EDUCATION REPORTER

Number 51 | *The Newspaper of Education Rights* | April 1990

Nanette Frank

Missouri Mother Wins Book Battle

The administration of Central Elementary School in Weldon Spring, Missouri agreed March 23 to remove a controversial book from the school's library after receiving numerous complaints.

A review committee, composed of the school's principal, the assistant superintendent, 5 parents, 3 teachers, and 3 librarians, voted to remove *Monsters of Mythology—Cerberus* from the elementary school library. The book, which the American Library Association labels as 8th grade level, will instead be used in Weldon Spring's middle school library. The book contained graphic pictures, such as an illustration called "Hell" depicting a bare-breasted woman and monsters attacking people in hell. The committee decided that these pictures made the book unsuitable for elementary school students.

Mrs. Nanette Frank, whose daughter is a 5th grader at the school, had complained to the school administration about *Monsters of Mythology—Cerberus* after her daughter checked out the book from the library. She asserted that "not only were the pictures disgusting, but the graphic details revealed evil acts," and that the book is not suitable for young children. Mrs. Frank said that her daughter was frightened by these pictures and also by the text in the book which stated, "The demons will give gold and diamonds for those who worship them."

Another parent, Mrs. Sally Kaplan, whose son attends the 2nd grade at Central Elementary, also objected to *Monsters of Mythology—Cerberus* being stocked in an elementary school library. She said, "I'm not for censorship but I feel that those types of books should be in a public library or a bookstore, not in a school library where we have no control over what our children read. *Monsters of Mythology—Cerberus* is inappropriate material for a grade school library—it's too graphic and promotes satanism." She also commented that the book is "as unsuitable for an elementary school library as *Playboy* or *Penthouse*."

Albert Cozzoni, principal of Central Elementary School and a member of the review committee, said that he was "very pleased with the results" of the committee's hearing about the book.

Mrs. Frank said that *Monsters of Mythology—Cerberus* was not the only controversial book in the school's library. She noted that there are approximately 25 books about wizards, witches, and astrology catalogued in the religion section of the library. ■

Michigan Boy, Age 8, Hangs Himself After Watching Suicide Film in Class

A 2nd grade boy in Canton Township, Michigan killed himself on March 23, the day after watching a film about suicide in his class. This is the same school district where controversial and R-rated movies have been shown to students without parental consent for the past five years.

Stephen Nalepa, an 8-year-old student at Gallimore Elementary School in Canton, Michigan, watched *Nobody's Useless*, a film about a handicapped boy who twice attempts suicide. The movie depicts a scene in which the boy, depressed over losing his leg, attempts to hang himself with a rope. The next day, Stephen apparently imitated what he saw in the movie and hanged himself with a belt from his loft bed.

People who knew Stephen Nalepa said that he was a happy child who had just been accepted into the school's gifted and talented program, and that he was not depressed at the time of his death. Many think that he was merely mimicking what he saw in the movie and had no intention to die. In the movie, the boy who tries to hang himself is rescued by his friend and lives.

Larry and Debbie Nalepa, the boy's parents, reportedly only found out about their son seeing the movie about suicide when they heard some of his classmates mention the movie on a local television newscast. When the Nalepas approached the school's principal about letting them see a copy of *Nobody's Useless* in order to understand their son's death, they were at first turned down.

According to Diane Daskalakis, founder of Citizens for a Better Education (CBE), it was only when Mr. and Mrs. Nalepa let the media outlets in the area know that their request was denied that they were allowed to see the film.

Stephen Nalepa's teacher has since admitted that she did not preview the film before showing it to her class. The producers of *Nobody's Useless* have pulled the film from distribution following the 8-year-old child's death. The movie *Nobody's Useless* is the movie version of *The Great Brain* by John D. Fitzgerald, which contains page after page of discussion of suicide and means of committing it.

After viewing the film, Mrs. Nalepa said that her son was "re-creating what he saw in that film. There were so many correlations. It really put into perspective what Stephen was thinking. But he just didn't realize the consequences of playacting."

She also said she hoped other parents would realize the dangers of *Nobody's Useless*. "I just hope that other parents whose children saw the film will talk to them about the film. Because what happened to us was horrendous."

Diane Daskalakis said that the film was only one in a long line of "dangerous" films shown in the Plymouth-Canton Schools. "It's not as if this district hasn't been alerted," she commented. "We've been trying to make a difference here for over five years. We've made the problems about these films very well-known to the district, but they chose to continue showing these films."

She said that other controversial and R-rated movies are still being shown to students in Michigan's Plymouth-Canton Community School District, despite the continued efforts of many parents to stop these screenings.

Teachers in the district's high school and middle school classes have shown many provocative films over the past few years (see *Education Reporter*, May 1987), including *The Thing, The Breakfast Club, One Flew Over the Cuckoo's Nest, Excalibur, The Life of Brian*, and *Firestarter*. These films have been ostensibly used as educational tools in English, psychology, or science high school classes, but they have come under fire by many parents due to their explicit language, graphic violence, and nudity.

