the law in Wisconsin, Illinois, and Indiana. It illustrates the significant drawbacks of a motivation test resting on an elusive, if not unreal, distinc-

tion allowing removal based on social, political, and moral grounds, but forbidding removal “imposing some religious or scientific orthodoxy” (*Zykan v. Warsaw Community School Corp.*, 1980).

Law and common sense requires schools to inculcate values. Some years ago, Chief Justice William Rehnquist observed that “of necessity, elementary and secondary educators must separate the relevant from the irrelevant, the appropriate from the inappropriate” (*Board of Education v. Pico*, 1982). A school must inculcate social values, but to do so requires selection if not coercion.

Law condemns “censorship” but also reinforces the authority of educators and other public servants to inculcate societal values. This point receives no emphasis in the Library Bill of Rights. In *Mozert v. Hawkins City Board of Education* (1987), the Court upheld the right of a public school to require pupils to read texts that a parent found offensive to her religion. Noting that the required reading did not insist that students declare any belief, the Court cited *Bethel School District v. Fraser* (1986) and observed that public schools “serve the purpose of teaching fundamental values ‘essential to a democratic society.’ These values ‘include tolerance of divergent political and religious views’” (*Bethel School District v. Fraser*, 1986).

In a similar vein, Walter Dickey, while head of the Wisconsin Division of Corrections, in 1984 cites the importance of prison libraries in inculcating values: “[B]ooks have been very important in the development of values that allow one to live at peace with oneself, as well as with others” he says. “It follows that books can help offenders in ways that they help most people—by helping them form values to live by” (Dickey, 1994, p. 30).² Surely all library users, not just prisoners, can benefit from that policy.

Does a library violate its duties if it excludes books and materials that deny the value of tolerance of divergent views (Marcuse, 1965)? Exclusion may be foolish because such books confirm the existence of bigotry, and the public requires education. However, book selections require balancing interests. For example, should a public library decline to shelve *The Turner Diaries* (MacDonald, 1980)? The book (apparently a favorite of Timothy McVeigh, currently accused of responsibility for the Oklahoma City bombing) is rabidly racist, anti-Semitic, and advocates a race war. The book supplies a formula for explosives and may have helped encourage the persons who bombed the federal building in Oklahoma City. Jane Larson, a professor in Northwestern’s Law School, argues that, if the bomber made plans based on the book, the author should be civilly liable for the harm caused by the book (Landis & Larson, 1995). It sold more than 185,000 copies, and its author made quite a bit of money. Since its publication in 1980, it remains the Bible of the extreme right militia movement. Contents of *The Turner Diaries* do not inculcate democratic pluralist values; grounds for keeping it out of the reach of the

impressionable are easy to perceive. How does one interpret the fact that the copy in the University of Wisconsin-Madison's library appears much used?

The Library Bill of Rights does not articulate support for a collections policy designed to promote tolerance, representative government, and patriotic values. Publishers have a right to publish material contesting tolerance, rejecting patriotism, offering substitutes for family values, or whatever, but it does not follow that the public can require libraries to supply that material. Can a library collections policy exclude books that offend those values? Can a public library properly decide not to receive a gift of books that denigrate people not holding "Christian beliefs?" (*Seattle Times*, 1993). First Amendment law does require us to decide whether all ideas have equal merit, but the Library Bill of Rights suggests neutrality. It does not guide us in distinguishing censorship from the promotion of values. Neither, for that matter, does the law help us.

The *Pico* decision (*Board of Education v. Pico*, 1982), the only Supreme Court decision evaluating library content, remains enigmatic because it produced no majority opinion—only seven separate views, three from Justices in the majority, four from dissenters. After receiving complaints about objectionable books, a Long Island school board appointed a committee to review books for their educational suitability, good taste, relevance, and appropriateness. Of the nine books complained about, the committee recommended the removal of two—*The Naked Ape* (Morris, 1967) and *Down Those Mean Streets* (Thomas, 1967). Committee members could not agree on *Soul on Ice* (Cleaver, 1967) and *A Hero Ain't Nothin' But a Sandwich* (Childress, 1973). They said that readers of *Slaughterhouse Five* (Vonnegut, 1969) and *Black Boy* (Wright, 1945) required parental approval.

