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## EDITORIAL STATEMENT

This issue of COMMUNICATION LAW REVIEW inaugurates an effort by the Freedom and Responsibilities of Speech Division of the Southern Speech Communication Association to keep its membership informed of current issues regarding freedom of expression. Dedicated to the proposition that freedom of speech is essential to the relevance of every aspect of our discipline, this newsletter/journal will focus on contemporary controversies and will offer an additional outlet for publication of short articles which contribute to our understanding of the historical, theoretical, rhetorical, and legal aspects of freedom of expression. Manuscripts, book reviews, bibliographies, and other items of interest should be prepared according to the MLA Handbook and submitted in triplicate. Manuscripts should not normally exceed 2500 words (10 double-spaced pages), and endnotes should be carried on separate pages at the end of the manuscript.

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IT'S TIME YOU TIGERS ROARED

SENIOR DANIEL PATRICK MOYNIHAN (D., N.Y.)

My grandfather once said of a man of whom he did not wholly approve that he had "the soul of a butler."

I would like to think there are none such here. Certainly Judge Medina thought so. "Fight like tigers," he told you here in 1976. But when it comes to defending principles of press freedom, more than great heart is required.

Vigilance is required: a matter our ancestors understood perhaps better than we.

Let me speak to some particulars.

First, I would wish to report on the international front. The efforts of the free nations and the free press of those nations to slow the efforts at UNESCO to establish -- I use Leonard Sussman's term -- "as a universal standard governmental control of the news media" have begun to have effect.

The decisive event here was the meeting at Tailloires, in France, in May 1981, of a group of leading journalists, editors, and publishers which adopted a declaration stating in no uncertain terms that:

There can be no international code of journalistic ethics: the plurality of views makes this impossible.

It also asserted that --

Journalists seek no special protection nor any special status and oppose any proposals that would control journalists in the name of protecting them.

And, speaking directly to UNESCO, the declaration said:

We reject the view of press theoreticians and those national or international officials who claim that while people in some countries are ready for a free press, those in other countries are insufficiently developed to enjoy that freedom.

Thus armed, I went to the Senate floor with an amendment to the Department of State authorization bill asserting the sense of the Congress that the President should withhold from UNESCO that portion of our contribution that would pay for:

Projects or organizational entities the effect of which is to license journalists or their publications, to censor or otherwise restrict the free flow of information within or between countries, or to impose mandatory codes of journalistic practice or ethics.

The Senate passed the measure unanimously, and the House strengthened it to bar the transfer of any money at all to UNESCO should any part of the so-called new international information order be implemented. The President signed the measure into law on August 24, 1982.
Now, finally, the U.S. position was clear: We would oppose any legitimation of state control of the media and we would not pay for it.

The law (P.L. 97-241) required a report from the State Department which we received this February. It is sensible, cautious, but positive. UNESCO, it states "is not, at this time," moving further in that direction. (My emphasis.)

Even so, may I suggest that it took us something like ten years to respond to an event that should have aroused us in ten weeks. It was in 1972 that the Soviet Union first came forward with its proposals for a new international information order. By then, the democratic values of the UNESCO charter had been under a steadily mounting attack and UNESCO had been politicized with the totalitarians in near complete control. But it is difficult to disagree with Tom Bethell's judgement that the American press did not report this seachange. And so it came to pass that when the press itself began to be attacked there was for the longest time little if any notice of that either, much less a prompt response.

Just so here at home.

It is something of a routine to decry the insensitivity of successive administrations to issues of freedom of information and freedom of the press. Yet one senses that such insensitivity is growing: much as government grows. It is not irony, I fear, but a general direction of history that we observe in the performance of the present administration. It has increased the size of government to unprecedented levels -- this coming year federal outlays will be 25.1% of GNP -- and it has simultaneously increased pressures on the press.

Consider the Agent Identities Protection Act of 1982. I am Vice Chairman of the Select Committee on Intelligence. I would wish it understood that the time came when we had to legislate on this subject. Not because of anybody or any journal present in this room but for different reasons altogether. We had to legislate. Even so we did not have to violate the Constitution. But when we did legislate, that is exactly what we did do.

One section of the bill makes it a crime to identify a covert agent even if the identity was discovered from publicly available information and even if the person disclosing the information had not the least desire to harm the national interest. Section 601 (c) of the National Security Act now provides for the imposition of a criminal sanction on a person who discloses the agent's identity:

In the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States ....(My emphasis.)

By a vote of 55-39, the Senate substituted this language for similar language adopted by the Judiciary Committee which included the crucial distinction that such disclosure had to be done with:

intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure. (My emphasis.)
The final vote on June 10, 1982 was 81-4. Four Senators voted no, one was paired against. Five Senators in all.

Thus, at the urging of the Administration, "reason to believe" was made a crime -- a standard which is at home in the civil law of negligence, but hardly a basis for sending an editor to jail.

Philip L. Kurland of the University of Chicago Law School has called this law the "clearest violation of the first amendment attempted by Congress in this era." I agree, and repeatedly so stated in the course of our debate on the floor of the Senate.

Henceforth a newspaper must proceed at the peril of prosecution if it publishes the name of a covert agent in a newsstory intended to inform the public and not to harm U.S. intelligence operations. The risk that proceeds from the uncertainty of the statutory language is the very essence of a "chilling effect." Has any newspaper publisher challenged it in court? I believe not. I trust this reflects only a sound litigative judgment to let the government make the first move -- a step we hope will never be taken. But I do implore you not to avoid this risk by imposing self-censorship where none is warranted.

More disturbing yet was the legislation advanced in the summer of 1982 by the senior Senator of North Carolina to deny the Supreme Court jurisdiction over any case relating to voluntary prayer in public schools and public buildings.

Clearly, if the Supreme Court can be denied jurisdiction in one aspect of the first amendment, it can be denied jurisdiction in any aspect. The first amendment guarantees that Congress shall make no law "respecting the establishment of religion . . . or abridging the freedom of speech, or of the press . . . ."