Before the *Nobody's Useless* suicide film, the most recent films to draw the ire of parents in the area were *What Are Friends For?*, a film about divorce, and *Am I Normal?*, a sex education video. Citizens for a Better Education has fought against the showing of these films in the school district, but the school board has repeatedly denied parental requests to stop showing these films to minors.

What Are Friends For?, a film starring the child actress Dana Hill, originally ran as an ABC AfterSchool Special several years ago. The plot concerns two girls who become friends after both sets of parents are divorced. The movie has been shown in schools to encourage communication between teachers and students about divorce.

Citizens for a Better Education expressed concern about satanic undertones in the film. One of the main characters in the movie,

See Suicide, page 2

Court Forces College to Release Porn Film Used in Health Class

A New York State court ruled April 5 that Nassau County Community College is required to make available to the public a film called *Sexual Intercourse* which has been shown for several years in a health course. The suit was brought by Frank J. Russo, Jr., a citizen in the area, under the New York Freedom of Information law.

The controversy came to light when Russo discovered that "Family Life and Human Sexuality," a 3-credit course at the tax-funded college, encouraged students to engage in illicit sexual behavior. They were required to view the film, *Sexual Intercourse,* a 17-minute Swedish video, which Russo said "features two couples having sexual intercourse on a spinning bed. The first two minutes are an educational veneer and the rest is hard-core pornography."

When Russo and other taxpayers in the area asked to view the film, the college refused, claiming that allowing them to see the movie would violate "academic freedom." Robert Allen, a college spokesman, said that the school was worried that the public would not appreciate the importance of the course materials if they were seen out of the context of the class. Nassau County Community College was defended in its attempt to keep the materials

Frank J. Russo, Jr.

secret by the New York State Attorney General.

Russo filed suit in court last June to force Nassau County Community College to allow the public to see the film. He sought access only to the visual materials which have been used in the class.

Ruling in favor of Russo, State Supreme Court Justice George Murphy wrote, "What is right can stand the light of access and prove itself in the open forum.... Self-indulgent secrecy is unbecoming, inappropriate and intolerable."

The film is not the only controversial aspect of the course. Until the college's Board of Supervisors threatened last summer to cut off the school's $89 million annual subsidy unless Nassau Community College modified the course, students could earn credit in this class by going on "field trips" where they were encouraged to "do something which will challenge your mind, expand your intellectual horizons." The course suggested visits to a gay bar, an abortion clinic, a prostitute and a nude beach. Students were told to "experience their sexuality" by masturbating and urinating onto a mirror. They were shown slide shows which depicted 80 pictures of male genitalia (some wearing sunglasses and flying an American flag) and 80 shots of female genitalia.

Although these activities were removed from the class, the course's textbook, *Our Sexuality*, which Russo charges makes "no distinction between monogamous marriage and wife-swapping," is still in the class. The textbook states that "the discovery of infidelity does not necessarily erode the quality of a marriage" and that "many believe swinging to be far more acceptable morally than a secret affair." The textbook also encourages masturbation and gives detailed instructions on how to engage in oral sex.

Russo said that the course instructors are "imposing their value system on the kids and it's alien to the values of the community." ■

EDUCATION BRIEFS

A mental health worker in Sand Lake, Michigan passed out material on "Self-Pleasuring Techniques," "Masturbation: A Contemporary Account," and "Sexual Fantasies" in a health class for 7th to 11th grade students. The mental health director called it an "unfortunate incident" and said the employee has resigned. The sexually explicit material is used in the agency's counseling program, but the health class was just supposed to be given material on how to improve self-esteem.

The Wisconsin State Legislature, at the urging of Governor Tommy Thompson, has passed a bill which establishes the state's first school choice program. The pilot program, which will pay for low-income children in the Milwaukee Public Schools to attend private, nonsectarian schools, will affect one percent of the city's 97,000 students. Each student who transfers to a private school will take along $2500 in state aid that would have gone to the Milwaukee public schools.

Cable magnate Ted Turner has been named "Humanist of the Year" by the American Humanist Association. The group calls Turner "an outspoken promoter of humanist values and global awareness" and commends his "using his media network to preserve the future of our planet." Turner will receive his award this month at the organization's 49th annual conference in Orlando, Florida. The American Humanist Association will also honor longtime mandatory sex education advocate Sol Gordon because "his popularity as a lecturer on teenage sexuality has made him a frequent target of the religious right."

Parents of 7th graders at North Middle School in Kirkwood, Missouri were up in arms over the class's February 22 field trip to see *Glory*, an R-rated film about the Civil War. The school's principal, Jim Cockrell, admitted the optional field trip was controversial because "it puts parents on the spot. They don't want to make the decision—they don't want to be the bad guy." Said one parent, "We don't allow our children to see R (-rated) movies. We don't think the school should encourage it, either."

