Freedom to Read Foundation News

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

Lee B. Brawner, President

Judith F. Krug, Executive Director

Volume 14, No. 1 1986

U.S. Supreme Court: Indianapolis Ordinance Unconstitutional

In a 6-3 decision issued on February 24, 1986, the United States Supreme Court affirmed lower federal court rulings that the Indianapolis "anti-pornography" ordinance is unconstitutional. As reported in earlier issues of the *Freedom to Read Foundation News* (vol. 13, no. 2-3; vol. 12, no. 4; vol. 11, no. 1), the Freedom to Read Foundation joined the American Booksellers Association, the Association of American Publishers and others in challenging the constitutionality of the Indianapolis law on the grounds that the statute is unconstitutionally vague and could be used to restrict or ban a wide range of non-obscene, high-quality books and movies. The American Library Association, Indiana Library Association and Indiana Library Trustee Association had filed an *amicus curiae* brief supporting those claims.

The Indianapolis ordinance defined pornography as the "sexually explicit subordination of women graphically depicted, whether in pictures or in words," that included the presentation of women as "sexual objects" in any of six situations. The statute, which classified pornography as a "discriminatory practice (which denies) women equal protection in society," was hailed by its supporters as an "innovative and promising" way to help women, children and other victims of the pornography industry by creating a system of civil penalties. The ordinance had the strong support of Indianapolis Mayor William H. Hudnut III, local religious and conservative groups and some feminists. Under the law, women and others were given the right to sue for damages for assault and other harms said to be caused by pornography, but the creation, distribution or use of pornography was not addressed by the ordinance.

The Court's unsigned order reaffirmed Seventh Circuit Court of Appeals Judge Frank Easterbrook's 1985 decision affirming a lower court ruling that the ordinance was unconstitutionally vague and overbroad and established a prior restraint on speech. Judge Easterbrook described such attempts to prohibit all forms of graphic sexually explicit speech, without regard to the literary or political value of the work taken as a whole, as an impermissible form of "thought control." In his decision (see *FTRF News*, vol. 13, no. 2-3), he raised the question of how Indianapolis would treat recognized lit-

(Continued on p. 4)

1986 Slate

Committee Nominates Ten for Board of Trustees

Ten candidates for the Freedom to Read Foundation's 1986 election have been slated by a committee composed of Trustees Neil H. Adelman, Russell Shank and Pamela G. Bonnell, chair.

Trustees to fill five scheduled vacancies on the Board of Trustees will be chosen from the following list of candidates:

- J. Dennis Day, Director, Salt Lake City Public Library, Salt Lake City, Utah.
- Judith Farley, Reference Specialist, The Library of Congress, Washington, D.C.
- Elliot Goldstein, President, Social Issues Resources Series, Inc., Boca Raton, Florida.
- Monteria Hightower, Director, Downtown Library Services, Seattle Public Library, Seattle, Washington.
- Burton Joseph, Attorney, Barsy, Joseph & Lichtenstein, Chicago, Illinois.
- Gene D. Lanier, Chair and Professor, Department of Library Science, East Carolina University, Greenville, North Carolina.
- Jay K. Lucker, Director, Massachusetts Institute of Technology Library, Cambridge, Massachusetts.
- Dr. Laurence Miller, Director of Libraries, Florida International University, Miami, Florida.
- Judith A. Sessions, University Librarian, California State University-Chico, Chico, California.
- F. William Summers, Dean, School of Library and Information Studies, Florida State University, Tallahassee, Florida.

According to Freedom to Read Foundation election rules, at least two and no more than three candidates must be nominated for each vacancy on the Board.

Ballots will be mailed on May 1 to all persons holding paid membership in the Foundation on that date.

Nomination by Petition

Persons who wish to *nominate candidates by petition*, should submit twenty-five signature of current members of the Foundation in support of each candidate. Names of petition candidates, statements of consent from the

(Continued on p. 2)

candidates, and the required signatures to support each must be received by the executive director of the Foundation no later than April 21, 1986.

Current Trustees

Elected Trustees currently serving on the Foundation Board are: Neil H. Adelman (1987), Pamela G. Bonnell (1987), Lee B. Brawner (1986), Dorothy M. Broderick (1987), J. Dennis Day (1986), Alice B. Ihrig (1986), R. Bruce Rich (1987), Judith A. Sessions (1986), and Russell Shank (1986).

Trustees serving on the Board by virtue of their office in the American Library Association are: C. James Schmidt, chair of the Intellectual Freedom Committee; Beverly P. Lynch, ALA president; Regina U. Minudri, ALA president-elect; and Thomas J. Galvin, ALA executive director.