The school board rejected the advice of the Committee and removed all the books, finding them "anti-American, anti-Christian, anti-Semitic, and just plain filthy" (*Board of Education v. Pico*, 1982). Several students sued, claiming a violation of First Amendment freedoms. A District Court upheld the removal without holding any trial or hearings, but the Court of Appeals reversed. In 1982, the Supreme Court disapproved the removals but failed to agree on why and remanded for a trial. No trial occurred—the parties evidently exhausted. However, the opinion remains a centerpiece for discussion of the First Amendment in a library context.

Five Justices (Brennan, Marshall, Stevens, Blackmun, and White) ordered a trial. Four of them said that a trial must decide whether the removals were for valid politically neutral reasons, or whether the removal rested on the board's disagreement with the books' contents. Justice White does not say what a trial must establish. Brennan's opinion for the plurality of four contains contradictions. He admits that a school board has discretion to set the content of a public school library, but he also says that content decisions must not rest on narrow partisan or politi-

cal grounds. “If petitioners *intended* by their removal decision to deny...access to ideas with which petitioners disagreed,” he notes, “and if this intent was the decisive factor in petitioners’ decision, then petitioners have exercised their discretion in violation of the Constitution” (*Board of Education v. Pico*, 1982). Brennan says the First Amendment forbids orthodoxy, but he also says that schools have a duty to “inculcate fundamental values” (*Board of Education v. Pico*, 1982). Surely “fundamental values” make up an orthodoxy, and in this respect Justice Brennan’s words lack coherence. Justice Brennan also said he might approve the removal decision if the school showed it “was based solely upon the educational suitability of the books...”. Book removals for legitimate educational purposes do not violate the First Amendment.

The problem, of course, lies in identifying a “legitimate educational purpose.” Justice Blackmun takes a more aggressive stance by inviting judicial balancing. Courts, he said, should examine all school decisions—not simply library decisions—to determine whether a school acts in a politically neutral manner. Blackmun does not identify how to achieve a neutral balance, nor does he offer a practical solution. In his *Pico* dissent, Chief Justice Warren Burger accurately observes that “virtually all educational decisions” involve some political determination (*Board of Education v. Pico*, 1982).

The American Library Association emphasizes “freedom to read” but to read what? If the publication lacks legal protection—e.g., obscenity—it is hard to justify freedom to read it. Freedom to read does not imply a duty of government to supply the reading material. Just as freedom of speech does not generate a correlative duty of government to supply the speaker with a printing press, so also freedom to read does not imply a government duty to supply any specific reading material. However, in *Pico*, Justice Brennan notes for himself and Justices Marshall and Stevens that the “right to receive ideas follows ineluctably from the sender’s First Amendment right to send them” (*Board of Education v. Pico*, 1982). But the nature of the right claimed depends very much on the context. “The special characteristics of the school *library*,” he says, “make the environment especially appropriate for the recognition of the First Amendment rights of students” (*Board of Education v. Pico*, 1982). However, he only deals with removal policies, not with the more interesting question of what bookshelves should contain. It seems implausible that Justice Brennan meant that librarians must honor any student demand to shelve any book.

The “right to receive” has dubious roots in constitutional law. Courts uphold restrictions on advertising and sustain laws limiting sexually explicit speech and, within limits, retain the law of defamation. Some things people have no right to receive even if a speaker has a right to communicate. Moreover, libraries cannot, practically speaking, include all

information. With limited resources, they must choose. Furthermore, school libraries have a teaching role—and teaching requires selectivity. Decisions that limited the coercive power of government, such as those protecting students who refuse to salute the flag, for example, do not support a general “right” to information, only a right not to be subjected to force that offends political or religious belief.

Some claim a “right to read” finds support in *Griswold v. Connecticut* (1965), but that case focuses on the privacy rights of those seeking contraceptives not simply on the First Amendment. The Court has struck down rules prohibiting the distribution of handbills from door to door, saying that “the First Amendment [protects] freedom [to] distribute literature.” But then the Court unnecessarily added that the First Amendment “protects the right to receive [information]” (*Martin v. City of Struthers*, 1943). However, the right to read, or the right to distribute literature, does not embody a duty of the government to buy books or to help in the distribution of literature. Dean Yudof (1984) correctly observes that “the ‘right to know’... is no more than artistic camouflage to protect the interests of the willing speaker who seeks to communicate with a willing listener.” Recent decisions reveal that protection for the speaker is tempered by allowing government to protect listeners (*Florida Bar v. Went for It, Inc.*, 1995).

