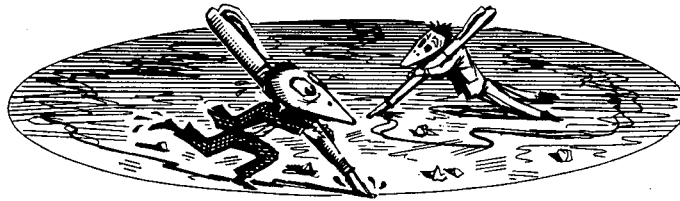


# AMONG THE INTELLECTUALOIDS



## WRONGING THE BILL OF RIGHTS

by Williamson M. Evers

As part of its bicentennial Bill of Rights exhibition, my local children's library featured a guide for librarians and schoolteachers, listing thirty-seven works of fiction suitable for introducing children to the Bill of Rights. It was compiled by Barbara Elleman, the editor-in-chief of *Book Links* and past editor of the children's section of *Booklist*, both magazines published by the American Library Association. My first clue that something might be amiss with the guide was a poster promoting it. The poster omitted the Ninth Amendment (inherent but unenumerated rights) and the Second (right to bear arms), and it condensed the Tenth so as to leave the powers reserved to states completely out of the picture.

Now the list: Elleman thinks that *Rebecca's War* (1972), by Ann Finlayson, illustrates what is at stake in the Third Amendment, which restricts the quartering of troops in civilian residences. In the novel, the British army occupies Philadelphia during the American Revolutionary War. Rebecca's house is requisitioned early on by the British, who billet troops there. The British expropriate Rebecca's house in particular because the male members of her family are fighting the British. But the Third Amendment is *not* meant to prevent hostile troops occupying your residence in wartime—it bars troops of your own government occupying your house in peacetime.

The Fourth Amendment protects people and their property against “unreasonable searches and seizures.” Elleman, however, thinks it governs a wide variety of humanity's ordeals, including the treatment of prisoners of war. So she recommends Bette Greene's *The Summer of My German Soldier* (1973). Elleman also thinks the Fourth Amendment is about imprisoning people on the basis of their race. Hence several books that she recommends are about the detention of Japanese-Americans and Japanese-Canadians during World War II.

*Williamson M. Evers is a visiting fellow at the Hoover Institution.*

Elleman even thinks that the Fourth Amendment governs thievery by army deserters. So she recommends Patricia Gauch's *This Time, Tempe Wick?* (1974).

Many of these topics are worthy matter for books, but they are not what the Fourth Amendment is about. Since the characters in the books about World War II really were captured German soldiers or persons of Japanese ancestry, their seizure was “reasonable” as the law uses the term. These might be legitimate Fourteenth Amendment “due process” or “equal protection” cases, but what the Fourth Amendment does, in the usual case, is mandate procedural safeguards when the police are searching for and gathering evidence.

Elleman thinks the Bill of Rights outlaws individuals disturbing the peace of mind and sensitive feelings of other persons—protecting, for example, the psychological sense of independence of the elderly. One of the books (*Sweet Bells Jangled Out of Tune*, 1983) is about a bag lady who gets help she does not want from a girl. But a young person's perhaps undue solicitude for an elderly person is not a constitutional issue.

Several books (*Once I Was a Plum Tree*, 1980; *Prank*, 1980) are about someone not liking somebody else's religion and exhibiting personal prejudice. Not liking someone's religion can take different forms. Strong religious convictions and a disapproval of rival religions is a normal, predictable aspect of a pluralist society—and certainly constitutional. Believing that practitioners of certain religions are diabolical creatures is ethically vile. But, unless the government is aiding and abetting matters, no constitutional issue is at stake. If someone commits vandalism against your church or synagogue, that is a matter of criminal law; it is not in itself a constitutional matter.

Constitutional liberty is abridged if the government establishes a state church or outlaws religious practices. If the government assisted vandals who were persecuting those of a certain re-

ligion, that would be a serious constitutional violation. But individual vandals—as in *Prank*—should be prosecuted as vandals, not as violators of the Bill of Rights.

In listing fiction pertinent to the Second Amendment, Elleman includes no books about protecting people from government infringement on their right to bear arms. Three of the books she lists are *Bambi* books—like *The Hunter and the Animals* (1981)—that attack

hunting for sport. Another, *Rifles for Watie* (1957), is about spying during the Civil War, not popular self-defense.

