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High court feels uneasy in school book-ban case

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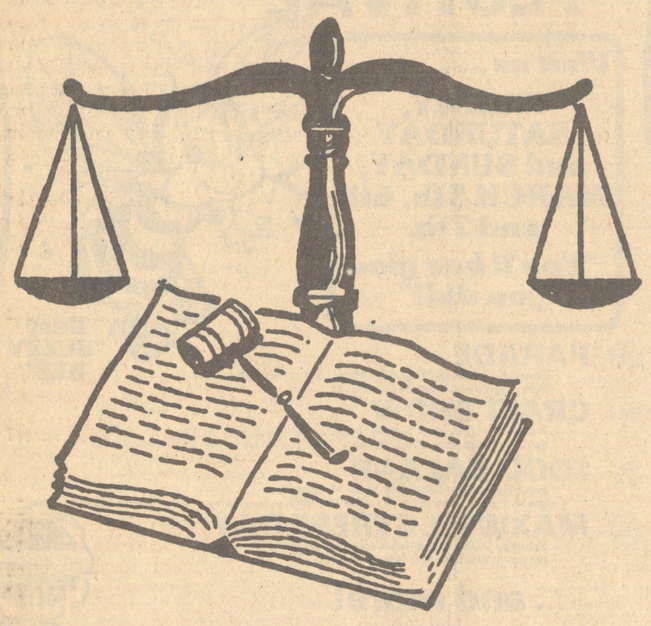

By Jim Mann
Los Angeles Times

WASHINGTON — Local school boards have the legal right to remove books from school libraries that they consider offensive as part of their duty to transmit "moral, social and political values" to students, a lawyer for a New York school district told the Supreme Court Tuesday.

George W. Lipp, a Babylon, N.Y., attorney, argued that the nation's 16,000 school systems need to be able to "tailor local programs to local needs." If each school board were not able to decide what books should be available for students, he said, "a true pall of orthodoxy" would be imposed.

A civil liberties lawyer, on the other hand, contended that it is unconstitutional for a school board to remove books from library shelves. "It is historically assumed that the right to read a book is protected by the First Amendment," New York attorney Alan. H. Levine said.

Those conflicting assertions were made during an hourlong hearing before the court in what was viewed as a key test of the extent to which school officials may keep books or other materials away from public school students.

The case arose when the board of the Island Trees school district in Levittown, N.Y., ordered nine books, including Kurt Vonnegut's "Slaughterhouse Five" and Bernard Malamud's "The Fixer," off school library shelves. Board members said that the books contain passages that are offensive, vulgar or blasphemous. Their action was challenged in court by students and civil liberties groups who said that it violated the First Amendment.

The justices probably will not rule in the case until late June or early July. By all indications during Tuesday's hearing, several of the justices find the case particularly troubling, because they are not anxious to open the door for federal courts to second-guess the judgments of local school boards.

"Do you deny it is the primary function of a school board to determine what is unsuitable?" Justice Lewis F. Powell Jr. asked Levine, the civil liberties lawyer. "Is a federal court more qualified? I'd like to think we are, but I know we're not. . . . Somebody has to make the determination of what's educationally suitable."

Levine responded that school board members like those in Levittown may not employ words such as "educational suitability" in order to disguise what he said were "political judgments" about the value of various books.

Local school board members may legitimately convey their personal values to the students in their district, Levine said. However, he went on, "What we say here is that they may not ignore their obligation to respect diversity."

While the justices seemed to be reluctant to tie the hands of local school boards, they also appeared uneasy about the prospects of giving school officials unlimited power to ban whatever books they do not like.

"Is there some place where you draw the line?" Justice Sandra Day O'Connor asked Lipp, the attorney representing the school district. She questioned whether a school board could remove from its libraries all books that foster a particular ideology.

Lipp replied that he was not adopting an absolute position. If a school board tried to ban books solely on their content, or engaged in "a rigid and exclusive attempt at indoctrination," its actions might be unconstitutional, he conceded, but he said a board may take less sweeping actions based on its own political and social values.

O'Connor also pressed Lipp to explain whether a school board might ban all books favorable to Republicans "because it is a good Democratic board." Lipp said he did not think a board could do that, and explained that he was not using the word "political" in that way.

The school board's lawyer also drew questions from the court when he said that local school officials acted to remove books that are "in bad taste."

"What is bad taste?" Justice John Paul Stevens asked. "Could they take every book out of the library that contains the word 'ain't'? I was taught that was a vulgar word."