Two of the four dissenting Justices in *Pico*, all of whom wrote forcefully, remain on the Court and might today be joined by Justices Scalia, Thomas, and Kennedy in rulings favorable to school administrators. Chief Justice Burger, joined by Justices Powell, Rehnquist, and O’Connor, agreed that a school board enjoys discretion to select the books in a library. Chief Justice Burger and Justice Powell expressed dismay over the corrosion of school board authority. Justice Powell, a former school board member, noted that, in the *Pico* case, the school board took its responsibilities seriously and tried to decide what values to impart—a task, after all, they were elected to do. If the majority in *Pico* means that any junior high school student can get a judge to reverse a book removal decision, Justice Powell rightly objects. Powell appended a summary of excerpts from the books showing some reason to believe the volumes contain substantial racist and/or vulgar words, and therefore, in his view, justified a decision to remove.

In his strong dissent in *Pico*, Justice Rehnquist stressed the school’s interest in determining what the educational program should be, an interest that encompassed deciding what books to place in a library. School board actions are part of many choices that are necessary in the ordinary course of their duties. He viewed a school library simply as a supplement to a public institution engaged in “the selective conveyance of ideas.” Thus, he said, public libraries enjoyed more discretion to exclude because the challenged books were generally available. Justice O’Connor

took a more measured view of the removal decisions which, on the merits, she thought wrong. However, she believed the board's decisions were entitled to great deference.

The *Pico* case presents several problems. How does one measure a decision-maker's purpose? If a school board decides only that "the books lack significant educational value," does a Court have the authority to challenge that decision as erroneous? If a school board overrules the school faculty, does the Court have authority to prefer the faculty decision to that of the elected school board? In several recent cases, the Court has sustained seemingly absurd school decisions because the actors held administrative authority. Justice Brennan's plurality opinion in *Pico* does not deny administrative decision making. Where evidence of a political motivation appears debatable, one can expect courts to favor the administrators unless they find a constitutional violation. In 1968, the Court protected a teacher's freedom in a classroom, preferring the right to teach evolutionary biology over a legislative ban on such teaching (*Epperson v. Arkansas*, 1968). Twenty years later, however, the Court approved the censorship imposed by a school on a student newspaper which school officials found invaded the privacy of other students (*Hazelwood School Dist. v. Kuhlmeier*, 1988), and a lower court allowed removal of a text containing Chaucer's *Miller's Tale* (*Virgil v. School Bd. of Columbia Co.*, 1988). In short, *Pico* does not mean much.

Limited resources force choice. Does law limit that discretion? At the extremes, the boundaries appear clear. A social science library may not properly collect mathematics or physics books and vice versa. Selectivity requires judgment, but the Library Bill of Rights supplies no practical guidance. Justice Stevens observed the necessity for choice in *Widmar v. Vincent* (1981):

In performing their learning and teaching missions, the managers of a university routinely make countless decisions based on the consent of communicative materials. They select books for inclusion in the library, they hire professors on the basis of their academic philosophies, they select courses for inclusion in the curriculum, and they reward scholars for what they have written...if two groups of 25 students requested the use of a room at a particular time—one to view Mickey Mouse cartoons and the other to rehearse an amateur performance of Hamlet—the First Amendment would not require that the room be reserved for the group that submitted its application first.

Of course, if a public library purporting to offer its patrons a general selection of popular writing decided not to include books written by Republicans, by minority authors, by Catholics, etc., such a policy would offend the First Amendment because it would be based on the racial, political, or religious views of the government decision maker (see *Widmar v. Vincent*, 1981). These actions are particularized viewpoint discriminations

and hence fatal to the policy. Happily, one is unlikely to encounter such clearly unlawful policies.

