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1989

SB 191 By Wagner SCHOOLS, PUBLIC

Establishes standards for pupils to exercise freedom of
speech and press while on school property. (BDR 34-74)

Fiscal Note: Effect on Local Government: No. Effect on the
State or on Industrial Insurance: No.

03/15 40 Read first time. Referred to Committee on
Human Res and Fac. To printer.

03/16 41 From printer. To committee.

03/16 41 Dates discussed in Committee: 3/22, 6/7 (A&DP)

06/15 108 From committee: Amend, and do pass as amended.

06/15 108 (Amendment number 1377.)

06/15 108 Placed on Second Reading File.

06/15 108 Read second time.

06/15 108 Declared an emergency measure under the Constitution.

06/15 108 Read third time. Lost. (7 Yeas, 14 Nays, 0 Absent,
0 Excused, 0 Not Voting.)

(* = instrument from prior session)

SENATE BILL NO. 191—SENATORS WAGNER, TOWNSEND, RAGGIO, COFFIN,
MELLO, NEAL, SHAFFER, SMITH AND TITUS

MARCH 15, 1989

Referred to Committee on Human Resources and Facilities

SUMMARY—Establishes standards for pupils to exercise freedom of speech and press while on school property. (BDR 34-74)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to public schools; establishing standards for the expression of free speech and press by pupils while on school property; prohibiting the prior restraint of an official school publication by school officials under certain circumstances; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 385 of NRS is hereby amended by adding thereto a
- 2 new section to read as follows:
- 3 1. *Pupils enrolled in a public school may exercise freedom of speech and*
- 4 *of the press on school property through, but not limited to:*
- 5 (a) *The use of bulletin boards;*
- 6 (b) *The distribution of printed materials or petitions;*
- 7 (c) *Wearing buttons, badges and other insignia; and*
- 8 (d) *Official school publications,*
- 9 *whether or not the means of expression is supported financially by the school*
- 10 *or through the use of the school's facilities.*
- 11 2. *Material that is:*
- 12 (a) *Obscene;*
- 13 (b) *Libelous or slanderous; or*
- 14 (c) *So incites pupils as to create a clear and present danger of the commis-*
- 15 *sion of unlawful acts on the school's premises, the violation of lawful school*
- 16 *regulations, or the substantial disruption of the orderly operation of the*
- 17 *school,*
- 18 *is prohibited on school property.*
- 19 3. *Each school district shall adopt regulations to establish reasonable*
- 20 *standards for the times during which and the places and manner in which*
- 21 *material may be disseminated by pupils on school property.*

- 1 4. There may be no prior restraint by school officials of material prepared
2 for official school publications unless the material violates the provisions of
3 this section. School officials have the burden of showing justification for any
4 prior restraint without causing undue delay before limiting any such material.
5 5. The state board shall adopt by regulation procedures by which a pupil
6 may appeal a decision of a school official to restrain or limit freedom of
7 speech and of the press.
8 6. For the purposes of this section, "official school publication" means
9 material produced by pupils in journalism or composition classes or for the
10 school's newspaper or yearbook which is distributed to the pupils of the
11 school for a fee or free of charge.
12 7. The provisions of this section do not prohibit a school district from
13 adopting regulations relating to oral communications by pupils upon school
14 property.
15 Sec. 2. This act becomes effective on July 1, 1989.

MINUTES OF THE SENATE COMMITTEE ON
HUMAN RESOURCES AND FACILITIES

March 22, 1989

The Senate Committee on Human Resources and Facilities was called to order by Senator Raymond Rawson, Chairman, at 1:55 p.m., on Wednesday, March 22, 1989, in room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Raymond Rawson, Chairman
Senator William O'Donnell, Vice Chairman
Senator Joe Neal
Senator Donald Mello
Senator Randolph Townsend
Senator Mike Malone
Senator Dina Titus

STAFF MEMBERS PRESENT:

Don Williams, Senior Research Analyst
Lorne Malkiewich, Legislative Counsel
Stephanie Clem, Committee Secretary

OTHERS PRESENT:

Senator Sue Wagner, District 3, Washoe County
Dennis Myers, KTVN News
Tad Dunbar, KOLO TV8
Mike Norris, Chief Investigative Reporter, Reno Gazette-Journal
Janine Hansen, President, Nevada Eagle Forum
Jerri Christiansen
Judy Dalluge, Certified Home Economist and Substitute Teacher
Lucille Lusk, Nevada Coalition of Conservative Citizens
Alexis Hanson, former member of the Sparks High School Newspaper, former reporter for the Sparks Tribune
Diana Hill, Parent
Martha Gould, Private Citizen
Pro-Life Andy Anderson, Executive Director, Courageous Humane Individual Life Defenders (C.H.I.L.D.) of God
LaVern Forest, Advisor, Reno High School
Jerry Lusk, Nevada Coalition of Conservative Citizens
Eric Johnson, Speech and Debate Team, Reno High School
Todd Moore, Senior, Wooster High School
Joshua Zive, Speech and Debate Team, Reno High School
Julia Decay, Senior, Reno High School, Editor in Chief, 1988-1989 Reno High School Red & Blue Newspaper
Felix Lee, Speech and Debate Team, Reno High School

Caelan McGee, Forensics and Publication, Reno High School
Chris Giunchigliani, President, Nevada State Education
Association
Assemblyman Ernie Adler, Carson City, District 40

Senator Rawson opened the hearing on Senate Bill 191.

SENATE BILL 191 - Establishes standards for pupils to exercise freedom of speech and press while on school property.

Senator Sue Wagner, District 3, Washoe County, read the first amendment of the United States Constitution and then read from written testimony in favor of S.B. 191 (Exhibit C). She said because Mr. Ev Landers, Executive Editor, Reno Gazette-Journal, could not be present at the hearing, she would read his statement in favor of S.B. 191 in his place (Exhibit D). She also read from an editorial from the March 21, 1989 edition of the Las Vegas Sun entitled "School Newspapers Should Have Freedom - To a Point." Senator Wagner distributed a Policy Statement (Exhibit E) which offers guidelines for school newspapers.

Senator Rawson stated that without passage of this bill a public forum has failed to be created, and by passage of this bill and setting down certain ethical guidelines, a public forum would be established in the schools. He asked Senator Wagner if she feels this is the basic issue.

Senator Wagner responded she feels the basic issue is a balance in terms of responsibility and rights. She stated in essence the majority opinion of the Supreme Court said the rights of public school students are not necessarily the same as those for adults in other settings. The decision noted the student newspaper in question was "not a forum for public expression by students and thus the censored students were not entitled to broad first amendment protection." Therefore the court held that the school was not required to follow the standard established in Tinker versus DeMoines Independent Community School District, which had been the standard up until this more recent decision. She said S.B. 191 is in harmony with the Hazelwood Decision. The issue is being addressed in many other states and similar legislation has been part of the California Code for some time.

Lorne Malkiewich, Legislative Counsel, stated a student newspaper is produced by the school and is part of the educational curriculum, and as such is not a forum for public expression. In these situations, where there is supervision and control by the administration, all the first amendment protections do not exist. Within this area where the first amendment does not grant these rights, this bill will allow

the state to grant certain rights with certain restrictions. He does not feel a public forum is being created because the standards are tailored toward reasonable restrictions on the educational process.

Senator O'Donnell asked for a definition of lines 9 and 10 of S.B. 191 which state "whether or not the means of expression is supported financially by the school or through the use of school facilities."

Mr. Malkiewich responded this is saying it does not matter whether the note put on the bulletin board or the petitions being circulated are financed by the school. Even if the means of expression is supported by the schools' resources, the school does not enjoy the right of censorship over it.

Senator O'Donnell continued that essentially what it means is any entity could financially back a student to distribute or publish that entity's information on school property in school newspapers or on school property.

Mr. Malkiewich stated in subsection 3 there are restrictions on time, place, and manner, but not on content. The rights are granted to pupils, and the extent to which this would authorize someone to speak in the school, other than the pupil, in the guise of supporting the pupil, is unknown.

Senator O'Donnell asked if fourth amendment rights, freedom of ownership of property, or first amendment rights take precedence.

Mr. Malkiewich stated constitutional questions sometimes involve conflicting rights, but the first amendment is considered one of the strongest principles in the constitution. He added where rights of property conflict with rights of speech, often the free speech rights win. The most common example is when a person wants to speak in a shopping mall. The owners of the mall have property rights they want to protect and yet malls have become public forums to an extent. Therefore the courts have ruled the first amendment will take precedence.

Senator Neal asked for an example where the legitimate pedagogical concerns stopped and the students' rights began.

Mr. Malkiewich responded the Supreme Court said if there is a legitimate educational interest involved, then the school has a right to censor the speech. He stated this bill limits the material that can be censored to obscene, libelous, or slanderous items, or material that may incite pupils to create clear and present danger for the commission of an unlawful act on the school's premises. This is limiting censorship to the sort of speech that under Supreme Court decisions can be regulated to a greater degree than other forms of speech. The

Supreme Court has consistently held that freedom of speech does not mean a person can say anything he wants wherever and whenever he wants.

Senator Neal asked what would happen if a student were to wear a button which stated "I support racism" or "I believe in what Hitler did to the Jews."

Mr. Malkiewich stated that would fall under the provisions regarding substantial disruption of the orderly operation of the school, clear and present danger of the commission of unlawful acts on the school premises, and/or violation of lawful school regulations. In this example the school will be able to say the button will create the risk of causing disruption and therefore they will exercise their right under this bill to prohibit that form of expression.

Dennis Myers, KTVN News, testified in favor of S.B. 191 (Exhibit F) and added that in a confrontation over the content of a school newspaper, feelings rise very quickly and by moving that dispute to a third party, tensions are lowered and compromise is possible.

Senator Rawson asked if this bill was passed, who would ultimately have the editorial responsibility.

Mr. Myers stated he does not feel the initial stage will change much at all, it will still be students and their advisors. He said this bill establishes a threshold over which school officials cannot cross in the content of the newspaper.

Senator Rawson asked if there is a similarity between school newspapers and those instruments being controlled by a corporation or a board of directors.

Mr. Myers responded there is no question the relationship of publisher to newspaper would still exist, but the restraint he spoke of earlier exists even in corporate newspapers. Generally the business, sales, and advertising offices keep their distance. Only in extreme cases is there any confrontation, and should it happen at a school level, there is still that third party to consult.

Senator Neal asked if Mr. Myers equates a student newspaper with a professional publication.

Mr. Myers stated he feels the relationship should be the same. School officials should understand that they are both publisher and government in creating their relationship with the student newspaper.

Senator Neal asked if Mr. Myers could envision a situation whereby a school administrator or principal could be held

hostage by the freedom of a school newspaper to print anything it desired about the administration.

Mr. Myers said there are safeguards in the bill. It is always possible to take a scenario and project it to its extreme. Student journalists come and go, and in the end the school officials will always have the upper hand. Most student journalists are planning a career, as he was, and sometimes they may be a little more adventurous because of that career goal. He stated one of his colleagues, who was a student editor, still cannot get a job because he went too far on one occasion. This is a built-in restraint since these students want to be responsible and ethical journalists.

Senator Neal noted the student newspaper is supposed to teach students to accept the consequences of their actions.

Mr. Myers stated that is true in student publications as well as professional.

Tad Dunbar, Anchor/Reporter, KOLO TV8, spoke in favor of S.B. 191 (Exhibit G).

Senator Rawson stated there was an example of self-imposed censorship when human bones were washed up at the Stillwater area. There was a deep concern that early press on it would send people out to destroy the area. He felt this was a responsible action on the part of the press when they delayed the release of the story. He asked if there would be this same level of maturity in similar situations on the part of the students.

Mr. Dunbar replied by definition student journalists are in the process of learning how to be journalists and may make mistakes. Responsible journalism is what these students need to learn and the answer is not to legislate against irresponsibility but to teach responsibility.

Senator Rawson expressed a concern that there seems to be a pride in the fact that if a student takes on a faculty member and it damages them in the process, then it is good because exposing corruption is part of the American system. He surmised that basic school journalism classes may not have the research budgets or staff to be able to verify some of the stories. We want a generation of young people that is aggressive and looking for the story but they may not have the resources to get all the facts.

Mr. Dunbar stated he feels a good reporter with a telephone, pen, and a notepad is the best resource for finding out what is happening in a story. The skill to use them properly is what the student is there to learn. He said there are some stories which are beyond a high school newspaper's ability to pursue. He added there are stories that are beyond even a

television network's ability to pursue -- a good journalist needs to understand what his scope is. Inevitably it comes down to having good teachers who teach the principles of good journalism.

Senator O'Donnell asked if Mr. Dunbar's television station hires reporters without a college education.

Mr. Dunbar stated there is no requirement in the written policy, but in practice there is not anyone in the news room who does not have one.

Senator O'Donnell asked why the station would want college educated people.

Mr. Dunbar responded because they want as broad a level of education and understanding to be brought to bear on the very wide range of issues that are addressed daily in the reporting business.

Senator O'Donnell asked how Mr. Dunbar feels about broadening this freedom of speech to the grade school level.

Mr. Dunbar stated he is an absolutist on the matter of the first amendment. People are people and they ought to have the rights guaranteed them under the Bill of Rights. He also stated he sees very little difference between a third grader and an adult in these terms.

Senator Neal commented on the situation at Dartmouth College where the students hounded a professor unmercifully. He stated students in general have their own political views and asked if Mr. Dunbar sees this as an area where the school administration is to exercise some judgment.

Mr. Dunbar stated the provisions in S.B. 191 that allow the school administration to intervene in the publication of an article which they feel would disrupt the orderly operation of the school are adequate to satisfy the concerns raised by Senator Neal. As long as the free market place of ideas remains open, then the restraints concerning the ability of the school to function are legitimate if they can be substantiated. He added that the fact an opinion may be a dumb one is not a reason to prohibit its publication.

Senator Neal asked what Mr. Dunbar feels should be the scope of such a newspaper; should it be that individual school setting or should it encompass the whole area in which the school is located.

Mr. Dunbar replied if he were a faculty journalism advisor, his advice to the students would be to cover the things they have the ability to cover. In matters of editorial opinion, those limits would not necessarily apply, but the reporter

should not extend the scope of the story further than he has the ability to extend his knowledge.

Mike Norris, President, Society of Professional Journalists, testified in support of S.B. 191 (Exhibit H).

Senator Neal asked if the controls in S.B. 191 would be sufficient to allow the orderly and progressive operation of the educational setting.

Mr. Norris feels the bill is a moderate proposal and the structures outlined in this piece of legislation would not create any undue inconvenience for administrators, students, or teachers in the exercise of their rights in those individual capacities in the schools. The language is phrased broadly enough that there may be room for individual adjustments in certain institutions. He added that schools are places of debate, cultivation of ideas, and the encouragement of dreams of youth. He questioned how ideas can be expected to prosper in an environment where students may be afraid to express their own thoughts.

Janine Hansen, State President, Nevada Eagle Forum, testified in opposition to S.B. 191 (Exhibit I) stating this is an issue of leadership, responsibility, and common sense.

Senator Mello stated he feels Ms. Hansen's testimony is in contradiction to the freedom of the press and freedom of speech she claims to believe in.

She stated she has long been an advocate of freedom of speech, but children are forced by law to attend school and we as adults have a responsibility to teach or present both sides of an issue to them; however we must also protect them, depending on their age, from some things that may be inappropriate.

Senator Mello asked if Ms. Hansen is afraid that her children will be able to speak out to their fellow students or that someone else's children will speak out to her children.

Ms. Hansen responded that her children are well educated at home and, to their level of maturity, would be able to respond; however, she would not expect them to be in a situation which was beyond their capacity to have someone insist they respond. She continued that it is the responsibility of the parents to teach their own values so that no matter where their children might go they would be prepared to meet any challenges. She stated she encourages debate and feels that looking at both sides of the issue is one of the best ways to understand your own position, but this bill goes far beyond that. By opening the schools to any kind of propaganda or beliefs, students can lose an opportunity for any wisdom in what can be espoused by the school newspaper or what kind of materials can be disseminated in the schools.

She feels adults have to serve in a leadership capacity with children -- that is why there are certain age restrictions in the United States Constitution.

Senator Mello stated he believes in the system, even though it contains flaws.

Ms. Hansen said she believes in the system too, but it is unfortunate that some think the problems can be solved without direction and moral and ethical guidance.

Senator Mello stated millions of dollars of the taxpayers money are spent trying to educate our children and then some seem to be afraid to allow them to have the right of freedom of speech, and freedom to write and read what they want. He said perhaps if these things were allowed, this state would not be known as the one with the highest teenage pregnancy rate, the highest teenage suicidal rate, one of the highest teenage drug-use rates, and the highest rate for alcoholism. Maybe if the young people had more freedom to speak out and to publish their writings, and think about both sides of the issues, the rates would decrease. This freedom is what this country was founded on.

Senator Neal asked when leadership conflicts with the Constitution, does Ms. Hansen feel leadership should take control in this particular instance.

Ms. Hansen replied outside of school and when a person reaches the age of 18, there should be no limitations unless there is a felony or some other restriction on their constitutional guarantees. She feels the Constitution and laws allow for treating children differently than adults because adults need to provide leadership for them.

Senator Neal asked if she feels children have no Constitutional rights until they reach the age of 18.

She clarified that she feels there are some Constitutional limits on their rights, and certainly outside of school they would have more leniency on freedom of speech than within the school.

Jerri Christiansen, Parent, stated she takes her responsibility as a parent very seriously. She recognizes that this generation of children is superior to her own generation in many ways and that much of society is trying to pollute and destroy the moral fiber of the young people. As a parent, she is able to censor the things that go on in her home, but when she sends her children to the public schools, which are supported largely by taxpayers, she expects them to use wisdom and good judgment in the regulations and policies established there. She commented that most of the discussion today has been how this bill will affect high school

journalists, but her concern lies with those in kindergarten and up to high school. She does not want to send her children to school and relinquish all control. She is also concerned with the long-term ramifications of this bill. To suggest that students would be unable to make decisions, learn responsible journalism, or develop freedom of expression without passage of S.B. 191 is just not so. They would be able to establish these qualities and to develop without this passage.

Ms. Christiansen added that this bill places a tremendous burden on the school boards and the administrators. She is concerned that in making efforts to preserve the civil rights of minors we might be neglecting higher concerns like the moral decay of our young people. She urged the committee to vote against S.B. 191.

Senator Neal commented that he grew up in a setting where it was illegal to have a publication called The Pittsburgh Courier which was a black news publication being delivered to black students. He said even Jet magazine was banned. Life in a world where children are only allowed to see the things adults want them to see is not reality. He stated the world is much different than that, and as a result of his experience with censorship he has become a very avid reader.

Ms. Christiansen agreed there have been many injustices, there still are, and always will be. She also believes children should be exposed to all things at their level of maturity and ability to understand. She does not want to shield children from the world they will some day have to live in, but there are appropriate age levels at which they should be presented. By passing this bill it is inviting problems that might further the moral decay in our society.

Judy Dalluge, Parent, spoke against S.B. 191 (Exhibit J) stressing that the most important characteristic of effective schools is strong instructional leadership.

Senator Titus asked if Ms. Dalluge feels she would have more control over a teacher or principal than an elected school board.

Ms. Dalluge responded she feels she could approach a principal much easier than she could approach the current school board.

Lucille Lusk, Nevada Coalition of Conservative Citizens, stated in the last 4 days since news of this proposed legislation has reached many citizens, she has been contacted by many parents who have concerns about the undermining of the authority and responsibility of the elected officials at a local level to maintain reasonable standards in the school system. She said that in earlier testimony by Mr. Malkiewicz he commented that even where the first amendment does not

grant rights, it is the intention of this legislation to grant additional rights as a matter of state law. He stated this would mean making the schools an open forum, but she asked what is the meaning of an "open forum." She feels this is the bottom line of the issue, and that as parents and citizens we have a right to expect the officials that serve in the public school system to be able to impose some reasonable guidelines. It is important to note that although the proponents of this proposed legislation have emphasized high school journalism there is no age limit in this bill. We also have a right to expect children to be as free from harassment as possible in the school setting, whether by religious reasons, racial reasons, or opposing gangs.

Ms. Lusk also noted that Senator Neal had asked about buttons that might say "I support racism." She said there is nothing in this bill to prevent that, even though some attempted to state there would be such protections. She added that Mr. Malkiewich earlier stated, in response to Senator Neal's question, that he does not know "if this falls anywhere, it might be under the disruption clause." She stated the proponents of this bill have emphasized school newspapers but the measure also includes buttons or fliers which could be materials put in students' hands by persons outside the school district who have a special agenda or product they want to advertise or a philosophy they would like to promote. Mr. Malkiewich stated earlier, "I don't know the extent this would authorize someone who is not a pupil to disseminate materials in the guise of supporting a student."

Ms. Lusk continued that parents have a right to expect schools to educate their children correctly about the dangers of drug usage, and not to expect in school publications that drugs might be glorified in school publications by the use of drug cult language. This bill says the school officials can restrain things which may incite unlawful acts if they occur on school premises. Many testifiers have referred to the restraint of unlawful acts, but most have omitted the reference that only if those occur on school premises. Under this bill it appears that both speech and press could inflame hatreds, prejudices, incite and promote drug usage, violence, and crime as long as they do not take place on the campus. That little phrase "on school property" is highly dangerous. She said if school officials lose authority to work correctly with the children, parents will have no one to appeal to for fairness and reasonable judgment for the children in the school systems. Children are required to attend school; therefore there must be reasonable adult judgments made for their benefit in case they fall into one of the categories that could be subjected to harassment.

Senator Neal asked how many school newspapers are published in the state.

Ms. Lusk said it is not a question of how many newspapers, but how many total publications. Each high school has a newspaper, many of the Jr. Highs have newspapers, and even some elementary schools have newspapers. She added it must not be forgotten this bill does not refer just to school newspapers, but also to bulletin boards and fliers that cannot be removed unless they are obscene, libelous, or incite unlawful acts on the school grounds.

Alexis Hansen, resident of Sparks, former member of the Sparks High School Newspaper, and former reporter for the Sparks Tribune, spoke in opposition to S.B. 191 because of what it means rather than what it says. She is a staunch supporter of first amendment rights but feels those rights need to be examined in relationship to what this bill would represent. She stated a school newspaper is a privilege, not a right, and with that privilege comes certain conditions. School yearbooks and papers are the training grounds for future journalists and photographers, and in essence it is the laboratory of learning. In this laboratory the environment is controlled in order to produce the best possible results. Currently, student journalists practice freedom of speech within the boundaries that are appropriate for their maturity and knowledge of the facts and issues. They need enough "rope" to explore their potential journalistic abilities, but not enough to "hang" themselves. As a former student journalist, she feels she was given enough freedom to express herself without harassment from advisors or school officials.

Ms. Hansen stated her objections center around the idea of censorship. It is a word that is hurled at anyone who might question the intent of this bill. Censorship is a part of our everyday lives; parents censor what their children will or will not watch on television, editors decide what does and does not go to print, libraries determine what books they will or will not buy. Public schools receive public funds; therefore school newspapers are supported with public funds. She would not want to see students getting involved with issues of moral value where there is a possibility of offense toward those whose tax dollars are used. She said if a standard, value-free curriculum has been set, then why would students now be allowed to moralize in the school paper. If mistakes are made in the paper, retractions make little or no difference to those who are hurt or misrepresented. Also, if a student is looking to the school paper to express a concern or a problem, then the student needs to be encouraged to articulate his thoughts or arguments with reason and control and to try to resolve it within the system. If he still feels he is unable to express himself, then he has other avenues of appeal such as parents, school board, and public newspapers. This bill also creates an adversarial position which breeds a "you against them" atmosphere. She feels school yearbooks and newspapers represent an image of the students and the faculty. It is her hope the committee will vote against S.B. 191 and

thereby send a message to students that high school journalistic activities are a training ground where students learn writing skills, interview techniques, and follow-up. Hopefully they will also learn that freedom of speech is not license, but responsibility. She stated anyone can hurl innuendoes, half truths, distortion, or provoke controversy. The hallmark of a great journalist is the ability to recognize the power of the pen and to responsibly exercise his freedom of speech.

Diana Hill, concerned parent, spoke in opposition to S.B. 191 and stated she feels this bill does not address the level at which this freedom would go into effect. She feels a major problem in high school is the lack of respect and this bill would allow more turmoil at that level from those students who are quietly disrespectful. She wondered how the local school boards will govern this freedom of speech, and who is to decide how much religious or racial literature is allowed or restrained. The bill also forbids prior restraint, which means school officials cannot preview materials before they are distributed.

Senator Titus pointed out that subsection 4 of S.B. 191 allows for justified prior restraint by school officials. She added that she keeps hearing testifiers speak of how dangerous this bill is and it seems to be suggested that students will not use the same restraint that adult authors and publishers uses. She stated she does not feel this is true and pointed out some of the case law established over the past 200 years which helps to define these different kinds of situations.

Martha Gould, private citizen, spoke in favor of S.B. 191 and stated she has heard testimony that makes a supposition that young people are not responsible. She has spent many years working with students and feels they are responsible. The vast majority of students are interested in getting an education, are going to be active in the democratic process, and care about their homes, families, and communities. It is a terrible disservice to them to make an assumption that these young people are second class citizens and do not deserve equal treatment under the law. The legislators have an enormous responsibility to ensure that students have the rights and protections guaranteed them under the Constitution. She quoted the late Senator Gibson when he said "The Constitution, and most particularly the first amendment, protects not only majority opinion, but minority opinion and both opinions have a right to existence under law." She added that students have to learn that with freedom comes responsibility in terms of their actions, and feels S.B. 191 will give them the ability to learn to be responsible for their actions and their words.

Pro-Life Andy Anderson, Executive Director, American Courageous Humane Individual Life Defenders (C.H.I.L.D.) of

God, spoke in opposition to S.B. 191 because he feels students will not be allowed to expose the truth about organizations such as Planned Parenthood (Exhibit K).

LaVerne Forest, Advisor, Reno High School, feels there is a perception on the part of many school administrators and some communities that a bill like this one will grant students the freedom to abuse others, to commit libel, and to invade the privacy of individuals, but in fact she feels this bill will provide proper guidelines so that these acts cannot take place. She feels guidelines should be established by schools and school districts, students and advisors sitting down together and determining what they feel is responsible journalism and what is not. She concluded that this is one student activity where the benefits outweigh the risks.

Senator Rawson asked if Ms. Forest experiences the heavy hand of censorship.

Ms. Forest responded she is not censored presently, but she has been in the past. At this present time, she says she is in the perfect environment for students to express every aspect of responsible journalism, but there are many schools in the state which do not have this freedom.

Senator O'Donnell asked how responsible journalism is taught.

Ms. Forest replied that within her publications room there are guidelines which are established before any printing takes place, but they do not prohibit the students from investigating controversial subjects.

Senator O'Donnell asked if Ms. Forest were to find a student who had gone outside those established guidelines, would she edit the student's remarks and restrict his freedom of speech.

Ms. Forest said she would only restrict a student in the areas this bill addresses.

Senator Mello stated he does not understand why people feel high school students would be more irresponsible and more apt to misquotes than college students.

Ms. Forest responded that is why it is important to establish some reasonable and uniform guidelines that everyone could be comfortable with, then this piece of legislation might be less threatening.

Senator O'Donnell asked Ms. Forest who she feels should establish the guidelines.

Ms. Forest responded the guidelines should be established with the advisor, the students, and the school administration. Presently, there are no established uniform guidelines and a

school administrator is able to interpret them however he pleases and quote the school board as his authority.

Jerry Lusk, Nevada Coalition of Conservative Citizens, stated there are some young people who show a great deal of maturity, but there are others who do not. These individuals are in a learning environment and at this time in their lives they need guidelines. He does not feel it would be a violation of their rights if this bill did not pass. The measure ties the hands of the people who are trying to train them. The schools do not need to become places where the problems of the world can be entertained when the students do not have the experiences in their lives to handle them. He concluded by saying this bill will not be in the best interest of the youth at this time.

Eric Johnson, Speech and Debate Team, Reno High School, spoke in support of S.B. 191 and stated that this bill is about taking all facts into account and examining them closely. This bill allows the freedom to see all sides of an issue. He then questioned some of the language in line 18 where it says "is prohibited on school property" and proposed restating it "may be prohibited on school property" because he feels the intention of the bill is to allow schools the leeway to censor obscene or libelous material, not to mandate it. He stated that "true freedom of the press is the freedom of the people who own the press to control what goes on in it." If the school or the state owns the press, then they should be able to control what goes in it. This is why the Constitution really cannot protect what students publish in their newspaper. He concluded that since the beginning of the United States, we have been moving toward a purer democracy, and S.B. 191 is one more step toward that goal.

Senator Townsend asked Mr. Johnson if he feels his generation is prepared to handle the responsibility that S.B. 191 entails.

Mr. Johnson responded he feels the situation creates a self-fulfilling prophecy. When students are given the responsibility this bill renders, it makes the freedom of the press and the new abilities they have that much more important, and it will make them more able to take on those responsibilities.

Senator Titus stated this bill has been developed in reaction to a Supreme Court decision that moved us away from, instead of toward, greater democracy.

Mr. Johnson responded he agrees with the Supreme Court decision, not because he likes it, but because he feels it correctly interprets the Constitution. He stated we should always interpret the constitution first in the best way possible, and then do whatever needs to be done to correct the

problem with examples of legislation like S.B. 191. He does not believe the Supreme Court decision was moving away from democracy, but pointing out a problem that existed in the current system.

Todd Moore, Senior, Wooster High School, stated it is an undeniable fact that freedom of expression is absolutely necessary to the maintenance of a free and moral society. To whom does the right of expression belong and to what extent is that right guaranteed are two questions being addressed by S.B. 191. He believes the right to express oneself is a right guaranteed to everyone regardless of age. If responsible decisions are to be made, the voices of everyone must be heard. Freedom of expression is vital to insure that students can think for themselves and make decisions for themselves. Denying the freedom of expression will only further reduce thought among students. He quoted Voltaire who once wrote "I may disapprove of what you say, but I'll defend to the death your right to say it." Even though school administrators may disagree with what students have to say, they should not take away their right to say it. He feels S.B. 191 is a reasonable solution to an important and controversial subject. It gives students the rights they deserve and administrators ample ability to protect the educational environment of the school.

He concluded there must never come a time when the rights of a group to express itself are restricted, the views of the young are considered meaningless, someone is not heard, and there should never be a time when the rights of free expression are not protected by law. Now is the time to protect students' rights and S.B. 191 is the bill that will accomplish that goal.

Joshua Zive, Junior, Reno High School, addressed some of the generalizations made by the opposition. He stated they seem to base all their arguments on the fact that if students receive freedom of the press, all the students will do is try to destroy everything they have worked to build. He added that this is simply not true, and that most of the students who are on the journalism staff are not there to destroy, but to help build trust and knowledge of the system. If this bill was not to pass, the impact could be disastrous. If the current trends were to continue, journalism would not be the only area affected, but also plays, movies, speech and debate. He stated the real way someone is educated is through experience and taking responsibility for his actions, and S.B. 191 allows young people to do this.

Senator O'Donnell agreed with Mr. Zive's comments on freedom of speech, and asked if a student printed a story which was borderline libelous and borderline slanderous, is it possible the student could be sued.

Mr. Zive responded from what he understands if it is

borderline, he could not be sued, but if he stepped over that line, he would be held responsible and could be sued.

Senator O'Donnell clarified that if a statement made by a student is borderline libelous, he could be sued and his parents could be sued along with him.

Senator Rawson questioned a student's personal liability if he is writing for a school newspaper.

Mr. Zive stated he believes that it is an editors' job to edit, and if he allows libelous material to be printed, he should be held responsible also.

Julia Decay, Senior, Reno High School, Editor in Chief, 1988-1989 Reno High School Red & Blue Newspaper, addressed a question that was raised earlier concerning an editorial board and who decides what is printed. She said on her high school paper, the editorial board consists of all the editors and the advisor. They decide what editorials will be used, whether letters will be printed, and what view will be taken on them.