In addition to the Malamud and Vonnegut novels, the books ordered off the shelves of the Island Trees district libraries included Desmond Morris's "The Naked Ape," Langston Hughes's "Best Short Stories by Negro Writers" and Eldridge Cleaver's "Soul on Ice."

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Justice O'Connor Gets Special Honor

VALLEY FORGE, Pa. (AP) — Supreme Court Justice Sandra Day O'Connor, VisionQuest and a Flowing Wells High School graduate are among the winners of the 1981 Freedoms Foundation at Valley Forge National Awards, the foundation announced.

Mrs. O'Connor, a former Arizona Court of Appeals judge, won a Distinguished Award from the foundation.

Jill Barber, a freshman political economy major at Hillsdale College in Michigan, won a "Youth Essay 1981" George Washington Honor Medal. She was valedictorian of the 1981 Flowing Wells graduating class.

The VisionQuest wagon train program for troubled youths won the George Washington Honor Medal for "Community Program 1981" honors.

The annual awards recognize individuals and organizations who support U.S. social, political and economic institutions and present solutions to contemporary problems.

Joining Mrs. O'Connor as winners of Distinguished Awards were Beverly Sills, Pearl Bailey, Arthur Ashe, Rod McKuen, Roger Staubach, the Special Olympics and, posthumously, Anwar Sadat.

Freedoms Foundation at Valley Forge, whose honorary chairman is President Reagan, describes itself as a non-profit, non-sectarian and non-political organization that promotes American heritage.

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Justice O'Connor may have 'let cat out of bag'

Associated Press

WASHINGTON — Supreme Court Justice Sandra O'Connor may have tipped the court's hand Tuesday in an important case involving access to the federal courts in civil-rights cases.

At a congressional hearing on the court's budget request, Justice O'Connor was asked how Congress can help alleviate the court's growing workload.

She suggested that Congress consider requiring alleged victims of civil-rights violations to seek all available "administrative remedies" before they file federal lawsuits.

If it was following its normal procedures, the Supreme Court last week took a preliminary vote during a secret conference on the same issue. Thus, Justice O'Connor's answer — implying that Congress does not now require such exhaustion — may indicate that the court's majority reached the same conclusion in last week's vote.

Civil-rights activists say such a requirement would make it more difficult for people to undo wrongs committed by state and local officials.

The court could dispose of the case now before it on some procedural technicality without resolving the exhaustion question. Another possibility: The justices always reserve the right to change their minds and the results of their preliminary voting.

Just last week, the justices heard arguments in a Florida case that asks them to decide whether Congress already has imposed the administrative-exhaustion requirement. The 5th U.S. Circuit Court of Appeals said yes.

Asked about her remarks as she left the Tuesday hearing, Justice O'Connor said only, "I will rest on what I said."

Pre-announcement leaks of Supreme Court decisions are extremely rare. Such leaks by the justices themselves are virtually unheard of.

The Florida case that the court has under study was sparked by a 1979 lawsuit filed by Georgia Patsy, a secretary at Florida International University in Miami. She charged the state Board of Regents with passing her up for a promotion because she is white and female, a form of discrimination outlawed by an often-used, 111-year-old federal law.

The Civil Rights Act of 1871 allows citizens to sue state- and local-government officials who allegedly violate their rights.

The 5th Circuit Court killed the suit, saying Ms. Patsy first must try to get some help in state-university-system administrative procedures. The appeals court said Congress has mandated that route in subsequent civil-rights legislation.

At the hearing, Justices O'Connor and Lewis F. Powell asked Congress to appropriate $14.9 million for the Supreme Court in fiscal year 1983, a $1.6 million increase over the court's current budget.

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O'Connor urges state control in civil rights damage cases

By Lyle Denniston
The Baltimore Sun

WASHINGTON — A Supreme Court justice has hinted strongly to Congress that a key case will be decided in favor of keeping federal courts open for the growing volume of civil rights damage claims.

The highly unusual hint came March 9 in testimony by the newest justice, Sandra Day O'Connor, before the House Appropriations Subcommittee that is studying the court's $14.9 million budget request.

The issue arises in a pending Florida case that has the potential of cutting off many civil rights cases. She did not say, in so many words, how the court would rule.

But she did urge Congress to pass a law to achieve that result by requiring most civil rights cases to be pursued first with state agencies, instead of going directly to the federal courthouse.

It would not be necessary for Congress to act, of course, if the justices were to interpret present law to give state agencies priority in handling such cases.

Asked after the hearing if the issue she had discussed were not the same one now under review by the court in the Florida case, O'Connor replied: "I will rest on what I said."

Just two weeks ago, the court heard lawyers argue the case. Under normal procedures, the justices would have cast their preliminary vote on the case at their secret conference on Friday.