Cable News Network reported on April 3 that an elementary school class in Gloucester, Canada was required to eat baked worms. This came to light when one parent complained that her child began having nightmares. The school and some parents defended the unusual serving of worms, saying that it was an educational experience to introduce children to the customs of other cultures.

Education Reporter (ISSN 0887-0608) is published monthly by Eagle Forum Education & Legal Defense Fund with editorial offices at Box 618, Alton, Illinois 62002, (618) 462-5415. Editor: Lisa Swan. The views expressed in this newsletter are those of the persons quoted and should not be attributed to Eagle Forum Education & Legal Defense Fund, Annual subscription $25. Back issues available @ $2. Second Class postage paid at Alton, Illinois.

Texans Told That Money Isn't The Answer in Education Reform

The Texas state legislature, which was ordered by the state's Supreme Court in the *Edgewood v. Kirby* decision to design a more equitable system for funding its public schools, has not been able to reach an agreement on just how to revamp the state's school educational finance system, despite a recent special legislative system dedicated to solving this very problem.

Money has become the main issue in Texas's struggle to reform its educational system. Tempers flared last month when U.S. Secretary of Education Lauro Cavazos suggested at a joint session of the legislature that money alone would not solve the state's educational woes. Three state senators exhibited their displeasure with Cavazos's statement by walking out on his speech. However, Governor Bill Clements has vowed to veto any bill which increases the state's tax rates.

Recently Clements called for another special legislative session dealing with the state's educational funding crisis. If the state does not come up with a solution for the redistribution problem by May 1, the Texas Supreme Court will completely cut off state funding of the public schools.

Since the state must quickly resolve this dilemma, many organizations concerned with education have proposed alternatives for the state legislature to consider.

Among these groups is the Landrum Society, a public-policy organization dedicated to limited government, free-enterprise economics and traditional values. This group, along with the National Center for Policy Analysis and the Texas Public Policy Foundation, held a conference called "Texas Public Schools: Dollars and Sense" on March 23-24 in Austin which dealt with ways to improve Texas's educational system.

Speakers at the conference included Russell Kirk, Congressman Dick Armey (R-Tx), *Dallas Morning News* columnist John Goodman, Joseph Horn, Associate Dean of Liberal Arts at the University of Texas at Austin, and John Chubb of the Brookings Institution. The theme echoed by nearly all of them was similar to what Lauro Cavazos had stated a few weeks earlier — that money will not solve the problems inherent in Texas's educational system.

Instead, the speakers suggested other ways to improve the state's schools, with school choice being the favorite proposal. The speakers on one of the panels, "School Choice: Is It the Answer?" pointed out that, since there is only a 4 percentage point difference in the passing rate between students whose school districts spend less than $3,296 per student and those that spend more than $4,708, more money does not mean better performance.

Joseph Horn spoke about the woeful inadequacy of current public school education in readying students for college. He said that, because so many students are unprepared for higher education, there is a current drive to make college degree requirements even easier. Horn said that an ad hoc committee at the University of Texas at Austin proposed a comparative studies degree which would have no set requirements. He called the proposed degree a "B.A. Lite" and warned that such a plan would water down the value of a college degree even more.

In his speech, "Money, Money, Money: Or, Why Throwing Cash at the Schools Gets Us Nowhere," Morgan Reynolds of Texas A & M University warned that the state legislature may condemn Texas schools to perpetual mediocrity if they drastically increase education funding. ■

Suicide Movie

continued from page 1

Michelle, uses occult chants and trances to try to make her future stepmother "disappear." She also "prays" to a shrine of candles in her bathtub with a satanic cross painted in the background. She and Amy, the other main character in the film, take a "blood oath" to be friends always. Michelle tells her new friend, "All witchcraft is is learning to focus your mind."

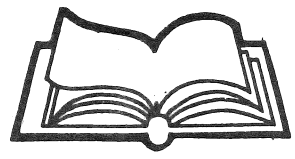
The other new controversial film, *Am I Normal?*, is used to educate middle school boys about puberty. The film is criticized because parents are depicted as unintelligent and uncaring in this film. *Am I Normal?* also tells children that masturbation is perfectly normal and suggests that young boys should look at the male organs of zoo animals and talk to zoo-keepers about their bodies in order to understand their own sexuality. ■

Teachers Call Porn Lines at Taxpayers' Expense

An investigation of two New York City public school districts showed that more than $17,000 of school money went to pay for calls to 900 number specialty phone services. *Newsday*, a Long Island newspaper, published the following list of numbers called from the telephone in the teachers' lounge:

