

Warning: This Column is about THE LAW



(l-r) Gene Balloun, Justice Sandra Day O'Connor, and Judge David Waxse. (Photo by Sherwood Archibald)

What I'm about to write may shock you, so be prepared. But this month's column is about THE LAW. Yes, a legal column. More than just that, it's a First Amendment column. So, grab some smelling salts, get back in your chair, and once you've finished reading this, you might just qualify for CLE credit. Doubtful, but think positive.

You see, a long time ago, a high school library here in the metro had an award-winning book on its shelves that was removed by order of the school board. The book, "Annie on My Mind" by Nancy Garden, recounts a story of a romantic relationship between two high school girls. The book is fiction. But the controversy resulting from the school board's decision to remove the book was anything but; once placed, and then removed, several students sought to assert their First Amendment rights to have the book kept on the shelf. The year was 1995.

Kansas City Star reporter Joe Robertson recently described the controversy this way: "The book was highly acclaimed in literary circles. It turned out that copies of the book had already been sitting essentially unnoticed on some school library shelves, including those at Olathe South High School. Most school boards in the area rejected the gift of the books. The Olathe school board took the extra step of removing its existing copies."

When the request of the students to return the book was declined, the legal wheels started moving. My firm, Shook, Hardy & Bacon, represented those students in a lawsuit against the Olathe School District challenging the school district's action. After a trial, Judge G. Thomas Van Bebber agreed with the plaintiffs and found the district's actions violated the First Amendment.

Following the conclusion of the case, Shook donated its fee award – with some additional funds – as a charitable contribution totaling \$200,000 to establish the Johnson County First Amendment Foundation. One of my partners, Gene Balloun, and a former partner, Judge David J. Waxse, who had represented the students, were instrumental in establishing and organizing the Foundation. The Foundation was established "to promote a better understanding among Kansas students . . . of First Amendment and other Constitutional rights."

Since its inception, the Foundation has sponsored various speakers on the First Amendment and the Constitution, including Anthony Lewis, a two-time Pulitzer Prize-winning writer for the *New York Times*. Lewis wrote "Gideon's Trumpet," the story of an indigent, one Clarence Earl Gideon, and his request for legal counsel upon his arrest. When Lewis passed away last year, the *New York Times* described the book this way: "Mr. Lewis wrote 'Gideon's Trumpet' in large part during a four-month newspaper strike. The book told the story of Clarence Earl Gideon, a Florida drifter accused of breaking into a poolroom who was tried and convicted without a lawyer, and it sought to place the decision his case gave rise to in a larger context." The rest, as they say, is now taught in the law schools under the heading *Gideon v. Wainwright*.

On November 12, the Foundation helped bring former Supreme Court Justice Sandra Day O'Connor to Yardley Hall at Johnson County Community College. There she found an audience of more than 1,000 students from 24 different high schools. In the audience were some of those initial plaintiffs, and in some cases, their parents, plus the author, Nancy Garden, in addition to numerous judges, as well as representatives from KU, Washburn, and UMKC law schools.

It was a harmonic convergence of all things good with an iconic figure of our time leading the assembled.

While speaking to students and encouraging them to make a difference, Justice O'Connor was also promoting her program for civics education, iCivics. The iCivics website (www.icivics.org) describes that program as "a non-profit organization dedicated to reinvigorating civic learning through interactive and engaging learning resources. Our educational resources empower teachers and prepare the next generation of students to become knowledgeable and engaged citizens."

Very much like five knowledgeable and engaged students did at Olathe South High school, some 18 years ago. ■

About the Author



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