



Freedom to Read Foundation News

50 EAST HURON STREET, CHICAGO, ILLINOIS 60611 PHONE (312) 944-6780

Florence McMullin, President

Judith F. Krug, Executive Director

Volume 9

Fall 1979

No. 1

In the U.S. Supreme Court Foundation Supports Reversal of Conspiracy Conviction of Anti-war Activist

If there are still any citizens interested in protecting human liberty, let them study the conspiracy laws of the United States.—Clarence Darrow

The conspiracy conviction of Franke Giese should be reversed, the Freedom to Read Foundation told the U.S. Supreme Court in October, because the trial court admitted into evidence claims that Giese owned, read, and discussed books whose possession and examination are fully protected by the First Amendment. The Foundation's friend-of-the-court brief was filed in cooperation with P.E.N. American Center and the American Booksellers Association.

Giese, a teacher of French at Portland State University and a bookseller, met his alleged co-conspirators in the bombing of Army and Navy recruitment centers in 1973 through the Radical Education Project Bookstore, which he founded in 1971. When his conviction was upheld in a controversial ruling by the U.S. Court of Appeals for the Ninth Circuit, Judge Shirley Hufstедler filed a dissent which formulated the basic issue of the case:

Dr. Giese's conviction for conspiracy must be reversed because it was obtained by patently inadmissible evidence of the contents of the book *From the Movement toward Revolution* [by Bruce Franklin], which the prosecutor forced Giese to read to the jury after defense counsel's objection to the admission of the book had been overruled. The prosecutor used the contents of the book to convince the jury that the ideas expressed in the book were Giese's own and that he acted on those ideas to form a conspiracy to blow up recruiting centers. Giese was thus convicted of conspiracy by book association in egregious violation of the guarantees of the First Amendment.

Prepared by Attorneys Thomas Emerson, Leonard Boudin, Jerry Simon Chasen, and Maxwell Lillienstein, the brief for P.E.N., the ABA, and the Foundation stated:

Use of evidence of reading habits and preferences, as was done in this case, is plainly a violation of the First Amendment. Any other rule of law would have a devastating impact upon the system of freedom of expression. It would mean that citizens would have to weigh with care

(Continued on p. 7)

Fired Utah Librarian Files Federal Suit with FTRF Help

Dismissed after twenty years of service to the Davis County (Utah) Library, the last nine years as library director, Librarian Jeanne Layton filed suit in U.S. District Court in October to regain her job. The legal step was taken four weeks after the Davis County Library Board voted three to two to fire her.

The suit, prepared by Attorney Albert Colton and supported by Freedom to Read Foundation funds, asks for monetary damages and Layton's immediate reinstatement.

Named as individual defendants in the action are the three trustees who voted for Layton's removal: Morris Swapp, Sharon Shumway, and Robert Arbuckle. They are accused of having violated Layton's constitutional rights and the rights of citizens of Davis County to read controversial literature protected by the First Amendment.

Swapp, also a Davis County commissioner, apparently decided that Layton should be removed from her position after she refused to comply with his requests that Don DeLillo's *Americana* be removed from Davis County libraries, despite the fact that each time a complaint was filed against the book Layton scrupulously followed board policies.

At the September meeting during which the vote was taken to dismiss her, Layton responded to each of the charges against her, including "excessive cost" in the processing of books (the library's procedure—not utilizing state cataloging services—was authorized by the board), a limitation on bookmobile services (a policy not to allow bookmobiles within one mile of library buildings was established by the board), and waste of tax dollars on books whose value to the community is not "optimum" (*Library Journal* rated *Americana* as "highly recommended," and each time a complaint against it was received all professionals in the county library system reviewed it and concluded that it was selected in accordance with board-approved guidelines).

The charges were first presented to Layton in a letter signed by Swapp, Arbuckle, and Shumway. Dated July 23, 1979, the letter was apparently written before the

(Continued on p. 3)

Alabama Librarian Fired Again

The trustees of the Fairhope (Alabama) Public Library voted in September to dismiss Librarian Claire Oaks at the end of that month, the earliest possible date they could have removed her under the out-of-court agreement signed by Fairhope officials in May after Oaks challenged her April dismissal in federal court (see *FTRF News*, Spring-Summer 1979, p. 11).