Ms. Decay then addressed the concerns of whether or not high school students are able to be responsible journalists and if they have the resources to support their views. She stated every issue printed in the Red & Blue must have back-up. Even if names or sources are to be withheld, the editor must know who they are. The staff is very careful about what is published and what is not, and because of this they have been allowed to print stories that most high school papers would not touch. Some of those stories were on Acquired Immune Deficiency Syndrome (AIDS), substance abuse, AIDS education, teenage pregnancy, and suicide. She feels students should not just sit around and allow a larger paper to handle all the pertinent stories because sometimes adults do not see the world the same way high school students do.

Felix Lee, Speech and Debate Team, Reno High School, addressed the arguments that parents use against S.B. 191. He feels many of the parents who oppose this bill do so because they are afraid it will infringe upon their rights as parents to instill their values upon their children simply because their children will be hearing views which differ from their own. He pointed out this actually is inevitable because school is a microcosm of society and any parent who allows his child to attend is already giving permission for them to hear other views.

Mr. Lee said he had asked his advisors what kind of an article would be banned besides something that is obscene, libelous, or would incite unlawful acts. Many of the examples they gave were simply of partisan issues, ones that primarily opposed the views of those who were in power at the time. This

essentially goes against all first amendment rights.

He concluded it is ironic that many of the people who are opposed to this bill say the opinions of children need to be examined before being expressed in a public forum, and yet not one of them has spoken against the students testifying in favor of S.B. 191 within this public forum. He continued it is obvious that children are able to give articulate and informed opinions, and because that is the case there really is no reason to ban or censor any materials besides those addressed in this bill. He then urged the committee to support S.B. 191.

Caelan McGee, student, Reno High School, spoke in support of S.B. 191 (Exhibit L) pointing out sections 1, 2 and 3 and their importance in relation to freedom of expression.

Senator O'Donnell asked if Mr. McGee feels he currently has all these rights in his school newspaper.

Mr. McGee responded he feels they are restricted.

Senator O'Donnell asked what this bill will do to lift those restrictions.

Mr. McGee replied this bill will place guidelines as opposed to restrictions.

Senator O'Donnell asked what the difference is between a guideline and a restriction.

Mr. McGee responded a restriction is something that is set beforehand and states this area is not to be touched. A guideline is something that guides one in the direction that is tasteful, acceptable, and allows for good judgment. A restriction allows for no judgment at all.

Senator Rawson expressed a concern over the regional adaptation of this bill. There would be a potential for 17 different standards on free speech, which may send a message that says it is all right to have a local interpretation of the Constitution.

Mr. McGee responded he feels the government is based upon the sovereign yet unified states, and this eliminates regional conflict. He stated this bill is a protection from future oppression and restriction.

Senator O'Donnell asked if Mr. McGee feels it would be better if Washington, D.C., decided for the nation as a whole a certain standard of freedom of speech to which all students would have to adhere, or would it be better at the state level.

Mr. McGee responded if this bill was expanded to a federal level it would do the same thing by allowing the states to make their own standards under the federal guidelines.

Senator O'Donnell asked how Mr. McGee would feel if the Federal Government stated this bill is not the right avenue for students in terms of freedom of speech, and they restricted it much more, would he believe the law should be sent down from Washington, D.C.

Mr. McGee replied he would argue against Washington's policy and instead put this bill into effect.

Senator O'Donnell asked if he felt it would be better to have each state determine its own policy.

Mr. McGee responded it would be better if each state determined its own policy under federal guidelines.

Senator O'Donnell asked if he felt each county should establish its own policy.

Mr. McGee stated each county should be able to establish its own policy with limited adaptations for their needs.

Senator Rawson closed the hearing on S.B. 191 and opened the hearing on Assembly Bill 125.

ASSEMBLY BILL 125 - Requires teachers and pupils in public schools to wear protective devices for their eyes in certain classes.

Chris Giunchigliani, President, Nevada State Education Association, explained that it came to the attention of legislators that protective eye wear was not being supplied by the schools for classes such as wood shop or chemistry. She said the intent of A.B. 125 is to have the school districts provide protective eye wear for the students in these classes where there is potential danger to their eyes.

Senator Titus said the bill just states the students have to wear the gear but it does not say the school districts have to provide it.

Ms. Giunchigliani responded she was concerned about that also and it was their intent to have the school districts provide the gear.

Senator O'Donnell stated he feels it is implied intent that if they are not wearing the protection they cannot be in the lab.

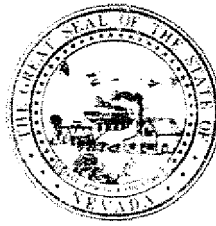
Senator Titus stated that in many elective classes the students are required to buy their own supplies and maybe in one of these classes where they work with chemicals or wood,

SUE WAGNER

Senator

Washoe No. 3

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SIXTY-FIFTH SESSION

STATEMENT OF SENATOR SUE WAGNER

STUDENT PRESS FREEDOM - S.B. 191

BACKGROUND:

On January 13, 1988, the U.S. Supreme Court handed down a decision on a case which had been in litigation for almost four years. The case, HAZELWOOD SCHOOL DISTRICT vs. KUHLMEIER, involved administrative censorship on two pages of the high school newspaper. The decision, essentially said that it is permissible for a school to censor if there is a reasonable educational justification for its censorship.

In the wake of this decision, there has been much confusion. The decision was written in somewhat vague language, and the opinions issued since the court rendered its decision can be measured in feet.

Some of the confusion has been on the part of school administrators, unsure if now they were supposed to censor material never before censored. Additional confusion has been raised by students and advisors uncertain of what would be acceptable and yet concerned that they were being too cautious.

The purpose of this bill is to clarify the issue and help school boards, administrators, students and their advisors cope with the appropriate blending of school regulations and individual rights guaranteed under the U.S. Constitution.

THE BILL:

SECTION 1 merely reiterates those rights guaranteed by the First Amendment. Other activities might include plays, variety shows, poetry contests, etc., whether the school is subsidizing the activity or just allowing use of its facilities.

SECTION 2 emphasizes that every right is limited by responsibility, i.e. no one has the right to scream "fire" in a crowded theater. In keeping with court decisions, it bans material which is obscene, libelous, slanderous, would incite or encourage the commission of unlawful acts, violation of school regulations or disruption of the school's orderly operation.

SECTION 3 is very important in this state. It keeps the control of such freedoms at the local level, allowing each school board to adopt regulations in keeping with that community's standards for the times, places and manner in which the material may be disseminated on school property. This also means that if a school district did not wish advertising to be run in the school newspaper, they could pass such a regulation. However, a regulation which would state that only "happy news" could be published in the school newspaper would not be allowed. (What if the football team lost a game, would you not be able to do a story?)

SECTION 4 prohibits prior restraint by school officials without justification. (Not liking the picture of yourself on the front page is not justification, unless it is obscene.)

SECTION 5 is one of the most important sections in this bill. It is my hope that this process will teach our young people that they do not need to go to court and sue the minute they are unhappy, but instead, look for a way to work things out. What we envision is a policy for each student publication and a policy board, which could be composed of parents, an attorney and a professional journalist or editor. This group would look at the problem and determine if, in fact, the administrators' concerns are real or frivolous. Many times, fault is on both sides and a compromise can be worked out. This section requires the state board to establish such a procedure.

SECTION 6 defines "official school publications," and

SECTION 7 permits school districts to adopt regulation pertaining to oral communications.

In conclusion, I would like to tell you that while I am concerned with student's First Amendment rights, I am equally concerned about what we are teaching our young people about being good citizens. I am frightened by young adults afraid to question anyone in authority, hesitant to ask questions or probe. In other words, I want to ensure that our youth are given the chance to think, make decisions and yes, maybe even make mistakes.

Bill sets middle ground on free speech debate

Senate Bill 191 offers a fair, reasonable and very workable compromise to the dilemma of granting freedom of speech to students in Nevada. And the Senate Committee on Human Resources and Facilities, which is scheduled to hear SB191 today, should endorse it and recommend the Senate's adoption of it.

The bill is short and sweet and goes right to the heart of the matter. Children in our public schools are individuals with rights to freedom of expression and it's an important part of the growth and learning process.

At the same time, school board members, and the principals who work for them, are only being reasonable when they ask for some method to control ill-advised and irresponsible student behavior when it takes the form of libel, slander or obscenity.

Sen. Sue Wagner's bill spells it out for people on both sides of the question:

- Students in public schools may exercise freedom of speech and press on school property through the use of such things as bulletin boards, the distribution of fliers, the circulation of petitions and the handing out of buttons, badges and posters and official school publications.

- Banned would be material that is determined to be obscene, libelous, slanderous or offered to incite pupils to create dangerous situations or commit unlawful acts.

- Individual school districts would be required to establish reasonable standards for allowing students to create and disseminate materials on school property.

- The State Board of Education would be required to adopt regulations and procedures to allow students to appeal a decision of a local school official to restrain or limit freedom of speech and the press.

Here in Nevada, and elsewhere, there have been instances of abuse on both sides. Principals and school boards have been known to squelch projects or publications in advance because they feared the possibility of mischief. And, at the same time, there has been an occasional demonstration where well-meaning youngsters, inadequately advised and left unsupervised, have strayed beyond what reasonably comprises fair comment.

Deciding what's proper and what's excessive when it comes to juggling rights of privacy with fair disclosure; or deciding where fair comment ends and libel begins, is a judgment call best made by experts.

However, it's clear that our young people cannot begin to build a feel for responsible decision-making unless they're allowed to make decisions as a part of the learning process. They will, obviously, never learn to respect the Constitution's fundamental notion of fair play and equal justice if they are themselves routinely denied these things.

Supervising all this are the teacher-advisers who offer daily guidance, the administrators who enforce the rules and the school boards who make those rules. This bill, if it becomes law, would require them to do what it is they do best — teach, guide and advise without stifling enterprise, initiative or creativeness.

Wagner's bill is made workable by its singular ban of prior restraint. There will, undoubtedly, be occasional artistic, social or political efforts that will be denied distribution — but the young creators will at least have had the opportunity to pitch the project and argue its relative merits.

The state's various school districts are, after all, ultimately responsible for what is printed in official publications or said at student gatherings. If they didn't have some say-so and some control, life would be chaotic.

This is the way it's done in the "real world." Nobody is free to say or write whatever it is they please without being called to some reckoning as to fact, fairness or the possibility of malice.

At the same time, arbitrary censorship, dealt out by an insensitive bureaucracy that doesn't want to be bothered with the give-and-take of negotiation, is intolerable. And a school administration that doesn't see the even-handed application of human rights to students as an important part of the teaching process, is useless to its assigned task.

Common sense is the bottom line. Students need guidance as they learn to wield the powerful tools of free speech. The school districts need the wherewithal to protect themselves from the legal damages of libel and slander where these exercises are practiced. And in the midst of all this is a crying need for balance and fairness on those occasions when these two philosophies collide.

SB191 sets the tone and draws up workable guidelines for just such a compromise. It should become law.

Policy statement offers guidelines

The *Troy Invoice* will strive toward excellence in every issue. It will aim to be a vital part of Auburn High School. In order to meet these goals, the *Troy Invoice* will strive to:

1. Report news accurately, objectively, fully and in depth.
2. Provide leadership. Editorial comment will be frequent.
3. Meet professional journalism standards.
4. Provide a forum in the school for a free interchange of ideas.

"Letters to the Editor" and reader contributions will be accepted. (Class assignment contributions will be used as space allows). If many letters are received on a subject, as many representative letters as possible will be printed. In accordance with the school policy for student expression, free speech may not be used to disrupt the educational process or interfere with the rights of others. The written views of students must be responsible and in good taste and be free from character assassination.

5. The major editorial in each issue will represent the majority opinion of the *Invoice* staff and will be unsigned. All other editorial/commentaries will be signed. Letters to the editor must be signed unless the majority of the editor, managing editor and editorial board chairman agree that extreme circumstances warrant withholding a name.

6. Cooperate with the faculty and student body in supporting school projects and give honest evaluation of such projects.

7. Give full credit to any material that is not original.

8. Acknowledge mistakes and frankly correct any major errors which are brought to the attention of the staff.

9. Use the most effective style of expression. The Associated Press style will be used as a guide.

10. Endeavor to create a valid impression of the concerns of the students and the faculty of Auburn High School.

The *Troy Invoice* will not endorse political candidates or accept political advertising. It will reserve the right to refuse any advertising illegal or inappropriate for high school students.

The editor shall interpret and enforce the editorial policy. The editor will seek the advice of the publications board chairman if the adviser or staff disagrees with a decision. The publications board will consist of the Managing Editor of the *Kent News Journal*, as chairman, the class presidents, the chairman of the English department and a representative of the high school administration. A majority decision of the staff or the publications board overrules the editor.

Adviser's comment: This is the policy of the Troy Invoice, Auburn High School, 800 4th NE, Auburn, WA 98002. However, any school has permission to use it or any part of it as a policy.

Each year, it is reviewed and possibly revised by the staff and printed in the first issue of the paper.

The portion concerning letters to the editor is printed in the staff box every issue. The last paragraph is crucial as it informs everyone who will enforce the policy and what procedure will be followed if there is a problem. A policy is worthless unless it is clearly stated who will enforce it. Using a local editor as publications board chairman is a real advantage. It gives you a professional source on libel and local good taste that is very credible both to the staff and the school administration. In addition, the school administration usually will not object to something that has been seen and cleared by the local paper for fear of being accused of interfering with press freedom.

Testimony of
DENNIS MYERS
KTVN News
Senate Human Resources Committee
Nevada Legislature
March 22d 1989

While Senate Bill 191 deals with the full range of student expression, my comments will be directed to the rights of student journalists.

For many years I have been concerned about the problem of school faculty and administrators who attempt to regulate the conduct and product of student journalists. It is a problem which is growing. And I believe there are several factors contributing to this problem.

One is a basic conflict in the role of schools and their staff and faculty in matters involving students journalists. As the Nevada State Journal said in an editorial comment on a student press dispute in 1973, a school is in a "pluralistic" role. It functions as publisher. But it also functions as government. And in a country where the press is unfettered by government control, school officials should be conscious of the conflict in their plural role and act with restraint. Such restraint is called for not just in order to protect the rights of the school's journalists, but also to fulfill the school's academic mission by teaching those journalists the correct lesson about the way our freedoms are supposed to operate in our nation.

This leads me to the second problem I have always experienced in student press disputes. If school officials did indeed act with that kind of restraint, you probably would not have to deal with legislation like this. But that has not been my experience.

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Instead, in nearly every student press dispute I am aware of, school officials overreacted, went to censorship as a first resort, and were unable to distinguish between inflammatory or disruptive prose and merely provocative opinion or controversial coverage. When I was the editor of the *Red and Blue* at Reno High School, I published a letter from two students, Mike Etcheverria and Joe Reading. This was at the height of the Vietnam escalation, during the year of the Tet Offensive, the assassinations of Martin King and Robert Kennedy, the April riots in more than a hundred cities, and widespread student protests. In the midst of all these things which we could have been writing about, these two students---two of our National Honor Society members---were called to the vice principal's office within minutes after the newspaper was distributed and reprimanded for writing a rather mild letter suggesting that some funds be transferred from student athletics to student speech competitions. This was hardly a revolutionary tract, but the administration could not make that distinction and was not willing to tolerate even that most mild deviation from standard opinion.

This leads me to the third factor which makes protection of student journalists important. There may be school officials who---when faced with a student press dispute---focus on the content of the disputed material and the effect it may have on the school environment. But I have seldom come across such officials. Instead, they normally couch their reasons for censorship in the impact on the community, the image of the school in that community, the need to retain business or organizational support for education, or---quite frequently---their own personal interests (in cases where editorial comment challenges the judgement of

school officials themselves). One of the first stories I covered years ago as a new reporter for KTVN News was the suppression by the principal of Carson High School of an editorial written by the student newspaper's sports editor. That editorial challenged the judgement of the school's administration in firing a coach for not having a better win/loss record. The principal whose judgement was criticized in that editorial censored it and it was never published in the Carson High newspaper. Fortunately, the student editor of that newspaper was a strong and spirited woman who stood by her sports editor; she provided a copy of the editorial to this city's newspaper, the *Nevada Appeal*, and that newspaper had the community responsibility to see to it that it was printed. (That editor, Michelle Quintero, is incidentally still a competent and able journalist.) But I think you would have a hard time making the case that the editorial represented any threat to anything except the principal's personal image.

Finally, I would like to mention the fourth factor which I believe undercuts the ability of school officials to fill the role of regulating student journalists. Those officials hold great power over the lives and futures of student journalists. They influence grades, college recommendations, and most especially the atmosphere in which journalists can either thrive or fail as students. Several years ago, the principal of McQueen High School was able to use threats to the futures of student journalists very effectively to work his will over a band of students who were publishing a maverick leaflet which had been created for the sole purpose of criticizing that

principal's conduct. In my own case, our journalism instructor and advisor on the Reno High Red and Blue never allowed my name to appear in the masthead as editor until the final issue of the year, because a vice principal had exhibited a pronounced hostility to me and my coverage the previous year and my advisor wanted to protect me. I simply do not believe that the same people who can hold grades hostage should also be the ones to oversee the conduct of student journalists whose role is in part to scrutinize the policies and conduct of school officials. That is too powerful a weapon to be held over the heads of student journalists.

I do not doubt that there will be times when the writings of journalists in a school setting will be unpleasant, will cause divisions, will damage the standing and prestige of some school officials. That is a prospect we should embrace rather than reject. So long as the educational mission of the school is not disrupted, student journalists should be left free to be provocative or boring or something in the middle. It is a fine line which the United States Supreme Court considered in 1969. This was their judgement:

It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate...in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our

Constitution says we must take this risk and our history says that it is this sort of hazardous freedom---this kind of openness---that is the basis of our national strength and of the independence and vigor of Americans... In our system, students may not be regarded as closed circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved.

The judiciary has retreated from that bold stand. I hope that the legislative branch will reinstate it, and that in your deliberations you will consider the civics lesson you want to teach our state's students by your actions.

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March 22, 1989

Ladies and Gentlemen:

I appreciate the opportunity to appear before this Committee to speak in favor of Senate Bill 191, which seeks to broaden the First Amendment Rights of Freedom ^{of Speech} and of the Press to public school students. I am here because the Bill would especially apply to high school journalism students, who represent the future of my own profession. I want to see the traditions of independence of thought, of an open examination of the issues and controversies of our society, continue in that profession.

But my support for this proposal is not limited to my concern as a journalist. I believe all of us should support the widest possible application of First Amendment rights to all our citizens, including students in our public schools.

In a speech given in Reno recently, a nationally-recognized journalist reminded us that the First Amendment must protect all of us, or it protects none of us. The setting was the Annual E.W. Scripps Dinner at the Donald W. Reynolds School of Journalism at UNR. The speaker was Gene Roberts, Editor of the Pulitzer Prize-winning Philadelphia Enquirer. Roberts pointed to a growing number of restraints being placed on free expression in this country. He believes that such limits on free speech have already had a chilling effect on what we think of as one of our basic rights.

A recent article by investigative reporter Eve Pell in California Magazine even talks about cases where private citizens have been sued for testifying before panels like this one. The article is called "The High Cost of Speaking Out"...

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and such lawsuits are called "SLAPPS," for "Strategic Lawsuits Against Public Participation."

In such a climate as that, it's important to all of us that we guard our First Amendment rights more closely than ever, and that we take care that the next generation is educated in what those rights are and how they can be a force for a better world.

Senate Bill 191 is a step in that direction. As it is written, the Bill merely extends to students the same guarantee of free expression, and at least some freedom from prior restraint, that are already guaranteed to you and me in the Bill of Rights.

The Bill would free responsible student journalists in their pursuit of stories, even if those stories might prove embarrassing to school policy and school officials. It allows for serious discussion of the problems that confront our children every day; such as drug use, teenage pregnancy, gang activity, and the threat of AIDS. None of these issues is without controversy. All are subject to conflicting and highly emotional opinions. SB 191 assures that discussion of these matters can take place freely, without being limited to the "official" opinion, as defined by the school administration.

The draft, as written, clearly outlines the kinds of expression which should be protected. It also makes later revisions possible, including, I hope, future student reporters who practice their craft on school radio and television stations as well as newspapers. That's important in an age when communications technology is changing so rapidly.

The proposed Bill also delineates two areas which are not protected under its provisions: obscenity and libel. In this respect, the student journalist will operate under the same rules the rest of us face.

Many of us at the shop where I work are less happy with the inclusion of a provision that would allow a principal to stop publication of an article he fears would disrupt "the orderly operation of the school." It seems quite likely that an overworked principal's concept of "orderly operation" might differ substantially from a student's...or a parent's...or from that of any member of this panel. But we are satisfied that the burden of proof in such a case falls in the right place; on the shoulders of the administrator instead of the student journalist. With SB 191, the student journalist will not have to accept censorship without question. He or she will have recourse under the law.

The young men and women who will be protected by this Bill will be Nevada's future newspaper, magazine and television reporters. It's never too early to begin teaching them that they can work within the system, and that the law will give them the protection they need. This Bill is a wonderful way to send them that message.

I thank you for the opportunity to speak in its support, and I'll be glad to answer any questions from the Committee.

Tad Dunbar

Anchor/Reporter - KOLO-TV

Society of Professional Journalists/ Nevada Professional Chapter

Statement by Mike Norris, president, Society of Professional Journalists/Nevada Professional before the Nevada Senate Human Resources Committee, March 22, 1989.

Throughout history, governments have used a variety of excuses to limit freedom of expression. Most recently, in our own country, we have heard the clarion call of national security. We heard it during the Kennedy administration when, to my disbelief, the very profession for which I work invoked it to forestall publication of material that could have prevented the coming disaster known as the Bay of Pigs. We heard it throughout Watergate. We hear it even now in the trial of Oliver North.

We are seeing a parallel development in our schools. Only this time the byword used to quash freedom of thought and expression is not national security but, ironically, education. Yes, education. School administrators, teachers, and sometimes communities, are prohibiting the reading of certain books, the writing of certain thoughts, the painting of certain pictures -- all in the name of education when it actually amounts to nothing more than the imposition of their own personal moral or intellectual code on a captive audience -- students.

Shall we become like the ayatollah -- approving of only those books and works of art that conform to our own personal set of beliefs?

Schools do need an orderly environment to cultivate and respect for learning. That is a given. But orderliness must never be allowed to become an excuse for repression and censorship. The Bill of Rights, as Time Magazine noted shortly after the U.S. Supreme Court ruled in the Hazelwood, Mo., case in early 1988, isn't "stamped for adults only."

To limit the opportunities for expression by our children -- whether it be in a newspaper, in an art class or in a school play -- is to endow them with a corrupt patrimony that runs counter to the very principles on which America was founded. It is, ultimately, only going to limit their future potential as productive, contributing citizens whose broad imaginations strengthen our democratic endowment. When anything less is permitted, a piece of America dies.

Therefore, Mr. Chairman and members of the committee, the Society of Professional Journalists urges your full support of this bill.

Oppose SB191

This issue has been framed as an issue of censorship but it ^{is} not--it is an issue of leadership, responsibility, and common sense.

Freedom as we know is not a license to do whatever we want But an obligation to act responsibly so that our freedom to choose may be maintained. Freedom is not license but responsibility.

Parents possess the fundamental liberty to educate their own children. In the Supreme Court Decision Meyer vs State of Nebraska:

When parents send their children to school they ^{delegate} ~~extend~~ some of their parental rights and responsibilities to the schools. ^{and have the right to expect that the schools will act wisely as surrogate parents from a child's point of view} ~~parents~~ parents are encouraged in their leadership role in the family to turn off the Television (in other words to censor the television) when violent programs may be on, which children would otherwise watch without parental censorship or leadership or responsibility.

This same kind of reasoning can be extended to many of the freedoms that adults take for granted which are either completely denied children, that is minors up to age 18, or in some manner limited.

For instance, the Constitution guarantees ^{the} ~~that~~ right to vote, provided you are 18. It does in fact completely censor the right of children to vote. It does discriminate on the basis of age.

The Constitution also guarantees freedom from unreasonable searches and seizures without a warrant. However, right now it is the policy of the Washoe County Schools that Security officers can for probable cause of something illegal search students lockers and rules in this area are less restrictive for school Administrators, they can search a locker if there is a reasonable suspicion ~~that~~ there is something illegal or harmful in the lockers. And why-- well because the students do not have sole ownership of lockers, that they belong to the schools. And I would suggest because the schools have a certain responsibility for the care, supervision and safety of students. ^{as delegated to them by parents.}

What about other guarantees of freedom. What about trial by jury? Don't we have a whole system of courts and laws specifically designed to recognize the differences between children and adults. ^{This difference does not disappear.} ^{It simply recognizes} ^{in a responsible way the difference between} ^{children & adults}

I fully support and endorse the constitutional guarantees of freedom of speech and press. However, this does not eliminate the responsibility and obligation for parents, and educators to provide leadership for our children.

In Hazelwood vs Kuhlmeier, the U.S. Supreme Court provided some very reasonable guidelines in the areas of freedom of speech and press. This bill, SB 191, is designed to circumvent that reasonable decision and eliminate nearly all guidelines or limits in the schools starting in kindergarten.

from Hazelton

make this school a public forum
"Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons that activity (referring to school sponsored publication, theatrical production, and other expressive activities) is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for the level of maturity, and; ~~that may be inappropriate for their level of maturity,~~ and that the views of the individual speaker are not erroneously attributed to the school.

"Hence, a school may in its capacity as publisher (and I might add, financed by tax dollars) of a school newspaper or producer of a school play disassociate itself (Fraser, 478 U. S., not only from speech that would 'substantially interfere with (its) work. . . or impinge upon the rights of other student,' Tinker, 393, U.S., at 509, but also from speech that is for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences."

continued Hazelton:

What's the purpose of SB 191. Is it to open our schools to endless opportunities for special interest propagandizing? Line 6 refers to the distribution of printed materials and petitions. Are we to assume that if a student is lead by an adult to use the school to distribute one sided propaganda that will be sanctioned by this bill.

In speaking to Washoe County Superintendent Marvin Moss yesterday it was his feeling that propaganda by Skin Heads and Hari Chrishnas would not be allowed under this bill---I see no prohibition---but that propaganda by Planned Parenthood would be allowable. Is that discrimination? I would say it is.

And what about Christian organizations or those such as Eagle Forum that have a sharply opposing view to Planned Parenthood? would they be allowed access to distribute information thru student members? Or will there be more discrimination and law suits? *who will decide*

Interestingly enough the chief sponsor of this bill ^{is an} ~~is~~ and
honorary Board member of Planned Parenthood.

I believe in freedom of speech and freedom of the press. In fact I beleive our Constitution was divinly inspired. But freedom if misused can be destructive. It is our responsibility to teach our children through supervised leadership to be self governing and responsible in exercising liberty.

One more thought - we often hear it said
that in Poland, the issue of local control
varied. Interestingly enough, we
perceive these individuals and groups
who set up a high & a way ^{for local control} over
the hill head of this committee concerning
the location of a building. However
I failed to hear those same
individuals object to this bill as its
obvious encroachment on local control.
Perhaps that issue for the proposed
of the bill is merely a convenience. To
be used not as a concerted principle
for themselves but to their self
interest.

To the Committee on Human Resources and Facilities,

My name is Judy Dalluge, a mother of 5, certified home economist and substitute teacher. The drafter of SB 191 would assure us that it is an admirable attempt to offer school districts some latitude in establishing standards of speech and press for pupils. Whoever, the true content will elude any criticism from parents. Reading between the lines, parents will be left out when these standards are established. This has been the consistent case regarding materials suggested in the controversial (Sex/AIDS education curriculum.) If time permitted, I could elaborate with specific documents to explain how Judeo Christian values are left out of discussions involving standards. This would be no exception.

Day to day management of what is spoken or printed will be taken from the school principals most likely, unless a progressive district values each principal and lets him give teachers and community volunteers a greater role in what students can say or print. This has not been the case, in my experience.

Research from the Dept. of Education states: THE MOST IMPORTANT CHARACTERISTIC OF EFFECTIVE SCHOOLS ARE STRONG INSTRUCTIONAL LEADERSHIP.

In my opinion, this bill takes away the leadership ability of the principal and teacher and puts a great burden upon the school board. The affect on local government WOULD BE great...! Cases would be passed over and the door would be open to political groups, religious groups, Hemlock Society, Planned Parenthood, ACLU, Gay right groups and all those expousing to Humanistic Values; and I could guarantee that the door would be slapped shut for those children speaking or publishing Judeo Christian values. I have seen it, I can document it. Too much power in turn is given to a liberal state board to handle appeals.

Power has been taken away from local school administrators and too much given to unapproachable boards... and journalists... and experts.

If no prior restraint by school officials, is allowed. The door is open to whoever gains the most power over the minds of our children as long as some one feels it is not obscene, libelous or incites crime.

Don't stick your head in the sand. This bill involves philosophy... and it definitely does not include the philosophy trying to be taught by the majority of homes struggling to keep afloat in a mist of (humanistic values.)

values based on... of... and... and... and...

Thank you,

For reference, please take my

767-847-2439

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AMERICAN
COURAGEOUS
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INDIVIDUAL
LIFE
DEFENDERS
OF GOD
PRO-LIFE GUARDS

Conceived Helpless Infant
Life Defenders (C.H.I.L.D.)

PHONE: (708) 786-7917
or 786-1996

The child needs special safeguards and care, including appropriate legal protection, because of its vulnerability. — Preamble, United Nations Declaration on Rights of the Child

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness. — U.S. Declaration of Independence

Not shall any person be deprived of life, liberty, or property without due process of law. — Bill of Rights

DATE: 22 MARCH 1989

PRO-LIFE ANDY CHARLES F. ANDERSON
BOX 745
RENO, NEV
89504



SUBJECT: Senate Bill 191 - "Freedom of Speech To Students" (Highlight Notes w/Attachments)

Members - Senate Human Resources Committee

1. Little Child Playing with Sharp Knife
2. "The Pen Is Mightier Than The Sword"
3. "The Truth Shall Set You Free" from Ignorance, Which Is Not Bliss, Since What You Don't Know Can Hurt You, Kill You, or Break You Financially since Ignorance Can be Dangerous, Deadly or Expensive Mentally, Emotionally, Physically, Pyseologically, or Financially.
4. Students might become so bold and brezen enough as to challenge the false and misleading information that they are being taught by Planned Parenthood Disciples of Sexual Sabotage, Subversion, Seduction, Selfish Slavery to Sex Activities, and Even Slaughter of The Innocent Unborn Babies Resulting from so-called Sex Education Information which is taught without moral values or developing strong character and motivation to retain or regain an individual's Integrity, Dignity, Self-Worth and Self-Esteem in their own eyes, the eyes of Society, and the Eyes of God!

May God's Blessings of Health, Holiness, Happiness, and Peace of Mind and Soul be upon you and your loved ones! Please keep on working and praying to abolish "legalized" and taxpayer direct abortion in America to avoid God's wrath upon our nation!

Gratefully yours (an unworthy child of God),

Pro-Life Andy Anderson
PRO-LIFE ANDY ANDERSON

1395

EXHIBIT K

TO:
ANNED PARENTHOOD
IS
ANTI-FAMILY
ANTI-CHILD
ANTI-LIFE
ALL P.O. BOX 490 STAFFORD, VA 22554

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of
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PO Box 490, Stafford, VA 22554

89 REGISTERED LOBBYIST
NEVADA
PROLIFE-ANDY
C. F. ANDERSON
89-19

You did form my inward parts.
You did knit me together in my mother's womb.
I praise You, for You are fearful and wonderful
Wonderful are Your works!
You know me right well,
My frame was not hidden from You,
When I was being made in secret
Immediately wrought in the depths of the earth
Your eyes beheld my unformed substance.
Your book were written every one of them, the days that were formed for me, when as yet there were none of them.

