



The Center for
First Amendment
Rights, Inc.

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The First Voice

April 2007

Hon. Drinan Passes

The Hon. Father Robert Drinan, the last of three highly influential First Amendment advocates supported CFAR from the outset, the other two being Rabbi Robert Goldberg and former director and author Howard Fast. Father Drinan, a former Dean of Boston College Law School served in Congress a decade until the Pope demanded priests withdraw from politics. Drinan complied and later became an advisory director of CFAR. He offered assistance in various ways and we at CFAR appreciated him greatly and will miss him, his leadership and his independent courage.

CFAR Assesses Liberty, Security

On Monday, May 7, 2007, CFAR and the University of Connecticut School of Law will hold their 14th annual Milton Sorokin Symposium entitled "Freedom of Expression v. National Security."

The event will take place at UCONN Law, in the Starr Hall Reading Room. We will begin at 7 p.m.



Richard S. Kay

To begin we welcome UCONN's own Wallace Stevens Professor of Law Richard S. Kay. Professor Kay attended Brandeis

University as an undergraduate. He received a Masters in economics from Yale, in 1969. In 1973 he received a J.D. magna cum laude, from Harvard Law School. Among a substantial list of academic honors and achievements, Professor Kay remains an active litigant, having recently collaborated on a case of first impression before the New Jersey Supreme Court, American Fire and Casualty Company v. New Jersey Division of Taxation.

Next we welcome Lawrence Douglas, Professor of Law, Jurisprudence and Social Thought, at Amherst College. Professor Douglas received his undergraduate degree from

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The Center for First Amendment Rights Inc.
and the University of Connecticut School of Law
invite you to the

14th Milton Sorokin Symposium

THE FIRST AMENDMENT: FREEDOM OF EXPRESSION VS NATIONAL SECURITY

**Monday, May 7, 2007
7:00 P.M.**

Presentation of First CFAR Freedom Award
to **John J Simon** by University of Connecticut
School of Law Dean Jeremy Paul

Presentation of CFAR 2007 First Amendment
High School Contest Awards by Justice Richard N. Palmer

University of Connecticut School of Law
The Reading Room, The Starr Hall
110 Sherman Street, Hartford CT

Directions: Take I-84 east or west to Exit 46. Take right at end of ramp;
at 2nd signal, take right into Farmington Ave.; take immediate left into
Sherman St; Starr Hall is at end of Street. Park, left or right.

The First Amendment: Freedom of Expression vs. National Security

A Three Way Conversation

Professor Richard Kay,
University of Connecticut School of Law

Professor Lawrence Douglas,
Amherst College, Amherst MA.

Professor Gary Lawson,
Boston University School of Law

Wide ranging issues will be discussed from the brave Connecticut Librarians who protected the confidentiality of their reader's activities to warrantless subpoenas of all kinds whether for books in libraries, bookstores, internet materials, bank information, wiretaps and a host more, including excessive secrecy of government information, interference with Freedom of Information, all in the context of the need for maintaining our liberties and the necessity of assuring our national security.

Questions from the Audience

Dessert Reception

Appreciation: The Center thanks Pullman & Comley LLC for their generous and continuing grant of office facilities, the **Attorney Jerome Caplan First Amendment Memorial Endowment** and the **Mark Rosen First Amendment Endowment Funds** at the Law School for their support of the Symposium. We thank all of those who contributed to CFAR and made its efforts possible.

First Amendment Briefs

Attorney Cecil Thomas, a graduate of Brandeis University with both a BA in Politics and History and an MA in American History, graduated from the University of Connecticut School of Law and is now a litigation attorney with Greater Hartford Legal Aid. He wrote the first First Amendment Briefs last fall, and The First Voice asked him to be its first regular columnist.

The following are brief reports of recent First Amendment-relevant events.

Washington Legislature Considers Limitations on High School Student Free Press: A Washington state legislator has recently introduced a bill that would limit a previously broad guarantee of student free press. Washington House Bill 1307, if passed, would amend the existing student free press statute to introduce a series of limitations specific to the exercise of freedom of the press within high schools. These limitations remove the protections of freedom of speech from expression that is obscene, libelous or slanderous. Protection is also removed from expression that might incite students in a manner creating a clear and present danger of: the commission of unlawful acts on school property; violations of school policies; or “the material and substantial disruption of the orderly operation of the school.” The bill, which seeks to balance First Amendment concerns with a desire to protect minors within the school environment, will be decided upon by mid-March.

Central Connecticut State University (CCSU) President Responds to Recent Scandal Over Satirical Article Advocating Rape: CCSU President Jack Miller recently announced the formation of a committee that will review the operating procedures and practices of CCSU student publication The Recorder. The initiative has been taken in response to community outcry over a satirical article entitled, “Rape Only Hurts If You Fight It.” The article, written by Opinions Editor John Petroski, opened with the following lines:

Most people today would claim that rape is a terrible crime almost akin to murder but I strongly disagree. Far from a vile act, rape is a magical experience that benefits society as a whole.