Wrestling/Fantasy Girls
Jean Simpson's Hot Numbers
Auto Loan Store
I Confess
Credit Information Line
The Latino Connection
Sports Trivia Game
Lottery Information Line
Tarot Card Reading
Soap Scope Info On-Call
550-CHAT
550-GENT
550-GIRL
The Man to Man Line
The Hugg Line/Teen Talk
The My My Line
Spanish Dial-a-Porn
Marilyn Chambers Advice Line
The Sensuous Switchboard
News & Moral Beliefs
City of Sluts
Fonetasia
Dirty Joke Line
Dial-A-Hunk
Party-Party-Party Line
Star Trek
Dial-An-Insult
Hardcore Trivia Line
The Skin Line
Ernie Luntati's Horoscope
Scary Story Line
Condom Sense
970-PAIN

You read it here first. National Public Radio's Morning Edition on April 10 told about the sex education course, Flour Sack Babies, which was originally described in the January *Education Reporter*. NPR added that, if a flour sack "baby" breaks, the student must call a funeral parlor and find out how much it costs to bury an infant. ■



Book of the Month

Killing the Spirit: Higher Education in America, by Page Smith (Viking Penguin, 1990, $24.95).

This book has been touted as the liberal antidote to Allan Bloom's *Closing of the American Mind*, but characterizing *Killing the Spirit* as a "liberal" book is a misnomer. The author is not conservative, but many of the conclusions he draws about higher education in America are similar to what can be found in *National Review* or Charles Sykes' *ProfScam*, or even *Closing of the American Mind*.

In a lively style, Smith criticizes disturbing trends in academia — worthless research, a tenure system "compararable to ancient rites of human sacrifice," and the tendency of professors to disdain teaching.

The book's main focus is on "the spiritual aridity of the American university." Religion is simply not discussed in colleges today, even in discussions of major historical events such as abolitionism or the Populist movement, where religion was the motivator. Instead, classes have a moral relativist tone. "God is not a proper topic for discussion, but 'lesbian politics' is."

Smith believes that denying students something to believe in, a need he calls "as basic as the need for food or sex," is rendering a terrible disservice and sending many of them into cults and radical politics. He sees it as a telling figure that over 75 per cent of cult leader Bhagwan Shree Rajneesh's followers attended college, and over one-third are psychologists. Students do not want "all-permissibility " or the ability to make their own decisions without any moral guidance.

Smith also decries what he calls the "We're so smart today because they were so dumb yesterday" philosophy so prevalent in academia. Today's social scientists and scholars view the past through late 20th century Marxist sensibilities; they believe that even classic literature has hidden agendas. Smith is horrified about this philosophy, especially the new literary criticism, which claims that all writers in the American Renaissance — Poe, Whitman, Melville, Emerson, and Thoreau — were part of an elitist conspiracy to keep the social injustices of the 19th century intact.

Women's studies is another academic discipline where the radical revisionists are hard at work. In these classes, "the past has been an unrelieved record of wickedness and oppression." Smith notes that "whatever one may think of the validity of Women's Studies, the existing situation is clearly out of hand.... It is one thing to say that women should have their proper place in all disciplines and departments of a university and another to turn over the enterprise to the most militant of their sex."

What makes *Killing the Spirit* a valuable book is that, since Smith is a liberal academician, his cogent observations about the university cannot be dismissed as right-wing fundamentalist propaganda. ■

Court Stops Drug Education Course

The following is the full text of a decision by a Federal District Court on September 28, 1973. A junior high school student and his mother filed suit to stop a drug education program, and the court "permanently enjoined and restrained" the school from in any way proceeding with the program, holding that it was a violation of the student's "constitutional right to privacy."

Like many contemporary drug education courses, this one consisted of asking nosy questions about the pupil's personal opinions and relationship with his family, did not provide for informed parental consent, and put the students' answers into a "massive data bank on student behavior."

The opinion was written by Federal District Judge John Morgan Davis. The school board did not appeal the decision to a higher court, and no other court has questioned its validity in the 16 years since it was published.

Merriken v. Cressman

364 F.Supp. 913 (E.D.Pa. 1973)

I. FINDINGS OF FACT

1. Plaintiff, Michael Merriken, is an eighth grade student at Stewart Junior High School, Marshall and Forrest Avenues, Norristown, Pa. Plaintiff, Sylvia Merriken, is the mother of Michael Merriken, is a resident of Montgomery County, and pays real estate and other taxes to the county.

2. Defendants are the Montgomery County Commissioners, the members of the Norristown Area School Board, the Superintendent of Schools of the Norristown Area School Board, and the Principal of Stewart Junior High School.

3. Defendants, acting in concert with each other and with Fred Streit Associates, intend to introduce a program entitled Critical Period of Intervention (CPI) into the Norristown Area School District to be administered to eighth grade students including Plaintiff, Michael Merriken.

4. Defendants intend to expend public tax monies to implement the CPI Program.

5. The stated purpose of the CPI Program is as a drug prevention approach as contrasted with drug rehabilitation efforts. It is designed to aid the local school district in identifying potential abusers, prepare the necessary interventions, identify resources to train and aid the district personnel to remediate the problems and, finally, to evaluate the results.