The Fifth, Sixth, and Eighth Amendments protect the rights of individuals accused of crimes by regulating what the government may do to them. Yet Elleman suggests reading Paula Danziger's *Can You Sue Your Parents for Malpractice?* (1979), a novel about a girl whose parents are too busy to pay attention to her. Uncaring parents are a

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problem. But surely not a constitutional problem.

Elleman thinks that reading about the Bill of Rights should root out bad, unprogressive attitudes. In Miriam Cohen's *Laura Leonora's First Amendment* (1990), readers learn that it is fine in junior high school to disobey your parents when they have unscientific views on AIDS. But in Victoria Boutis's *Looking Out* (1988), a twelve-year-old girl comes to understand and respect her parents'

devotion to the American Communist party.

Although Elleman's list emphasizes issues fashionable with contemporary welfare-state liberals—AIDS, feminism, labor organizing, animal rights, racism, sex education in public schools, problems of the homeless and the elderly, and the civil rights of Communist party members—this emphasis

is not a fatal flaw. Such issues can stir up serious and valuable Bill of Rights debate. The real problem is that Elleman does not know what the Bill of Rights is all about: namely, protecting individuals from government power. She thinks the Bill of Rights is a set of social sentiments rather than a rein on government action. Thus, she generally lists books about correcting people's sentiments rather than books about rights. Even when she lists books about rights, they are seldom the best-written and most memorable available.

In radical contrast to Elleman stands Leonard Wibberley, the author of science-fiction and historical novels for children (but best known for *The Mouse That Roared*). In a 1962 article in

*Horn Magazine*, the leading American magazine about children's books, he wrote that the experience of Americans before the Revolution "demonstrated that man needs constant protection from his own government." As Wibberley put it, "There have been many many wars fought to overthrow tyranny. . . . But the Revolutionary War not only sought to overthrow tyranny, it also established certain inalienable rights for people, rights which if established would protect mankind from tyranny in all the centuries ahead." Elleman's book list is eloquent testimony that modern liberals are unsuitable guardians of our most important means of constitutionally securing that protection. □

## An Alternative List of Bill of Rights Children's Books

FIRST AMENDMENT (religion, speech, press, assembly). Geoffrey Trease's *Red Towers of Granada* (1966), his *Wood by Moonlight and Other Stories* (1981), Cornelia Meigs's *Master Simon's Garden* (2nd ed., 1929), and Mark Twain's *The Prince and the Pauper* (1882) show how government-established churches and religious policies oppress dissenters. Trease's *Web of Traitors* (1952) describes threats to free speech in ancient Athens. Lloyd Alexander's *Westmark* (1981) begins with the government closing down a printing shop.

SECOND AMENDMENT (keeping and bearing arms). Well-known children's fiction about revolutionary Massachusetts (Esther Forbes, *Johnny Tremain*, 1943; Howard Fast, *April Morning*, 1961; Nathaniel Benchley, *Sam the Minuteman*, 1969; Robert Lawson, *Mr. Revere and I*, 1953; and Leonard Wibberley, *John Treigate's Musket*, 1959) portrays the fight of the armed populace against the regular British troops.

In this century, the Second Amendment has been a cockpit of controversy. Aficionados of ideological editing should compare the bowdlerized 1949 edition of *Red Planet: A Colony Boy on Mars*, one of Robert A. Heinlein's science-fiction novels for young people, with the full, uncut 1990 edition.

In the uncut edition, one of the characters quotes another as saying that the right to bear arms is "the basis of all freedom." Heinlein's editor at Scribner's insisted that he cut or alter such passages when the book was originally published. Heinlein's complaints about this meddling can be found in his correspondence, published posthumously in *Grumbles from the Grave* (1990).

THIRD AMENDMENT (quartering troops). In Donald Carrick's *Harald and the Giant Knight* (1982), a castle's

knights camp on neighboring farmlands, plunder the farms, and use the fields as their peacetime training grounds.

FOURTH AMENDMENT (search and seizure). Meigs's *Master Simon's Garden* describes an incident in which the English government jails a New Englander who refuses to let customs officers search his house for smuggled goods.