HAZARDOUS TO YOUR HEALTH

GRAND ILLUSIONS: THE LEGACY OF PLANNED PARENTHOOD

by George Grant

Wolgemuth & Hyatt Inc., Brentwood, Tennessee. 346 pp., \$9.95.

Reviewed by H.P. Dunn, M.D.

It is a measure of the intellectual power of this author that in his 13 chapters there are 1,385 precise references! When I write an article for a medical journal, I find it a burden to list accurately even ten references. The reader therefore has available to him an invaluable source of knowledge about Planned Parenthood (PP) in all its diverse activities and guises. In fact, this must be the most comprehensive analysis that the movement has ever been subjected to.

George Grant is one of the increasing number of good citizens who now see through the disguise, the "illusion" to use his term, under which PP operates. For over 90 years, dating from the time of Margaret Sanger's heyday, it has posed as the friend and savior of poor women, struggling mothers, neglected teenagers, and taxpayers burdened with too many welfare beneficiaries. It has been accepted uncritically by heads of government, society leaders, philanthropic organizations, the press, and many churches. Because of this it has enjoyed cash flows of millions of dollars of public and foundation funds.

But now the truth about this gigantic, evil incubus is being realized by more and more people. They have come to see, often through painful experience, that PP is the great enemy of the family, of sexual standards, of the unborn child, and of the viability of the country itself.

"PP claims to be a privately-funded, non-profit family planning organization. But that is an illusion. It is instead one of the largest publicly-funded multinational collectives the world has seen" (p. 28).

As to its power: "PP, for all intents and purposes, has the media in its pocket" (p. 245). And: "The judiciary has been a virtual playground for PP" (p. 251).

It is now well-known that PP is responsible for more induced (so-called "legal") abortions than any other organization in the world. It is a massive record of cruelty and injustice under the guise of helping women in distress. Some of them paid the price of chronic pelvic infection, sterility, sometimes hysterectomy, even death. Dr. Horton Dean, Los Angeles gynecologist, had the courage to say what the American Medical Association should have been saying for years (p. 65): "I am convinced that the PP programs pose the greatest health hazard in America today." And this is what they have built into a multimillion dollar business with government aid and approval.

PP is now openly engaged in a battle with the parents of America for control of their children through the school system. With diabolical determination they have taken the issue to the courts and, sadly, sometimes the judiciary has decided that parents are not fit to bring up children but that PP is. Grant exposes the fraud of sex education, which is the technique for the subversion of the young.

In a real life story, the most tragic I have ever read (pp. 120-123), he describes how the PP instructors invaded a classroom without the consent of the parents and proceeded to destroy the innocence of the captive teenagers. These young girls and boys were introduced to sexual practices, both normal and abnormal, were shown contraceptive devices which they tried on one another and, of course, they got the message that promiscuous sex was the norm. Then they got started on sexual activity - and soon tragedy struck. But you will have to read it for yourselves.

The author concludes with suggestions for defeating the PP monster. It will not be easy. Finance should be cut off at the governmental level. . . . parental con-

sent laws have been shown to be an effective deterrent to teen promiscuity, pregnancy, etc." But PP will fight them tooth and nail. The main defense must be from the churches, the teaching of proper standards of chastity and justice for the unborn.

Grant asks the question (p. 146), "Will we demonstrate the courage necessary to actually expose PP's crimes?" Of course all good people will. If they do not, they will lose their children and society will collapse into anarchy.

Don't be put off by the first two chapters where he goes in for some sentimental "fine writing," such phrases as "cudulent clutter" and "fervid fervor." When he gets into the real argument his style becomes plain and lucid. He tells how he was chased by a security guard at a PP abortion factory and was shot at several times. He narrowly missed being the first prolife martyr! What a character! This is an invaluable book and, moreover, it has a good Index.

(\$10 postpaid from HLI.)



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Former abortionists tell of their conversions

NATIONAL CATHOLIC REGISTER

March 5, 1989

Former abortionists embark upon a journey of renewal

BY BOB OLMSTEAD
Special to the Register

CHICAGO — "I am a murderer," Dr. McArthur Hill told the audience. "I have taken the lives of innocent babies. I ripped them from their mothers' wombs."

The Colorado physician was one of five former abortionists who described the tortures of conscience they went through until they quit

doing abortions and joined the pro-life movement.

They painted a life of increasing use of sex, drugs and alcohol to fight the depression that came with their well-paid but grisly work.

Of the five, three said their lives got so bad they considered killing themselves.

One put her husband's service revolver to her head but couldn't bring herself to pull the trigger.

The testimonies, which were called an act of "public repentance," were presented Feb. 18 before 250 people by the Pro-Life Action League, headed by Joseph Scheidler. All five of the ex-abortionists are now born-again Christians.

Hill got into abortions as a military surgeon at Travis Air Force Base in California, where state law permitted abortions before Roe vs. Wade in 1973. Travis Air Force Base became the abortion capital of the Air Force throughout the world, Hill said.

His emotional turmoil became acute while performing both abortions and deliveries in the same labor room. "Sometimes the aborted babies were bigger than the premature ones which we took to the nursery," he remembered.

Hill began having a recurring nightmare: In the dream, "I would deliver a healthy new-born baby, and I would take that... and I would hold it up, and I would face a jury — a faceless jury — and ask them to tell me what to do..."

"They were to go thumbs-up or thumbs-down. And if they made a thumbs-down indication, then I was to drop the baby into a bucket of

(Please turn to page 1)



Pro-life group hits UN children's rights draft
AN INTERNATIONAL pro-life federation has strongly protested a draft U.N. agreement on the rights of children because it does not extend the rights to the unborn. "The International Right to Life Federation, representing pro-life groups from 26 countries, has charged that the draft 'Convention on the Rights of the Child' will allow countries to deny the rights of children up until birth. The proposed convention has been worked on for 10 years and is to be voted on by the U.N. General Assembly in the fall. The final session of the working group drafting the convention was to begin in Geneva Feb. 20."

Continued from page 1

water

After entering private practice in Wheat Ridge, Colo., Hill was converted to Christianity and renounced abortions. Today he is an officer of Southern Baptists for Life.

When Dr. David Brewer of Glen Ellyn, Ill., first saw an abortion performed as a medical student, he told the audience, "It was kind of neat. It was exciting. It was something new." But when he was told to examine the aborted baby and tell the physician if he had gotten all the parts, "I looked, and it was like someone put a red-hot

poker into me."

But, he said, "My heart got caloused" until one day when he assisted a surgeon who aborted a late-term baby by cutting open the uterus, as in a Caesarian delivery.

When the womb was opened, Brewer said, "I saw the baby move under the sac of men-brane, and the thought came to me, 'My God, that's a person!'"

Then he [the surgeon] delivered the baby," Brewer said. He simply took that little baby and set it on the table in a cold steel little bowl. I could see the baby kicking. It gradu-

ally kicked less and less, and when we left, it was still alive."

After marriage, Brewer was converted through his wife's church, and today specializes in the reversal of tubal ligation. Kathy Sparks, who assisted at 40 to 50 abortions a day in Granite City, Ill., said her job wasn't difficult at first because "I was kind of wicked to begin with."

The clinic had pro-life picketers, she said, "but we didn't have very nice picketers. They egged the cars. They scratched the paint on cars. They [the employees] all thought they were nuts."

Soon, she found, "Things were getting very bad in my life. I did drugs. I drank." And she and her policeman-husband were talking divorce.

One day, she said, she considered killing herself by driving her car into the Mississippi River but decided not to because her baby was in the back seat.

When she got home, crying hysterically, she sat down in a reclining chair and put her husband's service revolver to her head — but couldn't pull the trigger. Still weeping, she drove to see her mother-in-law who

converted her to Christianity.

Sparks, 31, eventually quit the abort-on clinic and today is director of the Crisis Pregnancy Center in Clayton, Mo. Another abortionist who considered suicide as abortions became harder to perform was Dr. Beverly McMillan, director of the first abortion clinic in the state of Mississippi.

The abortion that bothered her the most, she said, "was the abortion I arranged for my kid brother for his girlfriend — more than the hundreds of abortions I did myself."

Many in the audience came to

hear the final speaker, Joan Andrews, who was released from prison last year after spending two years there for interfering with an abortion clinic in Tallahassee, Fla.

Andrews, 41, said the ex-abortionists can "teach us to love the people who are still doing abortions. We owe them something, because we failed to show up at their clinics and love them. We did not help them see that abortion is wrong."

Bob Olmstead is the Register's Chicago correspondent

1337

tion not vasectomy) and female castration (removal of both ovaries). Thus with any of the more common methods of birth control, there are unplanned pregnancies if the "planning" has been absolutized, backstop abortion is seen simply as a means of carrying out such plans.

You do not have to be a sex addict to fall into the organic contraceptive mentality of Western culture. On the contrary, the cultural influence is so vast that almost everyone is influenced by it to one degree or another. To act counter to the prevailing culture requires specific teaching, values, and witness, and for the most part such teaching has been absent. Young, contracting married couples of good faith have told us they were relieved to find in the Couple to Couple League the personal witness that times of abstinence are good for the marital relationship. They had been led by the cultural emphasis on the quantity of sex to think that they were unloving to each other if they didn't have sex every day, and they were tired of it.

Premarital sex and contraceptive sex within marriage both have a similar effect: they cause the development of love to stagnate at the level of physical pleasure. Fornication prevents an unmarried couple from getting to know each other in the ways that really count, and contraceptive sex within marriage contributes to the destructive myth that identifies married love with sexual performance, the more the better. The Christian doctrine that love is self-sacrificing, patient, kind and enduring is so difficult to reconcile with such an emphasis on immediate gratification that the conclusion is drawn that whatever the Bible has to say about love, none of it really applies to that all important area of life — marital sexual love.

Another tragedy of the Sangerian contraceptive emphasis on unlimited intercourse is that genital sex is too narrow a foundation for a solid marital relationship. It's like trying to balance a house on one pole. When the winds of trouble blow, everything comes crashing down. On the other hand, one of the beautiful things about natural family planning is that it requires some abstinence; it requires non-genital courtship; it requires a couple to build a wider foundation for their marriage relationship.

Margaret Sanger and her companions didn't care whether contraception was harmful to marriage because they didn't respect marriage. Contraception made fornication and adultery ever so much more convenient. But if you think that marriage is a God-created permanent relationship, and if you believe the Biblical

statement that self control is one of the gifts of the Holy Spirit, (Gal. 5:22) then you will want no part of the sexual philosophy or contraceptive practices of Margaret Sanger and her Planned Parenthood heirs.

None of this is to say that every married couple who practice contraception have made sex the center of their marriage and will tire of this and eventually will divorce. Not at all. For one thing, the divorce rate is "only" 50% while the contraception rate is probably close to 75% among couples in their fertile years. Many couples use contraceptives without relish and are relieved to find out about natural family planning, and many couples still have a firm enough commitment to their marriage that divorce is unthinkable no matter how used or abused the wife may feel. Nor do I suggest that contraception has been the only factor contributing to the divorce rate.

However, the fact remains that contraception takes apart what God has put together, it acts contrary to the order of creation. Thus despite the fact that millions of couples have never thought about birth control in this way and may be personally inculpable because they have not known better, they have not acted in accord with nature, and nature bats last! In various ways, the practice of contraception has undermined the divinely created human sexual relationship, and the statistics show the results.

Table 2. Percentage of Increase in Divorce Rate Since 1910

1910	Base year	1950	+ 165%
1920	+ 52%	1960	+ 192%
1930	+ 97%	1970	+ 268%
1940	+ 90%	1975	+ 443%
		1977	+ 470%

I cannot see how anyone can look at the parallel rises in the use of contraception and in the divorce rate at the national level, see it confirmed within Catholicism in the 1970's and avoid the conclusion that contraception has been a major cause of contemporary divorce rates.

With the practice of natural family planning as taught by the Couple to Couple League, it is all different. The primary emphasis is on following God's order of creation. It is recognized that God created woman with periodic fertility and that her times of fertility and infertility can be known with a high degree of certainty.

Sexual intercourse is viewed as a renewal of the marriage covenant, a symbolic affirmation of the

unreserved faith, love and commitment that were pledged by the couple when they married. The sexual embrace is an important way of expressing marital love and affection, but it is by no means the only way. The philosophy of natural family planning holds that marital love is also expressed by kindness, patience and the willingness to endure whatever comes (1 Cor 13:4-7).

Non-marital sex, whether before or after marriage, is seen as an invalid form of affection because there is no covenant of marriage to renew. In such circumstances, intercourse pretends to be what it is not and is thus a form of dishonesty, a lie.

Abortion becomes out of the question because God is recognized as the author of life. The unplanned pregnancy (and this happens with all forms of birth control) is recognized as a gift of God — even though an unasked for gift.

The development of married love is fostered by the practice of natural family planning — the only non-sexist form of birth control — because periodic abstinence provides a time when non-genital forms of communication, love and affection must be pursued. It is a commonplace occurrence for married couples to comment on their improved relationship after they have left contraception and have used only a natural method of birth regulation for a while.

Non-marital sex, companionate marriage and divorce, and birth control by any means including abortion — these are the legacies of contraception and the philosophy of sex it has fostered. This legacy has become the de facto State religion; and Planned Parenthood is financed by the State to promote this legacy, this triple threat to the family and to the nation. Is it not time for a national reappraisal?

The Couple to Couple League offers a positive, Christian, very practical and economical alternative to the State religion of Planned Parenthood. Interested? Just contact the League at its national office for information on establishing a chapter in your own community.

— John F. Kippley

International office:

The Couple to Couple League
3621 Glenmore Avenue • P.O. Box 111184
Cincinnati, Ohio 45211-1184
(513) 661-7612

Single copies: 15¢ each plus a self-addressed stamped envelope (or 35¢ postpaid). Bulk rates upon request.

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The Legacy of Margaret Sanger

The Foundress of Planned Parenthood



When Margaret Sanger founded the National Birth Control League in 1911, who would have thought that such an event would serve to undermine the family and the moral fiber of the nation? Who would have guessed that its successor organization, Planned Parenthood, which was founded by Mrs. Sanger in 1939, would popularize her own loose morals among teenagers and prepare them for a life of fornication, adultery, divorce and abortion, all of which were favored by this woman?

1338

Freedom of Expression for Students

Model Legislation

prepared by the Student Press Law Center

A. Students of the public schools shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, the performance of theatrical and musical events, and the publication of expression in school-sponsored publications, whether or not such publications or other means of expression are supported financially by the school or by use of school facilities or are produced in conjunction with a class, except that student expression shall be prohibited as described in section (B).

B. Students are prohibited from expressing, publishing or distributing material that,

- 1) is obscene as to minors as defined by state law,
- 2) is libelous or slanderous as defined by state law,
- 3) so incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the material and substantial disruption of the orderly operation of the school. School officials must base a forecast of material and substantial disruption on specific facts, including past experience in the school and current events influencing student behavior, and not on undifferentiated fear or apprehension.

C. Student editors of school-sponsored publications shall be responsible for determining the news, opinion and advertising content of their publications subject to the limitations of this section. It shall be the responsibility of a journalism adviser or

advisers of student publications within each school to supervise the production of the school-sponsored publication and to teach professional standards of English and journalism to the student staff. No journalism adviser will be fired, transferred, or removed from his or her position for refusing to suppress the protected free expression rights of student journalists.

D. No student publication, whether school-sponsored or non-school-sponsored, will be subject to prior review by school administrators.

E. No expression made by students in the exercise of free speech or free press rights shall be deemed to be an expression of school policy, and no school officials shall be held responsible in any civil or criminal action for any expression made or published by students provided they have not interfered with the content decisions of students.

F. Each governing board of a school district shall adopt rules and regulations in the form of a written student freedom of expression policy in accordance with this section, which shall include reasonable provisions for the time, place, and manner of student expression and which shall be distributed to all students at the beginning of each school year.

G. Any student, individually or through parent or guardian, or publications adviser may institute proceedings for injunctive or declaratory relief in any court of competent jurisdiction to enforce the rights provided in this section.

For further information contact:
Mark Goodman, Esq.
Student Press Law Center
800 18th St., NW, Suite 300
Washington, DC 20006
(202) 466-5242

I. STATEMENT OF POLICY

It is undeniable that students are protected in their exercise of freedom of expression by the First Amendment to the Constitution of the United States. Accordingly, school officials are responsible for ensuring freedom of expression for all students.

It is the policy of the _____ Board of Education that (newspaper), (yearbook) and (literary magazine), the official, school-sponsored publications of _____ High School have been established as forums for student expression and as voices in the uninhibited, robust, free and open discussion of issues. Each publication should provide a full opportunity for students to inquire, question and exchange ideas. Content should reflect all areas of student interest, including topics about which there may be dissent or controversy.

It is the policy of the _____ Board of Education that student journalists shall have the right to determine the content of official student publications. Accordingly, the following guidelines relate only to establishing grounds for disciplinary actions subsequent to publication.

II. OFFICIAL SCHOOL PUBLICATIONS

A. Responsibilities of Student Journalists

Students who work on official student publications determine the content of those publications and are responsible for that content. These students should:

1. Determine the content of the student publication;
2. Strive to produce a publication based upon professional standards of accuracy, objectivity and fair play;
3. Review material to improve sentence structure, grammar, spelling and punctuation;
4. Check and verify all facts and verify the accuracy of all quotations; and
5. In the case of editorials or letters to the editor concerning controversial issues, determine the need for rebuttal comments and opinions and provide space therefore if appropriate.

B. Prohibited Material

1. Students cannot publish or distribute material that is "obscene as to minors." "Minor" means any person under the age of 18. Obscene as to minors is defined as material that meets all three of the following requirements:

- (a) the average person, applying contemporary community standards, would find that the publication, taken as a whole, appeals to a minor's prurient interest in sex; and
- (b) the publication depicts or describes, in a patently offensive way, sexual conduct such as ultimate sexual acts (normal or perverted), masturbation and lewd exhibition of the genitals; and
- (c) the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Indecent or vulgar language is not obscene.

[Note: Many statutes exist defining what is "obscene as to minors." If such a statute is in force in your state, it should be substituted in place of Section II (B)(1).]

2. Students cannot publish or distribute libelous material. Libelous statements are provably false and unprivileged

statements that do demonstrated injury to an individual or business's reputation in the community. If the alleged libeled party is a "public figure" or "public official" defined below, then school officials must show that false statement was published "with actual malice," that the student journalists knew that the statement false or that they published it with reckless disregard the truth — without trying to verify the truthfulness of statement.

- (a) A public official is a person who holds an elective appointed public office.
- (b) A public figure either seeks the public's attention is well known because of personal achievements.
- (c) School employees are public officials or public figures in articles concerning their school-related activities.
- (d) When an allegedly libelous statement concern private individual, school officials must show the false statement was published willfully or negligently, i.e., the student journalist who wrote published the statement has failed to exercise reasonably prudent care.
- (e) Under the "fair comment rule," a student is free to express an opinion on a matter of public interest. Specifically, a student may criticize school policy, the performance of teachers, administrators, school officials and other school employees.

3. Students cannot publish or distribute material that will cause "a material and substantial disruption of school activities."

- (a) Disruption is defined as student rioting, unlawful seizures of property, destruction of property, substantial student participation in a school boycott, sit-in, walk-out or other related form of activity. Material such as racial, religious or ethnic slurs, however distasteful, are not in and of themselves disruptive under these guidelines. Threats of violence are not materially disruptive without some furtherance of that threat or a reasonable belief and expectation that the author of the threat has the capability and intent of carrying through on the threat in a fashion not permitting acts other than the suppression of speech to mitigate the threat in a timely manner. *Material that stimulates heated discussion or debate does not constitute the type of disruption prohibited.*
- (b) For a student publication to be considered disruptive, specific facts must exist upon which one could reasonably forecast that a likelihood of immediate substantial material disruption to normal school activity would occur if the material were further distributed or has occurred as a result of the material's distribution. Mere undifferentiated fear or apprehension of disturbance is not enough; school administrators must be able affirmatively to show substantial facts that reasonably support a forecast of likely disruption.
- (c) In determining whether a student publication is disruptive, consideration must be given to the context of this distribution as well as the content of the material. In this regard, consideration should be given to past experience in the school with similar

material, past experience in the school in dealing with and supervising the students in the school, current events influencing student attitudes and behavior and whether there have been any instances of actual or threatened disruption prior to or contemporaneously with the dissemination of the student publication in question.

- (d) School officials must protect advocates of unpopular viewpoints.
- (e) "School activity" means educational student activity sponsored by the school and includes, by way of example and not by way of limitation, classroom work, library activities, physical education classes, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays and scheduled in-school lunch periods.

C. Legal Advice

1. If, in the opinion of student editor, student editorial staff or faculty adviser, material proposed for publication may be "obscene," "libelous" or would cause an "immediate, material and substantial disruption of school activities," the legal opinion of a practicing attorney should be sought. The services of the attorney for the local newspaper or the free legal services of the Student Press Law Center (202-466-5242) are recommended.

2. Legal fees charged in connection with the consultation will be paid by the board of education.

3. The final decision of whether the material is to be published will be left to the student editor or student editorial staff.

III. NONSCHOOL-SPONSORED PUBLICATIONS

School officials may not ban the distribution of non-school sponsored publications on school grounds. However, students who violate any rule listed under II(B) may be disciplined after distribution.

1. School officials may regulate the time, place and manner of distribution.

- (a) Nonschool-sponsored publications will have the same rights of distribution as official school publications;
- (b) "Distribution" means dissemination of a publication to students at a time and place of normal school activity, or immediately prior or subsequent thereto, by means of handing out free copies, selling or offering copies for sale, accepting donations for copies of the publication or displaying the student publication in areas of the school which are generally frequented by students.

2. School officials cannot:

- (a) Prohibit the distribution of anonymous literature or require that literature bear the name of the sponsoring organization or author;
- (b) Ban the distribution of literature because it contains advertising;
- (c) Ban the sale of literature; or
- (d) Create regulations that discriminate against non-school sponsored publications or interfere with the effective distribution of sponsored or non-sponsored publications.

IV. PROTECTED SPEECH

School officials cannot:

- 1. Ban speech solely because it is controversial, takes extreme, "fringe" or minority opinions, or is distasteful, unpopular or unpleasant;
- 2. Ban the publication or distribution of material relating to sexual issues including, but not limited to, virginity, birth control and sexually-transmitted diseases (including AIDS);
- 3. Censor or punish the occasional use of indecent, vulgar or so called "four-letter" words in student publications;
- 4. Prohibit criticism of the policies, practices or performance of teachers, school officials, the school itself or of any public officials;
- 5. Cut off funds to official student publications because of disagreement over editorial policy;
- 6. Ban speech that merely advocates illegal conduct without proving that such speech is directed toward and will actually cause imminent unlawful action;
- 7. Ban the publication or distribution of material written by nonstudents;
- 8. Prohibit the school newspaper from accepting advertising; or
- 9. Prohibit the endorsement of candidates for student office or for public office at any level.

V. COMMERCIAL SPEECH

Advertising is constitutionally protected expression. School publications may accept advertising. Acceptance or rejection of advertising is within the purview of the publication staff, who may accept any ads except for those for products or services that are illegal for all students. Political ads may be accepted. The publication should not accept ads only on one side of an issue of election.

VI. ADVISER JOB SECURITY

The adviser is not a censor. No teacher who advises a student publication will be fired, transferred or removed from the advisership by reason of his or her refusal to exercise editorial control over the student publication or to otherwise suppress the protected free expression of student journalists.

VII. PRIOR RESTRAINT

No student publication, whether nonschool-sponsored or official, will be reviewed by school administrators prior to distribution or withheld from distribution. The school assumes no liability for the content of any student publication, and urges all student journalists to recognize that with editorial control comes responsibility, including the responsibility to follow professional journalism standards.

VIII. CIRCULATION

These guidelines will be included in the handbook on student rights and responsibilities and circulated to all students.

Sect 2-3

Every system of course must of course have it's limits, boundaries, guidelines, etc. irresponsibility is a likely result. This is where sections 2 and 3 come in. Section 2 essentially gives situations in which direct violation of public or school rights would nullify some of the freedom. And Sect 3 further enhances this. For under Subsect. 3, regulations will be assigned and created regionally to school district. This creates a number of benefits. First, simply, diff. areas, diff. groups, have diff. needs. This allows for that adaptation regionally. Secondly Nevada has always been a state independent of others, protecting it's rights and people, and therefore creating a great variety of freedoms, but never have these rights and privileges been achieved through revolutionary, rebellious, or radical means, but simply through ~~and~~ structured expression. By giving academic rights to students, we can preserve these dignities. And by allowing regions to ^{create} provide reasonable std's, we can keep the structure of our curriculum. Freedom with structure. That is what 1104 is all about. This bill summarizes

MINUTES OF THE
SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES

Sixty-fifth Session
June 7, 1989

The Senate Committee on Human Resources and Facilities was called to order by Senator Raymond D. Rawson, Chairman, at 3:08 p.m., on Wednesday, June 7, 1989, in the Commissioner's Meeting Room on the Fifth Floor of the McCarran International Airport in Las Vegas, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Raymond D. Rawson, Chairman
Senator William R. O'Donnell, Vice Chairman
Senator Joe Neal
Senator Donald R. Mello
Senator Randolph J. Townsend
Senator Mike Malone
Senator Dina Titus

STAFF MEMBERS PRESENT:

Nadine Nelson, Committee Secretary

OTHERS PRESENT:

Senator Sue Wagner, District No. 3
Frank Daykin, Attorney
Phyllis Darling, Teacher, Nevada Commission on Bicentennial
J. Erich Evered, Vice President, CER Corporation, Published Author
Thomas Moore, Attorney, Clark County School District
Elizabeth Graham, Nevada Right to Life
Lucille Lusk, President, Nevada Coalition of Concerned Citizens
Doug Jydstrup, Government Teacher, Las Vegas High School
Don L. Christensen, M.D., State President, Church of Latter Day Saints
Judith Hale, Journalism Teacher,
Louise Coff,
Daniela Dell'Orco, Newspaper Editor, High School Junior
Carolyn Harris, Nevada Coalition of Concerned Citizens
Sari Aizley
Ray Morgan, Principal, Bonanza High School
Molly Kieser, Teacher, Cashman Junior High School
Deborah Ash
Lyndsey Jydstrup, Director of Communications, Nevada State Education Association
Allen Coles, Principal, Clark High School
Jack Levin
Charles Jensen, Nevada Coalition of Concerned Citizens

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Don Eldfrick, Principal, Kenny Guinn Junior High School
Gene Wright, Journalism Teacher, Bonanza High School
Carter Rapp, Nevada Coalition of Concerned Citizens
Ina Wagner
Marjorie Call
Steve Wark
Ruth McGroarty, Pro-life
Judy Olsen, Free-lance Writer, American League of Penwomen

Chairman Rawson opened the hearing on SENATE BILL 191.

SENATE BILL 191 - Establishes standards for pupils to exercise freedom of speech and press while on school property.

Senator Sue Wagner, District No. 3, introduced Frank Daykin, the former Legislative Counsel, who she said was here at her request to go through the original bill and her proposed amendment (Exhibit C). She requested that the testifiers address their comments to the amendment, since it is virtually a new bill. She presented her testimony (Exhibit D) in support of the amendment to S.B. 191. She said the amendment had been put together in the past week in response to the hearing today and the passage of a similar bill in Iowa, which was signed into law on May 11, 1989. She stressed her concern that students be taught to be good citizens. She said she is frightened by students who are afraid to ask questions or to question anyone in authority. She said she felt students should learn good journalism skills and the importance of free expression in this country.

Mr. Daykin cited the Supreme Court case of Tinker versus the Des Moines School District, which said the rights of the first amendment extended to pupils in the public schools, as being a forerunner of S.B. 191. He added that the Supreme Court in the past 3 years has tried to limit and define the extent of student rights. He noted that in the Supreme Court case of Becker versus Frazier, the court held that definitely a school district had the right to discipline a pupil for lewd or suggestive language in a school assembly. Mr. Daykin explained that the Hazelwood case dealt with the regulation of a school newspaper, and the decision was that the school authorities could censor or control the content of the paper so as to avoid language too explicit in the area of sex. He said the area of confusion is that the law says "may", not "must", and that S.B. 191 seeks to lay down statutory standards for school districts in Nevada.

Mr. Daykin expounded on the amendment (Exhibit C). He noted the original bill used the term "obscene" (Exhibit E) in subsection 1(a), and this has been changed to "harmful to minors," which is defined in Nevada Revised Statute (NRS) 201.257 (Exhibit F). He noted the amendment only includes students in middle schools and up, thus limiting the scope of

S.B. 191.

Senator Wagner asked Chairman Rawson to allow Mr. Daykin the opportunity to respond to any concerns or questions raised during the hearing. She said she felt that many of concerns addressed at the first hearing, and by letters and phone calls, have been addressed in the amendment.

Chairman Rawson asked, "If the school is defined as a public forum, then there are many fewer limitations that you can put on free speech....In your opinion, does the language of this proposed amendment create that public forum in our school districts? "

Mr. Daykin said, "I think not, because it deals specifically with the limitation and use of official school publications as tools of teaching." He said the bill does not say the school newspaper is to be the forum for student expression, as it must be edited.

In answer to Chairman Rawson, Mr. Daykin said the amendment does not address the question of buttons, insignias, etc. He explained that under the Tinker case, armbands would most likely be permissible, but there would be some limitations under subsection 2 of the amendment. Mr. Daykin conceded to Chairman Rawson that a student wearing a condom in his lapel is a debatable area. Chairman Rawson asked if subsection 6 meant that the amendment was defining a greater freedom for speech than for the press. Mr. Daykin clarified that the amendment provided a greater freedom for the press but with specific limitations. He explained that the amendment leaves the question of oral communication where it currently is.

Chairman Rawson said it was his understanding in numerous court cases that the adviser could not edit a student's work for the purposes of grammar, etc., which is mentioned as an editing job of the adviser in subsection 5. Mr. Daykin said the Hazelwood case allowed the editing in regard to bad English and verbosity.

In response to Chairman Rawson, Mr. Daykin said he did not feel that the personal liability of an adviser would be increased. Mr. Daykin said the adviser has a statutory duty and cannot be sued under chapter 41 of NRS, in concern to sovereign immunity. Chairman Rawson said he interpreted subsection 7 as making an adviser personally liable if (1) he causes something inflammatory to be published, or (2) he interferes with a student. Mr. Daykin said, "Under existing law, as the the United States Supreme Court has interpreted it, the student can bring such an action, independently of this statute...If he [the adviser] deliberately causes something inflammatory to be added which was not there, then we would have him liable, presumably to someone on the outside, for his own deliberate act, though he would not be

liable for anything the pupil had put there which he did not take out."

In answer to Chairman Rawson, Mr. Daykin stated there was a typographical error in the next-to-last line of the amendment and that "or" should be inserted between "charge" and "for".

Chairman Rawson asked about the definition of the ages in regard to a middle school or a junior high school student. Senator Wagner said the term middle school is used in Washoe County in lieu of junior high, and basically could be seventh and eighth or sixth, seventh and eighth grades. Senator Wagner said this bill could be limited to high school, but that in junior highs there were often newspapers and advisers. Mr. Daykin pointed out that professional standards of journalism would not only include good English, but also accuracy and fairness in the opportunity to respond and the avoidance of sensationalism.

Senator Neal asked about the holding in the Hazelwood Supreme Court case. Mr. Daykin said the ruling was that the principal acted properly in removing two pages of the school paper. One article dealt with interviews of girls who had become pregnant while in high school and the other article dealt with the consequences of divorce to pupils in high school. The parents of the pupils sued because the two pages were removed and the Supreme Court upheld the principal, he added.