6. When suit was first instituted, Defendants did not intend to obtain the affirmative consent of parents to the participation of their children in the CPI Program. Rather, Defendants proposed a "book of the month club" approach in which a parent's silence would be construed as acquiescence. It was only after suit was started that Defendants offered to change that format so that affirmative written parental consent to participation in the CPI Program would be required.

7. However, the revised letter to parents makes no provision whatsoever for allowing parents to see the test instrument itself.

8. As originally proposed, the CPI Program contained no provision for student consent. After commencement of litigation, Defendants did modify the test instrument to allow students to return a blank questionnaire. However, no affirmative written consent from the students is contemplated nor is any data made available to students in advance to assist them in their decision.

9. In addition to a letter, Defendants propose to send to parents a question and answer sheet explaining the CPI Program. By the admission of its author, Mr. Streit, that document is a "selling device," "an attempt to convince the parent to allow the child to participate." The whole purpose in composing that document "was to convince parents that they ought to allow their children to participate." Mr. Streit acknowledged that "there is nothing in this document . . . that is critical of or negative about the CPI Program."

10. Two child psychiatrists testified without contradiction as to several negative, and indeed dangerous aspects of the CPI Program, none of which are mentioned or referred to in any of the materials to be made available to parents. **These dangers include the risk that the CPI Program will operate as a self fulfilling prophecy in which a child labelled as a potential drug abuser will by virtue of the label decide to be that which people already think he or she is anyway. In fact, the CPI Program manual itself, not available to parents, acknowledges this risk. Another danger mentioned is that of scapegoating in which a child might be marked out by his peers for unpleasant treatment either because of refusal to take the CPI test or because of the results of the test.** That this is not a mere hypothetical risk was illustrated by an incident involving Plaintiff, Michael Merriken, in which fellow students accused him of being a drug user because his mother does not want him to participate in the CPI Program. Drs. Gordon and Hanford also described the severe loyalty conflict that might result by asking children the types of personal questions about their relationship with parents and siblings which are included in the CPI questionnaire. A final example has to do with the qualifications of the personnel who will administer the so-called interventions once the results of the CPI questionnaire have been evaluated. As both psychiatrists pointed out, the types of psychotherapy that are suggested as interventions in the CPI Program are quite sophisticated and require the skills of trained psychotherapists, psychiatrists, psychologists, etc. who have undergone many years of training. However, the CPI Program contemplates that **these sophisticated psychotherapy techniques will be administered by school personnel, including teachers without any particular qualifications who have undergone only a short crash course.**

11. According to the Program, CPI is a "drug prevention approach as contrasted with drug rehabilitation efforts . . . . It is designed to aid the local school district in identifying potential abusers, prepare the necessary interventions, identify resources to train and aid the district personnel to remediate the problems and, finally, to evaluate the results." However, the Program nowhere defines the term "potential [drug] abuser." All that the Program does state is that it will identify patterns similar to marijuana, LSD, barbiturate or amphetamine user. There is no reference to such drugs as cigarettes, alcohol, opium, heroin or cocaine. Moreover, there is no statement as to what constitutes abuse. The study on which CPI is based, however, does contain "an arbitrary set of decisions . . . to define the degrees of use, known or experimental, moderate or heavy."

12. Identification of a potential drug abuser, emotionally handicapped student, or student with deviant behavior or student with specific problems is accomplished by requiring students such as Plaintiff and also their teachers to complete test questionnaires. **The questionnaires ask such personal and private questions as the family religion, the race or skin color of the student (Defendants have since stipulated to dropping this question), the family composition, including the reason for the absence of one or both parents, and whether one or both parents "hugged and kissed me good night when I was small," "tell me how much they love me," "enjoyed talking about current events with me," and "make me feel unloved." In addition both students and teachers are asked to identify other students in the class who make unusual or odd remarks, get into fights or quarrels with other students, make unusual or inappropriate responses during normal school activities, or have to be coaxed or forced to work with other pupils.** Students are at no time given any guidance as to what should be considered an odd or unusual remark or what is to be considered an inappropriate response. For example, there is no warning that political differences or unusual and imaginative insights should not be looked upon as odd remarks or inappropriate responses.

13. Although the CPI Program constantly refers to confidentiality, no specifics are given in the Program itself as to how confidentiality is to be maintained after evaluation. Mr. Streit did testify on this subject but that testimony is far different from what appears in the printed CPI materials. **The Program, by its own terms, contemplates the development of a "massive data bank"** and also dissemination of data relating to specific students to various school personnel, including superintendents, principals, guidance counsellors, athletic coaches, social workers, PTA officers, and school board members. In fact, at a meeting of the Norristown School Board on Monday, October 23, 1972, parents were advised that teams of faculty members had already been selected to receive data back from the CPI Program in order to implement the intervention stage of the Program in the various schools in Norristown.