O'Connor's promotion of a federal law to shunt more civil rights cases to state agencies echoed a proposal she made in a law review article last summer, before she was chosen for the Supreme Court.

An Arizona appeals court judge at that time, she argued that state officials would be as sensitive as federal judges toward constitutional rights and thus should be given more authority to deal with rights cases.

The case now before the Supreme Court involves Georgia Patsy, who filed a federal civil rights case three years ago against Florida International University, contending that the university discriminated against white females seeking jobs. She was a secretary at the university but had been denied a variety of other jobs for which she applied. She asked for $50,000 in damages.

The 5th U.S. Circuit Court of Appeals, however, ruled last year that civil rights complaints must be taken first to state agencies. Patsy is challenging that ruling in her appeal to the Supreme Court.

O'Connor's comments came in answer to questions by subcommittee members about what could be done to cut down the rising caseload of federal courts, including the highest court.

Twice, she offered the suggestion that Congress deal with civil rights complaints.

An 1871 civil rights law has been used increasingly by persons seeking damages for violations of their rights.

Justice Lewis F. Powell Jr. offered the subcommittee an implied criticism of that development Tuesday, noting that the court last year had a case involving a prison inmate's civil rights claim for $23.

The court's budget request is $1.6 million higher than last year's spending level. It is asking permission to hire four new full-time employees and one part-time employee and to expand its fleet of vehicles to seven from six.

Subcommittee chairman Neal Smith, D-Iowa, praised the court, saying it "has not been one of those agencies that have sought more than they really believe they needed."

SCOTTSDALE DAILY
PROGRESS
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O'Connor tastes liberal assault

WASHINGTON (AP) — The Supreme Court's liberals are accusing the court of "sheer demagoguery" in their first full-scale attack on an opinion authored by Justice Sandra Day O'Connor.

Justice William J. Brennan, writing for himself and fellow liberal Justice Thurgood Marshall, called Justice O'Connor's rationale "sentiments in reasons' clothing."

The comments came as the pair criticized a decision trimming state prisoners' rights to go to federal court to try to overturn their convictions.

Justice O'Connor, writing for the court's majority, answered Brennan by calling one of his statements about a key fact in the case "incomprehensible."

The nine justices often disagree in their opinions, claiming that their attacks on the others' stances are never personal.

For example, just a month ago Chief Justice Warren E. Burger and Justice John Paul Stevens wrote out their strong, but politely worded disagreements over the standards for admitting lawyers to practice before the high court.

The liberal wing generally saves its harshest criticism for the court's two leading conservatives, Chief Justice Warren E. Burger and Justice William H. Rehnquist. Justice O'Connor has only been on the court since Sept. 25, 1981.

Brennan disagreed with O'Connor's assertion that the passage

O'Connor

of time and other factors may bar a second trial, and may lead to the state criminal defendant's virtually automatic freedom, once the first conviction is set aside in federal court.

In the disputed case, the Supreme Court on Monday reinstated the convictions of three Ohio men, ruling that their successful federal court appeals should have been barred.

By a 7-2 vote, the justices ruled that state convicts most often cannot get into federal court when raising constitutional issues not pursued in state courts.

Her opinion attracted four other votes. Justices Harry A. Blackmun and Stevens agreed with the result, but chose not to join her opinion.

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Individual has role: O'Connor

COLORADO SPRINGS, Colo. (AP) — "One plain, unknown citizen" can influence decisions, even before the U.S. Supreme Court, Justice Sandra Day O'Connor told the graduates of Colorado College.

"The individual can make things happen," said Mrs. O'Connor, the first woman named to the Supreme Court. "It is the individual who can bring a tear to my eye and then cause me to take pen in hand. It is the individual who has acted or tried to act who will not only force a decision, but be able to impact on that decision."

Among the 452 graduates of the small liberal arts college was her son, Brian, 21, an economics major. Mrs. O'Connor received an honorary doctor of laws degree at Monday's ceremonies.

During the outdoor speech under overcast skies, the justice noted that her own life — from graduation from law school 32 years ago through a career as an Arizona state senator and a state appeals court judge — had been a succession of small steps, not giant leaps.

"Initially, I just tried to be a good lawyer," she said. "When I got married and had children, I tried to run a good household and home and to be as good a wife and mother as I could. Later, I did my best as a volunteer, as a state senator and as a judge."

She said she believes that creativity, work and love were the key ingredients of her successes.

She joked that knowing her son would be among those listening to her commencement address had made writing the speech difficult — "Everyone knows that a mother just doesn't know what she's talking about."