When Fairhope Mayor James Nix insisted last spring upon firing Oaks and shuffled appointments to the library board to accomplish that end, Oaks charged that the underlying reason for her dismissal was her refusal to bow to Nix's interference with the operation of the library, including his demands that *The Joy of Sex* and *More Joy of Sex* be removed from circulation.

Oaks signed the out-of-court settlement protecting her job until only the end of September at the urging of her attorney, who apparently saw little chance for success in pursuing the case in the U.S. District Court. After her second dismissal, Oaks told the Freedom to Read Foundation that she could not find an attorney in Alabama willing to take her case.

Because of the probable duration of any court action to win a legal victory—possibly four to five years—Oaks plans to look into employment elsewhere while seeking legal representation with the Foundation's help.

The School Docket

Clearly, the students' freedom to read has emerged as a legal issue. The following is a list of cases in which the Freedom to Read Foundation is currently providing financial or legal support:

- *Pico v. Board of Education*, now before the U.S. Court of Appeals for the Second Circuit, challenging the Island Trees school board's removal of books from district libraries.

- *Bicknell v. Vergennes Union High School Board of Directors*, also before the U.S. Second Circuit, seeking to reverse censorship of the Vergennes (Vermont) High School library and restrictions placed on use of the collection.

- *Lamb v. Independent School District 719* in Minnesota, placing before the U.S. District Court the issue of the removal of *Ms.* magazine from the high school library.

- *Pratt v. Independent School District 831* in Minnesota, asking the U.S. District Court to nullify a school board decision barring use of the film *The Lottery* in district schools.

- *Zykan v. Warsaw Community School Corp.* in Indiana, in a federal case fighting what *Saturday Review* (July 21, 1979) described as "book burning in the heartland" (the school board censored library books, canceled entire portions of the curriculum dealing with "ob-

jectionable" literature, and gave textbooks to a community group for burning).

No Clear Victory

Justice Department Fades, 'Progressive' Publishes Bomb Story

With the publication in September of Charles Hansen's long letter on the construction of hydrogen bombs, the U.S. Department of Justice backed away from the prior restraint imposed for six months on Howard Morland's *Progressive* article, "The H-Bomb Secret—How We Got It, Why We're Telling It."

According to the Justice Department, the Hansen letter—first published in the *Madison Press Connection* and later in the *Chicago Tribune*—"correctly identified the three critical concepts" that the Department of Energy wanted to bar from public discussion.

By its action the government virtually conceded the central thesis of Morland's article: that a diligent search of the public record will disclose the supposed H-bomb secret, and that the Department of Energy insists on secrecy largely to cover up the government's own ineptitude in supervising H-bomb data.

But the *Progressive* saga did not end with the publication of Morland's article. In fact, by not pressing its case the government may have decided that it would reserve its "arguments" for a better case in the future.

Because the publication of Hansen's letter occurred before the U.S. Court of Appeals for the Seventh Circuit had an opportunity to pass judgment on the lower court's action in imposing the prior restraint or weigh the government's case for secrecy, a future event may see these arguments used again:

- That technical data, or at least data pertaining to the manufacture and deployment of bombs, have no speech values and thus lie beyond the protection of the First Amendment. In this "argument" the government explicitly compares technical data with "obscenity."

- That some information is so dangerous that it is "born classified," irrespective of its source, even if, for example, that source is a scientific journal widely available in every other country in the world.

In its friend-of-the-court brief in the case, filed in cooperation with the Reporters Committee for Freedom of the Press and the *Chicago Tribune*, the Foundation charged that the prior restraint order of the U.S. District Court rested on "uncritical acceptance" of the government's assertions concerning national security.

Freedom to Read Foundation News is edited by the staff of the Office for Intellectual Freedom, American Library Association. It is issued quarterly to all members of the Foundation.

Regular membership in the Freedom to Read Foundation begins at \$10.00 per year. Contributions to the Foundation should be sent to: Freedom to Read Foundation, 50 E. Huron St., Chicago, Ill. 60611. All contributions are tax-deductible.

Fired Librarian (from p. 1)

county commissioners voted—at Swapp's request—to remove the position of library director from the county civil service system, thus clearing the way for the September dismissal action.