Senator O'Donnell said he assumes the school district can be sued under S.B. 191 if an editor makes some kind of change in a student's article. Mr. Daykin stated, "That is true." He explained that the Tinker case recognized this suit. In response to Senator O'Donnell, Mr. Daykin said a school district would be exempt, but a parent would have some limited liability if something a student wrote was found libelous after being published. In answer to Senator O'Donnell, Mr. Daykin said a minor cannot be held to a contract because the courts recognize that a minor does not have the sort of judgment which would permit him to make a binding contract.

In answer to Senator Titus, Mr. Daykin said he did not feel S.B. 191 would encourage hate and gangs more than what exists currently. He said he felt S.B. 191 encourages limitations and tends to restrict.

Senator Wagner reiterated her request that Mr. Daykin be able to respond to questions from the testifiers at the end of the hearing. Chairman Rawson said he would be guided by the time.

Phyllis Darling, Nevada Commission of the United States Bicentennial of the Constitution and the Bill of Rights, gave her testimony in support of S.B. 191. She referred to the Hearst Report (Exhibit G* original is on file in the Research Library) on the American public's knowledge of the United

States Constitution. She said the findings of the report were dismal. She explained that a majority of Americans are unaware of their rights under the Constitution. She suggested a reason for the ignorance is that the schools are teaching the freedom of speech in a vacuum. She alleged that the best way to teach a subject is to involve a student actively. She closed by stating, "It would be a terrible tragedy, indeed, if through ignorance we should allow these freedoms to disappear because our students are being taught theory rather than practice."

Erich Evered, Vice President, CER Corporation, Published Author, spoke in opposition to S.B. 191. He stated he was a strong proponent of freedom of expression, but felt "our children are emotionally vulnerable, impressionable and widely divergent in their ability to handle controversy and inflammatory ideas." He added that he felt S.B. 191 specifically codifies students rights to inflame and disrupt and that the amendment does not change his feelings. He noted that the bill does not apply to students committing unlawful acts off the school property that may have been incited while students were on school property. He mentioned that school officials are subject to prosecution by his interpretation of S.B. 191.

Senator Neal asked if Mr. Evered favored a lack of standards since currently each school district sets standards. Mr. Evered replied, "I don't favor putting handcuffs on school administrators in the exercise of their discretion on the individual instance...I don't feel statewide standards are appropriate." When Senator Neal said the lack of standards would allow an administrator to choose to publish something by one religious group and to exclude another, Mr. Evered replied, "I don't agree with that." He maintained it wouldn't happen a second time. Mr. Evered said he felt S.B. 191 sets a too liberal standard which could lead to abuse.

In answer to Senator Titus, Mr. Evered said it was his understanding that administrators currently can prevent what they consider to be morally offensive behavior from students. Senator Titus pointed out that S.B. 191 does not does change this, but rather sets certain standards into law. Mr. Evered said Nevada Revised Statute 201.257 would prevent some behaviors, but does not address the possible abuse of racial, ethic or gang problems that he feels could result with the passage of S.B. 191.

Senator O'Donnell asked Mr. Evered, "When we send our children to school, or when you send your children to school, whose children are they? Are they the states? Are they the publics? Are they yours? And which standards...should we use when we send our children to school?" Mr. Evered stated, "I think the standards are those of the parents through the exercise of their rights in a democracy in administering the

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school district."

Thomas Moore, Attorney, Clark County School District (CCSD), testified in opposition to S.B. 191. He explained the Hazelwood case dealt mainly with the question of a public forum, which is only created by an intentional act. He said the Hazelwood case involved a local district policy, but the school district had maintained restrictions which allowed the principal to review and give prior approval to a publication. He noted that the recent Supreme Court decisions hold with the idea that in the curricula area, the schools have the authority to determine standards. Mr. Moore noted that the amendment presented today advances the concept of immunity, but that this immunity motivates the principal or teacher to do nothing for fear of loss of immunity. He distributed and elaborated on a memorandum (Exhibit H) and an addendum (Exhibit I) drafted by the CCSD in regard to the original version of S.B. 191 and addressed his remarks also to the amendment. He reiterated that the Supreme Court has determined that certain material published by the public schools may be edited.

Senator Neal asked if there was an appeal process in place in the CCSD for the editing or censorship of some articles. Mr. Moore said the newspapers are produced by a journalism classes under the curriculum of the school and the school district has the right to determine what is published. He said it was his understanding that the principal has the ultimate authority to determine what is published and what is not published. He said he has never seen an appeal brought to the CCSD Board of Trustees on a school newspaper issue.

Senator Titus asked if the allegations of possible scenarios, presented in Exhibit H, if S.B. 191 was passed, are based on research done in other states where similar legislation has been passed or if they are speculations. Mr. Moore said they are anticipations of problems that could arise in a high school setting. Senator Titus asked, "Have you talked to other states who might have similar statutes [and] if they've had these kind of problems." Mr. Moore stated, "No, we haven't." He noted that the CCSD had looked at other court decisions where the Ninth Circuit Court has recognized the distinction between curriculum versus non-curriculum.

Elizabeth Graham, Nevada Right to Life, presented her testimony (Exhibit J) in opposition to S.B. 191. She noted that she felt there was more to "harmful to minors" than just sex and obscenity. She claimed that that the school is an extension of the parents, and that S.B. 191 takes away the rights of a parents to restrain freedom of speech in their children. She said she feared the proselytizing of religion that might occur as a result of the non-restriction of articles in school newspapers. Chairman Rawson noted the Supreme Court has ruled on the prohibition of religion in

public schools.

Liucille Lusk, President, Nevada Coalition of Conservative Citizens, stated she would address her remarks in opposition to S.B. 191 to the amendment presented by Senator Wagner. She said the question that S.B. 191 raises is "Whose judgment is to applied as to whether these things are libelous or harmful?" She alleged that S.B. 191 does not establish a uniform standard, but instead, places the judgment of written publications in the hands of children, rather than adults. She presented her suggested amendments (Exhibit K) to S.B. 191. She said the Supreme Court has recognized the difference between minors and adults and has ruled that schools do not have to be open forums for student free speech. She alleged that S.B. 191, even in its amended form, seeks to erase the difference between children and adults.

Doug Jydstrup, Government Teacher, Las Vegas High School, presented his testimony (Exhibit L) in support of S.B. 191.

Don L. Christensen, M.D., State President, Church of Latter Day Saints, read parts of his letter (Exhibit M) that he had previously sent to the committee members in opposition to S.B. 191. He said he felt the amendment did not make much difference. Speaking as a concerned parent, he said he is of the opinion that control of freedom of speech should be at a local level. He said he felt there should be standards, but they should be local ones. Dr. Christensen stated he was a proponent of freedom of speech, but that students have to be treated differently than adults. He said he was especially concerned about moral issues that may be offensive to him if S.B. 191 was passed.

Senator Neal asked, "What about the issue of allowing the children to think? That's all encompassed in this." Dr. Christensen answered, "It seems to me that that is allowable in the present forum." He alleged that S.B. 191 is allowing a unrestricted forum which has more disadvantages than advantages. Senator Neal asked him what his opinion was of Ms. Lusk's proposals. Dr. Christensen said the proposal seemed logical. He added that he saw some real problems unless there are more amendments, including the immunity for school officials for editing a student's writing.

Judith Hale, Journalism Teacher, testified in support of S.B. 191. She said she felt the amendments clarified S.B. 191 and would agree with Mrs. Lusk's suggestion to limit the scope of the bill to high school newspapers. She stated high school newspaper editorial pages deal with subjects such as drug abuse, sex education, gang violence and school security. She said schools are trying to encourage students to think and to make decisions. Ms. Hale said she felt the intent of the bill is to say a responsible program has its limits and feels S.B. 191, with the amendments, helps define theses limits.

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She declared she considered a high school newspaper a laboratory experience where students learn to think as well as to write, as they often do in science classes. Ms. Hale noted that standards of journalism are universally well defined. She stated, "All democracy includes some risk and I am willing to take that risk. I feel my students deserve the protection that this law gives."

In response to Chairman Rawson, Ms. Hale said she is still advising a school newspaper and is most fortunate that she has not had restrictions forcing her to pull articles from the paper. In answer to Senator Malone, Ms. Hale said she was an adviser at Clark High School. Senator Malone stated his daughter welcomed the advice of her journalism adviser. He pointed out that according to S.B. 191, if a student chooses to sue over editing action of an adviser, the adviser would be held liable. Ms. Hale said she felt any good adviser gives guidance and is covered in section 5 of S.B. 191. She said one question she would have is the interpretation of "interferes with or alters." She repeated, "I am not afraid of the bill." Senator Malone said he still feared advisers being sued. Senator Malone asked if the amendment restricted Ms. Hale more than she is restricted right now. She said she did not feel advisers would be more restrained, but that S.B. 191 is necessary because some students and advisers are being subjected to prior restraint.

When asked By Senator O'Donnell, Ms. Hale indicated she was a firm believer in the freedom of speech. Senator O'Donnell asked, "If we set out some guidelines, whereby, a school newspaper could be printed, why would we need any more advisers?" Ms. Hale replied, "Because journalism comes as part of the curriculum and there is more to journalism, sir, than just having students get together and put out stories. The newspaper program is instructional in that there are things such as layout and design, graphics...I see no way that it would eliminate the need for an adviser."

Senator Neal asked if she felt the lack of any uniform standards would not only have an effect on the students, but also on the teachers within in the school system. Ms. Hale said she felt there is a possibility of curriculum control and she felt legislation was needed for the protection of students and participants.

Louise Coff said she was testifying against S.B. 191 as a parent of a Clark County high school student. She stated her main concern of the bill is that no one is responsible for what is said, published or worn in the schools. She noted that currently the parents can hold the school district accountable. Ms. Coff said she felt the bill was unnecessary if it in fact does not do what the Senator Wagner and Mr. Daykin said it is not going to do.

Daniela Dell'Orco, Newspaper Editor, Clark High School Junior, presented her testimony (Exhibit N) in support of S.B. 191. When asked by Senator Rawson if she felt she had ever had any restraint on anything she had written or submitted, Ms. Dell'Orco replied that she had not and that she was fortunate to have Ms. Hale for her adviser. Chairman Rawson pointed out that the system is working for her now. She said her fear is that this may not always apply and that S.B. 191 would give her the security of knowing she could express her views. In response to Chairman Rawson, she said she felt the publisher should have the right to determine what is published, but that in a public school system, she feels she should have the right to express her view within reasonable limitations.

In response to Senator O'Donnell, Ms. Dell'Orco said that she felt journalism students should have the right to make mistakes in the learning process. She admitted students needed guidance from advisers and parents. In answer to Senator O'Donnell, Ms. Dell'Orco said students should not be able to write something to evoke violence, but should be able to express basic opinions in editorials.

Carolyn Harris, Nevada Coalition of Concerned Citizens, speaking in opposition to S.B. 191, urged the committee "to stop this bill in its tracks." She said the bill opens the door to all sorts of evil and stated, "Journalism is to be practiced by responsible adults, not children."

Sari Aisley gave her testimony (Exhibit O) in support of S.B. 191. She disputed Mr. Evered's statement that high school students are too vulnerable to handle controversy. She said she felt high school students needed to learn how to handle controversy before being thrown out into the world. She alleged that what is dangerous is the suppression of ideas. She contended that the Hazelwood decision did concern censorship since "the principal removed whole stories based on their content, not because they had poor syntax or the spelling was rotten." Ms. Aisley stated she felt that S.B. 191 is a great safeguard against censorship in Nevada. She noted that all speech has the potential to harm someone, but the greater harm is in not allowing free speech and free expression.

In answer to Senator Malone, Ms. Aisley said her feeling would be to include junior high students in S.B. 191. She said she felt the grades lower than this do not provide the setting for journalism classes and is practical only in terms of junior and senior high school students. Ms. Aisley agreed with Senator Malone that journalism students need an adviser to guide them. She disagreed with Senator Malone in his allegation that the adviser would be liable for any advice he gave in regard to a student's writing. She explained the adviser has the right and responsibility to teach the students, not only the mechanical skills, but also the

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philosophy of what is appropriate in a newspaper, the same as any editor does in a commercial newspaper. In response to Senator Malone, she said she felt the adviser should be encouraged to provide as much input as possible, but not to ultimately be a censor. Senator Malone said his understanding of S.B. 191 is that it does not address the issue of suppression.

Ray Morgan, Principal, Bonanza High School, explained that most of his comments would be directed at the original version of the bill, and presented his testimony (Exhibit P) in opposition to S.B. 191. When asked by Senator Mello, Mr. Morgan admitted he had not read the amendment presented by Senator Wagner.

Molly Kieser, Teacher, Cashman Junior High School, presented testimony (Exhibit Q), written by her husband who is currently a teacher at Southern Nevada Vocational Technical Center, in support of S.B. 191. Senator Malone said that he has been a great proponent of teacher's rights and it disturbs him that teachers would support S.B. 191 since it restricts them and makes them liable to be sued.

Senator O'Donnell asked whether property rights, fourth amendment, superseded freedom of speech rights, first amendment. He asked, "When the state forces us...to place our property, our children, in a setting, in a school, do your first amendment rights supersede my fourth amendment rights." Ms. Kieser said, "No." She added that, as a teacher, she has to make a value judgment since she has a multitude of students coming from a multitude of environments. Senator O'Donnell said the principal, with the advice of the school board and the parents, should make the final determination.

Deborah Ash testified in opposition to S.B. 191. she said she wanted students to have freedom, but not as much as S.B. 191 will allow. She said she felt the decisions concerning the school should be put in the superintendent's and principal's hands. She said she was concerned that S.B. 191 had no stipulations on who could publish in a school newspaper and she feared that outside groups, who want to influence teenagers, would find students to write articles reflecting their views.

Lyndsey Jydstrup, Director of Communications, Nevada State Education Association, presented her testimony (Exhibit R) in support of S.B. 191.

Allen Coles, Principal, Clark High School, presented his testimony (Exhibit S) in opposition to S.B. 191.

Jack Levin presented his testimony (Exhibit T) in opposition to S.B. 191.

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Charles Jensen, Nevada Coalition of Concerned Citizens, testified in opposition to S.B. 191. He said he felt schools were for learning and for making students become responsible adults.

Don Eldfrick, Principal, Kenny Guinn Junior High School, presented his testimony (Exhibit U) in opposition to S.B. 191.

Gene Wright, Journalism Teacher, Bonanza High School, presented his testimony (Exhibit V) in opposition to S.B. 191. He added that he had often advised students not to print something because he did not think the articles should be published.

Carter Rapp, Nevada Coalition of Concerned Citizens, testified in opposition to S.B. 191. He noted that there is a bill pending in the legislature that would mandate that the school district provide legal assistance to any teacher that a lawsuit has been brought against while in the performance of his duty. He fears that S.B. 191 would open the door for lawsuits that would result in the school districts, and ultimately the public, paying for the legal fees. He stated he sees daily examples of the freedom of speech at work in the United States and feels that S.B. 191 is unnecessary.

Ina Wagner spoke in opposition to S.B. 191. She stated, "A person's first amendment right to free speech was never intended to include a right to public funds, or tax funded means or expression. In fact, just the opposite is true. The framers of our Constitution felt very strongly that the use of public tax funds should be specifically restricted to expenditures dealing expressly in favor of the general welfare, that is, for the community as a whole, and forcing those who do not agree with you to fund your expression is in clear violation of the taxpayers' rights." She said she felt the regulations should be left to the local school districts whose regulations must remain in harmony with the higher laws.

Marjorie Call testified in opposition to S.B. 191. She said that in the 22 years she has had students in Clark County schools, she has observed a great change over the years in the attitudes and behavior of students in the schools. She stated her younger children have experienced violence and harassment, she felt, due to a lack of authority and guidance at schools. She alleged that S.B. 191 takes authority away, not only from the principals and teachers, but also from the parents.

Steve Wark spoke in opposition to S.B. 191. He said, as a student, he had many articles censored by his adviser in high school and that he did not have proper judgment at that time. He said he felt S.B. 191 restricted advisers too much. He stated that the bill of rights does not exist within a societal vacuum, but is subject to the vicissitudes of the courts. Mr. Wark contended that an environment in a school is

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often created by subtle remarks and attitudes that ultimately lead to an overt disruption. This is where an adviser or administrator needs to intervene, he added. He said he felt S.B. 191 contained too much ambiguity in the language and reiterated his opposition to S.B. 191.

Ruth McGroarty, Pro-life, said she wanted to go on record as being totally opposed to S.B. 191.

Judy Olsen, Free-lance Writer, National League of American Penwomen, said she had serious concerns about S.B. 191. She said she learned and teaches that you must pay for what you write and say. She alleged that S.B. 191 does not create a realistic journalistic atmosphere in the classroom when the right of editorial review is eliminated. She explained that in a school setting, the taxpayers are underwriting the cost of a school publication and that students need to learn that they are subject to editorial review. She said she feared S.B. 191 would allow off-campus groups to influence students.

Senator Neal asked Ms. Olsen if she would deny students the right to learn the process of shaping public opinion. Ms. Olsen said, "I would not deny them the right to study about that." Senator Neal expressed his concern that students be taught the difference between formulating public opinion and propaganda by writing and addressing questions. Ms. Olsen stated, "I see nothing abridging that opportunity for our students. I think this is exactly what they are doing."

Chairman Rawson closed the hearing on S.B. 191. In regard to Senator Wagner's request that Mr. Daykin be allowed to respond to some of the statements made during the hearing, Chairman Rawson said. in view of the time element, he would invite Mr. Daykin to submit, for the record, any comments he might have. Chairman Rawson said he would allow anyone to submit for the record, any further testimony on S.B. 191 for the remainder of the week.

SENATOR MELLO MOVED THAT THE CHAIRMAN SET A TIME CERTAIN TODAY FOR ACTION ON S.B. 191.

Chairman Rawson declared the motion dead for lack of a second.

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There being no further business, Chairman Rawson adjourned the meeting at 6:25 p.m.

RESPECTFULLY SUBMITTED:


Nadine Nelson, Committee Secretary

APPROVED BY:


Senator Raymond D. Rawson, Chairman

DATE: 22 June 1989

Mr. Daykin, after the meeting, submitted for the record, his interpretation of Senator Wagner's amendment of S.B. 191 (Exhibit W).

PROPOSED AMENDMENT TO SENATE BILL NO. 191.

Amend section 1, pages 1 and 2, by deleting lines 3 through 21 on page 1 and lines 1 through 14 on page 2 and inserting:

" 1. Except as otherwise provided in this section, a pupil enrolled in a public school may exercise freedom of speech on school property, including the right of expression in official school publications.

2. A pupil may not express, publish or distribute on school property material that:

(a) Is harmful to minors;

(b) Is libelous or slanderous; or

(c) Encourages pupils to:

(1) Commit unlawful acts on school property;

(2) Violate lawful school regulations; or

(3) Cause the material and substantial disruption of the orderly operation of the school.

3. There may be no prior restraint of material prepared for official school publications unless the material violates the provisions of this section.

4. The board of trustees of each school district shall adopt regulations to establish:

(a) Procedures by which a pupil may appeal a decision of a school official to restrain or limit freedom of speech.

(b) Reasonable standards for the times during which and the places and manner in which material may be disseminated by pupils on school property.

The board of trustees shall publish the regulations adopted pursuant to this subsection and make them available to pupils attending public schools in the district, and their parents or guardians.

5. A pupil who is an editor of an official school publication shall edit the content of that publication pursuant to the provisions of this section. An adviser of pupils who produce an official school publication shall supervise the production of that publication in such a manner as to maintain professional standards of English and journalism and to comply with the provisions of this section.

6. The provisions of this section do not prohibit the board of trustees of a school district from adopting regulations relating to oral communications by pupils upon school property.

7. Any speech or expression made by a pupil pursuant to this section, including any expression made in an official school publication, shall not be deemed to be an expression of the policy of the school. No civil or criminal action may be brought against the school or school district or any official or employee of the school or school district based upon any speech or expression made or published by a pupil pursuant to this section, unless the official or employee interfered with or altered the content of the speech or expression. If an official or

employee interferes with or alters the content of any speech or expression made by a pupil pursuant to this section, an action may be brought against him based upon the interference with or alteration of the speech or expression.

8. As used in this section:

(a) "Harmful to minors" has the meaning ascribed to it in NRS 201.257.

(b) "Official school publication" means material produced by pupils in journalism or composition classes or for the school's newspaper or yearbook that is distributed to the pupils free of charge for a fee.

(c) "Public school" means a middle, junior high or high school."

SUE WAGNER

Senator

Washoe No. 3

845 Tamarack Drive
Reno, Nevada 89509



COMMITTEES

Chairman

Judiciary

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Government Affairs

Member

Legislative Affairs
and Operations

Nevada Legislature

SIXTY-FIFTH SESSION

STATEMENT OF SENATOR SUE WAGNER

STUDENT PRESS FREEDOM - S.B. 191

BACKGROUND:

On January 13, 1988, the U.S. Supreme Court handed down a decision on a case which had been in litigation for almost four years. The case, HAZELWOOD SCHOOL DISTRICT vs. KUHLMEIER, involved administrative censorship on two pages of the high school newspaper. The decision, essentially said that it is permissible for a school to censor if there is a reasonable educational justification for its censorship.

In the wake of this decision, there has been much confusion. The decision was written in somewhat vague language, and the opinions issued since the court rendered its decision can be measured in feet.

Some of the confusion has been on the part of school administrators, unsure if now they were supposed to censor material never before censored. Additional confusion has been raised by students and advisors uncertain of what would be acceptable and yet concerned that they were being too cautious.

The purpose of this bill is to clarify the issue and help school boards, administrators, students and their advisors cope with the appropriate blending of school regulations and individual rights guaranteed under the U.S. Constitution.

THE BILL:

SECTION 1 merely reiterates those rights guaranteed by the First Amendment. Other activities might include plays, variety shows, poetry contests, etc., whether the school is subsidizing the activity or just allowing use of its facilities.

SECTION 2 emphasizes that every right is limited by responsibility, i.e. no one has the right to scream "fire" in a crowded theater. In keeping with court decisions, it bans material which is obscene, libelous, slanderous, would incite or encourage the commission of unlawful acts, violation of school regulations or disruption of the school's orderly operation.

SECTION 3 is very important in this state. It keeps the control of such freedoms at the local level, allowing each school board to adopt regulations in keeping with that community's standards for the times, places and manner in which the material may be disseminated on school property. This also means that if a school district did not wish advertising to be run in the school newspaper, they could pass such a regulation. However, a regulation which would state that only "happy news" could be published in the school newspaper would not be allowed. (What if the football team lost a game, would you not be able to do a story?)

SECTION 4 prohibits prior restraint by school officials without justification. (Not liking the picture of yourself on the front page is not justification, unless it is obscene.)

SECTION 5 is one of the most important sections in this bill. It is my hope that this process will teach our young people that they do not need to go to court and sue the minute they are unhappy, but instead, look for a way to work things out. What we envision is a policy for each student publication and a policy board, which could be composed of parents, an attorney and a professional journalist or editor. This group would look at the problem and determine if, in fact, the administrators' concerns are real or frivolous. Many times, fault is on both sides and a compromise can be worked out. This section requires the state board to establish such a procedure.

SECTION 6 defines "official school publications," and

SECTION 7 permits school districts to adopt regulation pertaining to oral communications.

In conclusion, I would like to tell you that while I am concerned with student's First Amendment rights, I am equally concerned about what we are teaching our young people about being good citizens. I am frightened by young adults afraid to question anyone in authority, hesitant to ask questions or probe. In other words, I want to ensure that our youth are given the chance to think, make decisions and yes, maybe even make mistakes.

Attorney General's Opinions.

Statute is applicable to parole and proba-
tion procedure and has no application to
release after full sentence is served. That
portion of NRS 201.230 which requires that

intamous crime against nature can be paroled,
parolee is still entitled to personal hearing
before state board of parole commissioners
and to consideration of his application be-
cause board has announced policy that it will
hear all initial applications for parole. AGO
521 (7-1-1968)

OBSCENITY

201.235 Definitions. In NRS 201.235 to 201.254, inclusive, unless the
context otherwise requires:

1. "Community" means the area from which a jury is or would be se-
lected for the court in which the action is tried.

2. "Item" includes any book, leaflet, pamphlet, magazine, booklet,
picture, drawing, photograph, film, negative, slide, motion picture, figure,
object, article, novelty device, recording, transcription, phonograph record
or tape recording, video tape or video disc, with or without music, or other
similar items.

3. "Material" means anything tangible which is capable of being used or
adapted to arouse interest, whether through the medium of reading,
observation, sound or in any other manner.

4. "Obscene" means any item, material or performance which:

(a) An average person applying contemporary community standards would
find, taken as a whole, appeals to prurient interest;

(b) Taken as a whole lacks serious literary, artistic, political or scientific
value; and

(c) Does one of the following:

(1) Depicts or describes in a patently offensive way ultimate sexual
acts, normal or perverted, actual or simulated.

(2) Depicts or describes in a patently offensive way masturbation, ex-
cretory functions, sadism or masochism.

(3) Lewdly exhibits the genitals.

Appeal shall be judged with reference to ordinary adults, unless it appears,
from the character of the material or the circumstances of its dissemination,
to be designed for children or a clearly defined deviant group.

CRIMES AGAINST DECENCY AND MORALS

201.243

5. "Performance" means any play, motion picture, dance or other exhi-
bition performed before an audience.

[1911 C&P § 196; A 1955, 907]--(NRS A 1963, 1171; 1965, 584; 1971,
205, 493; 1979, 364)--(Substituted in revision for NRS 201.250)

201.237 Exemptions. The provisions of NRS 201.235 to 201.254,
inclusive, do not apply to those universities, schools, museums or libraries
which are operated by or are under the direct control of the state, or any
political subdivision of the state, or to persons while acting as employees of
such organizations.

(Added to NRS by 1979, 363)

201.239 Power of county, city or town to regulate obscenity. The
provisions of NRS 201.235 to 201.254, inclusive, do not preclude any
county, city or town from adopting an ordinance further regulating obscenity
if its provisions do not conflict with these statutes.

(Added to NRS by 1979, 364)

**201.241 Action to declare item or material obscene and obtain in-
junction.**

1. The district attorney or city attorney of any county or city,
respectively, in which there is an item or material which he believes to be
obscene, may file a complaint in the district court seeking to have the item
or material declared obscene and to enjoin the possessor and the owner from
selling, renting, exhibiting, reproducing, manufacturing or distributing it and
from possessing it for any purpose other than personal use.

2. In such an action, no temporary restraining order may be issued.

3. A trial on the merits must be held not earlier than 5 days after the
answer is filed nor later than 35 days after the complaint is filed. The court
shall render a decision within 2 days after the conclusion of the trial.

(Added to NRS by 1979, 363; A 1981, 1688)

2200

201.257 "Harmful to minors" defined. "Harmful to minors" means that quality of any description or representation, whether constituting all or a part of the material considered, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of minors, is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors, and is without serious literary, artistic, political or scientific value.

(Added to NRS by 1969, 513; A 1981, 1689)

The American Public's Knowledge
of the U.S. Constitution
a national survey
of public awareness and personal opinion

A HEARST REPORT



sponsored by: *The Hearst Corporation*

conducted by: Research & Forecasts, Inc.

I. The American Public's Knowledge of the U.S. Constitution

A Report on the National Survey by
Frank A. Bennack, Jr.
President and Chief Executive Officer
The Hearst Corporation
Presented At
The Midyear Meeting of the
National Conference of Bar Presidents
New Orleans, Louisiana
February 14, 1987

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III. The Survey Methodology

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PART I.

A Report on the National Survey

FRANK A. BENNACK, JR.
President and Chief Executive Officer
The Hearst Corporation

This year marks a momentous occasion in American history—the 200th anniversary of the United States Constitution. On September 17, 1787, the 12th year of our nation's independence, a group of some of the most venerable figures in American history signed their names to a document which was to become the charter for the first successful experiment in self-government in the modern era.

One of those venerable gentlemen, Thomas Jefferson, had this to say about the republican form of government embodied in the U.S. Constitution: "Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the form of kings to govern him? Let history answer this question."

Certainly Jefferson, one of the world's foremost political philosophers and one of the staunchest advocates of American democracy, would be gratified by history's reply.

It is this singular document, the U.S. Constitution, that has lighted our nation's way through two centuries of government of the people, by the people, and for the people. This remarkably durable document established the political structure and principles of an American system of government that endured and flourished while the world was convulsed in war and revolution, while we moved from an agrarian 17th century into the Atomic Age.

The importance of the U.S. Constitution as the embodiment of the American ideals of democracy and the inherent rights of man cannot be overstated. It is considered the most sacred of all American political writings and it has set an example for free nations throughout the world.

As all of you here today are well aware, the U.S. Constitution is more than just a symbolic historical document. It is a living entity and the supreme law of the land. It is also a solemn responsibility shared by all Americans, one that no American citizen should take lightly.

With that responsibility in mind, The Hearst Corporation commissioned a national survey titled "The American Public's Knowledge of the U.S. Constitution." Our purpose was to determine exactly how much the American public know and understand about the fundamentals of the U.S. Constitution—its contents, meaning, and evolution throughout the years.

Hearst disseminates news and information every day through a network of daily newspapers, magazines, television and radio stations, cable television systems, book companies, and other sources. Since it is one of the largest communications companies in the nation, Hearst has a

professional interest in knowing how well informed and knowledgeable the American public is

When the results of this survey arrived on my desk, they confirmed what I had already suspected. Americans today have a confused understanding of many of the Constitution's basic tenets and provisions.

My suspicions were founded on The Hearst Corporation's previous experience with surveying the American public on constitutionally-related matters.

In 1983, we sponsored a study on the public's knowledge of the American judicial system. As you know, the U.S. Constitution is parent to the judiciary. That 1983 survey found the public's understanding of the operation of the courts and the people who preside over them to be basically flawed. The public also proved misinformed about some of the most fundamental principles upon which our concept of justice is based.

This most recent Hearst survey has likewise uncovered gaps in the public's appreciation of the U.S. Constitution—what it is, how our system of government functions under it, and the personal freedoms it accords each and every one of us.

Before I report on the specific findings of our survey on the American public's knowledge of the U.S. Constitution, I'd first like to give you a little background on the project itself.

The Hearst Survey

This Hearst survey had four objectives: (1) to measure the public's knowledge of the history and purpose of the original U.S. Constitution; (2) to assess the public's understanding of constitutional authority as it applies to our system of government; (3) to determine how well informed Americans are about personal liberties and individual rights; and (4) to document public opinion on certain contemporary constitutional issues.

The field work was conducted by Research & Forecasts, Inc., a national research and consulting organization based in New York. They completed telephone interviews with 1,004 respondents selected at random so as to reflect the various demographic groupings throughout the United States.

All of the results I will mention here this morning are statistically valid within an overall margin of error of 3.2 percent. This is the standard norm for all the other national surveys or polls with which you are familiar.

Our questionnaire was prepared with the able assistance of Louis Henkin, Esquire, University Professor at Columbia University School of Law.

The findings themselves were divided, like the objectives, into four separate categories and for the purposes of this announcement, I will follow that progression.

Before I get to the specifics, I'd like to point out a few of the most significant overall findings of this Hearst survey:

Number One—Among the subject areas examined, the American public proved most knowledgeable about the criminal justice system. The overall awareness of personal rights, however, was very inconsistent.

Number Two—Majorities of Americans overestimate the domestic powers of the President

and the responsibilities of the Supreme Court. They also are unclear about the governmental authority outlined in the Constitution.

Number Three — Large majorities of Americans today are willing to support certain changes in the Constitution.

The Findings

The first group of questions in the survey was designed to put the Constitution into a historical perspective and determine how much the public understands about the document's origin. On the most basic level, we wanted to know if the American public understands what the U.S. Constitution is. Are they aware that it laid down the principles and structure of the democratic form of government we live under today?

We also wanted to know how familiar they are with the fundamental principles it embodies, such as basic civil liberties.