Now what is disturbing is that Congress, arguably, has that power. This is contained in the so-called Exceptions Clause in Article III, Section 2 of the Constitution:

... the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

No less an authority than Justice Owen J. Roberts, speaking to a luncheon of the Association of the Bar of the City of New York on December 11, 1948, (after, that is, his retirement) so stated:

I see nothing. I do not see any reason why Congress cannot, if it elects to do so, take away entirely the appellate jurisdiction of the Supreme Court of the United States over state Supreme Court decisions.

Indeed, disinclined as he was to "tinkering with the Constitution," he proposed to amend it. He thought it was:

Just good housekeeping, just good insurance and just good common sense to put into the Constitution.
explicitly what you and I all think has been there by
tradition for a long time and which ought not be
subject to change.

But we didn't amend the Constitution. And when the court-stripping bill
came to the floor we did not have the votes to defeat it -- the Helms measure.
And so on August 16 last year four of us, lead by Senators Weicker and Packwood,
commenced to filibuster. On September 21, a motion to invoke clo- was rejected
50-39. On September 21, a motion to invoke ture was rejected 53-47. They
were gaining on us. Sixty votes, of course were needed. But then on the next
motion their majority dropped by one vote to 53. An election was coming, --
5 weeks away -- the season was advancing and so the proponents gave up. The
bill was recommitted. But note: it was never defeated. There was always a
majority for it. This despite the fact that it would have profoundly shaken the
balance of powers of the American system of government, and in the face of
a courageous statement by the Attorney General that:

Congress may not, however, consistent with the
Constitution, make "exceptions" to Supreme Court
jurisdiction which would intrude upon the core functions
of the Supreme Court as an independent and equal branch
in our system of separation of powers.

It was a close call. And again may I ask, how well was it reported? How
much was it reported? In my judgment, very little. In the aftermath Bill Petersen
of the Washington Post wrote a good analysis:

The debate was not one of Republicans versus Democrats
or Liberals versus Conservatives so much as the moderate
center standing up for the Constitution against "the radical right."

But I repeat: How much was it reported?

Let me make a small request. This week while you are in session I am going
to introduce the amendment Justice Roberts proposed. If I get any support in the
Congress, may I hope for some from you?

And finally to more recent events. On March 11, 1983, the President issued
a directive which requires all government employees with access to classified
information of any sort to sign standardized nondisclosure agreements subject
to judicial enforcement as a precondition to their access, and which authorizes
polygraph tests of such employees with respect to suspected leaks. In testimony
before joint hearings of the House Judiciary Subcommittee on Civil and Constitu-
tional Rights and the Post Office and Civil Service Subcommittee on Civil
Service, Mr. Floyd Abrams, the distinguished authority on press freedom sought,
as he put it, to put the directive in historical contest. He said:

It is not difficult to generalize about these policies.
They are unique in recent history. They are coherent,
consistent and (unlike those of some recent administrations)
not a bit schizophrenic. They are also consistently at odds
with the notion that widespread dissemination to the public
of information from diverse sources is in the public interest.
It is almost as if information were in the nature of a potentially disabling contagious disease which must be feared, controlled and ultimately quarantined.

A singular feature of this directive is that it requires pre-publication clearance of articles and books written by policymaking officials after they leave government, if they had access to "sensitive compartmented information" — which is intelligence information to which access is limited to protect sources and methods. Suffice it to say that there are presently about 200,000 people in Washington with such clearances — people who can and do contribute much to public debate after leaving office. Abrams observes:

Some of the most important speech that occurs in our society would be subjected to governmental scrutiny and that, if the government in power decided that something could not be written or said, to judicial review.

He reminds us that in 1980, the last year for which we have statistics, the government placed secrecy classifications on 16 million pieces of information. The effect of the new presidential directive could well be to strike at the heart of the ability of the public to be informed about their government.

True, it may spare us some memoirs of presidential aides. But is this sufficient recompense for the silence, or reticence, of the great body of men and women who move in and out of public service in a mode that is in fact unique to the American democracy?

Last Thursday we also learned that the March 11 directive was based on an inter-agency study which proposed prison terms for offenders. Now this could readily lead us to the point where at any given moment half the cabinet is in jail. Mind, there have been times in the recent past where we almost reached that point without the aid of any special legislation. Even so, one wonders if the republic is really ready for such an experiment.

With something such in mind, on March 22, I wrote the President enclosing a more or less routine press clipping of the day citing "senior Reagan Administration" officials and suchlike letting us in on details of "low altitude flights by United States spy planes" flying about Central America. I wrote that I assumed there would be "a thorough internal executive branch investigation of this matter" and asked if the Intelligence Committee might be favored with a copy of the findings. I have yet to hear back on the results.

Nor will I. The President won't reply to me. Nor, probably should he.

He will respond to you. But I don't think he has heard from you, nor has Congress. This is truly a menacing atmosphere gathering in Washington. And it is not at all confined to the executive branch. Freedom of the press, freedom of information is under attack.

It is time you tigers roared.

*This article is a reprint of Senator Moynihan's Keynote Address at the American Newspaper Publisher's Association Convention, New York, 25 April 1983. It is reprinted with the Senator's permission.
CONTEMPORARY ISSUES IN FREEDOM OF EXPRESSION: A REVIEW OF THE SOUTHERN STATES

Stephen A. Smith

During the Freedom and Responsibilities of Speech Division business meeting at the 1983 SSCA convention, the membership expressed a desire for a regular review of current free speech issues in the region, and this article attempts to help meet that need by summarizing some of the cases and controversies which have been reported in the press during the last few months. It is admittedly incomplete and weighted toward issues in Arkansas, but it should be a hopeful beginning. It is also a call for associate editors and state correspondents who will volunteer to monitor issues in each state for summary and inclusion in future issues of this journal.

Professor Linsley's annual review of U.S. Supreme Court decisions in FREE SPEECH YEARBOOK has been an invaluable resource for students, teachers, and scholars of freedom of speech. This review, which will become a regular feature, should serve to supplement Linsley's review by sharing information about cases and controversies which may never reach the Supreme Court or may never be litigated. It is intended to reflect the state of contemporary conflicts over free speech rights and to encourage discussion and scholarship about freedom in the Southern trenches. The South has always been a major battleground for First Amendment freedoms; it should also be a hotbed for productive scholarship and development of First Amendment theory.

ALABAMA

*The sponsors of creation science legislation in Alabama dropped their bid for enactment following federal court rulings in Arkansas and Louisiana holding such legislation unconstitutional.