In order to exhaust administrative remedies before taking the case to the federal courts, Layton appealed in September to the county civil service council, which



Salt Lake City Tribune

Jeanne Layton

ruled in October that her position was illegally classified as exempt.

Layton has been supported by the Utah Library Association, which passed a resolution censuring the library board for violations of intellectual freedom, by dozens of letters to the editors of local papers, by the *Salt Lake City Tribune*, which accused the board of engaging in politics worthy of a banana republic despot, and by a new group of friends of the library.

Layton's backers point to the expanded library services she has brought to Davis County citizens. They note that she worked productively under the library board until the spring of 1979, when Arbuckle and Shumway were appointed to the board. Arbuckle, a friend of Swapp, admits that he has no knowledge of the library and that he agreed to serve on the board simply to please Swapp. Shumway is a leader of the local censorship group, Citizens for True Freedom.

(Continued on p. 8)

School Library Purges Appealed to Second Circuit Court

Two U.S. District Court decisions upholding school board censorship of public school libraries will be reviewed next year by the U.S. Court of Appeals for the Second Circuit. According to one attorney in the cases, the appellate judges may hear oral argument in *Pico v. Board of Education* and *Bicknell v. Vergennes* as early as January.

The *Pico* decision was handed down in August by U.S. District Court Judge George Pratt, who ruled that nothing in the U.S. Constitution prevents school board members from censoring library materials whose contents they deem "objectionable" by any standard they wish to employ.

In an *amicus* brief on the *Pico* decision prepared for the Second Circuit, the Freedom to Read Foundation challenges Judge Pratt's contention that a school board may legally impose on students the values and views of the community majority by "winnowing" from the library any works which present opposing points of view. Indeed, the Foundation notes, it would appear that under Judge Pratt's interpretation of New York State education law, school boards have an *obligation* to impose majority views on students.

The student plaintiffs in *Pico* will be represented before the Second Circuit bench by the New York Civil Liberties Union.

In the *Bicknell* case, U.S. District Court Judge Albert Coffrin held—also in August—that the U.S. Constitution affords no remedy for school library censorship, even when that censorship is obviously "misguided" in its educational philosophy.

Key excerpts from Judge Coffrin's opinion appear below.

Federal Judge Upholds School Library Censorship

Ruling on a complaint filed against the Vergennes, Vermont school board by Vergennes Union High students and Librarian Elizabeth Phillips, Federal Judge Coffrin held on August 24 that the First Amendment does not protect school libraries from censorship.

The action, prepared for the plaintiffs by the Vermont Civil Liberties Union, was supported by funds from the Freedom to Read Foundation.

Judge Coffrin stated:

The parties in this action . . . have placed before the court a controversy involving one of our most fundamental and most carefully guarded political rights—the right to freedom of speech. The court is asked to determine whether the administrators of a public school district may remove books from the shelves of a high

(Continued on next page)

school library, or restrict student access to books, on the basis of their personal opinions that the book is "vulgar," "obscene" or otherwise inappropriate for student readers. Plaintiffs contend that school administrators violate the free speech and due process rights of students, school librarians, and teachers when they make such decisions based solely on their personal opinions. The defendants contend, on the other hand, that the selection and removal of library books is within the range of discretion granted to school authorities and the exercise of the discretion does not infringe the First Amendment or Fourteenth Amendment rights of students or school employees. The case is presently before the court on the defendants' motion to dismiss. . . .

[F]or the reasons given below, we find that plaintiffs have failed to state a claim upon which relief can be granted and we grant the defendants' motion.

