



"All the Truth
That's Fit to Print"

Legal News & Information for Modern Consumers

If you didn't know the year you were born, how old would you be?
-Warren Miller

Spring 2007

Dear friend,

Hello faithful readership. My apologies for the gap in newsletters, but this edition should get things back on track and resume their timely delivery to you. As usual, there are many items in the news to report. And for some, they could only occur in America.

U.S. Supremes to Decide the Most Important Student Free-Speech Case Since the Height of the Vietnam War



Joseph Frederick, a defiant high school senior, displayed a 14 foot banner bearing *Bong Hits 4 Jesus* while TV cameras captured the Olympic torch passing through his hometown of Juneau, Alaska in

2002. Frederick was trying to get on TV, but he was also trying to rile his disciplinarian principal, Deborah Morse. Morse wasn't amused, and confiscated the banner and suspended Frederick from school for 10 days. Five days of the suspension were tacked on when Frederick paraphrased Thomas Jefferson's "speech limited is speech lost." He is also fond of quoting Thoreau and Voltaire.

The flap, now legally morphed as *Frederick v. Morse* following Frederick's lawsuit against the principal and school district to allow his free speech, has assembled the ACLU, civil rights and constitutional law organizations on Frederick's side, and Kenneth Starr (of Bill Clinton/Monica Lewinsky notoriety), school boards nationwide and the Bush administration for Morse's camp. The ACLU claims that an unfair ruling "would in effect overrule the entire architecture of student speech law that the Supreme Court has so carefully constructed over the past 40 years." Morse and the school district counter that an adverse ruling would make all the more daunting the vital task of schools and teachers to attend "holistically to the needs of millions of students entrusted every school day to their charge." In other words, the school district maintains the slogan encouraged marijuana smoking.



Although the right to free speech was clearly established by the Supremes four decades ago, subsequent court decisions have allowed some restrictions to speech considered indecent enough to disrupt a school's mission. The case presents tricky facts for the justices to consider, however. Frederick was 18 at the time, he was careful not to display the banner on schools grounds, and one person holding the banner was not a student. Even if his message was considered pro-pot, debates about legalizing the drug are a legitimate topic of discussion, and the Alaska courts have ruled that adults have the right to possess small amounts of the drug.



Frederick also sued the Juneau Police Department for harassment that he alleged occurred after the banner incident; his lawsuit resulted in a settlement from the City of Juneau. In another odd twist, Frederick's father, Frank Frederick, worked for the company that insured the school district that his son sued. Frank claimed that he was demoted and then fired for not pressuring his son to drop his lawsuit. A jury agreed and awarded Frank \$200,000 against his employer. Hard to believe all of this has spawned from a banner off school grounds that was offensive at best.



Since the case has worked its way to the Supremes, a lengthy delay has occurred since the incident took place. Frederick graduated from high school in Juneau and then attended college in Texas where he was arrested for distributing marijuana. In a conference call with reporters at that time, Frederick bluntly stated, "I never professed to be perfect or a saint." Who is. Frederick now resides in China with his father and teaches English and studies Mandarin. It's doubtful he'll test his free speech rights in China. But his case in America will either solidify our free speech or curtail it. Should be an interesting ruling. Stay tuned.



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Will Doctors' Apologies Reduce Medical Malpractice Claims?

Wow, this is extremely old school, but it's amazing how far a simple apology can go to abate anger and ill will, not to mention lawsuits. It seems the medical and legal communities and state legislature finally realized this fundamental truth and codified it in RCW 5.64.010. Specifically, a health care provider's statement, gesture, or conduct expressing apology, fault, sympathy, condolence or compassion made within 30 days of the alleged conduct that is the basis for a medical negligence claim is inadmissible at trial or a related proceeding. Doctors can now apologize to patients after screwing up and the apology can't be used against them at trial.



This is a radical shift. In the past, physicians often wouldn't talk or discuss their patient's care if an error had occurred. Patients left without answers or explanations would become angry and this fueled filing suit, taking depositions and scrutinizing their chart notes. This happened to Doug Wojcieszak who never received an apology after his brother, Jim, died from a medical error. In his words, "it's not greed that drives most people to file medical malpractice lawsuits. It's anger. People get angry when they think there's a cover up."

Wojcieszak then started the Sorry Work's Coalition with the premise that telling patients the truth followed by an apology will reduce medical malpractice claims. (See SorryWorks.net).



Plaintiff medical malpractice attorneys agree—a genuine apology can derail a lawsuit. Once again, the truth shall set you free.

Until next time,