*On May 12, the 11th U.S. Circuit Court of Appeals declared two state statutes permitting school prayer to be unconstitutional in a case brought by Ishmael Jaffree, father of five students, against the Mobile County school system. One of the acts permitted teachers to hold a period of silent meditation or voluntary prayer for one minute during the first class period each day, and the other allowed the teachers to lead students in a prayer written by Fob James III, a Mobile lawyer and son of the former governor. The opinion, written by Judge Joseph Hatchett of Tallahassee, said "The fact that prayer is voluntary and nondenominational does not neutralize the state's involvement. The state must remain neutral, not only between competing religious sects, but also between believers and nonbelievers. The practical effect of this neutrality means that state schools should not function to inculcate or suppress religious beliefs or habits of worship."

*Twenty KKK members received a city permit to distribute literature and solicit money in Eufaula on June 25. Klan leader Cramer J. Rogers of Roopville, Ga., said the Klan wanted to show support for white businesses which were the target of a black boycott following a police shooting of two blacks involved in a traffic incident. Golden Frinks, an SCLC field representative, said barring the Klan in town aided the boycott because whites were watching the Klansmen rather than shopping.

KENTUCKY

*The teaching of Dr. Dale Moody, a professor at Louisville's Southern Baptist Theological Seminary, has been found to be within the dictates of the seminary's charter, thus averting what could have been the first heresy trial in school history. At issue was Moody's teaching of apostasy, the belief that a person who has been saved can later fall from grace. He had called the traditional belief of "once saved always saved" the "Baptist heresy," contending that a misreading of the Scripture in 1677 accounted for the error in the seminary's Abstract of Principles. The school's president requested Moody's resignation, but the Board of Trustees decided that Moody's comments had been within the school's 1858 charter. Moody had been cleared of similar charges brought by Oklahoma Baptists in 1962.
LOUISIANA

The state's 1981 creation science statute was declared to be unconstitutional by U.S. District Judge Adrian Duplantier in November 1982, ruling on a motion for summary judgment sought by the state Board of Elementary and Secondary Education. Without reaching the First Amendment challenge advanced by the Board and the Louisiana ACLU, the court ruled that only the Board had the authority to prescribe courses, and the legislature erred by dictating "not only that a subject must be taught, but also how it must be taught." Martha Kegele, director of the state ACLU, called the ruling "a complete vindication of our position." Attorney General William Guste said he would appeal the ruling to the 5th CCA, and Senator Bill Keith of Shreveport, the act's sponsor, voiced support for an appeal; however, the legislature twice rejected Guste's request for $100,000 to cover the expenses incurred during the trial.

In June, 1983, federal judge ordered Hammond city officials to grant a parade permit to 23 to 30 Klan members seeking to demonstrate support for city policemen. Klan leader Bill Wilkinson said that the Hammond police were being unfairly harassed by blacks complaining of abuse, but Police Chief Roddy Devall disavowed the groups support and said, "That was his speech, not our speech." The Klansmen carried a banner reading, "Peaceful, Patriotic Protest by the Knights of the Ku Klux Klan," encountered about 100 protesters shouting "Death to the Klan."

OKLAHOMA

On January 26, the 10th U.S. Circuit Court of Appeals sided with the state Attorney General, overturning a December, 1981, District Court ruling and upholding a state statute prohibiting broadcast advertising of liquor and wine. Prior to the 1981 ruling, which declared the prohibition to violate the First Amendment, Oklahoma had restricted liquor advertising to 4-inch signs in store windows. The Oklahoma Press Association has vowed to fight the extension of the ban to print advertising.

Norma Kristie, Inc., organizers of the Miss Gay America beauty pageant, have sued Oklahoma City officials for permission to use Myriad Municipal Convention Center. The group contends that refusal of permission to hold the contest for female impersonators by City Manager Scott Johnson constitutes an arbitrary denial of access to public facilities and a restraint on the company's First Amendment rights to freedom of speech. A hearing is scheduled for August 31, and the pageant is planned for September 18.

VIRGINIA

Frank Spicer, a Norfolk restauranteur, paid $1,800 for a three-story metal pole so he could fly the American flag that he "went to war for" next to his business. City officials ordered Spicer to remove the flagpole because it was in violation of city building codes, and in August he ended his three month fight by agreeing to pay a fine and move the flag.

Wearing buttons proclaiming "I read banned books," Moral Majority Leaders in April called for an end to what they termed the systematic censorship of the conservative viewpoint from the nation's libraries and bookstores. Rev. Jerry Falwell, founder and president, said, "when less than 10% of the libraries carry the conservative books that are vital to the conservative movement in this country, it looks ... as though censorship and book-banning has [sic] been practiced by someone." At a news conference called to promote his new book, BOOK BURNING, Cal Thomas, executive director for communication, said, "Censorship is wrong, whether it's coming from the right or the left. The thrust of this book and our philosophy is not to take one book off the shelves. We don't want to censor or shut up the other side." Thomas advocated increased availability of conservative religious books in the public libraries, and Falwell pledged to raise the money to provide the volumes.
NORTH CAROLINA

* A bill by Sen. Ollie Harris to extend the state sales tax to newspaper advertising died in the Senate finance committee. Arguments were made that the bill was discriminatory because it did not extend to other media advertising, and most political observers think it unlikely that similar legislation will be introduced at the next legislative session.

TENNESSEE

* Federal Judge Robert M. McRae, Jr. of Memphis ruled in May that a city ordinance banning nude dancing was unconstitutional because it was vague and unfairly enforced, holding that police failure to arrest a partially nude dancer in the Metropolitan Opera's recent Memphis performance of "MacBeth" demonstrated that the law was subject to selective enforcement.

MISSISSIPPI

* Chancellor Porter Fortune, Jr. announced in April that the Confederate battle flag would no longer be used as an official school symbol, but that other symbols, such as the Colonel Rebel cartoon mascot and the song "Dixie," would be retained. White students demonstrated by singing Dixie and chanting, "Save the Flag!" black leaders complained that Fortune was supporting racism by not banning display of the flag by individuals. Fortune said, referring to the demonstration by white students that university "would not be shaped by pressures or petitions," and he told black civil rights groups that he had no authority to ban the use and display of the flag by individuals and he did not "propose to say who can . . . whistle Dixie."