FIFTH AMENDMENT (grand juries, double jeopardy, self-incrimination, due process, takings). The Dutch Protestant characters in H. Rider Haggard's *Lysbeth* (1901), set during the Revolt of the Netherlands, face the threat of torture and subsequent self-incrimination.

The Fifth Amendment includes a takings clause ("nor shall private property be taken for public use without just compensation"). Keith Robertson's *Henry Reed, Inc.* (1958) includes an incident that shows how zoning laws can be used to confiscate property. (According to University of Chicago Law School Professor Richard Epstein, zoning laws should be scrutinized to see if they conform to the Fifth Amendment.)

SIXTH AMENDMENT (criminal proceedings). Charles Dickens's *A Tale of Two Cities* (1859) and Alexandre Dumas's *The Count of Monte Cristo* (1844-45) are often read by older children and memorably describe unjust criminal proceedings. Lewis Carroll's *Alice's Adventures in Wonderland* (1865) has a brilliantly comic portrait of an unjust trial ("Sentence first—verdict afterwards").

EIGHTH AMENDMENT (bail, cruel and unusual punishments). Twain's *The Prince and the Pauper* tells of burning Baptists at the stake, and, in Haggard's *Lysbeth*, a prison official—who is the book's villain—condemns one of the book's important characters to death by starvation. —WME


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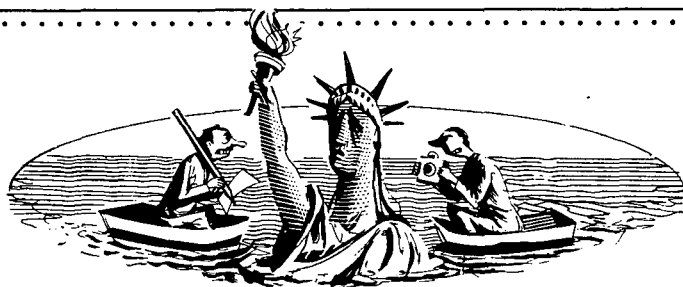
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# PRESSWATCH



## ANONYMOUS CHICKENS

by Terry Eastland

During the amazing week of the “special hearing on a charge of sexual harassment” against Clarence Thomas, the press, for the most part, proved uninterested in writing about the leak that led to that hearing, except dismissively, even condescendingly. Thus, four days after it occurred, Maureen Dowd of the *New York Times* wrote that the interest of some senators in “pinning down the source of the leak” was an “obsession that may have mystified the public a bit.” How Dowd could claim to know what “mystified” the public a lot or a bit is not so mystifying; like most others in the mainstream press, she seemed obsessed with turning the charge against Thomas into a national referendum on sexual harassment.

The press has, of course, an occupational disability when it comes to itself — “I don’t really want to talk about leaks,” a reporter for the *Washington Post* told me. Nonetheless, this leak—but for which Thomas would have been confirmed at least a week earlier—was an absolutely critical part of the confirmation story. The news accounts based on it—supplied to the nation first by *Newsday* and then by National Public Radio on Sunday, October 6—deserve close analysis for what they say about the state of the Senate today as well as the nature of the Beltway press. But for Presswatch, I am bound to say, there would be no leaked-story watch.

The *Newsday* piece, written by Timothy M. Phelps, came first, actually hitting the wires at nine o’clock the night before. Here’s the lead: An Oklahoma law professor has recently told the FBI that she was sexually harassed by Thomas while she worked for him at the Equal Employment Opportunity Commission. Phelps identifies the professor, Anita Hill, about to become Oklahoma’s most famous academic, and elucidates her charge as he understands it, which is that “Thomas repeatedly discussed sexual matters with her in a suggestive way.” Phelps then tells readers that this comes from “a source who

has seen [Hill’s] statement to the FBI.”

In graph three Phelps has Hill on the record, confirming “that she had told agents she was harassed by Thomas.” Phelps does not tell readers what he surely must have known and which became clear later, namely that Hill was reluctant to go public; nor does he indicate how *he* helped her become a confirming source. Nor does he note that what someone like Hill says to the FBI is raw, unprocessed data—the bureau renders no conclusions about such a charge. Done with Hill (who will say no more), he returns (in graph four) to his anonymous source: “He made suggestions to her about what kind of sex she engaged in, asking her in great detail about different forms of sex,” the source says, adding that while Thomas implicitly pressured Hill to have sex with him, he never told her explicitly that she would lose her job if she did not.