The responses generally indicate a poor grasp of some elemental American history on the part of the American public.

For example, only a slight majority, 54 percent, know that the purpose of the original U.S. Constitution was to create a federal government and define its powers. Twenty-six percent believe the document's purpose was to declare independence from England. Another 10 percent believe it was intended to create the 13 original states.

The public also seems to confuse the Constitution with other documents. In a separate question, large majorities, 80 percent and 77 percent, respectively, incorrectly attribute two phrases from the Declaration of Independence to the Constitution. A vast majority of Americans, 82 percent, also think the Gettysburg Address phrase "of the people, by the people, for the people" is found in the Constitution.

A majority also do not know what the Bill of Rights is. Only 41 percent of Americans know that it is the first ten amendments to the original Constitution. Twenty-seven percent think this document, which enshrines our most valued individual liberties, is a preamble to the Constitution. Nineteen percent identify it as any bill involving personal rights that passes through Congress.

Sixty-four percent of the public is under the misconception that the Constitution establishes English as the national language. This finding is somewhat surprising considering the attention given to the passage of a law in California last November declaring English that state's official language. And as you know, proposals for state laws or a constitutional amendment which would make English the official language are currently pending in a number of other states.

On a more positive note, three-quarters of the American public understand the basic process by which the Constitution is amended. Only one-third, however, know approximately how many times this has been done. Thirteen percent think there are between 1 and 10 amendments — instead of the actual 26. Fourteen percent think there are between 11 and 20, and 22 percent believe there are more than 30 amendments.

Part Two of the Hearst report explores the American public's knowledge of the structure and function of the institutional authority that underlies our system of government. The questions

were designed to determine how much the public understands about the presidency and Constitution, the rights of the states, and the role of the Supreme Court as one of the three branches of government established by the Constitution.

Before I get to our next set of results, I'd like you to see what one of our television stations—WCVB in Boston—discovered when it took our survey questionnaire onto the streets of the historic city.

WCVB-TV is, I might add, one of the nation's most highly respected and honored television stations, with a well-deserved reputation for excellence in local programming.

This Hearst television station also happens to be located in the capital city of one of the original thirteen states and a place that resonates with American history. As the city where colonial unrest led to the revolutionary war, Boston played a critical role in the events leading up to the drafting of the Constitution. In light of its historic richness, I thought Boston would be an appropriate place to test the American public's knowledge of the U.S. Constitution.

Here is what happened when a WCVB-TV news reporter went on location in the streets of Boston and asked passersby questions about the original Constitution, the presidency, states' rights, and the Supreme Court.

Video #1

Overall, the responses of those Bostonians were representative of what we found across the country.

I'd now like to tell you some of the highlights of our findings on public familiarity with constitutionally-defined institutional authority. I won't be citing every statistic documented in the Hearst survey because we have a detailed booklet containing all the results, as well as the methodology, which you may pick up before you leave the hall this morning.

Let's begin with the top political office, the presidency. The American public tends to overestimate the domestic powers of the country's chief executive. Nearly half, 49 percent, erroneously believe the President can suspend the Constitution in the event of war or national emergency. And one-third think the President can adjourn Congress. Fully 60 percent said that the President, acting alone, can appoint a Justice to the Supreme Court, which all of us here today know is not the case.

What makes these deficiencies all the more interesting is that the American people demonstrate a much better grasp on some of the specifics of foreign policy. Large majorities—over 70 percent in all three instances—know that the President, on his own, cannot conclude treaties with the Soviet Union, declare war on Libya, or send military aid to Central America. Sixty-two percent also know that the President cannot give economic aid to friendly countries on his own authority.

In a year preceding a presidential election, I cannot stress enough the importance of a basic understanding of the powers of the presidency on behalf of the American population. Whether the public's misunderstandings speak of political apathy, insufficiencies in our educational system, or a poor job of informing the public on the part of the media, it is a problem in need of a remedy.

The Hearst survey also explores the public's understanding of the powers granted the states by the U.S. Constitution. The findings, as you will see, were riddled with inconsistencies.

On the side of awareness, three-quarters of the population know that states have the right to place a sales tax on goods. An even greater number—83 percent—know that the Constitution permits the states to establish a death penalty for certain crimes.

On the side of unawareness, however, 68 percent of the public do not know that a state can legalize marijuana within its borders, even though Alaska legalized personal usage more than ten years ago and a referendum to permit similar rights was defeated in Oregon in last November's elections. Only 28 percent of Americans are aware of this state right.

The public's knowledge of states' rights involving religion in the schools is also deficient. For example, just under half, 49 percent, know that a state is not permitted to declare an official state prayer. Less than half, 47 percent, are aware that states are prohibited from giving money to religious schools, even if they were to give it to all schools equally.

And while we're in the area, exactly half of the American public do not know that it is illegal for schools to establish a moment of silence for the purposes of prayer. Three-quarters do know, however, that schools may not institute Bible readings in the classroom. On a related subject, a majority of Americans, 57 percent, erroneously believe that local schools can require children to pledge allegiance to the U. S. flag.

Prayer in the schools, as you in the legal profession know all too well, has been one of the most pressing issues on this nation's political agenda in recent years. This public confusion on a prominent legal issue that has received extensive media coverage in recent years is a bit bewildering.

The American public did, I might add, fare better on laws governing voting requirements in the states. Fully 81 percent know that it is unconstitutional for communities to impose religious requirements on candidates running for local public office. Two-thirds of the public also know that the Constitution left voting requirements up to the individual states. However, a full three-quarters do not know that states are indeed permitted to require literacy tests before citizens may become registered voters.

As representatives of the legal community, I presume you are curious to know how the public did on questions relating to the judiciary. We concentrated on public understanding of the Supreme Court, given the impact the nine jurists who head that institution have as the final arbiters of constitutional issues.

Six in ten Americans know that the Supreme Court is the final authority on the interpretation of the Constitution. Interestingly, of the 37 percent who answered otherwise, twice as many attribute that authority to Congress than to the President.

I'm sorry to have to report that although his appointment took place just several months ago and amid much media attention, only 43 percent of the American public could identify William Rehnquist as the current Chief Justice of the United States. Twenty-nine percent apparently haven't been keeping up with the news—they think Warren Burger is still Chief Justice.

Our fellow Americans are also confused about how the Supreme Court functions. Exactly half know that a Supreme Court decision can be overruled. A hefty 85 percent are under the false

impression that ANY important court case can be appealed from the state courts to the U.S. Supreme Court.

As for specific Supreme Court cases which have shaped American society in recent years, the public proves largely ignorant. Barely more than half of the public could identify the landmark school segregation case of *Brown versus Board of Education*, one of the most famous cases in American constitutional history. Less than half, 45 percent, know that *Miranda versus Arizona* dealt with the rights of the accused, and in spite of the ongoing controversy over the matter, only 30 percent know that *Roe versus Wade* was a landmark Supreme Court ruling on abortion rights. I should note that at least 28 percent of our survey respondents declined to answer when asked to identify each of these three important cases. In the case of *Roe versus Wade*, that percentage jumped to 45 percent.

These findings indicate that significant numbers of Americans are in the dark when it comes to our nation's highest court of law. Perhaps it seems to them a remote and mysterious institution detached from public purview. If this is the case, I think we need to do something about it. Supreme Court decisions shape our lives, often in profound ways. It seems to me essential that the American public be knowledgeable and informed about the branch of our government charged with interpreting and enforcing the Constitution. As Thomas Jefferson once wrote, "I know no safe depository of the ultimate powers of the society but the people themselves."

With that thought in mind, I'd like to continue with the next part of the Hearst survey. Part Three documents the American public's knowledge of individual rights under the Constitution. The Hearst survey was interested in finding out how well informed the American public is about the individual rights governed by the U.S. Constitution—those aspects of our law which affect them most intimately and which reflect the primacy of the individual in American political life. We wanted to find out what the public knows about specific rights governing public education, health care, employment, the First Amendment, and the rights of the criminally accused, among other issues.

For a preview of what the Hearst survey found, let's return to Boston and see what the WCVB-TV film crew discovered.

Video #2

As I'm sure you have already surmised from the video, the American public's understanding of the individual rights embodied in the Constitution is muddled, at best.

One of the most statistically striking findings has to do with education. Fully three-fourths of Americans are under the false impression that the Constitution guarantees them a free public education.

One-half of the population wrongly believe the Constitution guarantees them the right to own a handgun and a significant 42 percent think they have a constitutional right to free health care if they cannot afford to pay for it. We did find, however, that seven in ten Americans know that the Constitution does not grant them the right to a job. Some of that knowledge, I suppose, is the consequence of first-hand experience.

The one area where the American public does show a clear understanding of their

constitutional rights is the criminal justice system. Among the survey's findings:

- 92 percent know that a person accused of a crime must be provided with a lawyer if he or she cannot pay for one
- 83 percent are aware of the constitutional provision for a trial by jury
- 81 percent know a person cannot be compelled to testify against a spouse in a court of law
- 69 percent are aware of the legal principle of "double jeopardy"
- 62 percent know minors can be punished for crimes committed before the age of 18
- 55 percent know that a convicted felon can be denied the right to vote

When I first looked at these figures, I noted a glaring inconsistency with the balance of our findings. I strongly suspect the media, and television in particular, has a role to play here. I'll elaborate on that hunch and what I think it means later in this presentation.

Considering the significance of First Amendment rights in our democratic system, we felt it would be important to test the public's understanding of these basic freedoms. And because Hearst is a communications company, we were interested, from a professional standpoint, in what Americans know of First Amendment protections. The findings were not particularly encouraging.

Less than half know that in a libel suit, the burden of proof is on the plaintiff, and not on the media representative charged with the libel. Just over half, 54 percent, know that there are restrictions on the printing and distributing of hard-core pornography.

This level of ignorance is perplexing given the recent attention to the issue of pornography by the Meese Commission. And as a representative of the media, I must say I am personally distressed by the apparent indifference on the part of the American public to the issue of freedom of the press, one of the fundamental safeguards in a free society.

Controversial Issues

Because what Americans think is as revealing as what they know, the last section of this Hearst survey was devoted to public opinion on certain contemporary constitutional issues.

On location in Boston our reporter asked passersby whether they would support certain changes in the Constitution. Here's what the proper Bostonians had to say.

Video #3

As you see, Americans aren't lacking for opinions.

The fourth and final part of the Hearst report documents public opinion. The issues include amendments governing health care, presidential terms of office, and Supreme Court Justices' terms of office. We also asked about members of the clergy holding public office and about convening a Constitutional Convention on issues of social importance.

Perhaps most significantly, our survey finds that majorities of Americans are willing to support certain changes in the U.S. Constitution. A further analysis of our survey findings reveals that those Americans who are *most* knowledgeable about the Constitution are *least* likely

to support changes. I cannot even begin to speculate on the implications of that finding, but it certainly gives us something to think about.

As for the specifics, six in ten Americans say that a special Constitutional Convention should be assembled this bicentennial year to consider amendments dealing with issues such as prayer in public schools, abortion, and freedom of the press.

Also, nearly three-fourths of the public would approve a constitutional amendment which would guarantee adequate health care to those who cannot afford to pay for it. These findings would seem to indicate that a sizable portion of the public also appears to be reform-minded.

Sixty-two percent of the public would oppose an attempt to repeal the 22nd Amendment in order to grant more than two terms in office to the country's President. Another 68 percent, however, do think Supreme Court Justices should be subject to reappointment after serving a term of years. For those of you entangled in the current controversy over whether life terms for Justices should be reconsidered, this is where the American public stands on the issue.

Seventy-two percent of the public are satisfied that under the constitutional separation of church and state, it is permissible for members of the clergy to hold public office. And 56 percent of the American people feel the First Amendment should be rewritten for the present day so that it clearly applies to the rights of the broadcasting media.

Some Personal Observations

Now that the facts and figures are before you, I would like to consider for a moment what they mean.

This Hearst survey, "The American Public's Knowledge of the U.S. Constitution," indicates that the public has neither adequate factual or conceptual knowledge of the U.S. Constitution. Without this knowledge, they cannot fully understand the constitutional issues that are debated in courts of law every day and which directly affect each and every one of us.

Our survey has documented that majorities of the American public are willing to support certain changes in the Constitution. But how can we be fully assured that they know the ramifications and consequences of such changes if they are misinformed about many of the basic principles and provisions of the Constitution in the first place? I offer that we cannot be thus assured. But I am confident that corrective measures can be taken.

The deficiencies in knowledge and understanding of the U.S. Constitution on the part of the American public matter to all of us, whether as members of the legal community, the media, or the public at large.

We in the media and you as the leaders of the legal community have a part to play in redressing the situation we find ourselves in as the Constitution enters its 200th year. What action you the members of the American legal system can take to help educate the American public is best left for you to determine.

I can comment, however, on the role of the media. As the chief executive of a communications company which owns and operates six television stations, I am well aware of the impact television has on the public. The better programs dealing with crime and criminal justice have

undoubtedly contributed to the public's knowledge in that area. I expect the print media, newspapers, in particular, make an important contribution as well.

But, as our survey indicates, much more needs to be done.

A Televised Initiative

The Hearst Corporation is pledged to help in this effort and as an important step we are underwriting a series of five special television programs for the Public Broadcasting Service entitled "The Presidency and the Constitution." This series is being produced by Columbia University Seminars on Media and Society and is scheduled to air on PBS in May. It will commemorate the Constitution's bicentennial, along with another notable event, the centennial anniversary of The Hearst Corporation.

The series will take an in-depth look at the effects of constitutional principles on presidential actions. Presidents Gerald R. Ford and Jimmy Carter will participate in the programs, along with many other prominent public figures including former Chief Justice Warren Burger, Attorney General Edwin Meese, former Secretary of State Dean Rusk, former Secretary of Defense Robert McNamara, Senator Orrin Hatch, Congressman Thomas Foley, and journalists William F. Buckley, Jr., and Bill Moyers. Other members of Congress, as well as political and military leaders, members of the judiciary, and both print and broadcast journalists will also take part in the broadcasts.

The Constitution's bicentennial offers an excellent opportunity for education of the sort this series will provide. We should all be mindful, however, of not turning this historic occasion into simply another overly commercialized and sentimentalized national event.

It should be approached as an opportunity for education, as well as celebration. As many political leaders have pointed out over the years, an informed and knowledgeable citizenry is a critical component of the democratic society established by the Constitution 200 years ago. The U.S. Constitution is our insurance that crucial liberties will remain protected from shifting political tides and changing societal circumstances.

I can assure you that all of the Hearst businesses involved in disseminating information, be they newspapers, magazines, books, or broadcast media, will do their part to raise the level of public consciousness about constitutional issues. I hope you will join us in this effort.

Thank you.

Part II.

The Survey Findings

Introduction

The Hearst survey had four objectives: (1) to measure the American public's knowledge of the history and purpose of the original U.S. Constitution; (2) to assess the public's understanding of constitutional authority as it applies to the American system of government; (3) to determine how well informed Americans are about personal liberties and individual rights; and (4) to document public opinion on certain contemporary issues.

All the questions developed for this study are reprinted here with the results. The methodology at the end of this report provides a full description of the survey design.

I. Knowledge of the U.S. Constitution

Knowledge of the Original Document

The majority of Americans (54%) know the purpose of the original Constitution was to create a federal government. One in four (26%) incorrectly say the Constitution's purpose was to declare independence from England.

This confusion with the Declaration of Independence is common. Eight in ten Americans (80%) wrongly say the phrase "All men are created equal" is in the Constitution. Like numbers say that "Life, liberty, and the pursuit of happiness" is also found in the Constitution. Another Declaration of Independence phrase, "The consent of the governed," is thought to be in the Constitution by a majority (52%) of the American public.

Eight in ten (82%) Americans also believe the Gettysburg Address phrase "Of the people, by the people, for the people" is found in the Constitution. And nearly half (45%) say the Marxist declaration "From each according to his ability, to each according to his need" is found in the Constitution.

Table 1: The Constitution of the United States was written in 1787. What was the purpose of the original U.S. Constitution?

	<u>%</u>
To create a federal government and define its powers	54
To declare independence from England	26
To create the 13 original states	10
To make George Washington the first President	4
Don't know/no answer	8
(Number of respondents)	(1,004)

Table 2: True or False: The following phrases are found in the U.S. Constitution.

	<u>True</u> <u>%</u>	<u>False</u> <u>%</u>	<u>DK/NA</u> <u>%</u>
"From each according to his ability, to each according to his need"	45	42	13
"The consent of the governed"	52	32	16
"Life, liberty, and the pursuit of happiness"	77	20	3
"All men are created equal"	80	18	1
"Of the people, by the people, for the people"	82	16	2
(Number of respondents)	(1,004)		

The Bill of Rights

A majority of Americans (59%) do not know what the Bill of Rights is. Only four in ten (41%) know the Bill of Rights is the first 10 amendments to the original Constitution. One in four (27%) say it is a preamble to the Constitution, and one in five (19%) believe it is any bill involving personal rights that passes through Congress.

Table 3: Which of the following best describes the Bill of Rights?

	<u>%</u>
The first 10 amendments to the original Constitution	41
A preamble to the original Constitution	27
Any bill involving personal rights that passes through Congress	19
A message of secession from the Founding Fathers to the British monarchy	5
Don't know/no answer	8
(Number of respondents)	(1,004)

English as the National Language

Nearly two-thirds (64%) of the American public falsely believe the U.S. Constitution establishes English as the national language.

Table 4: The U.S. Constitution establishes English as the national language, requiring that it be used in schools and government.

	<u>%</u>
True	64
False	34
Don't know/no answer	3
(Number of respondents)	(1,004)

Amending the Constitution

Three-fourths (76%) of the American population know the U.S. Constitution can be amended by a two-thirds vote of both houses of Congress, provided that three-quarters of the states approve.

Table 5: True or False: The U.S. Constitution can be amended by a two-thirds vote of both houses of Congress, provided that three-quarters of the states approve.

	<u>%</u>
True	76
False	18
Don't know/no answer	7
(Number of respondents)	(1,004)

Number of Amendments

There are 26 amendments to the U.S. Constitution. Thirteen percent (13%) of the American public say there are between 1 and 10; fourteen percent (14%) say there are between 11 and 20; twenty-two percent (22%) say there are more than 30 amendments. Thirty-four percent (34%) correctly give 21 to 30 as the number of amendments.

Table 6: How many amendments are there to the U.S. Constitution?

	<u>%</u>
None	2
1 to 10	13
11 to 20	14
21 to 30	34
More than 30	22
Don't know/no answer	15
(Number of respondents)	(1,004)

II. Familiarity with Constitutional Authority

A) Knowledge of the Presidency

Suspending the Constitution

Nearly half (49%) of the American population incorrectly believe the President can suspend the Constitution in time of war or national emergency.

Table 7: True or False: The President can suspend the Constitution in time of war or national emergency.

	<u>%</u>
True	49
False	46
Don't know/no answer	5
(Number of respondents)	(1,004)

Adjourning Congress

A majority (59%) of the American public know the President cannot adjourn Congress

Table 8: True or False: The President can adjourn Congress when he sees fit.

	<u>%</u>
True	35
False	59
Don't know/no answer	7
(Number of respondents)	(1,004)

Executive Authority

Most Americans know the President, acting alone, is not permitted to conclude treaties with the Soviet Union, declare war on Libya, or send military aid to Central America. Nearly eight in ten (79%) know the President cannot conclude treaties with the Soviet Union; seven in ten (73%) know the President cannot declare war on Libya; and seven in ten (72%) know the President cannot send military aid to Central America.

A majority of the public (62%) also know the President cannot send aid to a friendly country on his own authority. Six in ten (60%), however, incorrectly say the President, acting alone, can appoint a Justice to the Supreme Court.

Table 9: According to the U.S. Constitution, can the President acting alone:

	<u>Yes</u>	<u>No</u>	<u>DK/NA</u>
	<u>%</u>	<u>%</u>	<u>%</u>
Conclude treaties with the Soviet Union?	18	79	4
Declare war on Libya?	23	73	5
Send military aid to Central America?	24	72	4
Appoint a Justice to the Supreme Court?	60	37	4
(Number of respondents)	(1,004)		

Table 10: True or False: The President can, on his own authority, give economic aid to friendly countries.

	<u>%</u>
True	36
False	62
Don't know/no answer	2
(Number of respondents)	(1,004)

Presidential Elections

Seven in ten Americans (71%) correctly state that under the U.S. Constitution, only a person born in the United States can be elected the country's President. Two-thirds (67%) also know the popular election does not automatically determine which candidate assumes the nation's highest office.

Table 11: True or False: Under the U.S. Constitution, only a person born in the United States can be elected the country's President.

	<u>%</u>
True	71
False	27
Don't know/no answer	2
(Number of respondents)	(1,004)

Table 12: True or False: According to procedures outlined by the U.S. Constitution, the presidential candidate who gets the most votes in a popular election automatically becomes President.

	<u>%</u>
True	31
False	67
Don't know/no answer	2
(Number of respondents)	(1,004)

B) Knowledge of State and Local Laws

States' Rights

Three-quarters (75%) of the American public correctly say that states have the right to levy a tax on goods sold within the state. Less than half (46%) know that states have the right to maintain a separate state militia. Nearly half (49%) know that individual states do not have the right to declare an official state prayer.

Table 13: The U.S. Constitution preserves states' rights. Please tell me whether states have the following rights.

	<u>Yes</u> <u>%</u>	<u>No</u> <u>%</u>	<u>DK/NA</u> <u>%</u>
The right to levy a tax on goods sold within the state	75	22	3
The right to maintain a separate state militia, that is, military force, under the command of the governor of the state	46	49	5
The right to declare an official state prayer	45	49	6
(Number of respondents)	(1,004)		

The Death Penalty

Most Americans (83%) know the U.S. Constitution permits individual states to establish a death penalty as punishment for certain crimes.

Table 14: True or False: The U.S. Constitution permits a state to establish a death penalty as punishment for certain crimes.

	<u>%</u>
True	83
False	14
Don't know/no answer	3
(Number of respondents)	(1,004)

Legalizing Marijuana

A majority (68%) of the American public are not aware that a state can legalize marijuana within its borders.

Table 15: True or False: The U.S. Constitution permits a state to legalize marijuana within its borders.

	<u>%</u>
True	28
False	68
Don't know/no answer	4
(Number of respondents)	(1,004)

Voting Requirements

Two-thirds of the American public (68%) correctly say the individual states are constitutionally in charge of voting requirements. Only twenty-one percent (21%) know that states can require citizens to take literacy tests before they may become registered voters.

Table 16: True or False: The original U.S. Constitution left voting requirements up to the individual states.

	<u>%</u>
True	68
False	27
Don't know/no answer	5
(Number of respondents)	(1,004)

Table 17: True or False: The U.S. Constitution permits a state to require its citizens to take a literacy test to prove reading and writing ability before they may become registered voters.

	<u>%</u>
True	21
False	75
Don't know/no answer	4
(Number of respondents)	(1,004)

Local Office Restrictions

Eight out of ten (81%) Americans know a community cannot impose religious requirements as a qualification for running for local public office.

Table 18: True or False: According to the U.S. Constitution, your community can impose religious requirements as a qualification for running for local public office.

	<u>%</u>
True	15
False	81
Don't know/no answer	4
(Number of respondents)	(1,004)

Government Money to Religious Schools

Forty-six percent (46%) of the public incorrectly say a state can give money to religious schools provided it gives it to all religious schools equally. Forty-seven percent (47%) correctly say a state cannot give out money in this fashion.

Table 19: True or False: A state can give money to religious schools provided it gives it to all religious schools equally.

	<u>%</u>
True	46
False	47
Don't know/no answer	7
(Number of respondents)	(1,004)

Religion in Local Schools

A majority of Americans (57%) falsely believe local schools may require children to pledge allegiance to the U.S. flag. Half (50%) also wrongly believe local schools may order a moment of silence for purposes of prayer. But more than three-quarters (78%) know local schools may not institute Bible readings in the classroom.

Table 20: True or False: According to rulings by the Supreme Court:

	<u>True</u> <u>%</u>	<u>False</u> <u>%</u>	<u>DK/NA</u> <u>%</u>
Local schools may require children to pledge allegiance to the U.S. flag	57	39	3
Local schools may order a moment of silence for purposes of prayer	50	46	4
Local schools may institute Bible readings in the classroom	19	78	3
(Number of respondents)	(1,004)		

C) Knowledge of the Supreme Court

Final Authority on the Constitution

Six in ten (59%) Americans correctly say the Supreme Court, by ruling on individual court cases, is the final authority on the interpretation of the Constitution. Another fifty percent (50%) correctly say a Supreme Court decision can be overruled.

Table 21: The Constitution of the United States is continually reinterpreted to accommodate social change, among other reasons. Who is the final authority on the interpretation of the Constitution?

	<u>%</u>
The Supreme Court by ruling on individual court cases	59
The Congress of the U.S. by voting new legislation	25
The President by issuing executive orders	12
Don't know/no answer	5
(Number of respondents)	(1,004)

Table 22: The Supreme Court is the final authority on all Constitutional issues. Can a Supreme Court decision ever be overruled?

	<u>%</u>
Yes	50
No	46
Don't know/no answer	6
(Number of respondents)	(1,004)

State Court Appeals

Eighty-five percent (85%) of the American public wrongly believe any important court case can be appealed from the state courts to the Supreme Court.

Table 23: True or False: Any important court case can be appealed from the state courts to the U.S. Supreme Court.

	<u>5</u>
True	85
False	12
Don't know/no answer	3
(Number of respondents)	(1,004)

Chief Justice of the United States

Less than half (43%) of the public know that William Rehnquist is the current Chief Justice of the United States.

Table 24: Who is the current Chief Justice of the United States?

	<u>5</u>
William Rehnquist	43
Warren Burger	29
Earl Warren	7
William Brennan, Jr.	4
Don't know/no answer	16
(Number of respondents)	(1,004)

Landmark Supreme Court Cases

A majority (55%) of the American public correctly identify Brown vs. Board of Education as a Supreme Court case which dealt with racial segregation in the schools. Forty-five percent (45%) know that Miranda vs. Arizona dealt with the rights of the criminally accused. Thirty percent (30%) know that Roe vs. Wade was a Supreme Court case which dealt with abortion. At least twenty-eight percent (28%) of the respondents did not know or would not venture an answer on these three questions.

Table 25: Brown vs. Board of Education was a landmark Supreme Court case which dealt with:

	<u>%</u>
Racial segregation in schools	55
Abortion rights	8
The rights of a person accused of a crime	8
Don't know/no answer	28
(Number of respondents)	(1,004)

Table 26: Miranda vs. Arizona was a landmark Supreme Court case which dealt with:

	<u>%</u>
The rights of a person accused of a crime	45
Abortion rights	12
Racial segregation in schools	8
Don't know/no answer	35
(Number of respondents)	(1,004)

Table 27: Roe vs. Wade was a landmark Supreme Court case which dealt with:

	<u>%</u>
Abortion rights	30
The rights of a person accused of a crime	16
Racial segregation in schools	9
Don't know/no answer	45
(Number of respondents)	(1,004)

III. Constitutional Guarantees and the Individual

A) Knowledge of Individual Rights

Right to Free Public Education

Three-quarters (75%) of the American public are under the misconception that the Constitution guarantees every citizen the right to a free public education.

Table 28: True or False: The U.S. Constitution guarantees every citizen's right to a free public education through high school.

	<u>%</u>
True	75
False	23
Don't know/no answer	2
(Number of respondents)	(1,004)

Right to Own a Handgun

Half (50%) of the American population wrongly believe the Constitution gives every citizen the right to own a handgun.

Table 29: True or False: The Constitution of the United States gives every citizen the right to own a handgun.

	<u>%</u>
True	50
False	48
Don't know/no answer	2
(Number of respondents)	(1,004)

Right to Adequate Health Care

Four in ten (42%) Americans falsely believe the Constitution guarantees every citizen's right to adequate health care.

Table 30: True or False: The U.S. Constitution guarantees every citizen's right to adequate health care if he or she cannot pay.

	<u>%</u>
True	42
False	54
Don't know/no answer	4
(Number of respondents)	(1,004)

Right to a Job

Seven in ten (69%) Americans know the Constitution does not guarantee a citizen's right to a job.

Table 31: True or False: The U.S. Constitution does not guarantee a citizen's right to a job.

	<u>%</u>
True	69
False	29
Don't know/no answer	2
(Number of respondents)	(1,004)

Right to Preach Revolution

Only forty-four percent (44%) of the American public know the U.S. Constitution permits American citizens to preach revolution.

Table 32: True or False: The U.S. Constitution permits U.S. citizens to preach revolution.

	<u>%</u>
True	44
False	51
Don't know/no answer	5
(Number of respondents)	(1,004)

Right to Immigrate to the United States

Six in ten (62%) Americans correctly say the U.S. Constitution does not guarantee unlimited entry of people from other countries into the United States.

Table 33: True or False: The U.S. Constitution does not guarantee unlimited entry of people from other countries into the United States.

	<u>%</u>
True	62
False	35
Don't know/no answer	3
(Number of respondents)	(1,004)

B) The Criminal Justice System

Rights to and During a Trial

Nine out of ten (92%) Americans are aware that in a criminal trial they must be provided with a lawyer if they cannot afford to pay for one. Five out of six (83%) know they must be provided with a trial by jury, and a similar number (81%) are aware that their spouse cannot be forced to testify against them. Seven in ten (69%) know they cannot be tried a second time for a crime for which they were found innocent.

Table 34: Suppose that you have been accused of a serious crime. True or False: According to the U.S. Constitution, you have the following rights:

	<u>True</u> <u>%</u>	<u>False</u> <u>%</u>	<u>DK/NA</u> <u>%</u>
You must be provided with a lawyer if you cannot afford to pay for one	92	7	1
You must be provided with a trial by jury	83	17	1
Your spouse cannot be forced to testify against you	81	16	3
You cannot be tried a second time for a crime for which you were found innocent even if new evidence in the case is found	69	29	2
(Number of respondents)	(1,004)		

Denial of Voting Rights

Fifty-five percent (55%) of Americans know convicted felons are denied the right to vote. Forty-six percent (46%) wrongly say adults who have been U.S. citizens for less than one year can be denied the right to vote. Nearly four in ten (38%) incorrectly say anyone who has spent time in prison can be denied the right to vote.

Table 35: According to the U.S. Constitution and the United States Supreme Court, who among the following can be denied the right to vote?

	<u>Yes</u>	<u>No</u>	<u>DK/NA</u>
	<u>%</u>	<u>%</u>	<u>%</u>
A convicted felon	55	40	5
Any adult who has been a U.S. citizen for less than one year	46	52	3
Anyone who has spent time in prison	38	57	4
None of the above — No one can be denied their right to vote	9	6	1
(Number of respondents)	(1,004)		

Punishment of Minors

Six in ten (62%) Americans correctly say that people can be punished for crimes committed before the age of 18.

Table 36: True or False: Under the Constitution, a person can be punished for a crime committed before he or she was 18 years old.

	<u>%</u>
True	62
False	33
Don't know/no answer	5
(Number of respondents)	(1,004)

Right to Protection Against Unwarranted Search

An overwhelming majority (94%) of Americans know the police can search a private home without the permission of the residents if they have obtained a search warrant. One in four (26%) wrongly believe the police can search a home without permission if the residents are not U.S. citizens. One in five (21%) falsely believe the police can search a home without permission if the residents have criminal records. One in five (19%) also wrongly believe the police can search a home without permission if the residents are related to or friendly with a known drug dealer.