Factual Background. In spite of the complexity and depth of the political controversy that has surrounded this case, the legally relevant facts are straightforward. On August 10, 1977, after almost twelve months of controversy surrounding certain books in circulation at the Vergennes Union High School library, the elected Board of Directors (the Board) of the high school adopted a formal, written "Library/Media Policy" pertaining to "the philosophy and procedure for operating and maintaining the school library." That promulgation, patterned after the "School Library Bill of Rights" approved by the American Association of School Librarians Board of Directors, contains a number of policy statements covering the objectives of the school library media center, and the "rights" and "responsibilities" of various persons connected with the library, as well as an outline of procedures and criteria for materials selection. The promulgation also contains a statement, entitled "Board Guidelines for Selection of Library Materials," setting forth criteria for materials selection and establishing a procedure for responding to citizen complaints about materials in the library collection. Despite a series of idealistic statements of library goals and policies, the August 1977 promulgation hardly qualifies as a "library bill of rights" for students, teachers, or librarians. It does, however, repeatedly reaffirm the Board's decision to retain direct control over library acquisition and removal decisions. It states that it is the "right" of the members of the Board of Directors "[t]o adopt policy and procedure, consistent with statute and regulation—that they feel is in the best interests of students, parents, teachers and community." The rights and responsibilities of professional personnel, on the other hand, are limited "in accordance with Board policy."

The procedure for determining whether a book should be removed from the library also places final authority with the Board itself. The August 1977 procedures provide that a parent or local citizen objecting to a book in

the library may initiate a review of the work by completing a form entitled "Citizen's Request for Professional Reconsideration of a Work," and submitting it to the high school principal. The principal must provide copies of the request to the librarian and superintendent of schools and must inform the Board of the request. The librarian must then review the request and submit a written report of "action taken" to the Board. Finally, the procedures provide that "unresolved issues shall be settled by a majority vote of the Board or its designees."

In the spring of 1978 defendants employed the procedures outlined above in the review of two books: *The Wanderers*, by Richard Price, and *Dog Day Afternoon*, by Patrick Mann. A complaint about *The Wanderers* was submitted by Harold Leach and on April 5, 1978, the Board passed a motion to remove the book from the school library "because it is obscene and vulgar." Mr. and Mrs. Kittridge Haven, Mr. and Mrs. James Parkinson, and Mr. and Mrs. Harold Leach also filed a complaint about *Dog Day Afternoon*, asking that the book be removed from the library because of its "vulgar language" and "obscene material," and because it was "immoral, perverted" and portrayed "too much violence." At its April 5 meeting the Board voted not to remove the book from the library permanently, but to place it in the principal's office pending creation of a special restricted shelf in the library.

Following these decisions, the Board also acted to restrict the professional discretion of the school librarian in the selection and acquisition of additional work for the library. At the April 5 meeting the Board voted to prohibit the librarian from purchasing any additional major fictional works until further vote of the Board. On July 12, 1978, the Board ordered that any book purchases other than those in the category of "Dorothy Canfield Fisher, science fiction and high interest-low vocabulary" be reviewed by the school administration with the assistance of the Board. For the purposes of our decision on this motion, the court assumes that the Board policies freezing major new purchases and screening most new acquisitions are still in effect.

Plaintiffs in this action include several students at Vergennes Union High School, minors who sue by their guardians; four parents of students at the high school; Elizabeth Phillips, the school librarian; Ruth Orr, a library employee; and the Right to Read Defense Committee of Vergennes, an unincorporated association organized to oppose restrictions on the school library collection. The complaint names as defendants the Vergennes Union High School Board of Directors; David Potter, superintendent of the school system; and Charles Memoe, the principal of the high school.

Discussion. Although the plaintiffs have not delineated precisely the constitutional bases of their challenge to defendants' actions, the court reads the complaint to

raise five claims of constitutional infringement:

1. Defendants' removal of *The Wanderers* and *Dog Day Afternoon* from the library infringes the students' First Amendment right to receive information.
2. By imposing a freeze on new library acquisitions and permanently screening all major acquisitions, defendants have impermissibly conditioned a government-created privilege and have thus violated the student plaintiffs' First Amendment rights.
3. Defendants' book removal and library acquisition policies violate the students' rights under the district's own library/media policy "to freely exercise their right to read and to free access to library materials" and thus infringe their rights to due process of law.
4. Defendants have violated the due process rights of the school librarians by creating and enforcing the August 1977 reconsideration and removal policy and by freezing and screening new library acquisitions.
5. Defendants' actions have denied teachers at the high school their constitutional rights "by creating a repressive atmosphere where their right to freely discuss literature has been chilled."