Phelps seeks an answer from Thomas, who “could not be reached for comment.” The White House has no comment, but Phelps does manage to find someone who also worked with Thomas at the EEOC to speak in his defense.

Phelps then locates Sen. Paul Simon, in Nebraska at a college reunion. Simon calls for postponement of the Senate’s scheduled vote on Tuesday, pronounces the charge “serious enough” that the Judiciary Committee on which he sits “ought to look at it,” and says he and most other members of the committee were unaware of the Hill accusations when they voted on the nomination. “I would say it adds to the credibility concern,” Simon tells the reporter, but like Hill, the senator declines, as Phelps puts it, to go into detail. “It’s difficult to discuss because I’m not able to discuss the FBI report,” Phelps quotes Simon as saying, without letting readers know that the senator is a major Thomas opponent, having voted against the nominee in committee.

Phelps doesn’t bother to include comments from a senator who supports Thomas. Instead he finishes his piece by reporting the thoughts of a senator

whom he identifies as “an opponent of Thomas who read the report and an accompanying statement by Hill.” This source, Phelps writes, “said that because of [the statement’s] confidentiality little could be done with the information because she has not come forward publicly.”

That “little could be done” was of course untrue, and indeed much already had been done to produce the very story Phelps was writing. The essence of Hill’s accusation, made (as Phelps must surely have known) in confidence that it would not be publicized, could be leaked *without her permission* to reporters, who then would seek confirmation from Hill, who would then feel backed into a corner where she just might decide to confirm its existence, even talk about it. In this way, Hill was forced to “come



forward publicly.” “I never came to the press,” she said at her first press conference. “The press came to me. . . . In fact, I have tried to avoid raising this as a press issue.”

Who leaked? To cover the base, I asked Phelps, who of course declined to say. Whoever leaked did not have Thomas’s interests in mind—or Hill’s. Only a Thomas enemy who “has seen [Hill’s] statement to the FBI” could have leaked; I should say “Thomas enemies,” because the leak strikes me as a “composite.” The contents of the statement may have been passed to the reporters through the special interest groups—People for the American Way and the like. The most likely candidates: Democratic members of the Judiciary Committee, who had access to the statement, and their aides, some of whom had read it.

Simon is a suspect. After all, he was

within easy reach, in Nebraska, and most willing to talk. What argues against Simon is that a reporter usually shields his anonymous source throughout a story. Joseph Biden, the committee chairman, is an unlikely suspect; my own reporting persuades me that Biden sought to honor Hill’s request for confidentiality. He was furious over the leak. Thomas’s most vocal opponents on the committee, Edward Kennedy and Howard Metzenbaum, are, of course, the prime suspects. Senators, it should be noted, have been known to leak confidential information in violation of Senate rules, and with impunity. As discussed here last year (“The Leak That Fizzled,” *TAS*, June 1990), in an eerily similar instance at least two senators leaked to NBC’s Andrea Mitchell information in an FBI report concerning cocaine use by Timothy Ryan, who was awaiting a full Senate vote on his nomination to head the Office of Thrift Supervision. (Ryan was confirmed, and Sen. John Danforth vainly called for a leak inquiry.) During the special hearing both Metzenbaum and Kennedy denied that they or their staffs leaked. But the evidence points to their offices, to their senior staffers if not them.

For one thing, Kennedy and Metzenbaum aides initiated the contact with Hill in early September, and flew to Oklahoma to encourage her to “come forward” to the Judiciary Committee. For another, I am told that staffers for these two senators dismiss Biden and his subordinates as softies on Republican Supreme Court nominations. For some time now the Democratic side of the Judiciary Committee has been at war with itself, a fact the *Washington Post*’s Al Kamen suggested in a piece on the breakdown of the confirmation process. This is a war between liberals who are constrained by at least some elementary notions of fairness and those who will stop at nothing to defeat a conservative nominee. If it means violating the promise of confidentiality to Anita Hill and that of a fair process to

*Terry Eastland is a resident fellow at the Ethics and Public Policy Center.*