

news

CENSORSHIP

THE NATIONAL COALITION AGAINST CENSORSHIP NEWSLETTER

WINTER 2008
NUMBER 109

NCAC BOARD

Joan E. Bertin
Judy Blume
Victor Bolden
Susan Clare
Chris Finan
Eric M. Freedman
Stephanie Elizondo Griest
Phil Harvey
Marjorie Heins
Damien Joyner
George Kannar
Gail Markels
Robert M. O'Neil
Larry Siems
Emily Whitfield
Patricia Wright

COUNCIL OF ADVISORS

Amy Adler
Helene Atwan
Julian Bond
Rev. John Harris Burt
Adrian W. DeWind
Norman Dorsen
Gail Edwin
Frances FitzGerald
Rev. Carl E. Flemister
Danny Goldberg
Victor Gotbaum
David Henry Huang
Rhoda H. Karpatkin
Tony Kushner
Sylvia A. Law
S Jay Levy
Pamela A. Mann
Jay Mazur
Joyce D. Miller
Victor Navasky
Aryeh Neier
Betty Ruder
Pat Scales
Stanley K. Sheinbaum
Nadine Strossen
Cleo Wilson
Susan N. Wilson

The Times They Are A-Changin'?

*First Amendment rights have taken a beating in the last eight years. With new faces in Washington, this trend may be reversed. **Here are some of the issues to watch.***

Freedom of information. In October 2001, then-Attorney General John Ashcroft issued new rules to federal agencies to discourage public disclosure of even non-classified information. The result has been an unprecedented level of government secrecy. With a stroke of the pen, the new Attorney General could restore a presumption in favor of openness and transparency in government.

Abstinence-only education. These ineffectual programs use federal dollars and suppress information on contraception, same sex relationships, HIV/AIDs, and abortion, sacrificing health and education in favor of indoctrination.

Surely Congress can find better uses for scarce resources.

National security. After 9/11, freedom of the press, the right of dissent, freedom of association, privacy rights, and scholarly discourse all lost ground to concerns for national security. Restoring these rights ought to have top priority if the new government values a better informed public, vigorous discussion and debate, and greater accountability of public officials.

Stem cell research. Religiously-based limits on federal funding for stem cell research impede research on potential treatments for serious diseases. A reversal of this policy would signal federal support for setting a research agenda based on widely-accepted scientific and ethical standards.

Global warming. The Bush administration suppressed and distorted research on global warming, most famously through its attempt to silence the nation's top climate scientist James Hansen. Repudiation of that policy would open the way for uncensored research and discussion on the issue,

both nationally and internationally.

Global gag rule. The "global gag rule," created by executive order, prohibits federally-funded international health and family planning organizations from telling women about the availability of abortion even in countries where it is legal. Equally troubling, under current law women in this country are denied access to information about abortion in federally-funded family planning clinics, even if those clinics don't provide abortions. These gag rules censor valuable speech.



This list is far from exhaustive. Consider other problem areas: government regulation of broadcast media, limits on arts funding, restraints on union activities, laws against obscenity and child pornography that penalize speech, and intimidation of government whistleblowers and reporters. There is plenty of work to be done if the incoming administration and Congress intend to restore First Amendment values to a place of honor in national policy.

NCAC PARTICIPATING ORGANIZATIONS

Actors' Equity Association
American Association of School Administrators
American Association of University Professors
American Association of University Women
American Booksellers Foundation for Free Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
American Federation of Television & Radio Artists
American Jewish Committee
American Jewish Congress
American Library Association
American Literary Translators Association
American Orthopsychiatric Association
American Society of Journalists & Authors
Americans United for Separation of Church & State
Association of American Publishers
Authors League of America
Catholics for Choice
Children's Literature Association
College Art Association
Directors Guild of America
The Dramatists Guild of America
First Amendment Lawyers Association
International Reading Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of the Churches of Christ
National Council of Jewish Women
National Council of Teachers of English
National Education Association
The Newspaper Guild/CWA
The Creative Coalition
Office of Communication, United Church of Christ
PEN American Center
People For the American Way
Planned Parenthood Federation of America
Screen Actors Guild
Sexuality Information & Education Council of the U.S.
Society of Children's Book Writers & Illustrators
Speech Communication Association
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
United Methodist Communications, United Methodist Church
Women's American ORT
Writers Guild of America, East
Writers Guild of America, West

NATIONAL COALITION AGAINST CENSORSHIP

Joan E. Bertin, *Executive Director*
Sarah Falcon, *Communications Coordinator*
Katherine Fowley, *Program Associate*
Lawrence Horne, *Development Director*
Svetlana Mintcheva, *Arts Advocacy*
Brian Pickett, *Youth Programs Coordinator*
Isabelle Katz Pinzler, *Special Counsel*
Barbara Pyles, *Office Manager*
Katherine Rabb, *Director, The Knowledge Project*
Mary Reinke, *Accounting*
Cynthia Villani, *Librarian*
Rebecca Zeidel, *Kids' Right to Read Coordinator*

Censorship News

Design: Jeanne Criscola/Criscola Design

275 Seventh Avenue, #1504, New York, NY 10001
tel: (212) 807-6222, fax: (212) 807-6245
e-mail: ncac@ncac.org, website: www.ncac.org

The First Amendment in the Supreme Court

The Supreme Court has a full docket of First Amendment cases. Some of them are confusing even to the Justices.