The Library Bill of Rights overgeneralizes. To consider "all people" as target patrons constitutes a large, if not impossible, audience to satisfy. If a community shows no interest in authors of a particular background and viewpoint, a library wastes its resources in purchasing materials no one reads. A homogeneous community might be easy to satisfy. A larger heterogeneous group offers more varieties of users than a library can practically serve. The community may contain the mentally ill, criminals, and perverts, but no one seriously suggests that libraries must accommodate the special interests of such people. To say that "materials should not be excluded because of the origin, background or views of those contributing to their creation" promises a lot but delivers very little. A book selector might simply say that the materials "lack educational value," or "patrons would have little interest in this," or "we think better (or cheaper) materials are available." It is not hard to dress a decision in nonpolitical terms to mask politics and moral sensibilities. Prison libraries may exclude books on lock picking or materials suggesting how to make explosives. Why not allow a forthright policy barring books with unsocial objectives from such collections? The breadth of the Library Bill of Rights invites masking decisions.

Can a library properly exclude material that appears to be the product of alcoholism, mental illness, perversion, or crime? That policy might exclude the works of the Marquis de Sade, Dylan Thomas, Samuel Coleridge, François Villon, or Richard Nixon. But it might also happily exclude works lacking taste, vitality, or redeeming value. Framing a policy in neutral terms presents a drafting problem, but a policy to exclude books on the grounds of obscenity or vulgarity passes (*Thomas v. Board of Education*, 1979; *Frison v. Franklin County Board of Education*, 1979; *Brubaker v. Board of Education*, 1974). Moreover, a school library serving young children may exclude sexually explicit materials, even if the materials passed the constitutional test of "obscenity" (*Bicknell v. Vergennes Union High School Board*, 1980).

The Library Bill of Rights promises too much by requiring material reflecting "all points of view." Library patrons may lack interest in "all points of view" even if resources for all viewpoints were available. If a library subscribes to *Playboy*, must it also take *Penthouse* or *Hustler*? A law library might decide only to stock *Penthouse* because Harvard's Professor Alan Dershowitz writes a regular column for it, but I expect that decision, at least here in Wisconsin, might inspire objection.

Distinguishing "partisan" and "doctrinal" disapproval (bad) from decisions based on taste, relevance, and general policy (good) can rest on subjective factors. The matter of gay-lesbian-bisexual interests triggers public pressures particularly from groups that believe homosexual

conduct immoral. Can a school library lawfully decide not to select *Heather has Two Mommies* (Newman, 1989) or *Daddy's Roommate* (Willhoite, 1990)?

Given the vast amount of literature seeking a place in a children's library, a decision to prefer more conventional classics may be understandable. In Blacksburg, Virginia, the library board kept *Daddy's Roommate* on the shelf by a divided vote (*Roanoke Times & World News*, 1994). Would a decision not to purchase the book in the first place inspire objection or trigger a violation of the Library Bill of Rights? Purchasing decisions do not invite legal review. The case for including either or both volumes in a children's collection rests on the fact that some parents present a child with a situation that may be hard to explain. Inclusion may rest on the belief that a work of fiction may more accurately explain a situation that a child finds unusual. However, if a book selection policy declined to shelve books explaining gay/lesbian relationships, courts probably would not interfere.

Paragraph three of the Library Bill of Rights invites conflict without regard to seriousness or wisdom. Does it mean that libraries should challenge every critic? Paragraph four urges cooperation with "all." Might that not also invite broad and inadvisable alliances? To the extent the Library Bill of Rights invites unnecessary confrontation, it appears too spacious if not foolish. Evidently, the library board in Loudoun County, Virginia, thought very much the same when, in February 1995, it decided to substitute portions of the Library Bill of Rights for a less sweeping policy favoring free expression. The controversy began with a concern for the policies for selecting library books and raises the question whether the Library Bill of Rights promises more than any library board can deliver. By a 4 to 3 margin, the Library Board of Trustees in this far suburban Washington, DC, community voted to delete some of the anticensorship language in the Library Bill of Rights including the following portions: "Materials should not be proscribed removed because of partisan or doctrinal disapproval"; "Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment"; "Libraries should cooperate with all persons and groups concerned with resisting abridgement of free expression and free access to ideas."

Expressing further uneasiness after several citizens cited fears of censorship, the board replaced the deleted anticensorship language with the statement "censorship of ideas should be rejected and opposed," then titled the resulting document—which consists of a set of "propositions"—"Freedom for Ideas—Freedom from Censorship." One Board member explained her vote to replace by saying that she could not honor the Library Bill of Rights because it might require her to work with "groups like the Ku Klux Klan, and I just cannot do that" (*The Washington Post*, 1995).