GEORGIA

* Three Baldwin County residents, represented by the ACLU, brought suit in federal court in May to have the word "Christianity" removed from a banner depicted on the Milledgeville city seal. At a city hall rally in June, Rev. Thomas Schulze, a Baptist minister, urged a crowd of about 300 "Bible-toting, flag-waving people" to resist the efforts, and he said he would ask the ACLU to reconsider its position and represent Christians being prosecuted for their religiosity.

* The Ku Klux Klan, represented by the ACLU, won in federal court the right to hold a rally in College Park in May after having been twice denied a parade permit by the city council. Judge William O'Kelley ordered the council to grant the permit to the Hapeville Klan chapter, but he set the marcher's 10-block route down Main Street and placed a 40-minute time limit on the rally. Klan leader Bill Wilkinson of Denham Springs, La., led the march and spoke to about 100 robed Klansmen for 20 minutes at City Hall in support of segregated schools and against affirmative action. Wilkinson's words were frequently drowned out by anti-Klan hecklers who outnumbered the Klansmen.

TEXAS

* Madalyn Murray O'Hair, arrested in November, 1977, for reportedly interrupting attempts by the Austin City Council to open its meetings with prayer, was scheduled to be tried on the misdemeanor charge in August.

* A 1973 Dallas ordinance, requiring non-conforming billboards to be removed without compensation, went into effect in May. Governor Mark White vetoed legislation that would have required cities to compensate billboard owners for any signs ordered removed.

* In August, Federal Judge George Cire ruled in Houston that Harris County may continue its 20-year tradition of displaying nativity scenes in public buildings during the Christmas holidays and refused an ACLU request for a permanent injunction prohibiting the displays.

* About 60 Ku Klux Klan members, carrying flags and posters, held a five-block march through downtown Dallas in July to shout their messages of white supremacy. Police Chief Billy Prince said the expense of extra police protection for the march was about $80,000, and, while about 1,000 anti-Klan protesters greeted the Klan
with shouts of "Death to the Klan," unique hand gestures, and projectiles of eggs, a rock, a cigarette lighter, and an umbrella, there were no injuries. Charles Lee, the march organizer, retorted, "You're a bunch of illegal aliens and Communists, and you ought to be rounded up like the criminals that you are." The Dallas Anti-Klan Coalition, which held a rally after the Klan march, filed suit challenging the city parade ordinance. The group contends that its constitutional rights were violated by having to wait 90 minutes to conduct its own march rather than holding it immediately following the Klan rally.

*About 42 KKK members, dressed in hooded robes and black and green paramilitary uniforms, conducted a six-block march on Commerce Street to the San Antonio City Hall in July. The Klan had requested the permit for their second march because tight police security had prevented adequate public and media access to an earlier march in May. Acting police chief Frank Hoyack provided an escort of 60 police officers in full riot gear for the second march, and, despite vocal epithets, there were no incidents of violence. Organizer Charles Lee of Pasadena, Tex., shouted, "This country was made for white people, and that's all there is to it. In the 1920's this country was controlled by the Klan, and it will be again. We're going to take back this country whether the Communists like it or not."

Mayor Henry Cisneros said, "I'm glad the people of San Antonio saw not to glorify the views or values of the Klan. These are not good people, [but are] people who abuse the notion of free speech."

ARKANSAS

*The 8th Circuit Court of Appeals reversed Judge Henry Woods and agreed with the State Parks Division that a park naturalist's rights were not violated by regulations against long hair. Village Creek State Park naturalist Larry Lowman contends in a suit last year that he had a constitutional right to govern his personal appearance, and Judge Woods agreed last July, saying that the controversy "seems like a battle from the past." On April 13, a 2-1 appeals court panel reversed the decision, holding that because Lowman also had some enforcement duties the state had a legitimate interest in a uniform appearance of employees so they would be easily recognized and more likely to be obeyed.

*A Federal court jury in July, awarded a judgement of $100,000 to Debbie Williams, former chief clerk for Little Rock Traffic Judge William R. Butler, in her civil suit contending that the judge violated her First Amendment Rights by firing her because she had given a statement to police investigating his office. Judge William Overton later set aside the $60,000 punitive damage portion of the award, saying that Butler had been sued in his official capacity and no punitive damages could be awarded against a city, but he upheld the $40,000 compensatory award.

*Two black activists, who were arrested in 1977 while picketing and handing out leaflets at a West Helena shopping center, were awarded $100 each for violation of their First Amendment Rights by Federal District Judge Henry Woods in the case of Perkins v. Cross, H-C-79-77. The incident occurred during a business boycott to protest at-large city council elections, a system which has been changed due to other litigation. Woods held that the boycotters clearly had the right to picket and distribute leaflets under the First Amendment, and that the police officers had failed to raise the qualified immunity defense for erroneously arresting the plaintiffs for disturbing the peace. He ordered Police Capt. Charles Weaver to pay $100 to Will Collier and Sgt. Bill Chapman to pay $100 to Jessie Jakes, saying he had "no alternative but the assessment of nominal damages."

*After the Ku Klux Klan announced its intention to hold a rally in a Newport park, Mayor Wayne Beard said he was going to Colorado for a vacation, would be unable to hear the request for a permit, and would go to court to prevent the rally on a farm north of McCrory, and Arkansas Grand Kleagle Lloyd McIntyre
of Walnut Ridge said other rallies were planned later in the summer at Little Rock, Jonesboro, Rogers, and Fort Smith. After only 55 people showed up for the July 23 rally, McIntyre cancelled plans for further rallies this year.

*House Bill 657, which would have prohibited parades, demonstrations or picketing inside the state Capitol building, was vetoed by Governor Bill Clinton on March 31. The bill would have required written permission from the Secretary of State to carry placards, banners, paintings, or printed materials into the Capitol or to hold parades or picketing on the Capitol ground, and it would have made disruption of legislative meetings a crime. In his veto message Clinton said, "Freedom of assembly is a right given utmost protection by the courts, and absolute prohibitions such as the one contained in this bill carry a strong likelihood of being struck down. Moreover, I believe our Capitol should be open to peaceful, orderly assembly which does not impair the abilities of state officials and employees to carry out their duties."

