

ON THE CONTRARY

WENDY KAMINER

Speaking of "Man-Boy Love"

Three years ago, in Cambridge, Massachusetts, 10-year-old Jeffrey Curley was abducted, sexually assaulted, and murdered by two men, one of whom was allegedly a member of the North American Man/Boy Love Association (NAMBLA), founded in 1978. Both of his assailants, Charles Jaynes and Salvatore Sicari, are now serving life sentences for murder. They have also been found liable for Jeffrey's wrongful death in a civil suit that ended in a symbolic \$328-million damage award to the Curley family. But according to Jeffrey's parents, Robert and Barbara Curley, Jaynes and Sicari were not solely responsible for their son's murder. They blame it also on NAMBLA and have filed a \$200-million wrongful-death suit in federal court against the group, seven of its alleged members, and its Internet service provider.

Some have compared this case to the successful 1999 lawsuit against anti-abortion activists who maintained an alleged "hit list" of abortion providers, or to recent lawsuits against white supremacist groups, like those filed by the Southern Poverty Law Center against the Klan. These cases, however, involved much more than claims about offensive or allegedly inflammatory rhetoric. The case against anti-abortion activists was essentially about stalking: The defendants were found liable for intentionally threatening and terrorizing abortion providers. The Klan cases involved claims that Klan members were involved in violence. Even so, these lawsuits trouble many free-speech advocates.

The case against NAMBLA is even more tenuous and mostly reflects abhorrence of its ideology. Unpopular speech, especially unpopular speech about sex, is regularly blamed for sexual violence and "deviance." Pornography causes rape, according to antiporn feminists. Sex education causes teen pregnancy, according to their counterparts on the right. NAMBLA's advocacy of "man-boy love" causes homosexuality and violent predatory behavior, according to the Curleys' lawsuit.

"Prior to joining NAMBLA, Charles Jaynes was heterosexual," their complaint alleges implausibly. Because he was exposed to NAMBLA's propaganda,

Jaynes "became obsessed with having sex with and raping young male children." The apparent theory of the lawsuit is that Jeffrey Curley would be alive today if only NAMBLA did not exist. The complaint claims that "immediately prior" to the murder, "Charles Jaynes accessed NAMBLA's Web site at the Boston Public Library."

The absurdity of these claims makes it difficult to take them seriously. But this lawsuit has already had serious chilling effects on speech. NAMBLA's Web site was shut down after the suit was filed, although, as far as I can tell, it contained clearly protected speech and included no endorsements of violence. I can't swear that I've seen the complete Web site, but viewing copies of what purportedly appeared on the Internet at the time of the Curley murder, I found no incitement to violence and abuse, no evidence of a conspiracy to rape and murder young boys, and not even any erotica. Mostly the site consisted of traditional political advocacy.

NAMBLA strongly opposes age-of-consent laws in the belief that they are arbitrary, simplistic, and a violation of the rights of minors as well as adults. It expressly condemns "sexual abuse and all forms of coercion," believes only in "mutually consensual relationships" between men and boys, and stresses that it "does not provide encouragement,

referrals, or assistance for people seeking sexual contact." The Web site included the sayings of respectable writers and academics (Oscar Wilde, Allen Ginsberg, Dudley Clendinen, and John Money), a rather dry discussion of "positive and beneficial experiences" between adults and minors, and a list of journal articles on sexuality as well as some sophomoric poetry. Maybe some people found this titillating, but all in all, the NAMBLA Web site seemed a lot less incendiary than the Bible.

NAMBLA's bulletin is more likely to offend: The issue I've seen included a story about man-boy sex that could qualify as soft-core porn—but nothing sanctioning, much less encouraging, violence and abuse. Of course, some may believe that any erotica involving minors is an invitation to abuse, or statutory rape, at least. But if stories involving sexually active minors were not protected by the First Amendment, *Lolita* would be illegal (along with numerous TV shows and movies). In fact, Nabokov had predictable trouble finding a publisher for his controversial book; but even if *Lolita* were construed as an endorsement of statutory rape, it would remain protected speech. For speech to be prohibited, it must have a clear, direct, immediate, causal relationship to violence or other unlawful activities. Mere advocacy of violence is legal; only incitement to violence—intentionally provocative speech that is likely to result in immediate unlawful action—can be prohibited.

Still, the Curley lawsuit is hard for civil libertarians to ignore. Jeffrey Curley's murder was horrible and readily exploited by advocates of repressive legislation. (It nearly brought the death penalty back to Massachusetts.) The civil suit against NAMBLA, aimed at censoring unpopular speech about sexuality, reflects widespread biases about a supposed link between homosexuality and pedophilia—a link denied by such mainstream organizations as the American Medical Association and the American Psychological Association. (Children have more to fear from heterosexual predators within their extended families.)

But for many people, facts about child abuse are less compelling than their visceral reaction to NAMBLA's support for adult-child sexual relation-

ships. NAMBLA is highly vulnerable (and the Curleys' lawyer, Lawrence Frisoli, reportedly plans to demand its membership list during pretrial discovery). Virtually no group of people is more unpopular; even some attorneys generally sympathetic to First Amendment claims have shied away from any association with NAMBLA; the organization is now represented by the Massachusetts ACLU.

NAMBLA has, however, found one unlikely defender—Jeffrey Curley's father, a primary plaintiff in the case. Robert Curley was previously represented by attorney Harvey Silverglate, a Massachusetts ACLU board member and First Amendment absolutist, in a dispute with the City of Cambridge over mandatory diversity training. He is surprisingly sympathetic to the ACLU's opposition to his lawsuit: "I really do have a lot of respect for them," Curley told *The Boston Globe*. "They are very consistent in who they defend. It takes a lot of nerve to defend the groups they have over the years. They have a lot of courage."

It's too bad that courage is required to defend this case, when a simple appreciation of freedom of thought and expression should do. Unfortunately, the fundamental principle underlying the First Amendment—the protection of "offensive," unpopular speech—is not widely embraced. Speech with much more artistic value than anything found on the NAMBLA Web site is regularly banned in our nation's schools. Recently, a high school teacher in Jacksonville, Florida, was prohibited from introducing his students to Allen Ginsberg's groundbreaking poem "Howl." Considering current demands for censorship—of video games, rap music, and other material that supposedly corrupts America's youth—it wouldn't be hard to garner support for banning the advocacy of man-boy sexual relationships.

The notion that pubescent children could enter into consensual, mutually beneficial sexual relationships with adults seems absurd to me, but so do a lot of ideas I don't share—like a belief in reincarnation, the Resurrection, creationism, or the spiritual wisdom of Oprah. If only sensible speech were protected by the First Amendment, we'd live in a very quiet nation indeed. ♦

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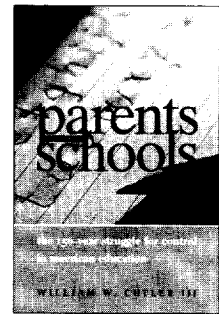
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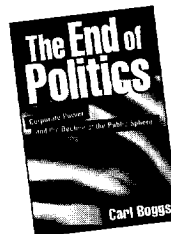
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