Sallisaw, Oklahoma

School Library Censorship Case to be Settled

An agreement in principle has been reached in *Faulkenberry* v. *Board of Education of Sallisaw*, a school library censorship case filed in Federal Court in Oklahoma in October, 1985 (see *FTRF News*, vol. 13, no. 4). The Freedom to Read Foundation has provided legal and financial assistance to the plaintiffs, a group of parents and students in Sallisaw.

The agreement calls for the Sallisaw Board of Education to return J.D. Landis' *The Sisters Impossible* to the elementary school library from which it had been removed; to adopt new guidelines concerning the review or removal of library materials to bring the procedures within American Library Association-recommended standards; and to pay a substantial portion of the plaintiffs' attorney's fees and costs.

The Sallisaw controversy arose when *The Sisters Impossible* was removed after the parents of a fourth-grade student complained that the book contained "inappropriate language" and a "negative attitude."

The matter was brought to the attention of the Foundation by Oklahoma Library Association Intellectual Freedom Committee Chair Duane Meyers, who played an invaluable role in the development of the litigation.

At the Foundation's 1985 Annual Meeting, the Trustees directed FTRF Executive Director Judith Krug and FTRF Counsel James Klenk to meet with representatives of the Sallisaw parents' and teachers' groups who opposed the school board's action. A strategy session was subsequently held in Tulsa at which time Krug, Klenk, Meyers, and FTRF President Lee Brawner met with Cleata Brown, president, Sallisaw Association of Classroom Teachers, Bette Brown, media specialist, Sallisaw Liberty Grade School and Lucretia Scoufus, member, Sallisaw Concerned Citizens and Parents for Children's Rights.

The decision was then made to file suit on behalf of the Sallisaw parents and students.

City of Renton v. *Playtime*

Court Approves Zoning to Limit Adult Movie Theaters

The U.S. Supreme Court has held that local zoning officials have broad powers to restrict the location of theaters that screen sexually explicit "adult" movies. The ruling in *City of Renton* v. *Playtime Theatres* extends a 1976 zoning case that permitted Detroit to disperse adult movie theaters throughout the city in order to avoid the adverse effects of a concentration of "skid row" theaters in one neighborhood.

In its February 25, 1986 decision, the seven-Justice majority upheld a Renton, Washington, zoning ordinance that prohibits adult motion picture theaters from being located within 1,000 feet of any residential zone, single- or multiple-family dwelling, church or park or within one mile of any school. Despite a theater owner's argument that the zoning effectively limited such theaters to an industrial area where no "commercially viable" sites were available, the Court held that the "ordinance is a valid governmental response to the serious problems created by adult theaters." Associate Justice William H. Rehnquist, writing for himself and five other justices, stated that, although the First Amendment forbids zoning ordinances that have the "effect of suppressing, or greatly restricting access to, lawful speech," the Constitution only guarantees a "reasonable opportunity to open and operate" and does not require that operators of sexually-explicit movie theaters "be able to obtain sites at bargain prices." Furthermore, the majority asserted the constitutionality of the Renton ordinance since it is "content neutral" in that it is not aimed at the *content* of the films shown at adult motion picture theaters, but rather at the "secondary effects of such theaters on the surrounding communities," including harm to children and "neighborhood blight."

Associate Justices William J. Brennan and Thurgood Marshall dissented, calling the ordinance "plainly unconstitutional" and a law which "discriminates on its face against certain forms of speech based on content."

Attorney General's Commission on Pornography

The Attorney General's Commission on Pornography, established by President Reagan in 1984, is scheduled to issue its final report in June, 1986. Chaired by Henry Hudson, a prosecutor who claims that his policy of "strong law enforcement and prosecution" eliminated all adult bookstores and massage parlors from Arlington County, Virginia, the eleven-person commission has held public hearings in six cities during the past ten months. American Library Association President Beverly P. Lynch presented testimony on behalf of the Association at the Chicago hearings in July, 1985 (Dr. Lynch's testimony is available through the Foundation and can be found in the September 1985 issue of the *Newsletter on Intellectual Freedom*).

According to a Justice Department statement, the Commission's objectives are "to determine the nature, extent and impact on society of pornography and make recommendations to (the attorney general's) office on ways—consistent with constitutional guarantees—to contain the spread of pornography."

Attorney General Edwin Meese has said that the Commission will give special attention to the impact of pornography upon society during the last fifteen years. In 1970, a presidential commission concluded that there was no evidence linking sexual material to delinquency or criminal behavior. Since that time, Meese said in a speech announcing the appointment of the Commission, "the content of pornography has radically changed, with more and more emphasis on extreme violence. Moreover, no longer must one go out of the way to find pornographic materials." He emphasized that the Commission's formation "reflected the concern a healthy society must have regarding the ways in which its people publicly entertain themselves."