*House Bill 336, requiring warning labels on records and tapes that some say contain hidden messages about Satan, passed both houses in February, but a committee conference never issued a report resolving the difference in House and Senate versions. The legislation was promoted by Rev. Don Hutchings, an Assembly of God minister from Hot Springs, who had led a 1981 burning of about $2,000 worth of rock records, T-shirts, magazines, and books in Dardanelle. Citing songs by Led Zeppelin and the Electric Light Orchestra, Hutchings said, "We're not trying to ban rock and roll. We're not trying to outlaw backwards masking. We just want to warn people so they can know what is about to enter their brains."

*Little Rock attorney William McArthur brought suit against Pulaski County Sheriff Tommy Robinson for false arrest and amended the complaint to add libel and wrongful interference with business under § 1983 of the Civil Rights Act. Robinson said he had "a First Amendment Right" to defend himself against attack in recent public statements by McArthur, and he announced plans to read from the evidence file during a news program on radio station KARN. McArthur asked Federal Judge Franklin Waters to enjoin Robinson from discussing the evidence file on the radio program; however, Waters denied the request, but he said he might order a change of venue if Robinson went ahead with plans to discuss the slandering case on radio. Robinson appeared on the program on August 18, but he did not discuss the evidence in the case, saying, "I'm not going to give any judge the opportunity to stick it to me."

*John and Kay Stoecking of Jacksonville, publishers of a job opportunities newsletter, were charged with violation of the state employment agency statute and enjoined by Pulaski Chancellor Lee Munson from continuing publication until they receive a license from the state Labor Department. The Stoeckings were fined $10,000 in the civil action, and charged with a misdemeanor which could carry a maximum fine of $250 and three months in jail. In June, the Stoeckings filed suit in federal court seeking a declaration that the statute violated their First Amendment rights and asking for $135,000 in damages. In July, Mr. Stoecking filed citizen complaints with the Pulaski County Prosecuting Attorney asking that the publishers of the ARKANSAS GAZETTE and the ARKANSAS DEMOCRAT also be arrested for carrying listings of job opportunities in their classified sections. Prosecuting Attorney Dub Bently rejected that request, but he also withdrew the misdemeanor charge against Stoecking.

*The parents of 15 children in the Vilonia School District, in a suit filed in federal court in May, by the ACLU, charged that their First Amendment rights by the districts promotion of religion through sanctioning daily Bible readings, assemblies that feature religious talks, and a policy of banning school dances for religious reasons. In July, Judge G. Thomas Eisele signed a consent decree in which the school district agreed to refrain from the Bible readings and religious
assemblies, and he recessed the suit on the issue of school dances to allow the district to consider a proposal to allow parents and students to rent school facilities for dances.

Two state prison inmates have filed litigation charging the state Correction Department with violation of their First Amendment right of Freedom of religion. David Fain charged in April that Warden refused to approve his personal check for a subscription to the Cloven Hoof, official publication of the Church of Satan. Fain said the information in the publication was necessary for his practice of Satanism, and he said he'd been told the Warden refused "to allow this type of literature" within the unit. In another case before Judge William Overton, inmate Lyndale Walker said he was a follower of Jainism, an Indian Religion which prohibited him from doing harm to any living thing. As a result of this tenent, Walker said, he couldn't do field work because that would entail hurting plants, and he asked to be excused from field work for religious reasons. In June, Judge Overton ruled that the First Amendment right to practice a religion wasn't absolute and must not be inconsistent with legitimate prison policies assuring security, discipline, and order. Several years ago, the court held that inmates converted to the Vow of the Nazerite had a First Amendment right to have long hair. The Correction Department, admitting that the regulation requiring short hair was not essential to prison security, dropped the policy.

A poll conducted by Center for Urban and Governmental Affairs at the University of Arkansas at Little Rock in November, 1981, a few weeks before the creation science statute trial in federal court in Little Rock, found that Arkansas citizens were less concerned with the issue than had been the legislature which enacted Act 590 of 1981, legislation requiring the public schools to give a balanced treatment of "creation science" and evolution. Only 16.8% agreed or were neutral that only evolution should be taught, while 27.4% opposed the teaching of only evolution. The majority, 55.8%, said they didn't know enough about the issue to venture an opinion.

Attorney General Steve Clark, who unsuccessfully defended the state's creation science statute in federal court, filed a libel action against television evangelist Pat Robertson and the Christian Broadcast Network. Clark took exception to Robertson's remarks during "The 700 Club" program broadcast in December, 1981, criticizing his participation in an ACLU fundraiser and questioning Clark's integrity in defending the creation science act. Robertson contends that applying the long arm statute to a program broadcast from Virginia would have a chilling effect on his First Amendment right to comment on the conduct of public officials. Judge William Overton, who declared the creation science statute unconstitutional, removed himself from hearing the case which is now set for trial of September 26 before Judge Henry Woods.

Dr. Jerry Jones, a nationally known Church of Christ minister, has been fired as head of the Bible Department at Harding University in Searcy in June. Jones said he was fired for calling attention to "work scholarships" for athletes which might be a violation of Arkansas Intercollegiate Conference athletic rules. Harding President Clifton L. Ganus, Jr., said the "athletic issue" had nothing to do with Jones' firing. He said he fired Jones because he would not disassociate himself from the Crossroads Movement in the Churches of Christ in the United States, a sect within the Church which was "highly evangelical" and which tried to pressure persons to conform to their ideals.

The WEST MEMPHIS EVENING TIMES and reporter Kate Dickson filed suit in Crittenden Circuit Court in May, alleging that Mayor Leo Chitman's Executive Order No. 2, requiring city employees to clear all public statements through the mayor's office, violated the Arkansas Freedom of Information Act, the First Amendment to the U.S. Constitution, and similar state constitutional provisions.
On June 17, Judge David Burnett nullified the Executive Order and enjoined the mayor from violating the state Freedom of Information Act. Burnett said that the order was "ambiguous" and that it "restricts the activities of city employees in that it encourages them not to disseminate information to the public."