14. Even if those who are to be working with the CPI Program were to try and be as confidential as possible, in accordance with Mr. Streit's testimony, there is absolutely no assurance that the materials which have been gathered would be free from access by outside authorities in the community who have subpoena power. Thus, there is no assurance that should an enterprising district attorney convene a special grand jury to investigate the drug problem in Montgomery County, the records of the CPI Program would remain inviolate from subpoenas and that he could not determine the identity of children who have been labeled by the CPI Program as potential drug abusers.

15. The second step of the CPI Program is "intervention" or "remediation." The stated purpose of this phase is "to change the cognitive and affective domains of potential drug abusers and other forms of deviant behavior." Intervention may take several forms, some of which are compulsory for the student and which seriously limit and infringe upon individual liberty. For example, one form of intervention, Guided Group Interaction (GGI) is specifically described in the CPI Program as an "involuntary assignment." GGI operates as follows:

a. "The peer group acts as a leveller or equalizer insuring that its members do not stray too far from its ranks."

b. The objective is "specific alteration in acting out or deviant behavior," both undefined terms.

c. "Deviancy is painstakingly defined and discouraged by the group itself. It can include not only socially proscribed behavior but any action which violates the group's specific normative system."

d. Members are compelled to "explain . . . why they have been assigned to the program . . . ."

e. The group may impose sanctions on members, including "work detail, withdrawal of past privilege, recommendation to a special unit for intensive training, or the assignment of more onerous tasks."

16. Intervention is also another major threat to the confidentiality of the CPI Program. For example, one form of intervention is Referral Intervention. Under this program, "responsible school personnel make referral interventions when remediation needed by a particular student far exceeds available school resources. This referral intervention utilizes community resources such as clinics, hospitals, rehabilitation centers, etc. to help the seriously disturbed or serious drug-user student." Another form of intervention is Adult Role Model in which "teachers [are] . . . asked to select two children from the list of identified emotionally handicapped children. They would be given background information on each child . . . ."

17. The CPI Program results will not be made available to parents unless they affirmatively request them.

II. DISCUSSION

The CPI Program as presented above is considered by its advocates, the Defendants, as a voluntary program in which affirmative parental consent is now given before participation by the student; and a student may return a blank questionnaire when the test is administered without apparent recrimination. It is contended that the Program is constitutional and is within discretionary power of the School Board.

The Plaintiffs assert that the Program is not voluntary because individuals' constitutional rights are waived without knowing, intelligent and aware consent. See *Brady v. U.S.*, 397 U.S. 742 (1969). Before the Court reaches the question of the voluntariness of this Program, we will examine the alleged violations of the Constitution and state why individual constitutional rights are involved in this litigation.

The Plaintiffs claim that the CPI Program will interfere with and impede the Plaintiffs' rights of freedom of religion, freedom of speech, freedom of assembly, privilege against self-incrimination and right to privacy guaranteed by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States.

The main thrust of the Plaintiffs' argument that the CPI Program is an involuntary invasion of constitutionally protected rights, is the violation of the right to privacy. They base their argument mainly on *Griswold v. Connecticut*, 381 U.S. 479 (1965), in which the Supreme Court ruled that inherent in the first nine Amendments to the Constitution is a right to privacy which is binding on the States as well. In a more recent case, the Supreme Court re-emphasized its position on the right of privacy in *Roe v. Wade*, 410 U.S. 113 (1973), and restated some of the general factual situations to which this right would apply. The Court said in *Wade, supra*, at 152-153:

"The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as *Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 251 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment,

Stanley v. Georgia, 394 U.S. 557, 564 (1969); in the Fourth and Fifth Amendments, *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968), *Katz v. United States*, 389 U.S. 347, 350 (1967), *Boyd v. United States*, 116 U.S. 616 (1886), see *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); in the penumbras of the Bill of Rights, *Griswold v. Connecticut*, 381 U.S., at 484-485; in the Ninth Amendment, *id.*, at 486 (Goldberg, J., concurring); or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment, see *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). These decisions make it clear that only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty,' *Palko v. Connecticut*, 302 U.S. 319, 325 (1937), are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, *Loving v. Virginia*, 388 U.S. 1, 12 (1967); procreation, *Skinner v. Oklahoma*, 316 U.S. 535, 541-542 (1942); contraception, *Eisenstadt v. Baird*, 405 U.S. [438] at 453-454, *id.*, at 460, 463, 465 (White, J., concurring in result); **family relationships**, *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) and **child rearing** and education, *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925), *Meyer v. Nebraska, supra*."

This Court will look closely at the factual situation as it relates to family relationships and child rearing. The CPI Program questionnaire asks whether the student's family is "very close, somewhat close, not too close, or not close at all." (Question 7) In addition, the student is asked to answer questions of such intimate things of his parents as to whether they "hugged and kissed him good-night when he was small" (Question 53); whether they told him how "much they loved him or her" (Question 54); whether the parents "seemed to know what the student's needs or wants are" (Question 116); and whether the student "feels that he is loved by his parents" (Question 112).