The article went on to argue, in jest, that rape had been vital to ancient Roman civilization and that it continued to provide benefits to “ugly women” and prisoners in modern society. Needless to say, the article’s humor was lost on many readers and members of the extended CCSU community. President Miller, in his statement in response to the article, acknowledged the importance of the First Amendment, but also noted the “need to be sure that students understand that such hateful speech is not protected and simply is not worthy, on any ground, of publication.”

New York City Could Be Held in Contempt for Enforcing Unconstitutional Ordinance for Fifteen Years: In 1992, a New York City ordinance permitting the arrest of “panhandlers” was ruled unconstitutional by a federal judge. Subsequent to that decision, a new law was passed against “aggressive panhandling.” In the aftermath of a class action filed in June of 2005, however, U.S. District Judge Shira Scheindlin found that city police have been making arrests under the old law for the past fifteen years. Judge Scheindlin is considering the possibility of holding the city in contempt for its violations of the 1992 court ruling.

Delaware U.S. District Court Extends First Amendment Protection to Search Engines Right to Accept and Reject Advertisements: In a recent decision, the U.S. District Court for the District of Delaware ruled that Google™, Microsoft™, and Yahoo™, possess the right to refuse to sell advertisement access for websites containing political commentary. The court’s decision rested on the First Amendment’s protection of the right not to speak.

U.S. Supreme Court Refuses to Consider Holiday Religious Display Case: The U.S. Supreme Court recently denied certiorari in the case of Skoros v. New York City. The case

challenged a New York City public school display that depicted the Jewish menorah and the Muslim star and crescent but did not show the Christian nativity scene. The display was created under a city policy that prevents the depiction of deities in holiday displays but allows Christmas trees to represent the Christian celebration of the holiday. Andrea Skoros, a mother of two students in New York public schools, filed the suit in 2002, arguing that the display impermissibly advocated Judaism and Islam while showing disapproval of Christianity.

ACLU Files Suit Against City Ordinance Against Day Laborers: The ACLU has filed suit against the city of Lake Forest, CA, requesting an injunction against an ordinance that prohibits day laborers from soliciting work on city sidewalks. The ordinance, which also prohibits the stopping or parking of cars for the purpose of arranging for day work, has been challenged as a violation of day laborers freedom of speech.



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Sorokin Symposium

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Brown University, his masters from Columbia, and his J.D. from Yale. He is the author of three books, among



Lawrence Douglas

numerous journals and magazines including The Yale Law Journal, The Washington Post, The Times Literary Supplement, and The New Yorker.

The third speaker is Gary S. Lawson, full professor at Boston University School of Law. Professor Lawson received his undergraduate degree from Claremont's Men College, and his J.D. from Yale. Before choosing Boston University as his campus, Professor Lawson also



Gary S. Lawson

taught at Northwestern School of Law, and Yale Law School. As a law student he clerked for Antonin Scalia, on the U.S. Supreme Court, and the U.S. Court of Appeals for the District of Columbia Circuit. He was an attorney and advisor for the Office of Legal Counsel at the U.S. Department of Justice.

The speakers are prestigious, the topic is timely, and we hope you will join us on May 7th for what should be an illuminating discussion.

Pudlin Scholars feature "Media & First Amendment" Lecture

On Monday, April 9th, 2007, Professor Robin D. Barnes, the Alvin Pudlin Scholars and the University of Connecticut School of Law will host a reception featuring keynote speaker, Leonard M. Baynes. The topic of the keynote address will be "Media and the First Amendment." The reception will commence at 6:30 p.m. in Janet M. Blumberg Hall.

The Alvin Pudlin Memorial Endowment Fund, which was initiated by CFAR and turned over to the University of Connecticut Law School Foundation, Inc., for management is supervised by the Law School and CFAR. It grants the Alvin Pudlin Memorial First Amendment Awards to students who have achieved distinction in the study of the First Amendment and in teaching its history and values. The Pudlin Scholars develop and teach a high school curriculum around First Amendment issues.

Leonard M. Baynes is Professor of Law and Director of the Ronald H. Brown Center for Civil Rights and Economic Development at St. John's University School of Law. Professor Baynes is a nationally recognized communications law scholar, specializing in race and media issues.

Professor Robin D. Barnes is Professor of Law and Director of the Street Law Cooperative at the University of Connecticut School of Law and supervises the Pudlin Scholars program at the Law School. Professor Barnes graduated from the University of Buffalo Faculty of Law & Jurisprudence and holds an LL.M. in Constitutional Theory from the University of Wisconsin School of Law, where she was a William H. Hastie Fellow. Professor Barnes has served on the Board of Editorial

Advisors for UC Berkeley's African American Law & Public Policy Report since 1993.