*Black activist Robert "Say" McIntosh of Little Rock has been arrested twice this year for his political protests. In April, McIntosh burned a poster-sized photograph of Governor Bill Clinton on the steps of the Capitol, protesting that more blacks had not been appointed to positions of power in state government. State Fire Marshal Ray Carnahan arrested McIntosh for burning in an open container, a trash can, and McIntosh pleaded guilty on July 19. Municipal Judge David Hale told McIntosh he would dismiss the case if McIntosh would refrain from open burning until January 24. In August, McIntosh was arrested by State Police for disturbing the peace for interrupting a news conference where Governor Clinton was announcing an appointment to the state Public Service Commission. The new commissioner was white, and McIntosh began shouting that a black should have been appointed. Clinton and Lt. Doug Stephens, head of the governor’s security force, announced that they would not pursue the charge. Clinton said he didn’t want McIntosh arrested, only removed from the room so he could make the announcement without interruption.

*The state office of Emergency Services has purchased a print of the film "Countdown for America" from the American Security Council Foundation, a "conservative" public affairs organization, and is showing the film to civic clubs around the state. The film endorses a congressional resolution advocating a buildup of nuclear weapons, and it is widely used as an argument against a nuclear weapons freeze. State officials said the purchase of the film was recommended by Jerry Stephens of Denton, Tex., regional administrator of the Federal Emergency Management Agency, in a letter stating that the film was available "at a reduced rate through our agency's membership in the Foundation." Russell Cranahan, a spokesman for FEMA in Washington, D.C., said that Stephens had violated the agency's policy against "recommending or endorsing a commercial product or political point of view or organization," and that FEMA was not a member of the American Security Council Foundation. The state OES office has now edited out the last 5 minutes of the 25 minute film which advocated a buildup of nuclear weapons.

*Relying upon the 1979 U.S. Supreme Court decision in Gannett Co. v. Pasquali, Two Arkansas trial judges have closed pretrial hearings this June to the press to avoid prejudicial publicity and assure a fair trial. KTHV-TV before Lonoke Circuit Judge Cecil Tedder and the Russellville Courier-Democrat before Pope County Circuit Judge John Patterson argued that the Arkansas Supreme Court case of Shiras v. Britt in November, 1979 had held that all court sessions are open to the public, but both judges agreed with defense attorneys that Gannett took precedence over state laws and court ruling.

* The Institute of American Ideals, has announced its intention "to restore proper respect for God and country" by influencing committees that select textbooks. The group, headed by Brodie Harrell, a Church of Christ minister, was organized in Searcy, Arkansas in June, and it claims 75 members in Florida, Oklahoma, Texas, California, and Arkansas. Harrell said the group aims "to update the moral standard of the country, particularly in the schools," and he wants schools around the country to choose textbooks that promote "traditional American values" over those now used which lean toward socialism and evolution. Humanists, he said, are now using the schools to promote atheism, and "textbooks ought to promote trust in God, the freedom of the individual, the profit motive, the private ownership of property, the dignity of work, and government as protector not provider."
Organizers of a "Rock Against Racism, Reagan, and the Religious Right" recently charged that the Fayetteville City Board had acted to curtail their First Amendment Rights. City administrators granted the group a 9½ hour/80 decibels variance from the city's 65 decibel noise ordinance for a rally in Wilson Park on April 17. After residents of the area complained about the noise and "filthy language" at a similar Rock Rally last fall, the Board reduced the variance to 3½ hours/75 decibels. John Adams, one of the organizers, said that action, as well as Board action on April 5 deleting an exemption for "noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way," violated the groups First Amendment rights. He told the directors that if his organization was known as "Christians for the Klan" they'd get any exemption they wanted, and that the suggestion that the event be moved to Walker Park was to get them into a poorer neighborhood so as not to "bother the rich folks." Mayor Paul Noland said the Board had tried to accommodate Rock Against Racism's right to free speech and the rights of neighborhood residents to peace in their own homes, to reconcile the differences between "two groups insisting their rights not be infringed upon." Assistant City Manager David McWethy said the suggestion to use Walker Park was made because large tracts of undeveloped land adjoined on two sides, and he pointed out that one of the City Directors lived in that neighborhood.

In November, 1982, Washington Chancellor Tom Butt upheld the Fayetteville city ordinance enacted in 1976 requiring a seven-year amortization of all non-conforming signs and billboards. Donrey Outdoor had challenged the ordinance on First Amendment grounds. The decision was affirmed by the Arkansas Supreme Court in 1983. Following that decision, the Little Rock Board of Directors enacted two ordinances establishing five "scenic corridors" along major thoroughfares, outlawing new construction of outdoor boards and requiring that all existing boards be removed in seven years. The Little Rock Board is also considering an ordinance to classify satellite receiving dishes as "accessory structures" and prohibiting them from being located closer than 60 feet from the front property line on residential lots, effectively requiring that they be installed only in backyards.

The Columbia Broadcasting System and KMOX-TV of St. Louis responded to a $1.3 million suit filed in federal court by a Christian survivalist group, saying that attempts to report on a national convention featuring officers of the Ku Klux Klan and the Christian-Patriots Defense League did not violate the groups civil rights. The group, known as the Zarepath-Horeb Church and also the C.S.A. (the Covenant, the Sword, the Arm of the Lord), maintains that its civil rights were violated by low-level helicopter flights by news crews during the convention in October, 1982.

Augusta school teacher Lou Hall, whose contract was not renewed after the 1980-81 school year, was awarded $22,500 in damages in her suit against Superintendent Carl Steward and the school district. Federal Judge G. Thomas Eisele ruled in March that Hall's First Amendment Rights had been violated when she was fired for "blowing the whistle" on Steward's misapplication of Federal Title I funds.

Tyson Foods obtained a temporary injunction against Local 425 of the United Food and Commercial Workers Union officials who were leafletting McDonald's hamburger outlets in an effort to encourage further contract negotiations. The order was issued by Little River Chancellor Ted Capehart in response to a suit by eight Tyson employees charging that the action was inimical to the worker's best interest. Tyson Foods had threatened layoffs and shift reductions at its plants which produce Chicken McNuggets for McDonald's if the leafletting continued, and the company brought suit in Federal district court and Washington Circuit Court alleging that the leaflets, discussing unsanitary conditions in the plants, were untrue.
BOOK REVIEWS


This tabloid report, compiled by the Sigma Delta Chi Freedom of Information Committee, is intended to "make the First Amendment issues of the past year come alive," and the reader is asked "to show others how they may look to the First Amendment of the United States Constitution to help defend the public's right to know and to protect the freedom of the press guaranteed by the First Amendment."

