THE POWER OF THE BOARD OF EDUCATION TO CENSOR

The jury is still out on the question of the right of boards of education to ban books. Regardless of how courts rule on the question, schools can show respect for parents' concerns.

TERRY J. LARSEN

The vehemence of debate over banning books from public schools indicates America's tacit acknowledgment of the power of the printed word. The debate is by no means restricted to the parlor. During the 1974 textbook controversy in West Virginia, teachers were intimidated and physically threatened; dynamite was used against the property of the school district; and coal miners went on wildcat strikes. In many cases, parents have become actively involved in the educational process for the first time by opposing texts their children were asked to read.

The debate over book censorship is as old as the printed word. But American public schools are faced with a special, inherent problem: our school districts serve widely diverse populations. What some believe is damaging material others see as beneficial. Most often, the local school board is asked to make censorship decisions—but they may not have that right.

The issue at hand is not simply one of free speech versus totalitarian repression, although to read the literature (replete with expletives and name calling) one might assume so. Actually, polarization has tended to obscure the reasonableness of both sides.

On the one hand, citizens and parents turn to the school board, demanding that it act as censor for them. This side contends, not at all unreasonably, that the primary function of the schools is to pass on to the younger generation the traditional values of our culture. What frightens these parents most is the possibility that the schools may actually be subverting their own efforts to pass these values on to their children. Richard Ahrens, president of the school board of Island Trees, New York—a district in which the board acted as censor and allegedly removed 60 books from the high school library in 1976—states this point of view succinctly:

> What is taught in the schools is a reflection of the values of a society—in this instance, the local community. One of the

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purposes of a Board of Education is to see that local control prevails. Teaching tools and curriculum are a definite reflection of community values. Most parents have high values for their children, and it is not the function of the school to taint, tarnish, or diminish these values.[1]

To the advocates of intellectual freedom, Ahrens' statements and the actions of his board are dangerous, their possible implications catastrophic for the American education system. These individuals point out the need for schools to be forums of ideas, places to question and examine, places to explore. Their opponents, they say, are naive if they think that banning a few books from school will shelter their children from ideas that might challenge tradition. Children, they point out, hear these ideas on the radio, on television, in the streets; better that they learn conflicting points of view in school where they can be rationally examined and discussed. The advocates of intellectual freedom therefore feel that the book banners are, paradoxically, working against their own stated ends.

Furthermore, they point to the dangerous possibility that if school texts are rendered so tepid that they do not reflect the world children see boiling around them, they will turn away from books and school altogether.

At their mildest, the advocates of this side of the issue hope to dispel their opponents' fears. They point out that the world in which children are maturing is quite different from the world in which they grew up. Often, they say, what shocks the parent is not shocking but *meaningful* to the student—to eschew controversy is to eschew the real world of the student, and the student's needs. Our culture, they insist, is in a state of flux and it always has been. While the surfaces shift and change, the deep values of civilization are in fact retained by schools in which intellectual freedom reigns.

Henry Miller, one of America's greatest writers, expressed this side of the issue:

> Nothing is more important for humans —educators, teachers—than to be constantly on the *qui-vive*, aware of the need for change, and ready to listen to new, perhaps frightening ideas. Otherwise, society runs the risk of rotting away. And the great writers, even though they use profanity and obscenity, are here to shake us up, to rout us out of our lethargy. To give us life, not death. . . . Individuals, free to choose life over death, need access to a wide range of controversial ideas presented by artists, for it is the artist who holds the creative spirit that animates the universe.[2]

Caught in the middle of the controversy are the publishers of educational materials, who are forced to compromise. A spokesman for Scott-Foresman and Company speaks directly of his company's dilemma:

> The censorship problem is worse today than it has been for years. . . . Custodians of "decency" are making a clean sweep. They're forcing us either to lose important sales or to sterilize our textbook offerings of all realism. A member of one of these book banning groups actually told me: "I don't *want* my kids to think independently, I want them to be conditioned." [3]

And when local school boards act to ban the classics of American literature—*Moby Dick*, because it "contains homosexuality"; *Invisible Man*, because it is "biased on the black question"; *Zoo Story*, because it is "pure filth"; *Huckleberry Finn*, because it "puts Negroes in a bad light" [4]—advocates of intellectual freedom are, predictably, up in arms. Almost inevitably a court case ensues.

How Courts Have Ruled

Perhaps the most important of the precedent-setting decisions handed down by the courts regarding school censorship was Minarcini v. Strongsville City School District, Civ. No. 75-1467-69 (6th Cir., 1976). Local parents sued to have restored to library shelves books that the Board of Education had removed, disregarding faculty recommendations. The decision of the U.S. Court of Appeals for the Sixth Circuit was unanimous: school boards cannot arbitrarily remove books deemed objectionable from library shelves.