The above questions are samples which represent the highly personal nature of the entire questionnaire. These questions go directly to an individual's family relationship and his rearing. **There probably is no more private a relationship, excepting marriage, which the Constitution safeguards than that between parent and child. This Court can look upon any invasion of that relationship as a direct violation of one's Constitutional right to privacy.**

The fact that the students are juveniles does not in any way invalidate their right to assert their Constitutional right to privacy. In a "freedom of speech" case involving the wearing of black arm bands protesting the Viet Nam War by students, the Supreme Court, in *Tinker v. The Des Moines School District*, 393 U.S. 503, at page 511 (1968), said:

"School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State."

This Court would add that the right to privacy is on an equal or possibly more elevated pedestal than some other individual Constitutional rights and should be treated with as much deference as free speech. The United States Court of Appeals for the Third Circuit held in *Stull v. The School Board of Western Beaver Junior-Senior High School*, 459 F.2d 339 (1972), in reversing the District Court, that high school dress codes governing the length of hair in the absence of any evidence of disruption or of a health hazard or of an effect on academic accomplishment was violative of due process. In another case involving hair length, the United States District Court for the Northern District of Illinois stated in *Miller v. Gillis*, 315 F. Supp. 94 (1969):

"Students are persons under the Constitution; they have the same rights and enjoy the same privileges as adults. Children are not second class citizens. Protections of the Constitution are available to the newborn infant as to the most responsible and venerable adult in the nation."

As this Court ascertains from the above authority that children who are students are entitled to exercise their Constitutional rights, the question then arises whether parents, as guardians of the children, can waive their children's Constitutional rights. In the case at Bar, the children are never given the opportunity to consent to invasion of their privacy; only the opportunity to refuse to consent by returning a blank questionnaire. Whether this procedure is Constitutional is questionable, but the Court does not have to face that issue because the facts presented show that the parents could not have been properly informed about the CPI Program and as a result could not have given informed consent for their children to take the CPI test.

Before dwelling on the question of "informed consent," it should be noted that the case before the Court is a civil case. The Supreme Court has indicated that in civil cases as well as criminal cases the Court should indulge in every reasonable presumption against waiver of procedural due process the self-fulfilling prophecy, scapegoating of those children who opted not to participate or the ultimate use of the data as it would affect their children and law authorities who might find it necessary to use that information to learn more about the drug situation in the local community.

The Law does not abound with cases or expert treatises on the problem of personality testing and confidentiality and the problems of informed consent. However, in a recent Federal Bar Journal article by Charles W. Sheerer and Ronald A. Roston, on "Some Legal and Psychological Concerns About Personality Testing in the Public Schools," 3 *Fed.Bar Journal* 111 (1971), there is some insight into the problem of scientific testing and the American parent. They stated at 114-115:

"The average American parent has a great and naive faith in 'scientifically' constructed tests. This faith is reinforced by the unconscious desire of the more insecure parents to avoid involvement and to depend on 'professionals' to make the difficult decisions in the education and maturation of their children . . . .

"In all probability, he is not clear regarding the qualifications of the school 'psychologist' who is likely to hold a master's degree in school psychology, not from the psychology department of a college or university, but from an education school or department. Chances are great he has not had significant supervision in a hospital, or outpatient clinic, or from a clinical psychologist or psychiatrist. He is likely to be considered 'untrained' by the persons that parents have in mind when they 'picture' a psychologist. . . . **Informed consent for personality testing should be comparable to the informed consent ideally obtained by a physician prior to the performance of surgery . . . .**"

This Court feels that however good may be the intent and motive of the Defendant, the presentation of the CPI Program to the student and the students' parents is far from candid, and any attempt at informed consent does not reach the level that this Court would consider adequate as in the "consent ideally obtained by a physician prior to the performance of surgery." The parents are not aware of the consequences and there is no substitute for candor and honesty in fact, particularly by the school board who, as the ultimate decision maker as far as the education of our children is concerned, should give our citizenry a more forthright approach. The attempt to make the letter requesting consent similar to a promotional inducement to buy, lacks the necessary substance to give a parent the opportunity to give knowing, intelligent and aware consent.

The actual testing of the students and the results gained are suspect. All that the Program does state is that it will identify patterns similar to marijuana, LSD, barbiturate or amphetamine users. There is no reference to the use of drugs and there are no statements as to what constitutes abuse. The study nowhere defines what is a potential drug abuser and is vague in the relationship of its background analysis to the intended results.