While the focus is, as expected, on issues relating to newspaper publishing, the report is very well written and helps to summarize current cases and controversies regarding freedom of the press. Among the articles are reports on coverage of the courts, libel, the actions of the Reagan administration, freedom of information, protection of student newspapers, advertising, textbook censorship, and region-by-region reports, as well as a collection of First Amendment cartoons by Herbert J. Block aka Herblock of the Washington Post. The report could be valuable in the classroom to help students understand contemporary First Amendment issues, and it should also stimulate our scholarship toward a more cogent and parsimonious theory of communication rights. Besides that, its a real bargain. Free copies are available upon request to Gannett News Service, Box FOI, 1627 K. Street, N.W., Washington, D.C. 20006.


This publication, No. 94 of the UNESCO Reports and Papers on Mass Communication, is intended "to trace the history of discussion of the concept of the right to communicate since it was first publicly enunciated in 1969 and to describe the present state of thinking on the matter and, as far as possible, to suggest the next stages in the work of defining the right." Drawing heavily on the writings of L. S. Harms and the studies of the East-West Communication Institute, the report also traces the development of the right to communicate by various groups conducting research and discussion under the sponsorship of UNESCO, and Desmond Fisher, editor of Irish Broadcasting Review, has done a commendable job of summarizing the work and raising significant questions for future study.

The study is, in fact, one of the most provocative documents regarding freedom of expression which I have ever read. I am not usually inclined toward superlatives in describing the literature in this area of our discipline, but I believe this report to be among the essential publications for helping students to understand the underlying philosophical principles of freedom of expression and to place First Amendment theory in the context of communication rights around the world. It should also prove useful, if not invaluable, in helping to refine the theoretical and conceptual analysis of even the most experienced scholars of communication.

PUBLICATIONS OF INTEREST


* The National Association of Attorneys General published a number of monographs, some of which are relevant to our discipline. These reports are available from William S. Hein Co., 1285 Main Street, Buffalo, NY 14209.

Campaign Finance Laws: Legislative Approaches and Constitutional Limitations (52pp., July 1977). This report analyzes federal and state statutes concerning campaign finance, including laws limiting expenditures and contributions. Public financing of campaigns, contributions by corporations and labor unions, and financing of ballot issue campaigns are also discussed. Relevant decisions by federal and state courts are summarized, as well as Attorneys General's opinions. Price: $2.50.

Public Information Programs for Attorneys General's Offices, Management Manual No. 4 (59 pp., May 1976). This is a review of current public information programs in Attorneys General's offices. The report surveys media relations and methods of direct communication, such as speakers' bureaus, conferences, telephone, and branch or local offices. Special attention is given to official reports, opinions and intra-office publications. Ten selected programs are discussed in detail. Price: $3.00.

Computer Uses in Attorneys General's Offices, Management Manual No. 5 (42 pp., May 1976). This analyzes computer uses in the legal profession and its feasibility in Attorneys General's offices. Primary emphasis is placed on managerial uses, such as docketing, time-keeping, and work scheduling and assignment, although research applications are also treated. The use of computers in specific enforcement areas, such as antitrust, consumer protection and organized crime control, is also discussed. Price: $3.00.

Computerized Research in the Law (40 pp., March 1976). This is an introduction to the concept of computerized legal research, the development of computer systems for legal research, and the types of systems presently available. The report also examines the current and projected feasibility of such methods and the availability of data processing systems to the Attorney General's office. Included are specific experiences of Attorneys General's offices with computerized legal research. Price: $3.00.

Open Meetings: Exceptions to State Laws (135 pp., March 1979). This is the first of three volumes to be published on the subject of open meeting laws. It offers a comprehensive enumeration of the various exceptions to open meeting laws by presenting the court cases and Attorneys General's opinions which have interpreted them. Among the exceptions discussed are: personnel exceptions; exceptions relating to the attorney-client privilege and pending litigation; exceptions for labor negotiations; and exceptions involving disciplinary proceedings, quasi-judicial matters, occupational or professional licensing, confidential records and personal privacy, investigatory proceedings, parole hearings, sale or acquisition of public property, and public safety. Price: $7.00*

Open Meetings: Types of Bodies Covered (63 pp., June 1979). This second volume on open meetings describes the types of bodies covered by state sunshine laws. Among the topics discussed are: general criteria for coverage; the creation and composition of bodies; committees and subcommittees of public bodies; executive, legislative and judicial entities; and private and nonprofit organizations. Price: $6.00*

Open Meetings: Actions and Meetings Covered (101 pp., November 1979). This volume, of a three-volume series, deals with what constitutes a meeting under open meetings law. It discusses the various aspects of public meetings (composition, activities, and procedures) and how such meetings meet the requirement of openness. Topical treatment is given to such matters as meeting formality; social gatherings; executive and special sessions; administrative hearings; meetings held at unusual locations and by unusual means; the concepts of "action taken" and "deliberation"; and procedural factors such as quorum, notice and minutes. Price: $7.00*

*The three open meetings reports are available as a set for $18.00.
CALL FOR PAPERS CALL FOR PAPERS CALL FOR PAPERS

SSCA CALL FOR FREE SPEECH PAPERS

FREEDOM AND RESPONSIBILITIES OF SPEECH DIVISION
SOUTHERN SPEECH COMMUNICATION ASSOCIATION CONVENTION
BATON ROUGE, LOUISIANA
APRIL 1984

Papers for all programs will be competitively selected. Completed copies of papers should be submitted to the program chairperson by September 15, 1983. Papers should conform to the style and length requirements of the Southern Speech Communication Journal, with a separate title page containing the name and institutional affiliation of the author(s). Presenters should bring 20 copies for distribution at the session.

I. "Constraints on Successful Communication: Extralegal Restrictions on Freedom of Expression." The papers for this program should examine non-statutory restrictions by government, academic institutions, and private sector organizations which limit the freedom of expression by individuals within or dealing with those entities.