This decision of the court is one oft-cited in recent book banning disputes:

> A library is a storehouse of knowledge. When created for a public school, it is an important privilege created by the state for the benefit of the students in the school. That privilege is not subject to being withdrawn by succeeding school boards whose members might desire to winnow the library for books, the content of which occasioned their displeasure or disapproval.[5]

Perhaps even more important were the court's words regarding the board's violation of the First Amendment. The court did not find pertinent the defendants' argument that the interested student could find the removed texts elsewhere:

> Restraint on expression may not generally be justified by the fact that there may be other times, places, or circumstances available for such expression.[6]

The court then addressed itself to the First Amendment right of the student to *receive* information, citing for precedence Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 96 Sup. Ct. 1817 (1976), the Supreme Court decision invalidating a statute forbidding pharmacists to advertise prices of prescription drugs:

> Freedom of speech presupposes a willing speaker. But where a speaker exists . . . the protection afforded is to the communication, to its source and its recipients both.[7]

The Strongsville case has received much publicity. It does in fact underscore the need to protect the right of students to receive information. And it denies school board members the right to remove books from the library simply because they disagree with their content. But, it should be remembered, the power of the school board to determine the content of library shelves is not utterly denied

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by this ruling; putting a book in the library in the first place remains their prerogative.

Another denial of the board's power to censor was handed down by the Michigan Court of Appeals in Todd v. Rochester Community Schools, 41 Mich. App. 320 (June 1972). A suit had been filed by parents in the Oakland County Circuit Court to have Kurt Vonnegut's *Slaughterhouse Five* banned from school use because it was "anti-religious." Surprisingly, the circuit court found in favor of the parents, concluding that the book in fact preached "anti-religion"; it ordered the book removed from school libraries. This decision was ultimately reversed by the Michigan Court of Appeals in a precedent-setting decision. The appellate proceedings found the circuit court's action a violation of free speech and declared that the removal of the book constituted improper state action.[8] In essence, the court found that judicial censorship is an unreasonable infringement upon the First Amendment guarantee of free speech, and in so doing it denied a school board bent on censorship the use of the courts as a possible tool.

The school board's powers as censor do not seem to hold up well in court. For this reason, some school boards have evaded the courts by somewhat devious means. In Ridgefield, Connecticut, after a period of turmoil and threats of violence (a bomb hoax even caused police to interrupt a school board meeting), the board managed to effectively ban several books, as vociferous citizen groups demanded, without actually coming out and saying so. First, by a vote of five to four in the presence of several hundred spectators, the board rejected the request of a group calling itself "Concerned Parents" that *Soul on Ice* and *Police, Courts and the Ghetto* be withdrawn from the schools' curriculum. Later, however, during the same meeting and after most of the anticensorship factions had left, the board in effect supported the book banners. It voted five to three to suspend the two *courses* in which the objectionable books were being used.[9]

The advocates of intellectual freedom have not always fared well either. Librarians of three junior high schools in School District 25 in Queens, New York, purchased *Down These Mean Streets* by Piri Thomas in an attempt to acquaint their students with the problems of their Puerto Rican contemporaries in Spanish Harlem. After several parents objected to the book, the local school board (by a five to three vote) banned the book from the libraries. In what seems to have been a move to appease the antibanners, the board later amended its order so that the book could be checked out not by students, but by parents who desired their children to have access to the book.[10]

Most significantly, when a principal, librarian, and parents' group sought a court order that would render the board's action unconstitutional under the First Amendment, the Supreme Court refused to hear an appeal of a federal district court decision. In Presidents Council v. Community School Board No. 25, 457 F.2d 289 (2d Cir. 1972), *cert. den.* 409 U.S. 998 (1972), the court was unwilling to override the board's authority. It deemed the intrusion of the board on constitutional rights "miniscule," noting that the topics of the book were not placed off limits; librarians had not been penalized; and teachers were still free to discuss the Barrio and its problems—indeed, teachers could even discuss the book in question. The general tolerance in this case allowed the court to conclude:

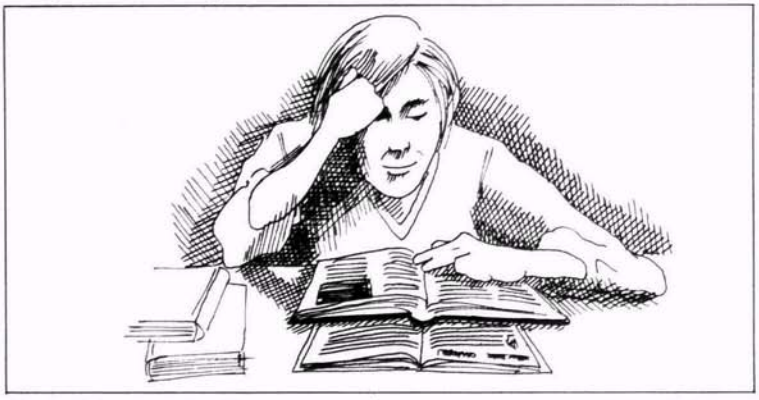
> To suggest that the shelving or unshelving of books presents a constitutional issue, particularly where there is no showing of curtailment of freedom of speech or thought, is a proposition we cannot accept.[11]