A. Students' Claims. Plaintiffs' most serious arguments are those concerning the rights of the students. We begin with the observations that "the educational needs of a free people are of utmost importance," *East Hartford Education Association v. Board of Education*, 562 F.2d 838 (2d Cir. 1977), and that "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

We believe, with the Supreme Court, that "[t]he Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'" *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 512 (1969), quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). A library is a vital institution in the continuing American struggle to create a society rich in freedom and variety of thought, broad in its understanding of diverse views and cultures and justifiably proud of its democratic institutions. The life and utility of a library are severely impaired whenever works can be removed merely because they are offensive to the personal, political or social tastes of individual citizens, whether or not those citizens represent the majority of opinion in a community. To this extent we agree with the arguments presented by plaintiffs herein.

Nevertheless, we cannot agree with plaintiffs' legal conclusions; what is desirable as a matter of policy is not necessarily commanded as a matter of constitutional law.

By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and

which do not directly and sharply implicate basic constitutional values. *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (footnote omitted).

Although the court does not entirely agree with the policies and actions of the defendants we do not find that those policies and actions directly or sharply infringe upon the basic constitutional rights of the students of Vergennes Union High School.

In making the determination we are required as a lower court to accept the law found in a Second Circuit case strikingly similar to the one at bar. In *Presidents Council, District 25 v. Community School Board No. 25*, 457 F.2d 289 (2d Cir.), cert. denied, 409 U.S. 998 (1972), the court of appeals reviewed a school board's decision to restrict junior high school students' access to the book *Down These Mean Streets* in their school libraries. Observing that New York State law placed responsibility for the selection of materials in public school libraries with local school boards, the court reasoned that

some authorized person or body has to make a determination as to what the library collection will be. It is predictable that no matter what choice of books may be made by whatever segment of academe, some other person or group may well dissent. The ensuing shouts of book burning, witch hunting and violation of academic freedom hardly elevate this intramural strife to First Amendment constitutional proportions. *Presidents Council*, 457 F.2d at 291-92.

Plaintiffs have urged upon this court allegedly critical distinctions between the situation in *Presidents Council* and the case at bar. We do not find any of them constitutionally meaningful. Plaintiffs admit that in Vermont, as in New York, local school boards are by statute afforded considerable authority and discretion with respect to the administration of the schools, including the acquisition and use of materials for school library collections. Moreover, we do not find the difference in the ages of the students involved in the two cases to be critical in determining this issue. Finally, contrary to plaintiffs' assertions, *Presidents Council* does not hold that school authorities must base their decision to purchase or remove a book on articulable educational grounds. To the contrary, the court of appeals stated that it was not appropriate for the federal courts "to review either the wisdom or efficacy of the determinations of the Board," and concluded, "[t]o suggest that the shelving or unshelving of books presents a constitutional issue . . . is a proposal we cannot accept."

The court is aware that two other courts that have reviewed similar public school library controversies have not followed and have sought to distinguish the Second Circuit's decision in *Presidents Council: Minarcini v. Strongsville City School District*, 541 F.2d 577 (6th Cir. 1976); *Right to Read Defense Committee v. School*

(Continued on next page)

Committee, 454 F. Supp. 703 (O. Mass. 1978). Those cases hold that although a school board can determine what books will go into a library, and may even determine whether to create a library at all, it may not exercise the same wide discretion in removing works from the shelves after they are purchased: “[o]nce having created such a privilege for the benefits of its students, however, neither body could place conditions on the use of the library which were related solely to the social or political tastes of school board members.” *Minarcini*, 541 F.2d at 582. Whatever merit there may be in such constitutional analysis, it is not the rule we are bound to follow in this circuit. The court of appeals explicitly addressed this argument in *Presidents Council*, holding, “[t]his concept of a book acquiring tenure by shelving is indeed novel and unworkable under any theory of constitutional law we can discover.” *Presidents Council*, 457 F.2d at 293.