Table 37: Suppose that the police come to your house and say they are looking for illegal drugs. True or False: According to the U.S. Constitution, the police can search your home without your permission:

	<u>True</u> <u>%</u>	<u>False</u> <u>%</u>	<u>DK/NA</u> <u>%</u>
If they have shown a judge there is probable cause of illegal drugs being on the premises and have obtained a search warrant	94	6	1
If you are not a United States citizen	26	66	9
If you have a criminal record	21	75	5
If you are related to or friendly with a known drug dealer	19	76	5
None of the above—they can never search your home without your permission	1	0	0
(Number of respondents)	(1,004)		

C) Knowledge of First Amendment Freedoms

The Rights of the Media

About half (48%) of the American public know if a libel case is brought to trial, the burden of proof is on the person who claims to have been libeled, and not on the media representative.

Table 38: Libel is defined as the printing of any false and malicious statement. Suppose that a public figure thinks that a story printed about himself in the newspaper is libelous and sues. If the case is brought to trial:

	<u>%</u>
Does the newspaper have to prove in court that the story is true?	44
Or:	
Does the public figure have to prove that the story is false and that the newspaper knew so and/or didn't care?	48
Don't know/no answer	8
(Number of respondents)	(1,004)

Freedom of the Press

Slightly more than half (54%) of the public know the right to publish and distribute hard-core pornography is restricted.

Table 39: The First Amendment of the U.S. Constitution states that "Congress shall make no law...abridging the freedom of the press." True or False: This means you have the right to publish and distribute printed matter, even hard-core pornography, without being subject to any restrictions.

	<u>%</u>
True	43
False	54
Don't know/no answer	3
(Number of respondents)	(1,004)

IV. The Public on Contemporary Constitutional Issues

Calling a Constitutional Convention

Six in ten (61%) Americans say a special Constitutional Convention should be assembled in 1987, the bicentennial of the Constitution, to consider amendments dealing with contemporary issues such as prayer in public schools, abortion, and freedom of the press.

Table 40: The U.S. Constitution states that a special Constitutional Convention may be called to consider amending that document when two-thirds of the states request it. Do you think a Constitutional Convention should be assembled in 1987, the bicentennial anniversary of the Constitution, to consider amendments dealing with contemporary issues such as prayer in public schools, abortion, freedom of the press, and other matters?

	<u>%</u>
Yes	61
No	34
Don't know/no answer	5
(Number of respondents)	(1,004)

Broadcasting Media and the First Amendment

More than half (56%) of the American public feel the First Amendment should be rewritten for the present day so it clearly applies to the rights of broadcasting media.

Table 41: The First Amendment to the Constitution, which guarantees the right to a free press, was adopted in 1791, when the only means of communication was print, such as newspapers and magazines. Should this amendment be rewritten for the present day so that this legal principle clearly applies to the rights of federally licensed broadcasting media such as your local television station?

	<u>%</u>
Yes	56
No	39
Don't know/no answer	5
(Number of respondents)	(1,004)

Right to Adequate Health Care

Nearly three-quarters (73%) of the American public believe there should be an amendment to the U.S. Constitution that would guarantee every citizen's right to adequate health care if he or she cannot pay for it.

Table 42: Should there be an amendment to the U.S. Constitution that would guarantee every citizen's right to adequate health care if he or she cannot pay for it?

	<u>%</u>
Yes	73
No	24
Don't know/no answer	2
(Number of respondents)	(1,004)

Public Office and the Clergy

One-quarter (25%) of the American public believe the constitutional separation of church and state should be interpreted to prohibit members of the clergy from holding public office.

Table 43: The U.S. Constitution requires separation of church and state. Do you think this should be interpreted to prohibit members of the clergy from holding public office?

	<u>%</u>
Yes	25
No	72
Don't know/no answer	3
(Number of respondents)	(1,004)

Presidential Terms of Office

More than one-third (36%) of the American population would favor a constitutional amendment that would permit a President to serve more than two terms.

Table 44: The 22nd Amendment to the U.S. Constitution says "No person shall be elected to the office of President more than twice." Should this amendment be repealed so that a President could be elected to serve more than two terms?

	<u>%</u>
Yes	36
No	62
Don't know/no answer	2
(Number of respondents)	(1,004)

Reappointing Supreme Court Justices

Seven in ten (68%) Americans say there should be a constitutional amendment that would require Supreme Court Justices to be reappointed after serving a term of years.

Table 45: As stipulated by the U.S. Constitution, Supreme Court Justices are appointed for life. Should the Constitution be amended so that Supreme Court Justices would serve for a term of years and then have to be reappointed?

	<u>%</u>
Yes	68
No	28
Don't know/no answer	4
(Number of respondents)	(1,004)

PART III.

The Survey Methodology

Sample

Respondents were reached by telephone from a sample of randomly generated telephone numbers provided by Survey Sampling, Inc., of Westport, Connecticut.

Weighting

Results were weighted against most recently available U.S. Census Bureau statistics to improve generalizations of sample findings to the adult population as a whole. Accordingly, results were adjusted to account for sample variations in gender, race, age, education, and area of the country.

Reliability of Survey Results

Results of any sample are subject to sampling variation. The magnitude of the variation is measurable and is affected by the number of interviews and the percentage distribution. The table below shows the possible sample variation that applies to percentage results reported in this study.

The chances are 95 in 100 that a survey percentage result does not vary—plus or minus—by more than the indicated number of percentage points from the results that would be obtained if the interviews had been conducted with all persons in the universe represented by the sample.

Size of Sample on Which Survey Result Is Based	Approximate Sampling Tolerances Applicable to Percentages At or Near These Levels				
	<u>50/50</u>	<u>60/40</u>	<u>70/30</u>	<u>80/20</u>	<u>90/10</u>
100	10.0	9.8	9.2	8.0	6.0
200	7.1	6.9	6.5	5.7	4.2
300	5.8	5.7	5.3	4.6	3.5
400	5.0	4.9	4.6	4.0	3.0
500	4.5	4.4	4.1	3.6	2.7
600	4.1	4.0	3.7	3.3	2.4
700	3.8	3.7	3.5	3.0	2.3
800	3.5	3.5	3.2	2.8	2.1
900	3.3	3.3	3.1	2.7	2.0
1,000	3.2	3.1	2.9	2.5	1.9
1,500	2.5	2.5	2.3	2.0	1.5

Data Collection

Approximately 25 members of the Research & Forecasts data collection staff conducted interviews of the general public from October 20, 1986 through November 2, 1986. Interviews took place on weeknights between the hours of 6 p.m. and 10 p.m. and on weekends from 12 noon to 8 p.m.

In order to ensure that the respondents represented a random sample of United States residents, every effort was made to reach and complete an interview with a qualified respondent at each number. Interviewers made one initial call and at least three callbacks to each telephone number that had neither yielded a complete interview nor been disqualified. At least 10% of all interviewees were called back by survey supervisors to ensure that the questionnaires were correctly filled out.

General Public Response Rate*

<u>Completed Interviews</u>	<u>1,004</u>	(44%)
<u>Nonresponse**</u>	<u>1,289</u>	(56%)
Refusals	1,136	
Terminated interviews	40	
Deaf/Language problem	113	
<u>Total Potential Respondents</u>	<u>2,293</u>	(100%)
<u>Excluded from Sample***</u>	<u>2,122</u>	
Callbacks	345	
Disconnected	742	
Never answered	683	
Always busy	116	
Business/Government	184	
Not qualified****	83	
<u>Total Number of Calls</u>	<u>4,415</u>	

*The computation of response rates for this study conforms to guidelines set by the Council of American Survey Research Organizations (CASRO).

**Refusals, terminations, and calls that resulted in respondents who had difficulty hearing the interviewer or a language barrier are classified as "nonresponses."

***Respondents who suggested the interviewer call back, calls that reached businesses and government offices, and respondents who proved to be not qualified to participate in this study are excluded from the sample. Disconnected numbers, unanswered calls, and busy signals are also excluded from response rate calculation. Busy signals and no answers (lines that remained unanswered or busy for *four* consecutive attempts) were assumed to be nonresidential numbers such as phone booths or businesses closed for the evening.

****Those who could not be interviewed because they were too young, were not residents of the household being contacted, or because they had at some time attended law school were classified as "Not Qualified."

The survey was conducted by Research & Forecasts, 110 East 59th Street, New York, NY 10022, a communications and research consulting firm. The project directors were Dr. Franklin J. Walton, President, and Vic Russell, Senior Vice President, Research & Forecasts.

Research & Forecasts has exercised its most advanced methods in the preparation of this information in order to ensure result accuracy. Data processing was subject to rigorous internal checks designed to detect both machine and human error. Research & Forecasts cannot, however, assume responsibility for any use which is made of this information or any decisions based upon it. As required by the Code of Standards of the Council of American Survey Research Organizations, we maintain the anonymity of our respondents. No information will be released that in any way will reveal the identity of a respondent.

Research & Forecasts wishes to thank Professor Louis Henkin, Esq., School of Law, Columbia University, for his consultation with the project staff and assistance in the survey design.

CLARK COUNTY SCHOOL DISTRICT

2832 EAST FLAMINGO ROAD LAS VEGAS, NEVADA 89121 TELEPHONE (702) 799-5011
FAX 799-5063



BOARD OF SCHOOL TRUSTEES

Dr. Dan Newburn, President
Mr. Mark Schofield, Vice President
Mrs. Jan Biggerstaff, Clerk
Mr. Howard Hollingsworth, Member
Mrs. Yvonne Atkinson Gates, Member
Mr. Martin J. Kravitz, Esq., Member
Dr. Lois Tarkanian, Member
Dr. Brian Cram, Superintendent

March 28, 1989

TO: C. A. Silvestri

FROM: Thomas J. Moore and
Robert L. Petroni

SUBJECT: Senate Bill 191

We have reviewed the contents of SB 191 and submit the following comments and concerns if this bill is enacted into law.

1. On its face, the bill applies to all pupils in all schools. It is not limited to just high school pupils in a journalism or publications course. This means that any student in a school which has a newspaper or yearbook may submit an article, letter, advertisement, or other written communication which must be published. The teacher and/or administrator would have no editorial control over the content of the material to be published. It could be offensive, derogative, indecent, contrary to school adopted curriculum, grammatically incorrect, have poor sentence structure, or be excessively long in content. Similarly, instructors and/or administrators would not be able to legally exercise editorial control of the school publications related to school-sponsored activities such as plays, athletic events, and assemblies.
2. All school property would be declared an open public forum for students. The bill contains no limitations on the type of school property available to the student expression. Therefore, school mail boxes, halls, cafeterias and parking lots, as well as those areas listed in paragraph 1 of the bill, would have to be made available to the students with only time, place, and manner control by the administration.

3. Paragraph 2 of the bill prevents publication of material that is obscene, libelous, or slanderous. There is no standard legal definition of obscenity which school personnel could uniformly apply to every school in the system. What is obscene to one school teacher or administrator may only be offensive to another. In Clark County, schools in one area may consider something to be obscene which would not be considered obscene in another school. This results in a subjective test of what is obscene and may result in lawsuits against teachers and administrators who have to make this decision.
4. The legal definition of libel and/or slander is also subject to unique factual situations which again must be determined by the teacher and/or administrator. This will also lead to lawsuits. The expression may be an invasion of privacy, however, it may not be libelous or slanderous. Students could have articles printed which contained individual teacher and/or administrator evaluations by the students. Students could request material be printed concerning sexual surveys involving students. Offensive gestures and/or language could be used in school assemblies for which a student could not be disciplined.
5. Material and symbols which promote race, sex, or religious discrimination, drug or alcohol use, or gang affiliation would have to be printed and/or be allowed to be posted or distributed.
6. There is no requirement in the bill that the author of the material printed, posted, or distributed be identified. The student or students could escape liability, whereas the district could not.
7. Students could require nude pictures to be printed, posted, or distributed. They could advertise and distribute condoms and other articles of a sexual nature which may offend other students.
8. Eighteen-year-old high school students could require articles about adult films and magazines to be printed, posted, or distributed at school. High schools in Clark County do not accept R-rated materials or advertisements in their publications and do not want to be forced to accept adult oriented material.

9. Students could require publication, distribution, or posting of items of a satirical nature demeaning females, teachers, administrators, public figures, fellow students, and other members of the community similar to the Jerry Falwell cartoon published by Hustler magazine.
10. Section 2(c) of the bill provides that material that so incites pupils as to create a clear and present danger to the commission of unlawful acts on the school's premises, the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school need not be published. This section presents a highly subjective test as to what material meets this criteria. In addition, it does not address the question of non-printed speech which may apply to this section. Legally, it must be proven by the school authorities that the material will in fact result in an overt act creating a clear and present danger. In order to do this, an act will have to be observed as taking place or the actual uttering of a threat over the material will have to be proven. Absent a provable occurrence, the subjective decision of the teacher or administrator will be subject to review under the federal civil rights statutes.
11. In order for due process to apply to a student discipline situation, the student will have to be made aware of the act or threats that may lead to the discipline. Since it is almost impossible to cover every situation which may arise under this section of the bill, students may escape discipline procedures on the ground of a denial of due process.
12. The requirements of section 3 already are covered by the decision of our U. S. Supreme Court in the Tinker case as to expressive speech which is not within the parameters of school-sponsored activities.
13. Section 4 prevents prior restraint unless the material prepared for official school publications violates section 1, subsection 2. The burden is on school officials to show justification for any prior restraint. There is no objective content neutral criteria for school officials to make this determination. Every school official, commencing with the journalism teacher all the way to the school board,

CLARK COUNTY SCHOOL DISTRICT



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Dr. Brian Cram, Superintendent

June 5, 1989

TO: C. A. Silvestri
FROM: Thomas J. Moore
Robert L. Petroni

SUBJECT: Addendum to March 28, 1989 Memo Re Senate Bill 191

A recent decision by the Ninth Circuit Court of Appeals held that school authorities may not enforce regulations requiring high school students to submit for approval any student-written material prior to distribution even though the material may include obscene or libelous matter. The lower federal district court had upheld the right of school authorities to exercise pre-distribution review of a newspaper entitled "Bad Astra" which was produced off school grounds. The newspaper was distributed at a school-sponsored function and some teachers who had been mocked in the newspaper were emotionally upset. The district judge, in upholding punishment of the students who distributed copies at the school function, cited a situation in another school district when a student publication had harmed a student cheerleader because it contained a story concerning her alleged promiscuity.

The appeals court stated, in citing a Fourth Circuit Court decision, that the terms "obscene" and "libelous" were terms of art not sufficiently precise to be understandable by high school students. The court disapproved prior restraint as to these areas, however, it approved a post-publication sanction. In other words, the articles must not be censored and any sanctions would have to be imposed after publication.

C. A. Silvestri
Page Two
June 5, 1989

If SB 191 is enacted, it will give the same status to school-sponsored publication articles that are obscene or libelous as nonschool-sponsored publications. School district regulations adopted in compliance with paragraph 4 of Section 1 of the bill will not be enforceable in light of this recent decision.

The Ninth Circuit did make it clear that school-sponsored publications are the responsibility and under the control of the school district. In conformity with the Hazelwood decision, school authorities would retain pre-distribution and content-based control over school-sponsored publications. SB 191 would negate the Hazelwood decision in Nevada and school publications would be treated the same as nonschool-sponsored publications as far as content-based prior restraint.

TJM:RLP/eh

2247

1. The use of the term "freedom of speech" as the
comparison to the prisons of speech and the press
in the constitution are misleading & erroneous

Minors do not have the right of freedom of
speech as adults do. In the home of which
the school is merely an extension - the child
does not have freedom of speech - it is restrained
on a core by law based by the parents and a
discipline code, then morality, ethics & code of
behavior.

2. In the case of the newspaper analogy, a student journalist
has no more freedom of speech than the reporter on any
newspaper or on any TV or radio station. In the case of
school publications the principal, school district, state
people & the community are in essence the publishers
and reviewers.

3.

4. The way in which
this will be not be amended in which to make it
acceptable.

employee interferes with or alters the content of any speech or expression made by a pupil pursuant to this section, an action may be brought against him based upon the interference with or alteration of the speech or expression.

8. As used in this section:

(a) "Harmful to minors" has the meaning ascribed to it in NRS 201.257.

(b) "Official school publication" means material produced by pupils in journalism or composition classes or for the school's newspaper or yearbook that is distributed to the pupils free of charge or for a fee.

(c) "Public school" means a middle, junior high or high school."

Question - are there no regulations in the period in which concerning this is no procedure

1. NRS 201.257 - does this apply only to the school?

yes, for a school

and

the school

speech

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Q - is there a moral issue -

3. On returning text

4. Know cases - not including those in Lincoln

5. Guarantee of the constitution & the law

2249

- yes

- probably

- don't

6. Take all accountability away from the principle

Bill

for conference, & minutes

to prepare a

a point giving of principle by 5. 1945 - no parents - even
if a judge decides for 1 child. If not in 100 protected
then it is not.

understanding of the case

PROPOSED AMENDMENT TO SENATE BILL NO. 191.

Amend section 1, pages 1 and 2, by deleting lines 3 through 21 on page 1 and lines 1 through 14 on page 2 and inserting:

"1. Except as otherwise provided in this section, a pupil enrolled in a public school may exercise freedom of speech on school property, including the right of expression in official school publications.

2. A pupil may not express, publish or distribute on school property material that:

(a) Is harmful to minors;

(b) Is libelous or slanderous; or

(c) Encourages pupils to:

(1) Commit unlawful acts on school property;

(2) Violate lawful school regulations; or

(3) Cause the material and substantial disruption of the orderly operation of the school.

3. There may be no prior restraint of material prepared for official school publications unless the material violates the provisions of this section.

4. The board of trustees of each school district shall adopt regulations to establish:

(a) Procedures by which a pupil may appeal a decision of a school official to restrain or limit freedom of speech.

(b) Reasonable standards for the times during which and the places and manner in which material may be disseminated by pupils on school property.

The board of trustees shall publish the regulations adopted pursuant to this subsection and make them available to pupils attending public schools in the district, and their parents or guardians.

5. A pupil who is an editor of an official school publication shall edit the content of that publication pursuant to the provisions of this section. An adviser of pupils who produce an official school publication shall supervise the production of that publication in such a manner as to maintain professional standards of English and journalism and to comply with the provisions of this section.

6. The provisions of this section do not prohibit the board of trustees of a school district from adopting regulations relating to oral communications by pupils upon school property.

7. Any speech or expression made by a pupil pursuant to this section, including any expression made in an official school publication, shall not be deemed to be an expression of the policy of the school. No civil or criminal action may be brought against the school or school district or any official or employee of the school or school district based upon any speech or expression made or published by a pupil pursuant to this section, unless the official or employee interfered with or altered the content of the speech or expression. If an official or

Essential Amendments to S.R. 11

1. High school only.
2. Prevent incitement of criminal acts, whether on or off campus.
3. Speech does not create open forum & does not permit access by outside organizations.
4. Newspaper only.
5. Allow proper adult judgement without threat of lawsuit.

Testimony on SB 191
Douglas Jydstrup, Las Vegas High School
Senate Human Resources and Facilities Committee
June 7, 1989

Mr. Chairman, members of the committee,

My name is Douglas Jydstrup. I am an American Government teacher at Las Vegas High. I would like to testify in favor of SB 191. I believe there are many teachers who would like to do the same if it weren't for the fact that final exams and graduations are occurring this week.

The major reason that I speak in favor of recognizing a right to free expression, even among students, is that I believe the rights of free speech and press, along with the right to vote, are the absolute bedrock of a constitutional democracy. It is obvious that the First Amendment was not intended and has not been construed to protect every utterance or publication. However, there is one area on which there seems to be fairly general agreement. This is in the theory that the First Amendment forbids the imposition of most prior restraints on the exercise of First Amendment rights.

The irony is not lost on students when we study the Constitution and the Bill of Rights and their importance in maintaining a free nation that one of our most fundamental rights, freedom of the press from prior restraint by officials, does not apply to them because of the Supreme Court's decision in the Hazelwood case.

The question is, should students be allowed to exercise a greater degree of freedom of press? I would argue in the affirmative for both practical and theoretical reasons.

Practically, because^{as} one student asked, "What are people worried about? That we might discuss ideas that we see on the evening news?" More important, I believe is the theory that most government teachers try to get across to students, that along with freedom comes responsibility. What kind of message is sent by the school when students are basically told that the school has responsibility for what they print, not them, so therefore the school will

judge what is acceptable? One student journalist told me that she liked the principal having censorship power over the paper, so she doesn't have to exercise any responsibility. Is learning to love censorship to avoid controversy and responsibility one of the messages we want our high schools to send? I would hope not.

I would like to commend Senator Wagner and the co-sponsors of this bill for having the foresight to recognize that to a large extent, school is a laboratory of democracy for students, an opportunity to gain instruction and to put into practice those ideas of freedom and liberty that Americans hold dear. And it is important. As noted jurist Learned Hand stated, "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it. While it lies there it needs no constitution, no law, no court to save it."

SOUTHERN NEVADA MULTI-REGION
PUBLIC COMMUNICATIONS COUNCIL

856 East Sahara Avenue
Las Vegas, Nevada 89104
(702) 737-5200

March 22, 1989

Senator Don Mello
Senator Bill O'Donnell
Senator Joe Neal
Senator Ray Rawson
Senator Dina Titus
Senator Randall Townsend
Senator Mike Malone

Dear Senators:

I write on behalf of the fifteen (15) Stake Presidents and one hundred fourteen (114) Bishops in the Las Vegas Valley representing more than sixty-five thousand (65,000+) members of the Church to express out utmost concern regarding SB191.

After carefully analyzing the language of this proposal, we feel strongly that the possible negative effects of this bill are so numerous and far-reaching as to outweigh its potential positive effects.

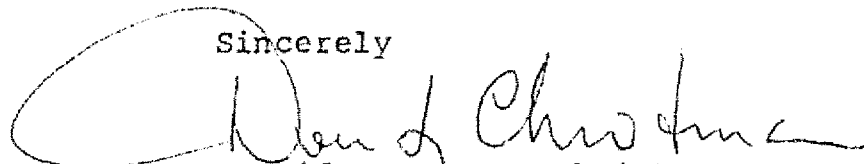
If, for example, standards of religious and/or racial tolerance are violated, what recourse would be available?

If hate groups or gang members chose tax-funded public schools as an avenue to advance their beliefs, to whom could parents and taxpayers turn for redress, if not to those officials they elected to represent their interests in the school district.

A successful educational program cannot be maintained without proper accountability. If this proposed legislation is successful, it will not only eliminate local accountability and control, but all control will be fundamentally compromised.

We appreciated your consideration of our deeply felt concerns.

Sincerely



President Don L. Christensen
OFFICIAL CHURCH SPOKESMAN

lmt:DLC

EXHIBIT M

Daniela
De'Orco

SB 191

My name is
I thought it would be nice if a student come forth
and ~~speech about Senate~~ ^{forward} ~~speech~~ ^{speech} here today
~~My name~~
~~is Daniela~~
~~De'Orco~~
As a high school newspaper editor I
am in favor of this bill

I would like to consider myself part of
this country and therefore be considered
worthy of it's rights.

I wonder if young people matter in society
with the biased decision, it seems we don't
I am young but have my views
about topics that matter.

Just because I'm in high school,
someone, somewhere decided that my
opinion should be kept to myself
Well so much for our first amendment
Well I only qualify for this basic
and fundamental right when I've

proven myself by earning a diploma

Of course I and my fellow high school
journalists will make mistakes, ~~with~~ well
from these mistakes we will LEARN.

And isn't learning at a younger age
more beneficial, ~~than learning from~~
~~these same mistakes that could~~ might
~~be made later in life and~~ ^{which} ~~might~~
~~be considerably more damaging~~

~~The same mistakes that we now would make now~~
Without making having the opportunity to make
these mistakes now, we are sure to make them
later well, later might be prove to be even
much more damaging

EXHIBIT N

own views

We
shouldn't ~~Deny~~ ^{Don't deny} us the opportunity to learn and form our
own views

2256

Mr. Chairman, members of the committee -

My name is Sari Aizley and I thank you for the opportunity to speak.

Senate Bill no. 191 is an affirmation that education is, indeed, about the free exchange of ideas.

As observed in the dissenting opinion in the Hazelwood case, "public education serves a vital national interest in preparing the nation's youth for life in our increasingly complex society... and for the duties of citizenship."

SCARE
WORD:
FORUM

The Supreme Court struck a proper balance in the Tinker decision: essentially, that free expression must not be stopped unless it "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." SB 191 was wisely written to protect both the education system and individual rights to free expression.

Moral
issues

We recognize that some student speech must be controlled to a degree -- it is a school setting, after all. But there are two other vital elements to be considered:

1. Free speech is a constitutional right, and
2. Schools should be the place where that right is fostered.

If a school official were allowed to censor a student's speech just because that official doesn't like what is being said, then our public schools would become enclaves of totalitarianism that would strangle the free mind at its source.

I must ask opponents of free speech for students: what are you afraid of? The supreme court decision, which affects only the Hazelwood school, gives too much control to those school officials. It permits them to stifle free expression and thought that they, the officials, may not agree with.

Contrary to Mr. Moore - the Hazelwood issue was censorship, not editing: principal removed stories based on content not syntax or spelling.

Words = ideas
Cannot have
you -
it's only
the
suppression
that is
dangerous
The only cure for
speech you hate
is more speech.

Senate Bill 191 is a great safeguard against such censorship in our state. Without SB 191, Nevada educators could take on the role of Thought Police, stifling discussion of all but state-approved topics, and trashing the student's belief in the protections guaranteed by the Bill of Rights.

Mr. Everett:

All speech has potential to offend someone - I ~~was~~ offended by people speaking against free speech - but one must not

The Court has recognized that the first amendment applies not only to free expression, but to the right to receive information and ideas. This is particularly important in a school environment.

We parents must not impose double standards on our children: how can we reinforce American values by denying our kids these fundamental rights?

We parents should all be loud and clear in our support of SB 191.

Unlawful acts off school premises
Clear + present danger
Judith Hale's program should
Not be the exception

Senator Raulson
~~MR. RAGGIO~~

AND MEMBERS OF THE COMMITTEE ~~ON HUMAN RESOURCES~~

~~AND FACILITIES~~, MY NAME IS RAY MORGAN. I HAVE BEEN THE PRINCIPAL

OF BONANZA HIGH SCHOOL FOR THE PAST NINE YEARS AND I APPRECIATE

VERY MUCH YOUR GIVING ME THE OPPORTUNITY TO EXPRESS MY

RESERVATIONS REGARDING PROPOSED SENATE BILL 191.

I haven't had the opportunity to fully study the amended bill -

HAVING STUDIED THE BILL, IT APPEARS TO ME THAT WHAT THIS

BILL ESSENTIALLY DOES IS THAT IN ITS ATTEMPT TO ASSURE STUDENTS

greater ~~THE SAME~~ RIGHTS OF FREEDOM OF THE PRESS *than* AS THEIR ADULT

COUNTERPARTS, IT HAS THE EFFECT OF GIVING STUDENTS *Propose to the press* RIGHTS, WHILE

AT THE SAME TIME LEAVING THE RESPONSIBILITY AND POSSIBLE

LIABILITY WITH THE TEACHER AND SCHOOL ADMINISTRATORS, *where up all forms of expression, plays, assemblies, etc.* ~~BY LIMITING~~ *This B. 11*

Represents the ~~THEIR AUTHORITY TO EXERCISE THEIR RIGHTS AS PUBLISHERS TO SET~~ *of school*

EDITORIAL POLICY FOR SCHOOL PUBLICATIONS.

opening up all forms of free expression, plays, assemblies & bulletin boards.

BONANZA HIGH SCHOOL IS NOT UNLIKE MOST OF THE OTHER HIGH

SCHOOLS IN CLARK COUNTY IN THAT WE HAVE APPROXIMATELY 2500

STUDENTS WHO ATTEND DAILY, MOST OF WHOM ARE THERE BY CHOICE, BUT

THE FACT IS THAT THEY MUST BE THERE WHETHER THEY WANT TO BE OR

NOT, BECAUSE STATE LAW REQUIRES THEIR ATTENDANCE. OBVIOUSLY,

WHEN YOU BRING THAT MANY STUDENTS TOGETHER, YOU ARE GOING TO GET
A WIDE SPECTRUM OF VALUES ENCOMPASSING EVERYTHING FROM NEO-NAZI
SKINHEADS TO THE VARIOUS RACIALLY ORIENTED GANG MEMBER. IN THE
PAST, THE PRINCIPAL HAS NOT ONLY HAD THE RIGHT TO PROHIBIT ANY OF
THEIR INFLAMMATORY HATE MONGERING MESSAGES, BUT COULD EVEN
PROHIBIT ANY OUTWARD SIGN OF GANG IDENTIFICATION. MY
UNDERSTANDING OF THIS BILL IS THAT IT SEVERELY LIMITS OUR ABILITY
TO CONTROL ACTIVITIES WHERE STUDENTS MIGHT BE WEARING SHIRTS WITH
RACIAL SLURS OR OBSCENITIES PLASTERED ALL OVER THEM. FURTHER,
WHEN WE DO ATTEMPT TO CONTROL THIS TYPE OF BEHAVIOR, THIS BILL
PUTS US IN JEOPARDY OF A LAW SUIT QUESTIONING OUR INTERPRETATION
OF WHAT IS OBSCENE, LIBELOUS. SLANDEROUS OR MIGHT INCITE TO
CREATE A CLEAR AND PRESENT DANGER. *(Speaking to the 5th grade students -
I have often referred to the students
of the school as the 5th grade, and I have
often referred to the students as the 5th grade.)*

WE PRINCIPALS AND TEACHERS ARE NOT LAWYERS. I HAVE IN THE
PAST, CONSULTED ATTORNEYS FOR THEIR OPINION ON WHAT WAS OBSCENE,
ONLY TO BE MORE CONFUSED AFTER I ASKED THAN BEFORE, BECAUSE WHAT
IS OBSCENE TO ONE PERSON IS NOT TO ANOTHER.

WHEN YOU AND I SEND OUR KIDS TO SCHOOL, I BELIEVE WE HAVE A

RIGHT TO EXPECT THAT THEY WON'T HAVE TO BE EXPOSED THROUGH THE
USE OF SCHOOL BULLETIN BOARDS AND WALLS OR T-SHIRTS, TO THE SAME

KIND OF FILTH THAT I SEE FREELY EXPRESSED ON PEOPLE'S BUMPER

STICKERS EVERY DAY. I BELIEVE THAT THIS BILL ^{I hope this bill will be put into the school that are not about any more language but} WOULD MOVE

"HAPPINESS IS A GOOD SCREW" OR "SHIT HAPPENS" FROM THE BUMPER

STICKER TO THE BULLETIN BOARD OF THE SCHOOL. ^{on the bumper}

I ASK YOU TO PLEASE NOT TAKE AWAY THE RIGHTS WE NOW HAVE TO

REVIEW WRITTEN EXPRESSION PRIOR TO PUBLICATION. WE HAVE A

RESPONSIBILITY TO OUR COMMUNITIES TO TRY TO RESPECT ^{and advance} THOSE

COMMUNITY VALUES THEY WANT PASSED ON TO THEIR CHILDREN.

WHAT I'M AFRAID WILL HAPPEN IS THAT TEACHERS AND

ADMINISTRATORS WILL FEEL SO THREATENED THAT THEY MAY JUST GIVE UP

THEIR EFFORTS TO MAKE THE SCHOOL SETTING JUST A LITTLE DIFFERENT,

PERHAPS PROVIDING A SMALL SANCTUARY FROM WHAT WE ALL SEE IN THE

REAL WORLD EVERY DAY. WE NEED TO BE ABLE TO MAKE THOSE KINDS OF

DECISIONS WITHOUT THE CONSTANT THREAT OF LITIGATION. IF YOU FEEL

~~THAT YOU MUST PASS A LAW OF THIS NATURE, I HOPE YOU WILL CONSIDER~~

~~SOMEHOW ABSOLVING THE TEACHER OR ADMINISTRATOR OF LIABILITY WHEN~~

[↑]
~~grace~~ ~~committed to~~

Came Wright

Mr. Chairman, Members of the Committee

The restoration of first amendment rights to junior and senior high school students poses no threat to anyone. I cannot imagine why society would, for one minute, deny the right of free speech to any class of persons, regardless of their age, religion or condition of birth.