In ***Ysura v. Pocotatello Education Association*** the union challenges Idaho's prohibition on payroll deduction for voluntary political activity. The lower court held that the law is an unconstitutional "content-based" rule because it targets political speech and refused to apply the deferential standard used in "public forum" cases. In oral argument, Justice Breyer stated that he "never understood" the concept of "content-based" speech restrictions, and Chief Justice Roberts, also in "a confessional mode," announced that he had "never understood forum analysis." Amidst the confusion there is an important question: if the state creates a mechanism to facilitate employees' voluntary contributions for various activities, can it exclude political activities?

In ***Pleasant Grove City v. Sumnum*** a small religious sect argues that it has a free speech right to erect a monument declaring its precepts in a public park because the park already has a monument containing the Ten Commandments. Like the Idaho case, this case raises questions as to what constitutes a "public forum" and whether religious speech restrictions are "content-based."

FCC v. Fox Television Stations involves a challenge to the FCC's 2004 "fleeting expletive" rule which imposed huge fines for unscripted, spontaneous, and isolated profanity on broadcast television. There has not been a direct free speech challenge to the FCC's "decency standard" since it was upheld in 1978. (See CN #103 and #105 for

more on this case.) Waiting in the wings is another challenge to the "decency" rule, this one involving Janet Jackson's famous "wardrobe malfunction."

In ***Wyeth v. Levine*** the free speech issues are buried in the legal technicalities of federal pre-emption law. Diana Levine went into the hospital with a migraine and ended up losing her arm because a risky method was used to inject a drug made by

Wyeth. Wyeth was aware of the risk but didn't disclose it on the warning label. Because the FDA had approved the label, Wyeth claims Levine's state law case should be barred (pre-empted). Such lawsuits often provide a critical source of information about drug-related risks. In an *amicus* brief, NCAC argues that pre-emption does not apply, because Wyeth had a First Amendment right

to issue truthful warnings about drug risks beyond those required by the FDA. Thus Wyeth could comply with both FDA labeling requirements and state personal injury law.

The Court recently agreed to hear ***Citizens United v. FEC*** which concerns preelection restrictions on broadcast advertisements addressing political issues. The case involves ads for "*Hillary: The Movie*." The question: are these ads "electioneering communications" subject to regulation under campaign finance laws, or are the ads political speech that is fully protected from government regulation?

The dominance of technical legal questions in the cases before the Court reflects the complexity of the law in this area and the finely drawn distinctions on which free speech cases often rise or fall. We'll do our best to elucidate in future issues.



Free Speech: Can We Afford It?

The economy has tanked. Chaos in financial institutions has been averted for the moment only through the infusion of federal funds. Hardship is spreading, leaving people without homes and jobs, shrinking the middle class and creating panic in educational and cultural institutions.

Economic security, as the philosopher Irwin Edman observed at the end of the Great Depression, is a "political condition of personal freedom." The corollary is that economic hard times have severe political consequences: they undermine personal freedoms and especially civil liberties.

For the past seven years, we've heard claims that in an age of terrorism, security concerns trump civil liberties.

As a result, the public has come to tolerate previously unacceptable levels of government surveillance, loss of privacy, and incursions on the rights of criminal defendants and immigrants. Civil liberties were characterized as a luxury we might have to sacrifice so as to ensure our security.

With the worsening economy, we now face the threat that the institutions that support critical cultural discourse and uphold civil liberties will be seen as a luxury we might need to sacrifice so as to ensure economic survival.

Allowing institutions of civil society like universities, community organizations, advocacy and cultural groups to weaken at a time of massive economic crisis jeopardizes democracy itself. As the

crisis deepens and more people lose their financial security, we may well experience increased social unrest. The danger is that this will in turn trigger increased state authoritarianism. We need a strong civil society to resist such a tendency. As history confirms, a deep economic crisis is a turning point, which can easily lead to a loss of civil liberties, the most notorious modern example being Germany after the devastation of World War I.

At times of crisis, – both economic and political – it is critical to maintain the institutions and safeguards that protect our freedoms. To do otherwise could be fatal to our spirit and our democracy.