Plaintiffs urge the court to find that the underlying premises of *Presidents Council* have been altered by the Supreme Court’s recent decisions on the First Amendment right to receive information. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976); *Kleindienst v. Mandel*, 408 U.S. 753 (1972). We are not persuaded by this line of argument. The right to receive information in the free speech context is merely the reciprocal of the right of the speaker. See *Virginia Board of Pharmacy*, 425 U.S. at 757. Plaintiffs do not contend, nor could they reasonably argue, that the publishers of certain works have a constitutionally protected right to have their works purchased by the Vergennes Union High School library or retained on the open shelves after purchase. The students’ right to review those works through the school library, expressed as the constitutional right to receive information, is no broader. Finally, we note that there has been neither evidence nor argument in this case that the Board’s actions have in fact abridged the student plaintiffs’ constitutional rights of free expression. Students remain free to purchase the books in question from private bookstores, to read them in other libraries, to carry them to school and to discuss them freely during the school day. Neither the Board’s failure to purchase a work nor its decision to remove or restrict access to a work in the school library violated the First Amendment rights of the student plaintiffs before this court.

The student plaintiffs’ final claim is that the Board’s disputed book acquisition and removal policies violate rights guaranteed them by the district’s library/media policy “to freely exercise their right to read and to free access to library materials,” and thus violate the due process clause of the Fourteenth Amendment. The protections of the due process clause extend only to bona fide liberty or property interests created by federal or state law. *Bishop v. Wood*, 426 U.S. 341, 344 (1976);

Paul v. Davis, 424 U.S. 693 (1976). Since we have found no independent constitutional right to the library policies plaintiffs advocate their due process claim rests on state law alone, and ultimately on the words of the high school’s library/media policy. Reading that promulgation in its entirety, the court is unable to find a violation of plaintiffs’ rights by the Board. As stated above, the policy repeatedly reasserts the primacy of the Board itself in the operation of the school library. It also sets forth in detail the process for removing from the collection, a process which plaintiffs do not even claim to have been violated by the Board. . . .

B. School Employees’ Claims. We turn now to the claims of the school employees. Since the complaint and supporting papers do not precisely delineate the constitutional claims raised by the high school’s library employees, the court assumes that they intend to join in the students’ First Amendment protest of the Board’s book removal policies. *Presidents Council* also forecloses this claim. . . .

Plaintiffs next argue that the Board’s removal of *The Wanderers* from the collection, the imposition of restrictions on *Dog Day Afternoon*, and the Board’s policy of screening all new major fictional additions to the collection violate the librarians’ rights under the library/media policy to “freely select” the media collection for the high school library. This claim is similarly unavailing. As we have pointed out above, the promulgation must be read in its entirety, and the detailed procedures set forth for removing works from the collection obviously condition the general statements of the rights of those persons affected by the policy. Furthermore, the rights of professional personnel under that policy “to freely select” materials for the collection are explicitly limited by the phrase “in accordance with Board policy.”

. . . For the foregoing reasons, the court grants the defendants’ motion to dismiss. As the plaintiffs are not prevailing parties, their motion for attorney’s fees under 42 U.S.C. 1988 is hereby denied. The parties will bear their own costs. . . .

Have you overlooked your membership renewal notice?

Your membership in the Freedom to Read Foundation represents your personal commitment to the defense of First Amendment rights. As you read this issue of *FTRF News*, remember that our story of resistance to censorship is a story that depends on you. If you haven’t returned your 1980 membership renewal envelope, please take a moment today to send it in.

Conspiracy Conviction (from p. 1)

and foresight what books they read, what books they keep in the house, what books they recommend to friends, and what ideas about books they express in public or in private. Otherwise they might find that their reading habits and preferences in literature are used against them in some later criminal or other official proceeding. Moreover, a prosecutor would be entitled, whenever it seemed advantageous, to delve into literary tastes, check library cards, and otherwise search for writings that express unorthodox or unpopular ideas and are connected in some way with an accused. . . .

The record reveals that the prosecutor never suggested to the trial court or the jury that his cross-examination based upon the contents of the book was intended merely to contradict petitioner's alleged character evidence and to impeach his credibility as a witness. Rather, the prosecutor unmistakably used the contents of the book to convince the jury that it should attribute the ideas in the book to the petitioner and that it should conclude that the petitioner acted upon those ideas to form the alleged conspiracy and to engage in the substantive offenses.

In the brief submitted to the Court on Giese's behalf, Attorney Doron Weinberg notes that no evidence whatsoever was presented to the trial court to show that Giese had ever discussed the contents of *From the Movement* with any other person or, indeed, that he had ever read it before he was forced to read it by the prosecutor.