School is for the purpose of educating the children, that they may become better citizens. Taking away their right to freely express their opinions is no way to teach children of the benefits of democracy. Indeed, it smacks of Un-American conduct. You know: Oppression is freedom. Lies are truth. Less is more. And so on.

If we truly believe in the democratic process: if we truly believe that education produces better citizens: if we truly believe that free men speaking freely are the best safeguard against government oppression, then we should not curtail the right of our children to learn responsibility through being encouraged to exercise it.

Children expressing their opinions on matters of concern to them pose no threat to us adults, nor are they in any way subversive. Quite the contrary, they are in the finest tradition of democracy.

Oppressing our children under the lame excuse that they aren't ready for freedom is not democratic. It is totalitarian.

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responsibility simply examining the age of 14, or 17 or 21, for that matter, is no guarantee of responsible adult behavior. Only education comes close to such a guarantee. And I would warn you that school that is free only, because someone in authority, agrees with it is not free at all.

Responsible free speech should be encouraged, not suppressed. The very fact that your committee is agonizing over the issue sends our children the very clear signal that while all persons are equal, some are more equal than others. That is not what the freely elected representatives of an educated citizenry should be doing.

See the bill. Show the children that we do more than say, no service to the needs of the founders.

Mr. Chairman and members of the Committee,
I am Lindsey Jydstrup, director of communications
for the Nevada State Education Association.
I am here to testify in support of SB191
and would like to commend Senator Wagner
for its introduction.

I would like to thank the Committee
~~from~~ for bringing this hearing to ^{Las Vegas} ~~Nevada~~.
It is unfortunate that because this is
finals and graduation week, so few of the
teachers and students who will be
affected by this bill are able to be here
today. The teachers who were able to
~~be here~~ rearrange their schedules to
be here today have very eloquently
expressed their concerns about the impact
of the Hazelwood decision and the need
for this legislation, so I will be very
brief.

I know of few other activities in
our schools today that teaches students
greater responsibility for their actions
than working on a printed publication.
And this responsibility stems from the
fact that students, like all citizens of
this country, do not have free
license to print anything they wish.
And this legislation, in my opinion,

does not give them that free license.
I would just like to reiterate that
we are sending our students the
wrong message when we tell them
they do not need to exercise
this responsibility because their
school administration will tell them
what is or is not acceptable. We
are sending them the wrong message
about their rights under the Constitution.
I urge you to pass this legislation.
Thank you.

Mr. Channon (Member of the Council) - I am here
as a school official

- I wish to speak against SB 191 - as a school official -
- My argument is grounded upon the notion that the journalism class is a laboratory learning experience much the same as algebra, chemistry, or the drama class

- A curriculum is taught in journalism classes. This curriculum addresses press law, ethics, and freedom reporting skills: balance, objectivity & attribution

The goals of this curriculum are to assist SS from confusing protected speech with unprotected conduct, and to learn that with the freedom of expression comes responsibility.

- I believe where problems with school publications have occurred, the reasons ^{have often} focused on unqualified journalism advisors. \longleftrightarrow Journalism is a specialized curriculum and not just anyone has the preparation & background to teach it.
<sub>OR
SUNV.</sub>

- My problem with SB 191 is that it limits the authority of school officials - and particularly qualified journalism teachers - to hold their students to the high standards of a free press

- SB 191 would, in effect, give journalism students power over their teachers not found anywhere else in the school curriculum. ^{while} no one would get the algebra teacher authority to have a student rewrite an expression, or the chemistry teachers

* Mr. Channon's
comment -
Encl. to read
Comparison of
SS work of law
rights to say into
liberty might give
authority

Authority to have a student redo an experiment, or an English teachers authority to edit a student paper. Under SB 191, it is uncertain whether journalism teachers would be allowed to do so if a student objected, or

My NAME is JACK LEVIN and I am here today to tell you

Why I am opposed to S.B. 191.

This ^{amended} Bill states that ~~any~~ student in ~~any~~ GRADE⁶⁻¹² will be able to pass out printed materials, wear buttons, use the Schools Bulletin Boards, and use official School publication, for anything they want unless it is obscene, libelous, or incites unlawful acts on the School premises.

This ^{Bill} fails to recognize that there is a difference between minors & adults. Even the U.S. Supreme Court has recognized the difference between minors & adults, & has ruled that schools are not open forums for students.

It is my Belief if you pass this Bill you will be allowing groups like the SKA Heads, Moonies, KKK gangs and other UNPOPULAR groups to Recruit students through our schools.

With the Authorities prevented from exercising any ~~Regulation~~ ^{Control} over such

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publications, serious problems could
result from increased gang tensions
on racial and religious prejudices.
Its effects will endanger our
children & the peace of our
community.

I ASK YOU ALL TO VOTE NO ON
SB 191.

If there is any question I will
be happy to answer them.

①

I am Don Eldfrice, principal of Kenney Quinn Junior High School, a TMS of 7th, 8th and 9th grade students speaking in opposition to Senate Bill 191. As a school principal I believe we share the task of teaching and reinforcing positive values, responsibility, self-discipline, and a sense of personal accountability. These tasks, I believe, are taught at home and reinforced at school and also within the community.

The potential negative ramifications of this bill will, I believe, extend beyond the Journalism and Publications classes of our schools and will immediately extend to English, Science, Social Studies, Reading and other classes within our school where students daily engage in publishing written work.

Students are exposed daily, through the media, to attitude of violence, sex, drugs and other controversy. To permit these and other negative topics to become the focus of daily instruction is unfortunate when there are more than adequate topics which can promote positive relationships within our school and among our students.

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believe that our professional staff must exercise care in protecting the rights of all students, those who may be vocal as well as those who remain silent, yet, are impacted by what they read and see.

The contents of literary materials at GTHS are currently enjoyed by children of all ages - from 5-6yr old at our local elementary schools to "seniors". For them to read slogans and/or statements which may promote promiscuity, drug use, graphic violence and/or other filth can be dangerous, distasteful, and/or leave a last negative attitude about our youth among otherwise supportive members of our community.

I support the principles of free press and speech; however, I recognize that our exercise of these "freedoms" does not violate the "rights" of fellow citizens. Where problems exist (which led to the drafting of SB 191), they are best addressed individually at the local level, by the parties directly involved, not, I submit, by a "blanket" addition to our state statutes where the potential

③

negative ramifications are not immediately apparent, where the potential for abuse is of concern, and where the minds of 11-14 year olds are at risk.

Thank you.

C. A. Silvestri
Page Four
March 28, 1989

will be involved in attempting to justify a decision to restrain material from being printed, posted, or distributed. In the final analysis, a judge will make this decision because school officials' decisions will always be subject to judicial review.

In essence, this bill creates open public forums at all schools for the use of students to disseminate any material which is not obscene, libelous or slanderous, or does not clearly threaten disruption of the school.

This bill would have the effect of overruling recent U. S. Supreme Court cases which have recognized that school officials have discretion in matters that reasonably are part of their important educational mission. In Bethel, the court held that a school district has the authority to punish a student because the manner of his speech in a school-sponsored assembly was offensive, disruptive, and contrary to the fundamental values which the school sought to promote.

The Hazelwood school newspaper case held that a school need not tolerate student speech that is inconsistent with its basic educational mission. The school newspaper was a laboratory situation, part of the student's course curriculum supervised by faculty members. The court held that speech within the nonpublic forum of a school-sponsored activity could thus be regulated in any reasonable manner.

The Hazelwood decision holds that school authorities are the publishers of school-sponsored activities and not the students. When the student speech occurs in the context of school-sponsored curriculum or extra-curricular activities, the school may regulate or discipline speech "so long as [the school's] actions are reasonably related to legitimate pedagogical concerns."

Under Hazelwood, a school may "disassociate itself" for almost any reason, including speech that is "ungrammatical, poorly written, inadequately researched, biased, prejudiced, vulgar or profane, or unsuitable for immature audiences." Moreover, the school may reject speech because it promotes conduct inconsistent with the shared values of a civilized social order. This includes speech which could "reasonably be perceived to advocate drug or alcohol use, irresponsible sex or any position other than neutrality on matters of political controversy."

C. A. Silvestri
Page Five
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If SB 191 is enacted into law, all of the safeguards contained in the Bethel and Hazelwood decisions will be taken from school officials and students will be in control of the school-sponsored activities and school property. The journalism and publications curricula will be subject to the students' whims as to what will be printed, posted, or distributed on school property. Students will enjoy greater freedoms than members of the private working press.

Further, this legislation is not necessary because local school boards now have the right to adopt policy and regulations governing student speech and conduct. If there is a problem in this area, local elected school board members should be allowed to address it with input by administrators, teachers, students, and other interested members of the public, including the most important, parents.

It is submitted that SB 191 be rejected in favor of local control of school-sponsored activities and property.

TJM/RLP:eh

SENATE BILL 191, June 7, 1989

First of all, let me state that as a journalism teacher, I view Senate Bill 191 as a sure way to create chaos in a school district and to destroy my authority in class, as well as to undermine my on-going attempts to foster in my students a sense of responsibility, fair play, and an awareness of what is proper and what is not.

~~Secondly, it would seem to me that this bill is nothing more than an attempt, for whatever reason, to circumvent the Supreme Courts' decisions, and that it is therefore unconstitutional. As a taxpayer, I cannot help but look askance at the waste of time and money in an action that will in all likelihood be rendered null and void.~~

I fear, also, that the author ~~or authors~~ ^{has} ~~have~~ lost sight of ~~the~~ ^{that} fact that pupils are children and as such all too often lack the maturity to handle total, unchecked freedom. Even the older pupils in high school lack the life experience necessary to evaluate the impact, the consequences of their spoken and written words. They all too often operate on emotion rather than intellect. And we all know the usual results of things said or written in the heat of passion.

However, Senate Bill 191 would require that I print any and all such passionate expressions in the school newspaper. No matter what the source.

And that is another aspect of the bill that greatly disturbs me—any student can walk into my classroom and demand that I print something no matter how ungrammatical, illogical, lengthy, libelous, or offensive it may be.

As a former radio and newspaper reporter and editor, I find this a stunning idea, for it gives any student greater freedom than that enjoyed by any newspaper reporter or broadcast journalist that I know.

What should I do if a student comes to me with something he or she has written that is racist and filled with venomous ideas, as well as words such as kike or nigger or spick. Perhaps even calling the holocaust a bullshit lie. BS is not obscene but in certain

circumstances it certainly is offensive and in poor taste; and one of those circumstances, I firmly believe, is a high school newspaper.

In addition, am I to print personal attacks on teacher or administrators or other students because someone is angry and expresses this anger and frustration in writing?

I, for one, want no part of a program over which I have extremely limited or no control at all. If this ill-advised bill becomes law, I shall probably get out of journalism because I do not care to be involved in all the trouble it ^{may} ~~my~~ well bring me. Trouble such as law suits or even an irate father threatening to beat me to a pulp because the newspaper I advise printed something ugly or nasty about his daughter, ..., *whether it was true or not.*

And speaking of advising and being an advisor to a high school newspaper staff, I really cannot foresee what my roll would be if this bill becomes law; for any and everything that I teach my students about journalism could be knocked into a cocked hat by any skinhead or gang member, any punker or heavy metal rocker who walks through the door waving a piece of paper, demanding that I print what is written or drawn thereon.

While the school newspaper is a forum for all the students, at least now we have the right, as well as the obligation, just like the public press, to edit material and to reject material for a variety of reasons. To do any less would mean denying what is taught in the journalism class, would mean that the school newspaper would become nothing more than pieces of paper on which anyone could print virtually anything that they wish to.

Comments of Frank W. Daykin on Interpretation of S.B. 191
Intended for Delivery at Close of Hearing 6/7/89
(All references are to the amended bill.)

1. Several persons expressed dismay at the provision of subsection 7 allowing a civil action against an official or employee of a school district "based upon * interference with or alteration of * speech or expression." To the extent that interference or alteration goes beyond what the Supreme Court has authorized, any civil action would be under federal law and the state could not prevent it by any statute. To the extent that state law is involved, we must look also at subsection 5, which imposes a positive duty upon both a pupil and an adviser to obey the limits of subsection 2, and a further duty upon the adviser "to maintain professional standards of English and journalism". This must be construed with subsection 7, so that nothing done by the adviser in performing either duty would give rise to any civil action. If the interference or alteration goes outside these bounds, some protection is afforded by NRS 41.032, which provides in relevant part that "no action may be brought * * * against * * * an officer or employee of [a political subdivision] which is * * * [b]ased upon upon the exercise or performance or the failure to exercise or perform a discretioary function or duty * * *." S.B. 191 makes no exception to this.

2. It was suggested that the list of prohibitions in subsection 2 should include inciting unlawful acts off school property as well as on it. This is an area where so far as I know the Supreme Court has not -- perhaps, not yet -- made a distinction between the freedom of speech accorded pupils in school and that accorded to citizens generally. For adults, it is not permissible to restrain or punish incitement or advocacy as distinct from conduct. The narrow prohibition against inciting unlawful acts on school property seems supported by the concern of the Supreme Court in Bethel School District v. Fraser (1986) and Hazelwood School District v. Kuhlmeier (1988) for the orderly operation of the public schools, but I would caution that the broader prohibition might be held unconstitutional.

3. It was also suggested that this bill should specify that no open forum is created in the schools or access by outside organizations permitted. Such a disclaimer -- or, more strongly, forbidding the school districts to do so -- might do no harm, but the language of the Hazelwood case makes clear that positive action is required to create such an open forum; therefore, the silence of the bill could not of itself create any open forum or invite access by outsiders.

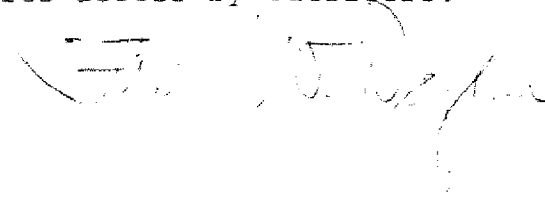


EXHIBIT W

MINUTES OF THE SENATE COMMITTEE ON
HUMAN RESOURCES AND FACILITIES

Sixty-fifth Session
June 14, 1989

The Senate Committee on Human Resources and Facilities was called to order by Senator Raymond Rawson, Chairman, at 1:45 p.m., on Wednesday, June 14, 1989, in room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Raymond Rawson, Chairman
Senator William O'Donnell, Vice Chairman
Senator Joe Neal
Senator Donald Mello
Senator Randolph Townsend
Senator Mike Malone
Senator Dina Titus

STAFF MEMBERS PRESENT:

Pepper Sturm, Research Analyst
Stephanie Clem, Committee Secretary

OTHERS PRESENT:

Assemblyman Eileen Brookman, District 9, Clark County
Chris Giunchigliani, President, Nevada State Education Association
Gene Paslov, Ph.D., State Superintendent of Public Instruction
Assemblyman Matthew Callister, District 1, Clark County
Assemblyman Mike McGinness, District 35, White Pine, Churchill (part), Eureka (part), Lander (part) Counties
Henry Etchemendy, Executive Director, Nevada Association of School Boards
Assemblyman Ernie Adler, District 40, Carson City
Anthony Callabro, Western Nevada Community College
Paul Meecham, President, Clark County Community College
H.E. Burton, Palm Mortuaries and Memorial Parks
Terry Rank, Assistant to the Commissioner on Insurance
Jerry Griepentrog, Director, Department of Human Resources
Senator Sue Wagner, District 3, Washoe County
Frank Daykin, Attorney
Charlie Sylvestri, Clark County School District
Fred Hillerby
Janice Pine, St. Mary's Regional Medical Center

Senator Rawson opened the hearing on Assembly Concurrent Resolution 61.

Senator Townsend expressed concern that adding this without the regulatory mechanism creates additional debt to a hospital structure, thereby driving up cost. He asked how severe the need is for this.

Mr. Griepentrog stated the need is cost-driven because it is not economical to do construction in 10-bed phases for these small hospitals. Secondly, the data they have supplied to the department shows that their hospital will not be able to meet the need in the foreseeable future. They also have arranged financing for expansion, where the department is putting the control on is limiting the expansion to 60 beds.

Senator Townsend asked if the department has the authority, upon a hospital's application, to grant those additional beds.

Mr. Griepentrog responded they could go through the CON process, but all hospitals can compete for those beds in a geographic area. This legislation is directed at the smaller hospital in a community that begins to grow rapidly.

Senator Titus asked if it would be a more positive move to give the Department of Human Resources the authority to make the distinction between a small hospital, which is addressed in this legislation, and a large CON hospital, to grant the necessary number of beds to the small hospital in need.

Mr. Griepentrog replied some kind of review requirement could be imposed. There is an automatic review requirement built into the statutes even if they are exempted from CON application because they must submit a letter of intent.

Senator Neal asked if a small hospital could become a large hospital under this arrangement.

Mr. Griepentrog responded they have to have less than 75 beds and the maximum expansion allowed is 60 beds. The largest a hospital could become is 134 beds without going through the CON process.

Senator Rawson stated the hearing on A.B. 875 would be suspended in order to take up a special order of business. He stated he is recognizing the time set certain for consideration of Senate Bill 191.

SENATE BILL 191 - Establishes standards for pupils to exercise freedom of speech and press while on school property.

Senator Sue Wagner, District 3, Washoe County, stated following the hearing in Las Vegas on this bill, she received many phone calls from her colleagues asking her to discuss

the issue with Senator Rawson. They met and discussed the concerns that exist with this matter, and based upon that discussion she developed an amendment (Exhibit D) along with a written explanation of the changes the amendment makes (Exhibit E). She feels the amendment will make no substantive change in the purpose of this legislation, but it is clear there are many concerns about advertising, open forums, and liability in the schools.

Frank Daykin, Attorney, explained the proposed amendment (Exhibit D and Exhibit E). He also explained the term "declaratory judgment" stating depending upon who was determined in the right, that person would be declared so. He continued that this amendment limits the whole bill to public high schools only. The only other concern that was voiced on this proposed legislation was a desire not to limit it to unlawful acts on school property. He advised them not to do that because under the Supreme Court's interpretation of the First Amendment as it applies to adults, one cannot be restrained from advocating commission of an unlawful act, only from committing it. The court has not yet dealt with the specific question as it relates to pupils in public schools.

Senator O'Donnell asked if a student involved in a journalism class discovered that another student had enrolled in Alcoholics Anonymous (AA) and wrote about it in the school newspaper as a factual event, would the redress exist in this bill for the parents of the victim to sue the parents of the writer.

Mr. Daykin responded that under subsection 5 of the amendment, an advisor could properly delete that factual report.

Senator O'Donnell asked if subsection 3 conflicts with this.

Mr. Daykin responded subsection 3 is to be read in conjunction with subsection 6 of the original amendment, that is supervise the production in such a way as to maintain professional standards of journalism. He continued that the student who was written about may sue for invasion of privacy because this amendment does not prevent whatever redress might exist.

Senator Mello asked if the school has control with this legislation over advertising in the school newspaper.

Mr. Daykin replied the school does have control over the advertisements in a school newspaper.

Senator Rawson commented that if someone damages another person through print or voice, that person is responsible for his or her actions. How much⁴⁸ could high school students

avoid that responsibility because of their minor status.

Mr. Daykin replied the standard of care to be applied to a minor would be less than the standard of care to be applied to an adult.

Senator O'Donnell stated according to the amendment, a school is not a "public forum," and should not be considered for free speech as a public forum.

Mr. Daykin replied this states a school is not an "open forum," but there is a difference between open forum and public forum. An open forum is one that is open to everyone, and the school under this bill is open only to pupils, teachers, and personnel within that school. It does not allow any outsider to come in or claim any expression under this legislation.

Senator O'Donnell asked where this freedom of speech will lead in terms of control and responsibility of the parent.

Mr. Daykin stated that is a judgment the legislature will have to make. Nevada will either have each of its school districts making their own policies, or Nevada will have a statewide standard of freedom of expression within the limitations of the bill.

Senator Titus asked what the policy is presently if a journalism student prints something libelous.

Mr. Daykin responded presently the victim could sue the author of the article or the school district for having allowed it to be published. Just how far the case would get depends upon the merit of the particular question. The proposed legislation would immunize from suit the school district, as well as the advisor.

Senator Titus clarified that this would be more protective of the school and the advisor, but it would not deny the offended person the right to sue the individual who wrote the article.

Senator Mello stated this bill does not, in any way, supersede the authority of the Board of Trustees of a school district as far as adopting rules dealing with the oral communications of pupils while on the school grounds.

Mr. Daykin stated that statement is correct, and it is expressly disclaimed in A.B. 191. He reiterated that the freedom of expression is within narrow limit.

Senator Wagner stated she was given a proposed amendment from the Clark County School District, and feels it is so restrictive it should have "censorship" stamped on it. She

stated she would rather have nothing at all than to amend the bill in this fashion.

Charlie Sylvestri, Clark County School District (CCSD), distributed a proposed amendment to S.B. 191 (Exhibit F).

Senator Mello asked why CCSD feels so strongly about restricting the freedom of expression for students in the whole state.

Mr. Sylvestri responded CCSD has great concerns over the bill because of a long ordeal regarding an advertisement that was placed in one of the schools' newspapers. Just recently the district's attorneys argued their position before the Ninth Circuit Court in San Francisco, so there is a great deal of concern from the district about S.B. 191 as it is written.

Mr. Sylvestri explained the amendments proposed by CCSD.

Senator Rawson commented this amendment would give the district publisher status over the newspaper.

Senator Titus stated this amendment would make the law much stricter than it is currently.

Mr. Sylvestri responded in light of the district's recent experience, they feel this gives school boards more responsibility in the area, and the regulations to be proposed by the board would be in accordance with the current statutes and the current court cases.

Senator Titus asked Mr. Sylvestri to give the committee some background on the Clark County case.

Mr. Sylvestri replied about 4 or 5 years ago, there was a request to place an advertisement in one of the high school newspapers by the Planned Parenthood group. The principal at that time elected to not accept that advertisement in the newspaper. There ensued a legal action brought by that group against the school district and the school. The process took a number of years, and although there is no answer yet, it was concluded, as far as the district is concerned, about a month ago in San Francisco.

Senator Neal asked if the school had been accepting any other advertisements.

Mr. Sylvestri replied as far as he is aware they were accepting other advertisements, but they were not accepting advertisements from any organizations opposing Planned Parenthood. He explained all the newspapers, including the yearbooks, accept advertising to help defray costs.

WITH THE SECOND AMENDMENT PROPOSED BY SENATOR WAGNER.

SENATOR TITUS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS RAWSON AND O'DONNELL
VOTED NO. SENATOR MALONE WAS ABSENT FOR THE VOTE.)

* * * * *

Senator Rawson continued with the hearing on A.B. 875 and distributed an amendment (Exhibit G). He requested Mr. Griepentrog review the amendment with the committee and discuss any concerns he has with it.

Mr. Griepentrog discussed the proposed amendment with the committee and discovered a conflict of intent in subsection 3 of section 2. It was decided to change the words "more than 90 percent" to "less than 90 percent."

The committee held general discussion regarding the options created by this and other bills for hospitals, along with dollar amounts being addressed and amended by other bills.

Fred Hillerby commented on the proposed amendment and stated he does not feel any hospital can ever attain a 90 percent occupancy. He explained a hospital can be on divert status and even have patients in the hallways and not be 90 percent occupied. He feels 85 percent may be more reasonable, but that may even be too high.

Mr. Griepentrog stated the State Health Plan uses 85 percent as its figure for being able to apply to CON.

Janice Pine, St. Mary's Regional Medical Center, expressed a concern that a large hospital, such as St. Mary's, in an urban area that has an affiliate rural hospital could not be exempt from the CON process to add beds, even though their affiliate hospital is in an entirely different community. She suggested the language state this applies to hospitals with affiliates within one county so that what happens in a rural area does not affect what happens in an urban area, and vice versa.

Mr. Griepentrog explained the point Ms. Pine is making is that if St. Mary's achieved the maximum occupancy, but had an affiliate in a rural area that had only a 60 percent occupancy, St. Mary's would be precluded from building. If the language "in the same county" was added to the amendment, it would correct this potential problem.

SENATOR NEAL MOVED TO AMEND AND DO PASS A.B. 875.

SENATOR O'DONNELL SECONDED THE MOTION.

PROPOSED AMENDMENT TO SENATE BILL NO. 191.

Amend section 1, pages 1 and 2, by deleting lines 3 through 21 on page 1 and lines 1 through 14 on page 2 and inserting:

" 1. Except as otherwise provided in this section, a pupil enrolled in a public high school may exercise freedom of speech on school property, including the right of expression in official school publications. The provisions of this section do not create an open forum in any public high school or authorize any communication within a public high school by any person who is not a pupil of the school or employed by the school district, nor do the provisions of this section limit the right of any school district to limit or regulate advertising in official school publications.

2. A pupil may not express, publish or distribute on school property material that:

(a) Is harmful to minors;

(b) Is libelous or slanderous; or

(c) Encourages pupils to:

(1) Commit unlawful acts on school property;

(2) Violate lawful school regulations; or

(3) Cause the material and substantial disruption of the orderly operation of the school.

3. There may be no prior restraint of material prepared for official school publications unless the material violates the provisions of this section.

4. The board of trustees of each school district shall adopt regulations to establish:

(a) Procedures by which a pupil may appeal within the school district from a decision of a school official to restrain or limit freedom of speech.

(b) Reasonable standards for the times during which and the places and manner in which material may be disseminated by pupils on school property.

The board of trustees shall publish the regulations adopted pursuant to this subsection and make them available to pupils attending public high schools in the district, and their parents or guardians.

5. An aggrieved pupil or his parent may obtain judicial review of the final decision within a school district concerning a particular restraint or limitation of speech or expression by filing an action for declaratory judgment in the district court. Such an action must not be considered moot because at the time it is heard the school year has ended or a particular edition of an official school publication has already been published. No relief may be sought or granted except a determination of the propriety of the restraint or limitation.

6. A pupil who is an editor of an official school publication shall edit the content of that publication pursuant to the provisions of this section. An adviser of pupils who produce an official school publication shall supervise the production of that publication in such a manner

as to maintain professional standards of English and journalism and to comply with the provisions of this section.

7. The provisions of this section do not prohibit the board of trustees of a school district from adopting regulations relating to oral communications by pupils upon school property.

8. Any speech or expression made by a pupil pursuant to this section, including any expression made in an official school publication, shall not be deemed to be an expression of the policy of the school. No civil or criminal action may be brought against the school or school district or any official or employee of the school or school district based upon any speech or expression made or published by a pupil pursuant to this section.

9. As used in this section:

(a) "Harmful to minors" has the meaning ascribed to it in NRS 201.257.

(b) "Official school publication" means material produced by pupils in journalism or composition classes or for the school's newspaper or yearbook that is distributed to the pupils free of charge for a fee."

Amend the title of the bill, second line, after "by" by inserting "certain".

Amend the summary of the bill, first line, after "for" by inserting "certain".

**PROPOSED CHANGES TO PROPOSED AMENDMENT NO. 1 TO
SENATE BILL NO. 191.**

At the end of subsection 1, insert:

"The provisions of this section do not create an open forum in any public high school or authorize any communication within a public high school by any person who is not a pupil of the school or employed by the school district, nor do the provisions of this section limit the right of any school district to limit or regulate advertising in official school publications."

Amend paragraph (a) of subsection 4 to read as follows:

"(a) Procedures by which a pupil may appeal within the school district from a decision of a school official to restrain or limit freedom of speech."

Renumber subsections 5 through 8 as subsections 6 through 9 and add a new subsection, designated subsection 5, following subsection 4, to read as follows:

"5. An aggrieved pupil or his parent may obtain judicial review of the final decision within a school district concerning a particular restraint or limitation of speech or expression by filing an action for ~~injunctive relief~~ or a declaratory judgment in the district court. Such an action must not be considered moot because at the time it is heard the school year has ended or a particular edition of an official school publication has already been published. In an action for declaratory judgment, no relief may be sought or granted except a determination of the propriety of the restraint or limitation.

Amend the present subsection 7 to read as follows:

"7. Any speech or expression made by a pupil pursuant to this section, including any expression made in an official school publication, shall not be deemed to be an expression of the policy of the school. No civil or criminal action may be brought against the school or school district or any official or employee of the school or school district based upon any speech or expression made or published by a pupil pursuant to this section."

Provide that the provisions of the section apply only to public high schools.

Explanation of proposed changes to amended version of S.B. 191:

1. The phrase "open forum" is taken from the Hazelwood decision. The declaration that no open forum is created does not change the legal effect of the amended version (or of the original bill), but may reassure some persons genuinely concerned. The same is true of the language on advertising, for the existing language does not limit the authority of a school district in this regard.

2. The group of three amendments, which mention subsections 4, 5 and 7, carries out the apparent intent of present subsection 7 to provide a judicial remedy under state law for unjustified interference with or alteration of a pupil's speech or expression, but removes the perceived threat of personal liability on the part of a school teacher or administrator for exercise of discretion by limiting the judicial remedy to a determination, by declaratory judgment, of who was right. This reconciles the legitimate interests of both pupils and teachers.

3. The limitation of the bill to high schools removes an ambiguity concerning how young may be the pupils affected, while preserving the effect of the bill for the pupils most likely to have official school publications in which to express themselves.

PROPOSED AMENDMENT TO SENATE BILL NO. 191

Amend section 1, pages 1 and 2, by deleting lines 3 through 21 on page 1 and lines 1 through 14 on page 2 and inserting:

"1. A pupil enrolled in a class which is responsible for producing an official school publication may have access to the school publication as provided in this section.

2. The board of trustees of each school district shall adopt regulations governing the lawful conduct of student expression in official school publications. The regulations must be related to legitimate pedagogical concerns of the school district.

3. Pupils enrolled in a public school may exercise freedom of expression on school property in accordance with the limitations provided in this section.

4. The board of trustees of each school district shall adopt regulations governing the lawful conduct of student expression on school property other than in official school-sponsored publications.

5. The board of trustees shall publish the regulations adopted pursuant to this section and make them available to pupils attending schools in the district, and their parents or guardians. A student who violates this section or the regulations mandated by this section shall be subject to discipline in accordance with NRS 392.463.

6. A pupil may not express, publish or distribute on school property material that:

- (a) Is harmful to minors;
- (b) Is obscene;
- (c) Is libelous or slanderous;
- (d) Is an invasion of the right of privacy of another person;
- (e) Encourages others to commit unlawful acts.
- (f) Violates lawful school regulations; or

(g) School authorities have reason to believe will substantially interfere with the work of the school or impinge upon the rights of other students.

7. Any speech or expression made by a pupil pursuant to this section, including any expression made in an official school publication, shall not be deemed to be an expression of the policy of the school. No civil or criminal action may be brought against the school or school district or any official or employee of the school or school district based upon any speech or expression made or published by a pupil pursuant to this section. If an administrator or employee unlawfully limits the speech or expression made by a pupil pursuant to this section, a civil action may be brought by the student for violation of the student's rights.

8. As used in this section:

(a) "Harmful to minors" has the meaning ascribed to it in NRS 201.257.

(b) "Official school publication" means material produced in a class for the school's newspaper or yearbook that is distributed to the pupils and general public.

(c) "Public school" means a high school."

Amend section 2, page 2, by deleting "July 1, 1989" and inserting "November 1, 1989."

Mr. President pro Tempore:

Your Committee on Finance, to which was referred Assembly Concurrent Resolution No. 60, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

WILLIAM J. RAGGIO, *Chairman*

Mr. President pro Tempore:

Your Committee on Human Resources and Facilities, to which was referred Senate Bill No. 374, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

RAYMOND D. RAWSON, *Chairman*

Mr. President pro Tempore:

Your Committee on Human Resources and Facilities, to which were referred Assembly Bills Nos. 614, 647, 658, 711, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

RAYMOND D. RAWSON, *Chairman*

Mr. President pro Tempore:

Your Committee on Human Resources and Facilities, to which was referred Assembly Bill No. 510, has had the same under consideration, and begs leave to report the same back with the recommendation: Re-refer to the Committee on Finance.