CFAR's Middle School Day "Starts the Presses"

CFAR's Middle School First Amendment Day studies freedom of the press under the guidance of its keynoter Lynn Tuohy, legal reporter for the Hartford Courant and Debra Avery, lead CFAR teacher at the Hartford Magnet School, a co-sponsor of the Day.

Assigned to design and write their own newspaper segment, students will have the help of Trinity student mentors as they prepare their own newsprint sheet. Ms Tuohy will discuss the history and meaning of Freedom of the Press; Ms. Avery will relate it all to a middle school newspaper, and do the wrap up. Any Middle School interested in a mirror image of the "Start the Presses" program should call CFAR at 860-541-3339.

CFAR Adds First Staff

As CFAR grows, its need for professional staff also grows. It has engaged a gem for this summer, to serve as a consulting executive in organizing and funding educational programming for the 2007-8 academic year, CFAR's 15th anniversary year. A high school social studies teacher, Anita Peters graduated from Vassar College with a BA in East Asian/Chinese studies, obtained a Master's degree from Columbia University's School of International & Public Affairs in Economics & Political Development. After serving as a business reporter for a local Taiwan newspaper, and for a short period as a foreign correspondent for United Press International in Singapore, she returned to the United States, spent ten years in development and then obtained teacher training at Sacred Heart University in Fairfield, CT. She is now at the Stamford Academy, a public charter school, and her supervisor has highlighted her "ability to create extra-ordinary, engaging lessons." CFAR looks forward to much intellectual and productive enrichment from Ms. Peter's consulting efforts.



Save the Date!

Monday, May 5, 2008

CFAR celebrates 15 years of provocative Symposiums

We are planning an event worthy of Milton Sorokin's initial idea. Email CFAR at 15years@cfarfreedom.org if you would like to be involved in the planning and preparations of a year of First Amendment celebrations.

15 years ago Milton predicted that, "CFAR will focus on education", and this is our much needed niche, especially for our 11-26 year old audience.

BALCO Journalist Nearly Jailed

By Alex Stana

Teacher Assistant
School of Communication,
University of Hartford

It was in a Romanian newspaper where I first read about what came to be known as the "Fainaru-Wada and Williams case". The title of the story made the problem clear: "Romanian-American Journalist Sentenced to 18 Months in Jail." As a Romanian citizen, the number of journalists harassed or obstructed in their investigations by Romanian authorities in the last two decades is a painful reminder of the communist authoritarian legacy. However, the danger of a Romanian journalist being imprisoned in the United States, where I currently reside, was a greater shock.

In 2004, two San Francisco Chronicle reporters, Mark Fainaru-Wada and Lance Williams published "The Shadow Game", a book which chronicled several high-profile athletes' steroid use. Williams and Fainaru-Wada received the 2004 George Polk Award for their investigative work.

On May 5, 2006 a subpoena was issued that required the two journalists to testify

before a federal grand jury regarding the confidential sources who revealed the information that appeared in their book. On May 31, 2006, Williams and Fainaru-Wada motioned U.S. District Judge Martin Jenkins of San Francisco to quash the subpoena, but their request was denied. On September 21, 2006 the two journalists were sentenced to 18 months in prison for contempt of court. Williams and Fainaru-Wada stated that they would readily go to jail rather than divulge their source.

An appeal was filed and was heard on February 12, 2007 by the Ninth Circuit. Before the appeal was decided, Troy Ellerman, a BALCO defense attorney stepped forward and revealed himself as the source. However, this move simply mooted the appeal and excused the court from confronting the issue.

The offensive aspect of their sentence, provided their appeal is rejected, is that Williams and Fainaru-Wada's 18 month penalty is longer than any of the actual defendants in the BALCO steroids case, which ranged up to four months in jail. The American government will not hesitate to spend three years and millions of

taxpayer dollars to put two reporters behind bars.

While many voices have decried the lack of a universal code of ethics in mass media, there is a general agreement that professional journalists should "identify sources whenever possible. . . [and] confidential sources should be used only when it is clearly in the public interest to gather or convey important information or when a person providing information might be harmed. . . ." Otherwise, "journalists should keep all commitments to protect a confidential source" Albaran, Allan B., Management of Electronic Media, 2006 Thompson Wadsworth.

If reporters decide to reveal the confidential sources, due to legal pressure for instance, the impact on investigative journalism would be enormous. Fewer individuals will agree to reveal information with dire consequences to the watchdog function of the media.

At the White House Correspondents' Dinner in 2005 President Bush praised the two reporters' work, saying, "you've done a great service". But, the August 2006 denial of the motion to quash the subpoenas took the first precarious step down a slippery slope smelling strongly of authoritarianism, and looking unconstitutional, and unsound.

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