Weinberg's brief for Giese continues:

It is no answer to this concern that the evidence of reading here was not the sole basis of the prosecution, but merely added to other more direct and unobjectionable evidence. In the first place, as noted above, on the record of this case it is at least possible, if not probable, that petitioner's conviction for conspiracy, by the same jury which evidently discounted the "direct" evidence of criminal acts, was the result of this evidence. Indeed, both the majority and dissenting opinions below recognize that this evidence was prejudicial, and not harmless.

Moreover, even if the impact on petitioner were less clear, where the potential inhibition of essential First

Amendment rights is involved, this Court has not hesitated to take into account possible applications of a rule in other factual contexts besides that at bar. *Thornhill v. Alabama* (1940) 310 U.S. 88, 97-98; *Aptheker v. Secretary of State* (1964) 378 U.S. 500, 516. Thus, this Court's

. . . decisions furnish examples of legal devices and doctrines, in most applications consistent with the Constitution, which cannot be applied in settings where they have the collateral effect of inhibiting the freedom of expression by making the individual the more reluctant to exercise it. *Smith v. California*, 361 U.S. at 150-51.

It is manifest that the use of books as evidence in criminal cases is one such "device" which will inevitably have the effect of inhibiting freedom of expression. The fear that the innocent but controversial contents of one's private library may become evidence in some unimagined future prosecution is only marginally less chilling of the exercise of First Amendment rights than the fear of prosecution for the contents alone. *Cf., N.A.A.C.P. v. Button* (1963) 371 U.S. 415, 433; *Keyishian v. Board of Regents* (1967) 385 U.S. 589. This threat, never previously encompassed by the rulings of this Court or the Courts of Appeals, emerges unmistakably from the opinion of the Ninth Circuit herein. The compulsion it may foreseeably engender in individuals to restrict their reading material, and hence their uninhibited exposure to ideas, is plainly antithetical to the fundamental ideals embodied in the First Amendment.

Brief Challenges Texas Law

In a second friend-of-the-court brief filed with the Supreme Court in October, the Foundation and the trade organizations of the Media Coalition urged the justices to uphold a U.S. Court of Appeals ruling against a Texas "nuisance" law. The case was appealed to the Supreme Court by the Texas attorney general.

The Texas statute provides for injunctions barring all use for one year of premises utilized for the "commercial manufacturing, commercial distribution or commercial exhibition of obscene material."

Freedom to Read Foundation

Regular members	\$10.00 or more
Contributing members	\$25.00 or more
Sponsors	\$50.00 or more
Patrons	\$100.00 or more
Benefactors	\$500.00 or more

Members are entitled to vote in elections of trustees to the Board, and to receive the FTRF NEWS plus material pertaining to special issues.

Check enclosed New
Amount \$ _____ Renew

Invite a colleague to join today.
Contributions are tax-deductible.

Name

Address

City

State

Zip

Please return to Freedom to Read Foundation, 50 East Huron Street, Chicago, IL 60611

When a bookstore or theater is closed under law, the Foundation and Media Coalition note, a prior restraint of the broadest and most absolute kind results.

The law also creates a chilling effect. Under it, parties enjoined may believe they are under special official scrutiny.

The chilling effect created by this perception, coupled with the inherent difficulty under the *Miller* test of determining what is obscene, inevitably will result in the withdrawal from distribution of protected material. The chilling effect is heightened by the fact that, under [the Texas law], this action can be brought and enforced by any private citizens, for whatever motive, unrestricted by the normal checks and balances of government. As the Court is well

aware, numerous private groups believe to be obscene that which is believed to be non-obscene by the community as a whole. Such groups, under a statute such as this, may freely act as self-appointed public prosecutors.

Fired Librarian (*from p. 3*)

Filled with enthusiasm after achieving success in a battle to close Ogden's adult bookstore, Joy Beech, the director of Citizens for True Freedom, told an Ogden reporter that the group plans to "go into libraries and schools" to see that True Freedom's moral standards are upheld. Two years ago Beech announced that the organization wanted to raise \$200,000 to bankroll lawsuits.

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

Nonprofit Organization U.S. Postage PAID Permit No. 142 Chicago, IL
