

CASES

FOR

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Case 1

The University of Wisconsin, like many other public universities, charges students an activities fee of several hundred dollars, about \$12 of which goes directly to various student organizations. In 1997 three law students at the University, who describe themselves as conservative Christians, sued the University, charging that the activities fee violates their constitutional First Amendment right of free expression. According to the law students, the activity fee forces them to pay for the support of organizations on campus they oppose on political, ideological, and religious grounds, such as the Lesbian Gay Bisexual Center, the Campus Women's Center, and Amnesty International. In September of 1998 a three judge panel of the U.S. Court of Appeals for the Seventh Circuit ruled in favor of the three law students.

Referring to the decision of the court, Scott H. Southworth, one of the three students, said: "It's a real victory for students around the country regardless of their political beliefs. No one should be forced to pay for speech and activities they oppose." Along the same line, Jesse H. Choper, Professor of Constitutional Law at the University of California, Berkeley, said: "A student at a state university cannot be compelled by a condition of being a student to pay student fees that go to support political or ideological beliefs that the student disagrees with."

Supporters of the University's position regard the idea behind the preceding statements as overly broad. If one takes this idea to its logical conclusion, they contend, it applies not only to student organizations but also to the classroom as well. Such, in turn, according to the supporter's of the University's position, leads to a patently unacceptable conclusion -- that a student who disagrees on political, ideological, or religious grounds with positions expressed in class by a professor has a right to receive assurances from the university that none of the student's tuition payments will be used to pay the professor's salary. Such assurances, the supporters of the University's position contend, would irreparably undermine the University as an institution of higher learning and diminish the educational experience of students. The same point, they say, applies to student organizations. In this connection, Donald A Downs, Professor of Political Science and Law, at the University of Wisconsin, says that while student fees should not be used for political purposes, student organizations are a key part of the university's educational function. Just as a publicly funded university offers courses taught by faculty with differing viewpoints, says Professor Downs, so also the university environment should support student groups with diverse political and ideological viewpoints.

The three judge panel of the Seventh Circuit Court of Appeals did not say that the University is barred absolutely, under the First Amendment, from funding private groups that engage in political or ideological advocacy. The court held, however, that the University should devise a system that appropriately accommodates the rights of

students who oppose various groups on political or ideological grounds. In this regard, the three law students who sued the University proposed that it put in place a procedure that would make it possible for individual students to indicate the specific organizations they do not want their activity fees to support. Supporters of the University's position object that this procedure would be an expensive nightmare to administer for the University of Wisconsin System, with its more than 150,000 students.

The Board of Regents of the University of Wisconsin has voted unanimously to request a rehearing by all of the judges on the Seventh Circuit Court of Appeals of the decision of the three judge panel.

Case 2

Jane lived on the same floor of her dormitory at X College with Mary during her freshman and sophomore years. At the end of her sophomore year Mary moved out of the dormitory. Jane remained, and now, in her senior year, is resident advisor. Based upon her acquaintance with Mary, Jane considers her a nice, kind, and caring person. In Jane's judgment other students who know Mary also view her the same way. Jane recalls that when they lived together in the dormitory, other residents looked upon Mary as someone to whom they could talk who would listen with interest and empathy. Jane recalls one situation where she and Mary stayed up all night with another female student who was undergoing an emotional crisis. Jane and Mary are friends, but not the closest of friends. Mary is a very close friend of several of Jane's closest friends, however – among them, the student with whom Mary and Jane once stayed up through the night.

Although Jane considers Mary a nice, kind, and caring individual, she (Jane) has nonetheless found Mary's approach to school work troubling. Jane has never seen Mary cheat on an in-class exam, but it seems to Jane that Mary places excessive reliance upon the help of other students on work outside of class. During the two years Jane lived on the same dormitory floor as Mary, she often observed Mary working with other students on homework problems or take-home exams, and obtaining assistance on her programming assignments and essay papers from friends of hers who were graduate students. In several instances Jane noticed that Mary received help on homework assignments for courses in which Jane was also enrolled. It appeared to Jane in these cases that the kind of assistance the other students provided Mary was so extensive it negated any educational value for her. Jane cannot recall, however, if the course instructors in these instances had made explicit statements to the class concerning acceptable and unacceptable kinds of assistance on homework.