There is a statement concerning the confidentiality of the test during its administration and during the immediate evaluation period that is comprehensive and well explained, but the credibility of the confidentiality of this Program breaks down when the potential drug abusers are reported to the school superintendent. The school will then attempt remediation by the use of teachers, guidance counselors and others, who have had little training in the area of psychological therapy in either individual or group therapy sessions. The ultimate use of this information, although possibly gained with a great deal of scientific success, is the most serious problem that faces the Court. How many children would be labeled as potential drug abusers who in actuality are not, and would be subjected to the problem of group therapy sessions conducted by inexperienced individuals?

Strict confidentiality is not maintained after evaluation and there are many opportunities for a child to suffer insurmountable harm from a labeling such as "drug abuser" at an age when the cruelty of other children is at an extreme. The seriousness of this problem is illustrated by the fact that if one child is so harmed and would be temporarily or permanently damaged by the label of "drug abuser" is this Program worth the effort to identify other actual "drug abusers."

When a program talks about labeling someone as a particular type and such a label could remain with him for the remainder of his life, the margin of error must be almost nil. The preliminary statistics and other evidence indicate there will be errors in identification. The Court recognizes that the Supreme Court has spoken and many Law Review authorities have spoken about a balancing test. What this means is that the Court balances the invasion of privacy against the public need for a program to learn and possibly prevent drug abuse in a society which has become highly aware of the dangers and effects of drug abuse. If the Court finds the public need so great and the invasion minimal, then it could sanction the Program in favor of public need. The Supreme Court in *Barenblatt v. U.S.*, 360 U.S. 109, at 126 (1959) stated:

"Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown." See also *Konigsberg v. California State Bar Association*, 353 U.S. 252 (1957); and 366 U.S. 36 (1961).

The Court, in balancing the right of an individual to privacy and the right of the Government to invade that privacy for the sake of public interest, strikes the balance in favor of the individual in the circumstances shown in this case. In short, the reasons for this are that the test itself and the surrounding results of that test are not sufficiently presented to both the child and the parents, as well as the Court, as to its authenticity and credibility in fighting the drug problem in this country. **There is too much of a chance that the wrong people for the wrong reasons will be singled out and counselled in the wrong manner.**

The Plaintiff also contends that other Constitutional rights will be violated if the Defendants are allowed to proceed with the CPI Program. There is no other Constitutional right that this Program would violate besides privacy. The protection against self-incrimination violation may be moot because of the new Pennsylvania Law which attempts to prevent the use of information, obtained confidentially from students, from being used against them in legal proceedings without consent.

The evidence presents no violation of the Constitutional right of the student to speak or assemble. The Court recognizes, however, that young people at the junior high school level are ostracized for unpopular views by their peers but no school authority is preventing the students from speaking or assembling. Although there may be a chilling effect or a step in the direction toward the prevention of free speech and assembly, this Court feels that there is no violation of Constitutional rights in this particular fact situation.

The Defendant maintains that the Legislature has vested the school board with discretionary power to act, that is, to test its students, and the burden placed on the Plaintiffs to show that this power is being abused is extremely heavy. *Lamb v. Redding*, 83 A. 362 (Pa. 1912); *Robb v. Stone*, 146 A. 91 (Pa. 1929); and *Ritzman v. Coal Township School Directors*, 176 A. 447 (Pa. 1935). However, as the facts presented in this case, vis-a-vis, a violation of one's Constitutional rights, so overwhelmingly carries the burden **there is no question that the school board has overstepped its discretionary authority.**

The CPI Program attempts to determine relative to today's problem of drug use and abuse what steps can be taken to prevent students from becoming drug abusers; and if such a program as presented here could be used to identify those who are potential drug abusers. Unfortunately, this Program does not meet the necessary Constitutional and procedural requirements. Setting precedents as to invasion of Constitutional rights without informed consent must be examined very closely and only employed when the balance weighs so heavily in favor of the public need. As the Program now stands the individual loses more than society can gain in its fight against drugs. The Court will enjoin this Program as it fails to meet Constitutional standards.

III. CONCLUSIONS OF LAW

1. This action is brought to redress the deprivation by Defendants, under color of state law, of the rights, privileges and immunities secured to Plaintiffs by Article I, Section 9, Clause 3 and the First, Fourth, Fifth, Ninth and Fourteenth Amendments of the United States Constitution. The Court has jurisdiction of the action pursuant to 28 U.S.C. #1343; 28 U.S.C. #1331.

2. The CPI Program will violate the Plaintiffs' right to privacy inherent in the penumbras of the Bill of Rights of the United States Constitution.

3. Under the CPI Program, Defendants would unlawfully and without authority attempt to exercise the exclusive privileges of parents, extending into areas beyond matters of conduct and discipline, in excess of their power and contrary to law.

4. The CPI Program will be administered without the knowing, intelligent, voluntary and aware consent of parents or students.

5. Defendants, their agents, servants and employers and all persons acting in concert with them are permanently enjoined and restrained from implementing or in any other way proceeding with the CPI Program and from expending any further county or school district revenues on the CPI Program. ■