In 1969, the Supreme Court ruled that words inciting violence enjoyed First Amendment protection unless they threatened likely and

imminent harm. Taken seriously, the Brandenburg doctrine (which the Supreme Court has repeatedly confirmed) protects a wide variety of words including those soliciting the commission of murder (*Brandenburg v. Ohio*, 1969). Thus, in *Eimann v. Soldier of Fortune Magazine* (1989), the court reversed a \$9.4 million judgment against the magazine after a jury found that an advertisement seeking "high risk assignments" led to a contract killing. The court found insufficient evidence of the magazine's negligence in not foreseeing the homicide. The court cited, but did not explicitly rely upon, First Amendment doctrine.

However, in *Braun v. Soldier of Fortune Magazine* (1992), the court sustained liability of the magazine and explicitly rejected a First Amendment defense. In this case the advertisement said: "Gun for Hire: 37 year-old professional mercenary desires jobs....Discreet and very private....All jobs considered." A reader hired the advertiser who then performed a contract killing. The victim's sons succeeded in getting a jury verdict of \$12.37 million against the magazine. In upholding the verdict on appeal, the Court of Appeals ruled that "the First Amendment permits a state to impose upon a publisher liability for compensatory damages for negligently publishing a commercial advertisement where the ad on its face, and without the need for investigation, makes it apparent that there is a substantial danger of harm to the public" (*Braun v. Soldier of Fortune Magazine*, 1993).

Although the decision may have subsequently led the advertising manager to act more judiciously, *Soldier of Fortune* continues to engage in warrior worship. Should libraries subscribe? It contains material of interest to mostly male readers, but should librarians keep it off open shelves? One can only speculate why, as of this writing, at least three Wisconsin libraries keep back issues in locked cases.

Does one condemn a library for deciding not to purchase the expensive (\$49.95) but salacious book *Sex* by Madonna (1992)? The book comes close to pornography—it certainly depicts amorous and athletic action. Many describe it as "trash," yet librarians report heavy demand, long waiting lists and, in some communities, fierce complaints about its presence (see Kniffel, 1992). The public library in Des Moines, Iowa, classified it as "reference/fine arts" thus confirming the observation that "one man's vulgarity is another's lyric" (*Cohen v. California*, 1971). Other libraries faced a more vocal and critical audience. An Arizona library ordered the book, but the town mayor, who evidently held the power of decision, asked that the order be cancelled. Shortly thereafter the library received three gift copies. Should it accept the gifts? The Library Bill of Rights supplies no guidance.

A decision not to shelve Madonna's *Sex*, regardless of the existence of objection, seems defensible. The book is costly, and although it reveals the female body (a display that is hardly novel), one would be hard

pressed to say that it contributes to society's store of knowledge. Yet the waiting list of borrowers attests to its entertainment value. Is it worth the cost? Public libraries depend on public support, and resisting pressure incurs a cost which may vary from place to place and from book to book. Madison, Wisconsin, may tolerate, or even applaud, Madonna, but Amy Hielsberg (1994) accurately observes that many in this renowned "liberal" community may not so easily accept *American Psycho* (Ellis, 1991).

Charges of engaging in "political correctness" can easily be leveled against some library decisions. To remove *The Story of Little Black Sambo* (Bannerman, 1899) but not a book depicting police as pigs, reveals "political correctness" in virulent form. Should public libraries adopt a policy against shelving books that are "factually incorrect?" For example, some argue that the Holocaust never occurred, that some people have invented a belief that Nazi Germany exterminated millions of Jews, the mentally unfit, and others (Gypsies, homosexuals, etc.). That is an easily refuted point of view. However, a publication denying the reality of the Holocaust exists—*The Journal of Historical Review*. Should a library with scarce resources subscribe?

The "factual correctness" standard generates problems. Who decides correctness? Some years ago, a Catholic librarian, who excluded a Protestant text on the basis of factual correctness, inspired the American Library Association to delete the truth standard from the Library Bill of Rights. However, that standard has value in other contexts. Because *The Encyclopedia of Mushrooms* (Dickinson & Lucas, 1979) contains erroneous information on edibility, several people who followed its advice became sick as a result and, although they all recovered, all needed liver transplants (see *Winter v. G. P. Putnam's Sons*, 1991). Should a library purchase this book knowing it contains incorrect information that can lead to the death of a library patron? If there was only one error in the book, a correction might be added, but who knows?

