

Judge junks courts' gas order powers

By TIM RICHARD

A federal judge has ruled unconstitutional a section of Michigan law allowing local judges to issue gag orders in criminal sexual conduct cases.

U.S. District Judge James Churchill this week ruled in the case of Channel 7 (WXLV) and the Michigan Association of Broadcasters vs. Farmington District Judge Michael Hand.

In September 1977, Hand issued an order against the media suppressing all news in the morals case against the Rev. Gary Berthiaume, assistant pastor of Our Lady of Sorrows Catholic parish.

Six months later, Berthiaume pleaded guilty and received a six-month jail sentence in Oakland Circuit Court. Meanwhile, the argument over the gag order has dragged on for 17 months in federal court.

"UNCONSTITUTIONAL on its face," said Judge Churchill of Sec. 520(k) of the Michigan Criminal Sexual Conduct Act of 1974.

That section requires a judge to suppress the name of the accused, the victim and details of the offense when requested by the accused, the victim or the defense attorney. In this case, the request came from Berthiaume's attorney, James Lawson of Southfield.

Quoting the U.S. Supreme Court in the Nebraska Press Association case of 1976, Churchill said: "Of all possible laws abridging the freedom of speech and the press, prior restraints are the least tolerable infringement."

He called the Michigan law section a "classic example of prior restraint," branding it "completely devoid of a single redeeming feature."

CHURCHILL called the law "unique" in a number of negative ways.

It granted a "limited right of privacy" in one type of case. The law was poorly conceived for enforcement. And it gave the magistrate—in this case, the local district judge—no discretion, Churchill said.

The federal judge's opinion was strong in striking down the offending portion of the Michigan statute but did not criticize Hand.

Raymond Morrow, attorney for Channel 7 who reported Churchill's decision, said either losing party had planned to appeal to the U.S. 6th Court of Appeals in Cincinnati.

The evening of Berthiaume's arrest, just before Labor Day in 1977, Judge Hand called newsmen together in his courtroom and issued an oral order suppressing all facts in the case. After conferences with attorneys, many broadcasters and newspa-

pers—including Observer & Eccentric Newspapers—decided to ignore the order.

The broadcasters asked the federal judge for a summary judgment throwing out the law.

Churchill, though unhappy that the case was brought to him instead of to a state court, lifted

Judge Hand's suppression order as it applied to news media but allowed it to apply to court personnel.

Churchill's declaring the law unconstitutional apparently means that it cannot even be applied to court personnel and police officers.

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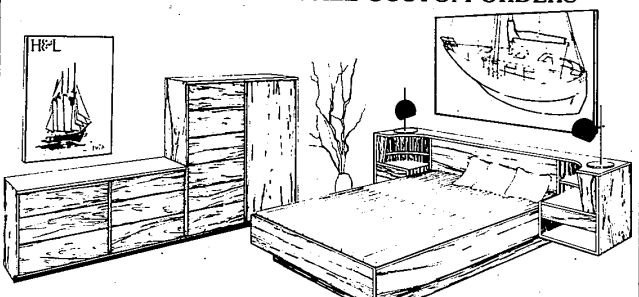
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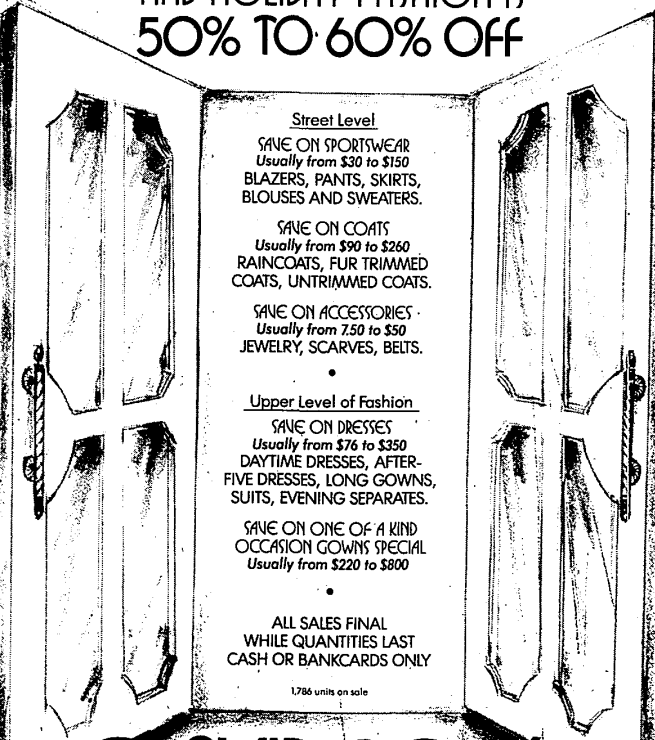
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