

the June 1997 trial before Judge Leonard Sand of the US District Court for the Southern District of New York. This letter represents my personal effort and views.

I remember the incredulity with which AIP and APS received G&B threats and complaints about the Barschall's PHYSICS TODAY article soon after it was published in July 1988. Although our analysis showed that the complaints were without merit, PHYSICS TODAY offered G&B space for a statement setting out its objections to the Barschall article, subject only to giving Barschall space to rebut any allegations of error. G&B summarily rejected the offer. Nevertheless, the offer was made again and again during the many years of ensuing litigation and of attempts, on our part, to achieve a settlement of the dispute.

After the litigation began, we learned about the history of G&B's largely successful efforts to intimidate those who criticized the prices or policies of its journals, and how G&B often demanded and got a retraction on threat of a lawsuit. By the time G&B's US suit against AIP and APS went to trial, we had documented ten instances of such intimidation. The realization that we were pretty much alone in standing up to G&B's threats was a major factor in the principled decisions of AIP and APS's officers and councils to stand by Barschall and to defend him and ourselves in what has come to be, at last count, a total of 13 courts of law in four countries.

At the outset, in 1988, some of us did not believe that a suit challenging the accuracy of Barschall's work and the right of the societies to publish the results would even be examined juridically on its merits. After all, wasn't there a constitutionally guaranteed right of free speech and publication? However, when Barschall and the societies were notified the following year that G&B had launched suits in Germany, Switzerland and France, we realized that free-speech protection was not as strong in those countries as in the US, and we also learned that they have "unfair competition" laws that significantly restrict the right to compare the prices and the quality of products.

As Goodwin reported, we nevertheless won our case in Germany, and are now close to final victory in Switzerland. In France, where a trial court initially found that Barschall's articles had violated the French law against unfair competition (the only such opinion obtained by G&B in any court), the appeals process is still dragging on. It's also worth noting that, after Barschall died in February

1997, G&B added his survivors to the list of defendants.

In September 1993, faced with losses and dimming prospects in Europe, G&B filed suit against us in the US under the Lanham Act, which regulates advertising. Litigation in the US is notoriously expensive and time-consuming—even more so than in Europe—but AIP and APS did not yield. Finally, in August 1997, as Goodwin noted, Judge Sand found in our favor, not only on the basis of free speech but also on merit: Nothing in Barschall's articles was false or misleading, and the societies had a perfect right to publicize them. True to form, G&B has appealed the judge's verdict.

The G&B lawsuits had a deep effect on Barschall. In some of the European lawsuits, he was threatened with severe sanctions. He devoted a large fraction of the last decade of his life to working indefatigably with us and our attorneys in the defense of the suits, using his command of German and French to help with the European litigation. When he lay on his deathbed, he spoke of his frustration that he would be unable to be a witness in the New York trial. It is a source of great sadness to me that he did not live to see the complete vindication of his work that resulted from that trial.

It also saddens me that, despite our successes in court, G&B did manage to discourage the societies from communicating the Barschall results to their constituencies and publishing any information about the cost-effectiveness and quality of journals. Moreover, the societies were forced to deflect large amounts of money and effort that could have been used for the good of the physics community.

Goodwin began his story with "By most legal standards, the case was of little importance. It had no broad political, social or economic implications." That opinion may ultimately prove to have been correct. But it certainly does not feel that way to me, nor—I venture to say—does it to the other participants in this continuing ten-year battle for freedom of expression and against intimidation.

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Correction

July, page 79—The award received by Richard M. Goody was the William Bowie Medal (AGU's top honor), not the Gold Medal as stated. ■

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