It is absurd to require a library faced with scarce or inadequate resources to satisfy mushroom hunters or Holocaust deniers. Of course, if the dispute becomes a matter of significant local debate, a library's decision to include erroneous materials in contrast with more accurate works may be more understandable, but that decision should rest on sound discretion, not in the Library Bill of Rights.

Paragraph five of the Library Bill of Rights forbids discrimination because of youth, Constitutional law does not. The interests of educators require special treatment and sometimes burdens on the young. Is it realistic to deny librarians the right to assist parents who wish (wisely or foolishly) to limit the access of their children to certain library materials? ALA standards clearly say that parents, and only parents, have this authority to deny. Librarians should not stand as parental substitutes, the association says. A Maryland public library proposes issuing restrictive

library cards preventing juvenile borrowers from checking out certain books without parental authority. Courts may uphold such a restrictive card. Is the Library Bill of Rights realistic in refusing to support parents who wish assistance in limiting access (see *Washington Post*, 1994)? Government policies regularly reinforce the authority of parents, yet the Library Bill of Rights advocates say that children should not be considered "second class citizens." The fact remains, however, that they are second class citizens, and courts regularly uphold restrictions on the young that do not apply to the mature.

Recent decisions consistently and predominantly prefer the interests of teachers and administrators over the claims of students. In *Vernonia School District v. Acton* (1995), the Court upheld the reasonableness of requiring high school athletes to undergo drug tests. The majority noted that "traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination....They are subject, even as to their physical freedom, to the control of their parents or guardians." In 1985, the Supreme Court telegraphed this view in *New Jersey v. T.L.O.*

Freedom claims of students collide with those of school teachers and administrators because those charged with the task of educating hold authority to "inculcate the habits and manners of civility" (*Bethel School District v. Fraser*, 1986). In the *Fraser* decision, the Court upheld disciplinary action against a high school student who delivered an off-color graduating ceremony speech to classmates. School officials can regulate student speech and may censor school-sponsored publications where that censorship reasonably relates to legitimate educational concerns (*Hazelwood School Dist. v. Kuhlmeier*, 1988). Within the realm of reason, the Court not only upholds corporal punishment (*Ingraham v. Wright*, 1977), it also requires few procedural rights to precede discipline (*Goss v. Lopez*, 1975). Earlier decisions upholding the rights of students over those of administrators appear less compelling and clearly distinguishable. *Tinker v. Des Moines Independent Community School Dist.* (1969) narrowly upheld the right of pupils to wear black armbands as a sign of protest, but the majority noted that the symbol did not threaten good order and discipline.

The Library Bill of Rights does not displace the lawful administrative authority of a public body charged with making library policy. Thus it offers no protection to a library employee who defies the authority of a lawful decision maker. When that authority involves spending public money, courts show great reluctance to displace administrative judgments. An Illinois public library director in 1994 ordered a library window exhibit removed over the objection of subordinates. The display contained a collage of clippings, photos, and literature on adoption rights and covered the controversial "Baby Richard" case which took a child from a couple holding adoptive custody and preferred the biological parents.

Although the subordinate who created the display objected, the director acted legally because her decision, like that of an editor, rests on her administrative authority. Courts normally do not displace the rights of an authorized superior. An employee of a government agency must follow lawful orders (*Bicknell v. Vergennes Union High School Board*, 1980). For example, in 1979, Utah county discharged a library director for refusal to remove a book but, in due course and after considerable expense, she was vindicated (see Krug & Harvey, 1992; *Layton v. Swapp*, 1979). In this setting, it appeared that the library director held legal authority and acted within that authority.

CONCLUSION

Mark Twain observes: "It is by the goodness of God that in our country we have those three unspeakable precious things: freedom of speech, freedom of conscience, and the prudence never to practice either of them" (Bartlett, 1992, p. 527). His meaning is clear—it is impossible to maintain a civil society where all people fully exercise their rights uninhibited by self-restraint. Without forbearance, self discipline, and good manners, no community can flourish.

NOTES

¹ Rule 2.1 of the Supreme Court of the United States provides that the Court's library "will be open to the appropriate personnel of this Court, members of the Bar of this Court, Members of Congress, members of their legal staffs, and attorneys for the United States, its departments and agencies."