The court played down the possible implications of the dispute, largely because freedom of discussion had been left open:

> The ensuing shouts of book burning, witch-hunting, and violation of academic freedom hardly elevate this intramural strife to First Amendment constitutional proportions. If it did, there would be constant intrusion of the judiciary into the internal affairs of the school. Academic freedom is scarcely fostered by the intrusion of three or even nine federal jurists making curriculum or library choices for the community of scholars.[12]

Just last year, a federal court ruled in Bicknell v. Vergennes Union High School Board of Directors, 475 F. Supp. 615 (1979), that a Vermont school board had not infringed on students' constitutional rights by re-

moving or restricting access to "vulgar," "obscene" books from the high school library. A long awaited[13] appeal from a similar decision in Pico v. Island Trees School District, 475 F. Supp. 387 (1979), will, however, hold implications for the censorship controversy in the future. *Pico* appears to be in the position of providing a tie-breaker in the court rulings, at least for awhile. It is interesting to note that 16 education groups filed briefs supporting the students and parents in the appeal, while only one, the National Association of Secondary School Principals, filed as a friend of the court, backing the school board. Whatever the appellate decision, *Pico* will undoubtedly be cited in future court battles.



Keeping Out of Court

The question of what texts and other materials school children should be asked or allowed to read is a highly volatile issue. In a sense, the local school board is caught in the middle of a dispute that seems almost built into a school system catering to our pluralistic society. On the one hand, citizen groups clamor for the removal of books, as in Rochester, Michigan, asking for the board to act as their representatives and exercise their will by censoring books for them. Pressure is then applied from the opposite direction, as in Strongsville and Rochester, by groups asking the board to secure the students' rights to receive information of all kinds. In a situation like this, where there is a high degree of polarization, it is difficult for the board or even the courts to please both sides.

Violent reactions in such places as West Virginia and Connecticut should make it apparent that court action in favor of intellectual freedom will not in itself clear the air of dispute. Parents who feel their careful efforts to raise their children are being subverted by schools are not likely to sit back and merely abide by court decisions they interpret as subjecting children to objectionable influences, particularly as confidence in and support of government and public institutions wane.

Intellectual freedom must, of course, be protected, but the vehemence of the dispute points out that parents should have the right to object to their children's presence in a particular class in which what is to them objectionable material might be presented. Participation in potentially controversial courses should be voluntary.

The school board of Rochester, Michigan, emerged from its court battle with a plan of action that can and should be implemented elsewhere. The board decided that in the case of potentially controversial elective courses, such as contemporary or black literature, parents should receive a letter from the teacher of the course spelling out objectives and noting required reading *before the course begins*. Parents are then allowed to express concern or disapproval *prior* to the student's formal entry into the course. Parents are allowed to remove a student from a course, indicate objection to a particular book, or accept the child's complete participation. The Rochester Schools report a good deal of success with their new policy.[14] Much of this success is no doubt due to the feeling on the part of parents that their wishes will be heeded, that they are not being left out of decision making, or even that their values are not being derided by a lack of concern.

By involving parents and by making controversial subjects voluntary, most litigation and out-and-out censorship can probably be avoided.

At the same time, the tendency for school board members to project their personal prejudices and moral background into a school curriculum or card catalogue must be resisted. The membership of a school board changes periodically, so one year's great literature may be another year's pornography if the decision to censor is left in the hands of board members.

The U.S. Supreme Court's admonition in the leading case of Epperson v. Arkansas, 393 U.S. 97 (1968), stressed that the First Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom."[15] And it is to precisely this pall that Henry Miller refers when he urges us to "choose life over death." ■

[1] "Speaking Out on Book Banning," *School Library Journal* 23 (October 1976): 83.

[2] Henry Miller, "A Great Writer's View: Banning Books in Schools is Insane," *The American School Board Journal* 165 (May 1973): 33.

[3] "Book Banning Makes a Comeback in Schools," *The American School Board Journal* 160 (May 1973): 26.

[4] Arthur Donart, "The Books They're Banning and Why," *The American School Board Journal* 160 (May 1973): 42-43.

[5] "The Strongsville Decision," *School Library Journal* 23 (November 1976): 25.

[6] Ibid., p. 26.

[7] Ibid.

[8] James Harvey, ed., "Intellectual Freedom in School Libraries," *School Media Quarterly* 1 (Winter 1973): 111-129.

[9] "Book Banning Makes a Comeback," p. 26.

[10] Ibid.

[11] Edmund Reutter, "Censorship in Public Schools: Some Recent Legal Developments," in *Current Legal Issues in Education*, ed. M. A. McGhehey (Topeka, Kans.: National Organization on Legal Problems in Education, 1977), p. 6.

[12] Ibid.

[13] *Pico* was still pending when this issue of *EL* went to press, a decision is expected by late autumn.

[14] Harvey, "Intellectual Freedom," p. 117.

[15] "The Strongsville Decision," p. 25.