– Joan E. Bertin

THE LONG AND THE SHORT OF IT

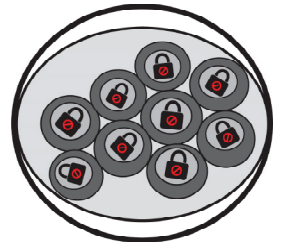
- A local group in St. Louis County, Citizens Against Pornography, joined with some community members in objecting to a dozen titles on the shelves in the teen section of the St. Louis County Library. The list includes *Alice on Her Way* by acclaimed author Phyllis Reynolds Naylor and *The Little Black Book for Girlz: A Book on Healthy Sexuality* by St. Stephen's Community House. The library board is reviewing the books.
- Citing Building Department regulations, New York City officials ordered Cooper Union, a private art college, to remove from its facade a banner of Picasso's portrait of Josef Stalin. The banner was part of an exhibition by the artist Lene Berg. Complaints had come from members of the local Ukrainian community who thought the banner "seemed to promote" Stalin.

- An Iowa comic book collector is facing obscenity charges because he received manga (a Japanese style of comics) which he ordered from Japan. This is a rare case of a criminal prosecution for possession of allegedly obscene material solely for personal use.
- A sculpture of the Kokopelli, a Native American fertility god and healer, was moved from the front of Edge of the Cedars State Park Museum in Blanding, Utah after a local group calling itself the "Values Committee" threatened a protest because the sculpture has a penis.
- Four posters from a national series of exhibitions called *Art of Democracy* were banned from display at the city-run Addison Street Windows Gallery in Berkeley because they contained images of guns. *Art of Democracy* has toured fifty other locations without a problem.

NEW & NOTEWORTHY

Censoring Science: A Stem Cell Story

A new article from NCAC's Knowledge Project analyzes the First Amendment implications of federal and state policies controlling human embryonic stem cell (hESC) research. The article describes the constitutional principles at stake when religiously-motivated policies interfere with scientific speech and inquiry. Read it at: ncac.org/science/Censoring_Science.pdf.



Go Green! Starting now, you can reduce your paper mail and get CN emailed to you as a pdf. Send an email to CNGreen@ncac.org or check the box on your reply envelope to start getting CN in your inbox.



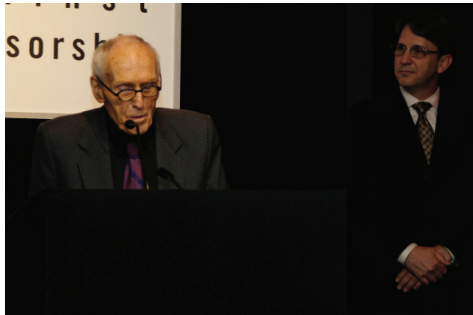
news

CENSORSHIP

5th Annual Celebration Honors Free Speech Luminaries and Young Filmmakers



Victoria Wilson and Ruth Gruber



Barney Rosset and Michael Pietsch



Jane Friedman, Caroline Hirsch, and Judy Gold



Chip Gibson and Judy Blume

On October 21, 2008, NCAC held its *Annual Celebration of Free Speech and Its Defenders* at the Rubin Museum of Art in New York City. The evening raised necessary funds for NCAC's ongoing work. The event was chaired by Victoria Wilson, vice president and senior editor at Alfred A. Knopf, Inc. The honorees were:

Dr. Ruth Gruber, journalist, photographer, and author

Anthony Lewis, Pulitzer Prize-winning author

Caroline Hirsch, founder of Carolines on Broadway

Barney Rosset, publishing pioneer of Grove Press

Dan Rather, veteran broadcast journalist

We were especially thrilled that Emmy Award-winning comedian **Judy Gold** was on hand to introduce Caroline and make us laugh.

NCAC also honored the winners of this year's youth film contest:

First place: **Connie Saltzman** and

Peter Block

Second place: **Shelbi Kepler**

Third place: **Mercy Emelike, Cameron Robinson, and Corey Steinhouse**



Shelbi Kepler, Corey Steinhouse, Mercy Emelike, Cameron Robinson, Connie Saltzman, and Peter Block

Excerpts from Dan Rather's comments on the state of the First Amendment:

We gather at a time of great danger for the First Amendment. . . . The guarantee of a free press represented the Framers' implicit understanding that journalists had an essential role to play in our democracy—that without the raw material of information, We the People would not be able to govern ourselves wisely or well.

So it is not for the press but for the people that we fight for access to the corridors of power . . . that we pressure our elected representatives and our candidates for office to answer the questions that the people might ask, if they had the opportunity . . . [and] that we defend (and call for our publishers and news owners to defend) our right to print and broadcast the truth—straight, no chaser. . . .



Dan Rather

As Mark Twain once said, "We write frankly and freely but then we 'modify' before we print." Why do we modify the free and frank expression of journalistic truth? We do it out of fear: Fear for our jobs. Fear that we'll catch hell for it. Fear that someone will seek to hang a sign around our neck that says, in essence, "Unpatriotic." . . .

When we bury the truth, we do not bury consequences. We only stand in the way of the American people. We keep this government of, by, and for the people from working as it should. And when we are complicit in burying the truth, we need to know well that we are also complicit in burying ourselves. . . .

To read the full text of Dan Rather's remarks, see more photos and hear Ruth Gruber, Anthony Lewis, and Barney Rosset on the Leonard Lopate show, please visit: ncac.org/2008_celebration.