² In *Hazelwood School Dist. v. Kuhlmeier*, 1988, Justice White's majority opinion emphasized the responsibility of schools to inculcate values which allowed a school to censor a newspaper produced in a journalism class.

REFERENCES

- American Library Association, Office for Intellectual Freedom. (1992). Diversity in collection development: History. In Office for Intellectual Freedom of the ALA (Eds.), *Intellectual freedom manual* (pp. 51-57). Chicago, IL: American Library Association.
- Bannerman, H. (1899). *The story of little black Sambo* (2d ed). London, England: Grant Richards.
- Bartlett, J. (1992). *Familiar quotations: A collection of passages, phrases, and proverbs traced to their conclusion in ancient and modern literature* (16th ed.). Boston, MA: Little, Brown and Co.
- Bethel School District v. Fraser, 478 U.S. 675 (1986).
- Bicknell v. Vergennes Union High School Board, 683 F. 2d 438 (2nd Cir. 1980).
- Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987).
- Board of Education v. Pico, 457 U.S. 853, 914 (1982).
- Boothe v. Hammock, 605 F. 2d 661, 664 (2d Cir. 1979).
- Brandenburg v. Ohio, 395 U.S. 444 (1969).
- Braun v. *Soldier of Fortune Magazine*, 968 F. 2d 1110 (11th Cir. 1992).
- Braun v. *Soldier of Fortune Magazine*, 113 S. Ct. 1029 (1993).
- Brown v. Louisiana, 383 U.S. 131, 142-143 (1966).
- Brubaker v. Board of Education, 502 F. 2d 973 (7th Cir. 1974).
- Brubaker v. Board of Education, 421 U.S. 965 (1975).
- Cardozo, B. N. (1921). *The nature of the judicial process*. New Haven, CT: Yale University Press.
- Childress, A. (1973). *A hero ain't nothin' but a sandwich*. New York: Coward, McCann & Geoghegan.