Chair: Dr. Paul Barefield
Department of Speech
University of Southwest Louisiana
Lafayette, LA 70504

II. "Issues in Freedom of Expression." The papers for this program may deal with any aspect of freedom of expression—historical, theoretical, or contemporary. Especially encouraged are papers by students and younger scholars and those dealing with the convention theme, "Determinants of Successful Communication."

Chair: Dr. Raymond Rodgers
Department of Speech Communication
North Carolina State University
Raleigh, NC 27650

III. "Freedom of Expression: 1984." The papers for this program should deal with the relationship between freedom of expression and the Orwellian themes of censorship, privacy, access, language, anonymity, disclosure, deception, etc.

Chair: Dr. Steve Smith
Department of Communication
University of Arkansas
Fayetteville, AR 72701
FREE SPEECH PROGRAMS AT SCA

Freedom of Speech and Contemporary Judicial Issues

Sponsor: The Commission on Freedom of Speech

Chair: Susan Siltanen, University of Southern Mississippi


"Empiricism and Judicial Reason in First Amendment Cases," Josina Makau, The Ohio State University.


Respondent: Steve Smith, University of Arkansas

The first paper examines an important case centered in backlash by religious fundamentalists who attempted to use statutes to restrict the gay movement and freedom of expression. The second paper characterizes the First Amendment context to show that judicial use of an empirical model, though attractive on its face, would render unacceptable implications in the area of free speech. The third paper turns to the Court of Human Rights, created by a treaty that went into effect in 1953. The significance of a 1980 decision involving The Times is examined with implications for freedom of speech.

Historical Development and Freedom of Speech

Sponsor: The Commission on Freedom of Speech

Chair: Henry L. Ewbank, University of Arizona


"John Quincy Adams and the Right of Petition," Goodwin Berquist, Jr., The Ohio State University.


Respondent: Anthony Hillbruner, California State University, Los Angeles.

The first paper contrasts the dangers of debate under a monarchy with the justification of debate in democracy, the English system where the English achieve a significant accomplishment in the history of freedom of speech. The second paper focuses on the rhetoric of John Quincy Adams with the analysis on his arguments on behalf of freedom of speech and the right of petition. The third paper aims at answering three extremely important questions: What does the First Amendment really mean? How would the founding fathers interpret it? What was the legislative intent underlying the First Amendment?
Freedom of Speech or Suppression?
Three Current Cases

Sponsor: The Commission on Freedom of Speech
Chair: John J. Makay, The Ohio State University


"Missouri: A Case Study of Broadcaster Failure to Gain Access to Courtrooms," Jeffrey M. McCall, University of Missouri.


Respondent: Ruth McGaffey, University of Wisconsin, Milwaukee.

The first paper examines the contention that protection of the nation's security has constituted a compelling justification for the supression of free speech, especially regarding military regulation. In the second paper, using Missouri as a case, the ultimate public concern is whether the principle of free speech and a fair trial can both be served when broadcasting equipment is brought into the courtroom. The "at-will" rule of law has allowed employers to fire employees exercising the right of expression. The third paper examines the erosion of the "at-will" rule and subsequent effects on freedom of speech.

Freedom of Speech, Mass Media, and Regulations:
Three Differing Views

Sponsor: The Commission on Freedom of Speech
Chair: James Seward, St. John Fisher College


Respondent: Larry E. Harris, Commissioner, Federal Communications Commission, Washington, D. C.

The first paper examines the impact of deregulation of radio on political and public issue broadcasting and assesses the arguments for and against extending that deregulation to television. The second paper presents a case for establishing an agency outside of government and media organizations to establish guidelines to insure the media adheres to its social responsibilities. Case studies will be presented to illustrate the need for such regulation. In response to recent controversy concerning ethics and the press, the third paper argues for the adoption of a uniform code of ethics and professional certification procedures for the field of journalism.
SSCA DIVISION MINUTES

MINUTES OF THE MEMBERSHIP MEETING
FREEDOM AND RESPONSIBILITIES OF SPEECH DIVISION
SOUTHERN SPEECH COMMUNICATION ASSOCIATION

Chairperson Gregg Phifer called the meeting to order at 8:20 p. m., April 7, 1983, in the Sabel Palm Room of the Hilton Inn Florida Center, Orlando, Florida.

Upon motion duly made, seconded, and unanimously approved, the Division resolved to reinstitute a newsletter/publication to keep members informed of current issues and events of interest in the region. Chairperson Phifer appointed Steve Smith as editor for 1983-1984 and authorized him to make the necessary decisions regarding publication date, frequency, format, and content. Dr. Smith said he envisioned the publication to include short articles, book reviews, and state updates on local items such as state and district court decisions, opinions of southern Attorneys General, proposed legislation, and other legal and extralegal actions, and he said that no costs of publication would be borne by the Division or the Association.

As provided by the Division bylaws, Paul Barefield became Chair of the Division for 1983-1984, and Frank Lower continued to serve another year as Secretary. Steve Smith was elected Vice-Chair by a unanimous vote.

Program ideas were discussed for the 1984 convention in Baton Rouge. Among topics suggested were: libraries, textbooks, and the right to read; 1st Amendment and everyday life; historical perspectives; philosophy of freedom of expression; open topic competitive program; access to media; nonverbal expression; government employees; private centers of power and corporate environments; censorship; pornography; and, suggested for a spotlight program co-sponsored with Rhetoric and Public Address, "Communication and 1984" to focus on privacy, electronic surveillance, freedom of information, extralegal constraints, and doublespeak.

Dr. Phifer reminded the membership of the importance of designating the Division as one of the three membership choices under the proposed amendments to the Association constitution and bylaws.

There being no further business, the meeting was adjourned at 9:10 p. m.

MEMBERSHIP REMINDER

Beginning this year, the members of the Southern Speech Communication Association will be allowed to designate membership in three divisions of the Association. Since each division is required to maintain a minimum percentage of Association membership to continue as a full Association division and since the divisional membership will constitute the mailing list for future issues of COMMUNICATION LAW REVIEW, please remember to designate the Freedom and Responsibilities of Speech Division as one of your membership options and encourage your colleagues to join the division as well.