The Commission had intended to frame its findings at a four-day meeting held in March, 1986, in Scottsdale, Arizona. Instead, the meeting resulted in considerable disagreements, including a failure of the Commission to agree to a definition for "pornography." According to Chairman Hudson, "pornography is not something that lends itself to terminological exactitudes or slide-rule formula. . . . It has many variables in it."

Hudson acknowledges that the Commission is behind schedule. He dismissed the fact that concerns regarding organized crime, law enforcement, production of pornography, technology, history and issues of constitutional law have not yet been resolved with the statement that, "Those areas are really not in controversy."

Also remaining to be completed is a report on social science studies of pornography's effects. Surgeon General C. Everett Coop had offered to do the study last June, but acceptance of his proposal was delayed for budgetary reasons and because some of the Commission members objected to Coop's vehement anti-pornography statements.

Groups such as the American Civil Liberties Union (ACLU) are concerned that the Commission has been insensitive to constitutional issues and less than objective with regard to its approach and the type of methods it has employed to collect and evaluate evidence.

In a report entitled *Rushing to Censorship: An Interim Report on the Methods of Evidence Gathering and Evaluation by the Attorney General's Commission on Pornography*, Barry Lynn, ACLU Legislative Counsel, indicates that the faulty procedures include:

- Witness lists weighted in favor of antipornography witnesses and harsh and irrelevant cross-examination of anti-censorship speakers.
- Inordinate focus on aberrant sexual practices and criminal activity designed to establish that sexually-explicit material leads to widespread "victimization" of consumers, models, and the general public.
- Recommendations of dozens of extreme law enforcement initiatives without serious consideration of constitutional issues.
- Unjustified focus on limited social science research tending to establish connections between pornography and negative effects, combined with a decision to use additional non-research bases for determining "harms" of pornography.
- Deliberate failure to require that Commissioners establish a credible basis for balancing and reconciling conflicting evidence or provide a reasoned basis for their recommendations.
- Use of expansive definitions of "child pornography" and "organized crime" in order to connect virtually all sexually-oriented material to child abuse and criminal activity.

Findings and Recommendations

At the recent Scottsdale meeting, the Commission did agree on several findings:

- That the widespread depiction of violence has "a profound negative effect" even when the context is non-sexual, as in some *R*-rated movies.
- That non-suggestive nudity has no harm.
- That the proliferation of adult pornography on cable television is a major threat to children.

The Commission's final report will recommend changes in over two dozen criminal statutes:

- to establish federal and state sentences of one year or more for second offenders against obscenity laws and long mandatory sentences for people convicted of child pornography
- to make it a felony to use children in pornography
- to make it a felony to knowingly advertise where child pornography can be bought
- to define child pornography as material involving people under the age of 21
- to mandate at least brief incarceration and lifetime probation and registration for all child molesters.

Lynn makes clear that his interim report "is not primarily a First Amendment argument for pornography's status as protected speech. Instead |it| seeks to demonstrate critical defects in the methods employed by the Commission to collect and evaluate testimonial and other evidence." His concerns over the Commission's methods and procedures are due to the deference executive and legislative decisions-makers normally give to the recommendations of such high-level Commissions. Moreover, it appears that the Commission, which is weighted heavily with members who are zealously opposed to pornography, may be rushed to submit a final report that will have a strongly adverse impact on First Amendment guarantees.

U.S. Supreme Court: *from p. 1*

erary works like James Joyce's *Ulysses* and Homer's *Iliad*; both of which "depict women as submissive objects for conquest and domination." In asserting his position that pornography, like other forms of speech, must be protected, he wrote, "any other answer leaves the government in control of all the institutions of culture, the great censor and director of which thoughts are good for us."

The Court's ruling in *American Booksellers Association* v. *Hudnut* reaffirms First Amendment protection of sexually explicit books, magazines and films from outright suppression. The definition of obscenity, which remains outside the protection of First Amendment guarantees, has been carefully restricted by earlier Supreme Court decisions while leaving some room for applying community standards. The traditional *Miller* test for obscenity—that a work must, as a whole, appeal to prurient interests and have no serious literary, artistic, political or scientific value—remains in effect.

Chief Justice Warren E. Burger and Associate Justices William H. Rehnquist and Sandra Day O'Connor dissented from the ruling, saying that the case should have been set down for detailed briefing and oral argument. They expressed no view on the correctness of the appellate decision.

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

First Class