- Choper, J. H. (1995). *Securing religious liberty: Principles for judicial integration of the religious clauses*. Chicago, IL: University of Chicago Press.
- Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 113 S. Ct. 2217 (1993).
- Cleaver, E. (1967). *Soul on ice*. New York: McGraw-Hill.
- Cofone v. Manson, 594 F. 2d 934, 938-939 (2d Cir. 1979).
- Cohen v. California, 403 U.S. 15, 25 (1971).
- Delcarpio v. St. Tammany Parish School Board, 865 F. Supp. 350 (D. Ct. E.D. La. 1994).
- Dickey, W. (1994). The importance of libraries in corrections. *Wisconsin Library Bulletin*, (Spring), 30.
- Dickinson, C., & Lucas, J. (Ed.). (1979). *The encyclopedia of mushrooms*. New York: G. P. Putnam.
- Eimann v. *Soldier of Fortune Magazine*, 880 F. 2d 830 (5th Cir. 1989).
- Ellis, B. E. (1991). *American psycho*. New York: Vintage.
- Epperson v. Arkansas, 393 U.S. 97 (1968).
- Florida Bar v. Went for It, Inc., 115 S. Ct. 2371 (1995).
- Frison v. Franklin County Board of Education, 596 F. 2d 1192 (4th Cir. 1979)
- Gardner, J. (1994). Freedom of association. In C. McCrudden & G. Chambers (Eds.), *Individual rights and the law in Britain*. Oxford, England: Clarendon Press.
- Goss v. Lopez, 419 U.S. 565 (1975).
- Griswold v. Connecticut, 381 U.S. 479, 482 (1965).
- Haskins, J. (1978). *Hoodoo and voodoo*. New York: Stein & Day.
- Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988).
- Hielsberg, A. (1994). Self-censorship starts early. *American Libraries*, 25(8), 768-770.
- Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, 115 S. Ct. 2338 (1995). *Journal of Historical Review*. Torrance, CA: Institute for Historical Review.
- Ingraham v. Wright, 430 U.S. 651 (1977).
- Kaplan, D. A. (1988). A matter of truth or confidences: Does attorney-client privilege outweigh demands of history? *National Law Journal*, 10(43), 36.
- Kissinger v. Reporter's Committee for Freedom of the Press, 445 U.S. 136, 141 (1980).
- Kniffel, L. (1992). Justify my purchase: To buy Madonna's *Sex* or not. *American Libraries*, 23(11), 902-904.
- Kreimer v. Bureau of Police for Town of Morristown, 958 F. 2d 1242 (3d Cir. 1992).
- Krug, J. F., & Harvey, J. A. (1992). ALA and intellectual freedom: A historical overview. In Office for Intellectual Freedom of the ALA, *Intellectual freedom manual* (4th ed.) (pp. xxiii-xxvii). Chicago, IL: American Library Association.
- Lambs Chapel v. Center Moriches Union Free School District, 113 S. Ct. 2141 (1993).
- Landis, M. L., & Larson, J. E. (1995). The killing words. *Legal Times*, 18(14).
- Layton v. Swapp, 484 F. Supp. 958 (N.D. Utah 1979).
- Lebron v. National Railroad Passenger Corp., 115 S. Ct. 961 (1995).
- MacDonald, A. (1980). *The Turner diaries*, 2d ed. Washington, DC: National Alliance.
- Madonna. (1992). *Sex*. New York: Warner Books.
- Marcuse, H. (1965). Repressive tolerance. In R. P. Wolff, B. Moore, & H. Marcuse (Eds.), *A critique of pure tolerance*. Boston, MA: Beacon Press.
- Martin v. City of Struthers, 319 U.S. 141 (1943).
- Miami Herald* v. Tornillo, 418 U.S. 241 (1974).
- Minneapolis Star Tribune*. (1993), October 8.
- Michigan v. Long, 463 U.S. 1032 (1983).
- Morris, D. (1967). *The naked ape: A zoologist's study of the human animal*. New York: McGraw-Hill.
- Mozert v. Hawkins City Board of Education, 827 F. 2d 1058 (6th Cir. 1987).
- Newman, L. (1989). *Heather has two mommies*. Boston, MA: Alyson Publications.
- New Jersey v. T.L.O., 469 U.S. 325 (1985).
- New York State Club Association, Inc. v. The City of New York, 487 U.S. 1 (1988).
- Pacific Gas & Electric Co. v. Public Utilities Comm., 475 U.S. 1 (1986).
- PruneYard Shopping Center v. Robins, 447 U.S. 74, 87 (1980).
- Roanoke Times and World News*. (1994), 9 November.
- Roberts v. United States Jaycees, 468 U.S. 609 (1984).
- Rosenberger v. Rector and Visitors of the University of Virginia, 115 S. Ct. 2510 (1995).
- Seattle Times*. (1993). October 21.

- Soldier of Fortune*. Boulder, CO: Omega Group, Ltd.
- Thomas, P. (1967). *Down those mean streets*. New York: Knopf.
- Thomas v. Board of Education, 607 F. 2d 1043, 1053 (2d Cir. 1979).
- Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).
- Turner Broadcasting System v. FCC, 114 S. Ct. 2445 (1994).
- Vernonia School Dist. v. Acton, 115 S. Ct. 2386 (June 26, 1995).
- Virgil v. School Board of Columbia Co., 677 F. Supp. 1547 (M.D. Fla 1988).
- Vonnegut, K. (1969). *Slaughterhouse-five*. New York: Dell.
- The Washington Post*. (1994). June 9.
- The Washington Post*. (1995). June 4.
- Wayfield v. Town of Tisbury, 1993 U.S. App. LEXIS 30997, 10 F. 3d 805 (June 27, 1994).
- Widmar v. Vincent, 454 U.S. 263 (1981).
- Willhoite, M. (1990). *Daddy's roommate*. Boston, MA: Alyson Publications.
- Winter v. G. P. Putnam's Sons, 938 F. 2d 1033 (9th Cir. 1991).
- Wright, R. (1945). *Black boy: A record of childhood and youth*. New York: Harper & Row.
- Yudof, D. (1984). Library book selection and the public schools: The quest for the Archimedean point. *Indiana Law Journal*, 59(4), 527-564.
- Zykan v. Warsaw Community School Corp., 631 F. 2d 1300 (7th Cir. 1980).
- Zykan v. Warsaw Community School Corp., 958 F. 2d @1255.
- Zykan v. Warsaw Community School Corp., 865 F. 2d @361.