RAYMOND D. RAWSON, *Chairman*

Mr. President pro Tempore:

Your Committee on Human Resources and Facilities, to which was referred Assembly Concurrent Resolution No. 61, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

RAYMOND D. RAWSON, *Chairman*

SECOND READING AND AMENDMENT

Senate Bill No. 191.

Bill read second time.

The following amendment was proposed by the Committee on Human Resources and Facilities:

Amendment No. 1377.

Amend section 1, pages 1 and 2, by deleting lines 3 through 21 on page 1 and lines 1 through 14 on page 2 and inserting:

"1. Except as otherwise provided in this section, a pupil enrolled in a public high school may exercise freedom of speech on school property, including the right of expression in official school publications. The provisions of this section do not create an open forum in any public high school or authorize any communication within a public high school by any person who is not a pupil of the school or employed by the school district, nor do the provisions of this section limit the right of any school district to limit or regulate advertising in official school publications.

2. A pupil may not express, publish or distribute on school property material that:

- (a) Is harmful to minors;*
- (b) Is libelous or slanderous; or*
- (c) Encourages pupils to:*
 - (1) Commit unlawful acts on school property;*

- (2) Violate lawful school regulations; or
- (3) Cause the material and substantial disruption of the orderly operation of the school.

3. There may be no prior restraint of material prepared for official school publications unless the material violates the provisions of this section.

4. The board of trustees of each school district shall adopt regulations to establish:

- (a) Procedures by which a pupil may appeal within the school district from a decision of a school official to restrain or limit freedom of speech.

- (b) Reasonable standards for the times during which and the places and manner in which material may be disseminated by pupils on school property.

The board of trustees shall publish the regulations adopted pursuant to this subsection and make them available to pupils attending public high schools in the district, and their parents or guardians.

5. An aggrieved pupil or his parent may obtain judicial review of the final decision within a school district concerning a particular restraint or limitation of speech or expression by filing an action for declaratory judgment in the district court. Such an action must not be considered moot because at the time it is heard the school year has ended or a particular edition of an official school publication has already been published. No relief may be sought or granted except a determination of the propriety of the restraint or limitation.

6. A pupil who is an editor of an official school publication shall edit the content of that publication pursuant to the provisions of this section. An adviser of pupils who produce an official school publication shall supervise the production of that publication in such a manner as to maintain professional standards of English and journalism and to comply with the provisions of this section.

7. The provisions of this section do not prohibit the board of trustees of a school district from adopting regulations relating to oral communications by pupils upon school property.

8. Any speech or expression made by a pupil pursuant to this section, including any expression made in an official school publication, shall not be deemed to be an expression of the policy of the school. No civil or criminal action may be brought against the school or school district or any official or employee of the school or school district based upon any speech or expression made or published by a pupil pursuant to this section.

9. As used in this section:

- (a) "Harmful to minors" has the meaning ascribed to it in NRS 201.257.

- (b) "Official school publication" means material produced by pupils in journalism or composition classes or for the school's newspaper or yearbook that is distributed to the pupils free of charge or for a fee."

Amend the title of the bill, second line, after "by" by inserting "certain".

Amend the summary of the bill, first line, after "for" by inserting "certain".

Senator Mello moved the adoption of the amendment.

Remarks by Senators Wagner, Rawson, Neal, Titus, Mello, Getto and O'Donnell.

Senator Wagner requested that the following remarks be entered in the Journal.

SENATOR WAGNER:

Thank you, Mr. President pro Tempore. I do intend to spend some time discussing this amendment, because actually this amendment is a new bill.

On January 13, 1988, the United States Supreme Court handed down a decision on a case which had been in litigation for almost four years. The case, Hazelwood School District vs. Kuhlmeier, involved administrative censorship on two pages of a high school newspaper. The decision essentially said, that it is permissible for a school to censor if there is a reasonable educational justification for that censorship. In the wake of that decision, there has been much confusion. The decision was written in somewhat vague language and the opinions issued since the court rendered its decision can be measured in feet.

Some of the confusion has been on the part of school administrators who are unsure if now they were supposed to censor material never before censored. Additional confusion has been raised by students and advisors uncertain of what would be acceptable and yet concerned that they were being too cautious.

The purpose of this amendment and new bill is to clarify the issue and help school boards, administrators, students and their advisors cope with the appropriate blending of school regulations and individual rights guaranteed under the United States Constitution.

After the first hearing on Senate Bill No. 191 on March 22, there was so much concern and controversy that I too became somewhat alarmed. I was not sure what I had wrought, so I called Mr. Frank Daykin, our former legal counsel. I visited with him to see if these concerns had any justification. He said no and explained that I had no need to be concerned at all; that this was a good bill and there was nothing dangerous contained in it. From that point forward, I sought his counsel and he has been helpful in producing the product we see here today.

Senate Bill No. 191 is quite different than the original draft heard on March 22, 1989 before the Committee on Human Resources and Facilities. A week ago last Wednesday, I proposed a new bill which was based on Iowa legislation that was signed into law on May 11 of this year, establishing students' rights in exercising freedom of speech. This includes the right of expression in official school publications. Following the hearing in Las Vegas last Wednesday, I was contacted by several of my colleagues in the Senate and asked to sit down and meet with the chairman of the Committee on Human Resources and Facilities. I was delighted to do that and did so last Monday evening. Senator Rawson and I sat with Mr. Daykin and discussed the chairman's concerns. He listed them and I submitted those as the amendment to the bill that I had suggested in Las Vegas. Those amendment concerns are found in this amendment No. 1377 which is before you today.

I have no concerns with the original bill. However, I am willing to listen and to try to address myself to the issues I heard expressed by many people throughout this state. I believe that this amendment addresses those concerns.

This amendment and/or bill, because basically, although we will be voting on the amendment, in essence, we will be voting on the bill provides a uniform policy for public high schools to follow in regulating the speech and expression of pupils, primarily in official school publications as school districts are now permitted to do under the decisions of the United States Supreme Court in the case of Hazelwood School District versus Kuhlmeier in 1988 and Bethel School District versus Feaserr in (1986). The bill is limited to high schools. That was a concern, and does not affect regulation of speech and expression of younger pupils. It does not affect regulation of oral communication by pupils in high school, regulation of the dissemination of material by pupils on school property or regulation or prohibition of advertising in official school publications.

The bill does not create an open forum within any school or permit access to the schools by persons other than by pupils, teachers or administrators for the purpose of speech expression or the distribution of materials. This was a major concern that I heard

expressed throughout this state, that has been addressed. The bill does require the editing, by both pupils and teachers-advisors of official school publications to maintain professional standards of English and journalism. The bill does prohibit the expression, publication or distribution, on school property, of material that is: (a) harmful to minors. Harmful to minors is found in our NRS chapter 201.257. The original bill included the word "obscene." Some people felt that was an adult standard as indeed it is. So, we chose a standard that is in our own Nevada Revised Statutes that addresses itself to minors, as this bill does. Harmful to minors means that quality of any description or representation, whether constituting all or part of the material considered, in whatever form of nudity, sexual conduct, sexual excitement, sado-masochistic abuse, which predominately appeals to the shameful or morbid interests of minors, is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors and is without serious literary, artistic, political or scientific value. That was added to the bill.

I again repeat, the bill does prohibit the expression, publication or distribution, on school property, of material that is harmful to minors, as I just read, is libelous or slanderous, encourages pupils to commit unlawful acts on school property, violates school regulations or substantially disrupts the orderly operation of the school. Within those standards, the bill prohibits prior restraint of material prepared for official school publications.

The bill does provide for appeal, within the school district, of the decision of a teacher or advisor to restrain or limit speech or expression and further provides for judicial review of such a decision, to decide who was right without imposing personal liability upon the teacher or advisor. This was again a concern I heard over and over again and which has been addressed.

The bill also provides that a school district and its personnel have no liability for any speech or expression by a pupil.

I might also add that there was a concern about advertising. Advertising has been taken care of in this bill as well. It says, in the very first part of the amendment, that the provisions of the section do not create an open forum nor do the provisions of the section limit the right of any school district to limit or regulate advertising in official school publications. I might tell you that the phrase "open forum" is taken from the Hazelwood decision. The declaration that no open forum is created does not change the legal effect of the amended version or, in fact, the original bill but reassures people who have genuine concerns. The same is true of the language on advertising. The existing language does not limit the authority of the school district in this regard. I have mentioned that the bill only applies to high school students. The bill seeks to accommodate the legitimate interests of pupils in freedom of speech and expression with the legitimate interest of the schools in teaching responsible behavior escaping the threats of monetary liability for doing so and avoiding disruption of their operation. At this point I will sit down and I hope that does explain this amendment. I would like to reserve the right to speak again, Mr. President pro Tempore.

SENATOR RAWSON:

Thank you, Mr. President pro Tempore. I take no great pleasure in speaking against an amendment which contains a good many of the concerns which I have expressed to Senator Wagner. It doesn't contain all of the concerns that I expressed. Every session there is a great issue that is decided here on the Senate floor. There is no great pressure from lobbyists that have tremendous interests in this measure. It is simply an issue for us to decide and decide according to our conscience what is best.

I recognize my limitations in trying to address you and compete with the fine speakers that will speak in favor of this issue before us today. I would like to share with you what I see the issue as being. In all of these discussions, there should be no question about the importance that any of us feel towards this first amendment right of free speech. It may well be the most important right that any of us have. It is certainly the issue that keeps this country free. Our first amendment right to free speech, like so many of the rights that are guaranteed to us through the constitution, are not absolute rights. We do not have absolute rights to own firearms. Teenagers do not have the right, through federal law, to own firearms because there is an issue of judgment, because there is an issue of concern about

the safety of other people. Teenagers don't have the absolute right to vote. How could we ever make the decision that an 18-year-old can vote and a 17-year-old cannot. We do that again on a basis that there is a level of maturity and responsibility that is involved with that right. When it comes to the rights of free speech, we know that the constitution speaks clearly but the supreme court does define that there are certain limitations to where that is not an absolute right. We can't yell "fire" in a crowded theater. You're familiar with those arguments.

There is also another important point, the point that is often not mentioned when it comes to free speech, and that is that in your exercise of free speech, if you injure another party, you are to be held accountable for that. I think that is one of the issues we get to in the Hazelwood decision; that a teenager cannot be held fully accountable for the injury that they may cause to another party through the exercise of their free speech. The Hazelwood decision, a decision that was issued by a more moderate or conservative court, essentially says that the school is a special situation. It says that we have nonetheless recognized that the first amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings. A school need not tolerate students' speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside of the school.

The court's second excuse for deviating from the precedent, is the school's interest in shielding an impressionable high school audience from material whose substance is unsuitable for immature audiences. No high school student wants to hear that they are an immature audience. We've had enough high school students appear before this session, speaking on various issues, for us to know that there is a great level of maturity and a great level of training and ability in our high school population. But, senior high school does include kids from 15 years of age and up. Not all of our 15-year-olds have that level of maturity.

Specifically, the majority decrees that we must afford educators authority to shield high school students from exposure to potentially sensitive topics. It goes on with that and defines some of those sensitive and offensive topics. They may be anything from alternative lifestyles to sensitive political subjects. We can talk about that being censorship or we can talk about it as being a responsible step in the growth and development of our teenagers through our educational system.

By passage of this amendment, which is passage of the new bill, we would guarantee rights that are greater than those defined in the constitution. The Hazelwood decision has defined first amendment rights for teenagers in school and we would be defining those rights as greater than defined in the constitution. I refer to that as an idealistic abstraction. It is not real world; it is not what it is really like for any of us. It is the same type of idealistic abstraction that caused students in Berkeley, when I was in college, to stand up and renounce the government of the United States and call for the development of Chinese Communism in America. Those same people now are able to watch another generation of students in Chinese communist countries stand and renounce their government and call for the adoption of American democracy. Both of those groups of students will be frustrated in their goals because it is an idealistic abstraction. It's great for us to be able to call for those things but nowhere else, other than in a high school, will anyone enjoy the rights that we are asking for here. No one else but a pupil in the high school will enjoy those rights; not the faculty members that will teach them, not the adults that send them to school. We will create a situation where only in that school will they have the right to have something printed in someone else's newspaper without any editorial control. I don't have that right. There isn't any working journalist here that has that right to demand that their article be printed on the front page of a paper without any editorial policy or review or scrutiny.

I'd like to refer to an editorial from the *Las Vegas Review-Journal* dated June 11, 1989. It echoes an earlier editorial that was written on the same subject. It reads as follows:

"Look, students have an ironclad, first amendment right to print or say anything they want. They may stand on a soapbox in front of city hall and call for a student strike to protest the lousy food in the cafeteria. They can print up flyers calling for students to join the Nazi Party. They can pool their money and rent a job press to print a fullblown,

broadsheet newspaper filled with favorable detailed reviews of porno movies, editorials on the virtues of communism, articles extolling the joys of crack smoking. Whatever, they can print any darn thing their little hearts desire and enjoy the full protection of the first amendment."

The first amendment does not, however, give students or anyone else the right to use someone else's press to express their views. No working journalist in this state would be so foolish as to suggest that he has a right to secure a place for his articles in a newspaper owned by somebody else.

The concern that I had is that we have a publisher, a school board that is able to exercise a responsible, editorial policy over the newspapers that are produced in our high schools. That's the concern that was not addressed in this amendment. I think it is a reasonable concern. There are other concerns that I have. I have concerns about things such as videos. We now have a yearbook video that takes advantage of the newest technologies that we have. It is tremendous to be able to see the freshness, the youth and the vitality of the kids in these high schools as you review the video yearbook. But, there is also the cunning little ploys to put in the sexual innuendoes, to mimic the flashing or exposure of genitals and those things slip by into the current standards that we have because that is a natural tendency to push the system.

We could talk on and on about this issue, but I don't know that a lot more needs to be said. I would just urge all of you to support me in rejecting this amendment because it does not represent real life and it is not needed.

SENATOR NEAL:

Mr. President pro Tempore and members of the Senate. I rise to speak out of fear in support of this amendment because, if I hear the arguments correctly against this, that if we should happen to find ourselves faced with the limitation of speech or press, then I think I would probably no doubt be in the forefront of those who would be censored or allowed not to speak.

We've heard arguments concerning the constitution. Let me read for you the first amendment of our United States Constitution dealing with freedom of religion, speech and press and the right to assemble and petition.

It says thusly: "That Congress shall make no laws respecting establishment of religion or prohibiting the free exercise of or abridging the freedom of speech of the press or the right of people to assembly and petition the government for a redress of grievance."

That is what the U.S. Constitution reads. Let me also read to you, for example, what the constitution of our state says in the First Article, subsection 9, entitled "Liberty of Speech and Press." It says: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for abuse of that right and no law shall be passed to restrain or abridge the liberty of speech or press."

Our constitution of the United States saw this argument. The people who wrote that statement saw fit to address this issue. It does happen at times, when we become so comfortable with ourselves and our lifestyles, that we forget about certain privileges and rights that are guaranteed to us by the constitution of the United States and the constitution of the State of Nevada. The amendment we have before us today to Senate Bill No. 191 is one that I think has addressed the issue of free press and free speech in schools. If you read the amendment, the amendment itself might be in violation of our constitution but yet, those who have attempted to straddle this question of free speech and the press, have done a pretty good job in trying to reach a medium by which this legislature can live with.

Starting, for example, in subsection 2 of this amendment, it addresses what a pupil cannot express, publish or distribute in their own schools. That is one of the things that is harmful to minors. In the back of the amendment it gives a definition of the things that are harmful to minors. It also says they cannot publish things that are libelous or slanderous or encourage people to commit unlawful acts on school property, violate school regulations or cause the material and substantial disruption of orderly operation of the school. These are things that have been addressed in this amendment. It goes further to talk about prior restraint, not letting this restraint run wild in terms of its exercise but stating that the school board may apply prior restraints if they find that a paper or publication will violate those things we have just mentioned.

Also, if you look on the second page of the amendment, it talks about appeal rights. It says the board of trustees, of each school, shall adopt regulations to establish a procedure by which a pupil may appeal within the school district from a decision of a school official to restrain or limit free speech. It sets down what the board might do in terms of reasonable standards. Additionally, it adds judicial review of a school board's decision in the amendment that might obstruct the free speech of a student writing for the paper.

Further, the amendment talks about supervision by an adult. We are talking here about a journalistic class whereby you would have an adult supervising that class. They give that adult the authority to review and look at the publication in terms of its style, its standards of English and journalism to comply with the provision of this section. That person who supervises the paper has the authority to enforce those things which we said, in the amendment, that the students cannot do.

Lastly, in the amendment, it talks about the board in terms of adopting the regulations. There is a provision in this section to not prohibit the board or trustees of the school district from adopting regulations relating to oral communication by people upon school property. I do not understand, after reading this amendment, what it is that we would have our schools to do in this area. We have set out the parameters by which the student newspaper can be published; a student can write in that paper and thereby be judged according to the guidelines set out in this amendment.

Ladies and gentlemen of the Senate, let me say to you that, if we are going to train children to be adults and provide a method by which they are able to protect their rights, then we can do no greater thing than to pass this amendment. This amendment sets out the criteria of saying the things they can and cannot do. If they should happen to have a conflict, we set out an appeal procedure through which they can appeal their concerns through the courts of this land. I don't know what we want the children to do. Do we want them to be trained less than adults? Do we want them to not know about the constitution of the United States? Or, do we want them to be like sheep that can be led to slaughter and directed anyway possible? Is that what we are asking that we do with the children? Do we want the children to be able to think, to reason, to understand their system of government? It seems to me that the opposition is saying that we do want this. I am saying, that since the bill has been limited to the high school pupil, the ones who write the papers, then you are looking at an age category in which you have a thinking human being. Would we take that human being at age 17 or 18, send him off to fight wars, to defend democracy and yet we would tell that human being that he cannot write a paper or conduct a newspaper within their school? Yet, we allow that person to go out and be killed in the defense of democracy. This is an issue that we should be greatly concerned about.

I have two children in school, one in high school and one in elementary school. One of my children just graduated from high school. I have no fear whatsoever that they cannot take this document, the law being proposed, and exercise it properly. I do not understand the fear that we might have of others. If we want, to say, to put our children in school, have them propagandized to a certain philosophy, then I can understand your opposition to this amendment. But if we want thinking individuals, children who can stand up and think and reason, then I think that you would vote for this amendment.

Some remarks have been made about China. Over 2,600 people were killed trying to express freedom of speech. Some of us in this legislature thought how bad it was to see that happen. If we do not pass this amendment, are we sowing the seeds to allow such a thing to happen in this state? Sure we are. But, if we believe in the constitution and those concepts that have been established, then we would pass this amendment.

SENATOR TITUS:

I rise in support of this amendment to Senate Bill No. 191, an innocent, straightforward bill which has been turned into a monster by those who will not or cannot look beyond their own prejudices to see what the bill really does.

This amendment very simply guarantees high school students the protection of our first amendment freedoms of speech and press. This does not mean unlimited freedom for students, any more than it means adult citizens under the constitution can say or print

anything they want. In fact, under this bill, it is clearly spelled out that there is no protection for speech which is libelous, obscene, harmful to minors, creates a dangerous situation, or incites students to commit illegal acts.

In addition, under this bill, the high school administration is given considerable power. It can set policy regarding the acceptance of commercial advertising in the school paper. It can also restrict individuals who are not students, or who are not authorized by administrators, from using the school as a public forum. Journalism advisors are further admonished to uphold the standards of professional journalism and good grammar.

Let me remind you that this year is the bicentennial of the Bill of Rights. Currently, I serve on the governor's Bicentennial Commission and the National Commission of Colleges, and Universities to Celebrate the Constitution. I have also been a judge in numerous state, local and national competitions among students of all ages. These various efforts are supported by the National Endowment for the Humanities and are coordinated through a national committee chaired by former Chief Justice of the Supreme Court, Warren Berger. Their collective goal is to promote a better understanding of our basic freedoms, especially among young people where we should be focusing our attention in order to combat the apathy and cynicism which plague our nation today and to develop instead good citizens of tomorrow.

I ask you what better way is there to do this than to allow young people to experience how the system works? Let them learn by doing that no rights are absolute, that an individual's rights are always limited by the fact that others also have rights which must be protected. It is interesting to me that those who readily support "hands on" education in so many other areas are afraid to use the same technique to allow students to learn how to accept responsibility and how our democratic system really works.

SENATOR MELLO:

Thank you, Mr. President pro Tempore. I had not really planned on saying anything on this bill because I think it is fairly clear what this bill does. You would never know that, however, if you had been in the hearings here in Carson City and in Las Vegas. People very rarely ever spoke to the bill. What they spoke to were the fears that they had in our young people today. They are so afraid that they are going to be able to speak out and they don't want other young people to listen to what they are saying. They are so afraid that the wrong advertising will appear in the school newspaper. If you look at the bill, all of this has been taken care of.

After about an hour, at the Las Vegas hearing, a woman in her mid-fifties, a mother of four who is a journalist, told the committee that after sitting and listening to the people testifying before her, She wondered what country she was in. That is very sad how someone can take a bill that gives the right all of us have, which we are giving to our children, and having people so afraid that our children are not learning anything in our schools and will do as they damn well please when they are in the classroom and on the campus grounds. The bill takes care of that.

Thousands of young men and women have given their lives, fighting to preserve and protect the first amendment, freedom of speech. If the amendment to this bill fails, one could think it was for nothing. This could be one of the saddest days in the history of this state if an amendment, which gives the rights we have to our children, fails.

SENATOR WAGNER:

Thank you, Mr. President pro Tempore. I have a few more concluding remarks. I would also like to quote from a newspaper, the *Reno Gazette-Journal*, on the date of the first hearing, Wednesday, March 22, 1989.

The title is:

"BILL SETS MIDDLE GROUND ON FREE SPEECH DEBATE"

Senate Bill No. 191 offers a fair, reasonable and very workable compromise to the dilemma of granting freedom of speech to students in Nevada. The bill is short and sweet and goes right to the heart of the matter. Children in public schools are individuals with the right to freedom of expression and it is an important part of the growth and learning process. At the same time, school board members and the principals who work for them, are only being reasonable when they ask for some

method to control ill-advised and irresponsible student behaviour when it takes the form of libel, slander or obscenity. Here in Nevada and elsewhere, there have been instances of abuse on both sides. Principals and school boards have been known to squelch projects or publications in advance because they feared the possibility of mischief. At the same time, there have been the occasional demonstrations where well-meaning youngsters, inadequately advised and unsupervised, have strayed beyond what is reasonable in their comments.

Deciding what's proper and excessive when it comes to juggling rights of privacy with fear of disclosure or deciding where common sense ends and libel begins is a judgment call best made by experts. However, it's clear that our young people cannot begin to build a field for responsible decision-making unless they are allowed to make decisions as a part of the learning process. They will obviously never learn to respect the constitutions fundamental notion of fair play and equal justice if they themselves are routinely denied these things.

Supervising all of this are the teacher-advisors who offer daily guidance, the administrators who enforce the rules and the school boards who make those rules.

This bill, this amendment if it becomes law, will require them to do what it is they do best; teach, guide and advise without stifling enterprise, initiative or creativity.

In reference to Senator Rawson's comment about videos, I spoke with the principal of a high school this morning where, supposedly, the video he watched came from. The principal was quite distressed to learn there might be something in this video, although the bill defines yearbook which we think of as being a published, printed document. Apparently, there are video year books. The principal of this particular high school, at my request this morning, reviewed this video and found nothing offensive about it at all.

Let me remind you that this bill regulates school activities while students are at school, not what students do on their own. We can't and we shouldn't do that. It allows each school district to establish their own standards. With this law, school districts are more protected now in terms of lawsuits than they currently are today. They will enjoy additional protection under this bill.

A Washoe County principal told me this morning that he was offended that people are using, in his mind, and he believes this to be the case, this bill to promote their own ideas and he perceives them to be exploiting children for their own means. I hope you will listen to what you have heard today from those proponents of the bill and try to put aside those rumors, those innuendos that have somewhat attached themselves to this piece of legislation since it was first introduced. I think it has been clear here this morning, from the discussion, that we have taken care of, at least, most people's concerns.

When I was asked to introduce this bill, I never dreamed it would cause so much controversy. Since that time, I have been surprised, shocked and most of all frightened by those wishing to limit freedom of speech; not just for young people but for all of us. We spent much time in this body worrying about literacy and why Johnny can't read. But this session, we spent as much time worrying about what Johnny might read or write. We can send a message today, one that says that within the limits of school board standards our young people have freedom of written expression. Other states have passed this law without all this controversy. If this amended bill does not pass this body, then the message you are sending is that you really want to limit freedom of thought and that you can never do.

SENATOR GETTO:

Mr. President pro Tempore, I wasn't really going to get involved in this. I'd like to ask the chairman of the Judiciary Committee how many states have passed this or similar legislation. There are just a couple of questions I am a bit concerned about. I have heard several speakers say that we should extend the freedom of speech to our children. To me, our children means our children. Does that mean birth to 18 years old? This bill actually limits it. What about the 15-year-old that is in the grammar school and the 15-year-old that is in the high school? There is discrimination in that respect. Then I think the question that Senator Rawson raised is a very valid one. We as adults if we defame someone's character or do damage, we are responsible or liable for suit. We all know that students

can be very vicious, all you have to do is to talk to some student who has been castigated or criticized or has not fallen in with a peer group, they can be damaged, actually mentally damaged. What recourses does that student have against another student in the freedom of speech? In other words, a student could write an article doing a great deal of damage to a fellow student, but the other student has no recourse. Those are just some of the questions I have about the bill.

SENATOR WAGNER:

In answer to the first question, there are five or six states that have instituted legislation such as this. I just mentioned the last state being Iowa on May 11 of this year. I might tell you, Senator Getto, that the original Senate Bill No. 191 was drafted identically along the lines with the California statute that has been on the books since the late seventies.

I have had the research division of the Legislative Counsel Bureau look into what has happened in California as to whether there was all this kind of dangerous and frightening activity occurring there as a result of the passage of this legislation. And, indeed, the answer was no.

There are seven or eight states in the process that we are in today debating this issue and looking at it legislatively.

And the answer to the second question. I believe that a student outside the purview of the restrictions in this bill, or their parents, could sue if that were their desire. This does not limit that.

SENATOR O'DONNELL:

Thank you, Mr. President pro Tempore. I rise in opposition to this particular amendment. I would like to address the amendment as a whole. I think the amendment is a charade. If the bill was so good in its original state, then why do we have the amendment that essentially guts the bill and makes a new bill?

The sponsor of the bill said there were no substantive changes to the bill. So let me go to the amendment. In section 1, subsection 3, it says "There may be no prior restraint of material prepared for an official school publication unless the material violates the provisions of this section." There may be no restraint. It goes into subsection 2, and it says "If it's libelous or slanderous." Now if material can't be put into a school publication that is libelous or slanderous, then why do we have in subsection 8, "Any speech or expression made by a pupil pursuant to this section, including any expression made by an official school publication, shall not be deemed an expression of the policy of the school." Now, what this amendment does is to say that the school district or any official of the school cannot be sued if a libelous or slanderous statement is made. Why is the protection in there if the libelous or slanderous statement can't be made? I think it is hypocritical. Now you tell me what school district is going to be named in a complaint for a libel suit to protect the student who may or may not have libeled somebody? I would submit to you, none, leaving that student out there alone for his or her parents to defend them against any libel. The school districts are not going to be involved. We just made them immune.

Now it has been mentioned here there was a journalist with four children who testified "what country are we in?" That particular woman was also representing herself as a member of the American Civil Liberties Union (ACLU). If the ACLU had seen subsection 8 in this amendment, they would be distraught. Because, essentially what this does is limit liability and limit redress. This is not a good amendment. It is a very, very bad policy for this state to be involved in the responsibilities that our principals and school districts have for our children.

SENATOR WAGNER:

Thank you. I will just answer Senator O'Donnell's question as to why if the bill was so good in the first place, it is now in an amended form. I said I supported the bill in the first place. As a matter of fact, on March 22 there were four votes in that committee to pass out the bill in its original form. There was no action taken for three months. Another hearing was held last week. I tried to meet the concerns of the chairman of the committee, in addition to other concerns that I had heard through the state. I think that is a reasonable way to legislate.

Senators Horn, Mello and Malone requested a roll call on Senator Wagner's motion.

Senators Malone, O'Connell and O'Donnell moved the previous question.
Motion carried.

The question being on the passage of Amendment No. 1377 to Senate Bill No. 191.

Roll call on Senator Wagner's motion:

YEAS—7.

NAYS—Beyer, Coffin, Getto, Hickey, Horn, Jacobsen, Joerg, Malone, O'Connell, O'Donnell, Rawson, Rhoads, Shaffer, Smith—14.

The motion having failed to receive a majority, Mr. President pro Tempore declared the amendment lost.

Senator Rawson moved that all rules be suspended, bill considered engrossed, declared an emergency measure under the Constitution and placed on third reading and final passage.

Remarks by Senator Rawson.

Motion carried unanimously.

Bill ordered to third reading.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, June 15, 1989

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day adopted Assembly Concurrent Resolution No. 83.

CAROL L. MOORE

Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Assembly Concurrent Resolution No. 83.

Senator Wagner moved the adoption of the resolution.

Remarks by Senators Wagner and Raggio.

Resolution adopted unanimously.

Senator Rawson moved that Assembly Bill No. 510 be re-referred to the Committee on Finance.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By Senators Raggio and Neal:

Senate Bill No. 544—An Act making an appropriation to the legislative fund for the support of the interim studies; and providing other matters properly relating thereto.

Senator Raggio moved that the bill be referred to the Committee on Finance.

Motion carried.

Amend sec. 11, page 8, line 14, by deleting "*state treasurer*" and inserting "*department*".

Amend sec. 12, page 9, line 6, by deleting "*state treasurer*" and inserting "*executive director*".

Amend sec. 13, page 10, line 4, by deleting "*state treasurer*" and inserting "*executive director*".

Amend sec. 14, page 10, line 35, by deleting "*state treasurer*" and inserting "*commissioner*".

Amend sec. 15, page 11, line 37, by deleting "*state treasurer,*" and inserting "*system,*".

Amend the title of the bill by deleting the second line and inserting: "forms of security required to be posted to ensure the performance of persons who".

Amend the summary of the bill to read as follows:

"Summary—Provides uniformity in forms of security required to be posted to ensure collection of money on behalf of state. (BDR 32-2100)".

Senator Joerg moved the adoption of the amendment.

Remarks by Senator Joerg.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 191.

Bill read third time.

Roll call on Senate Bill No. 191:

YEAS—7.

NAYS—Beyer, Coffin, Getto, Hickey, Horn, Jacobsen, Joerg, Malone, O'Connell, O'Donnell, Rawson, Rhoads, Shaffer, Smith—14.

Senate Bill No. 191 having failed to receive a constitutional majority, Mr. President pro Tempore declared it lost.

Senator Rawson moved that Senate Bill No. 191, or the subject matter, be given no further consideration for the remainder of the session.

Motion carried.

Senate Bill No. 370.

Bill read third time.

Remarks by Senators Hickey, Getto, Smith, Raggio and Vergiels.

Senator Smith moved that Senate Bill No. 370 be taken from the General File and placed on the Secretary's desk.

Senators Smith, Coffin and Titus requested a roll call on Senator Smith's motion.

Roll call on Senator Smith's motion:

YEAS—12.

NAYS—Beyer, Coffin, Hickey, Horn, Neal, O'Connell, Titus, Townsend, Vergiels—9.

The motion having received a majority, Mr. President pro Tempore declared it carried.

Remarks by Senator Smith.

Motion carried.