Two years ago X College adopted an Academic Honor Code upon the joint recommendation of the Undergraduate Student Council and the Graduate Student Senate. The recommendation was motivated by the sense of the members of these student government bodies that something needed to be done about cheating on campus. In her capacity as Resident Advisor, several students this year have revealed to Jane confidentially, with anguish, conflict, and frustration, situations where they observed cheating in class. It seems clear to Jane that students at X College who don't cheat have become increasingly concerned that the College take effective steps to eliminate a situation which they regard as causing them to pay a high price for their honesty.

Last week Jane (unavoidably) observed a graduate student working on a statistics assignment with Mary in the Student Union Cafeteria. The graduate student appeared

to show her how to do all of the problems on the problem set, step by step from the beginning to end. It seemed to Jane that Mary had expended almost no prior effort to solve the problems on her own.

The Academic Honor Code of X College contains the following among its provisions:

Honor Agreement (which must be signed by all students at X College)

Having read the X College Academic Honor Code I understand and accept my responsibility to uphold the Honor Code. In addition, I understand my options for reporting honor violations as detailed in the Code.

Definition of Academic Misconduct: Academic misconduct is any act that does or could improperly distort grades Such acts include but need not be limited to the following:

- . Possessing, using or exchanging improperly acquired written or verbal information in the preparation of any essay, laboratory report, examination, or other assignment included in an academic course;
- . Substitution for, or unauthorized collaboration with, a student in the commission of academic requirements;
- . Submissions of material that is wholly or substantially identical to that created or published by another person or persons, without adequate credit notations, including authorship.

Obligations of Students When They Suspect Honor Code Violations:

In order for an honor code to function, students of X College must not tolerate violations of it by anyone. Students are at their discretion to use either of the following options to report suspected violations:

1. A student may simply confront the fellow student with the perceived infraction. It is expected that an alleged violator be taken before the Student Honor Committee if he or she persists in academic misconduct (**Note:** The Student Honor Committee is the body established by the Honor Code to hear charges of academic misconduct and to determine sanctions in cases where it determines a student had violated the code.)
2. A student may choose to approach the professor of the class in which the alleged infraction occurred and seek his or her input on how to proceed.

Case 3

In 1975 Congress enacted the Individuals With Disabilities Education Act (IDEA) to assure a "free appropriate education" for all children with educational disabilities. A "free appropriate public education," as defined by the IDEA, includes special education and related services, provided at public expense and supervision, in conformity with state educational standards, and specifically designed to meet the unique needs of each individual child with educational disabilities.

In 1987 Garret F. was severely injured in a motorcycle accident when he was four years old. While his mental abilities were unaffected, Garret sustained a spinal cord injury that left him quadriplegic and dependent upon a ventilator. In the fall of 1988, Garret started kindergarten in the public schools of Cedar Rapids, Iowa, where he has been enrolled as a student continuously up to the present time. During the school day, Garret requires a personal attendant within hearing distance of him at all times to see to his health care needs. Garret requires urinary bladder catheterization about once a day to avoid injury to his kidneys. This procedure is simple. It can be performed in a few minutes by a layperson with less than an hour's training. Garret also requires suctioning of his tracheostomy, an inserted tube that enables Garret to breathe. This tube requires regular suctioning to expel mouth and nose secretions, which could prevent Garret from breathing. If Garret's breathing stops, he may require ventilation with an ambu bag, a device that artificially pumps air into his lungs. Neither the suctioning nor the ambu bag ventilation processes need be administered by a physician, although the individual who does so must be well trained, since neither process leaves much room for error. Garret must be monitored constantly for respiratory distress and autonomic hyperreflexia. The latter condition may require bowel disimpaction, which, again must be done by a well trained individual (however, not necessarily by a physician).

Up until 1993, Garret's parents provided the personal attendant for him at school. In 199e, however, when Garret entered fifth grade, his mother requested that instead the School District provide the attendant, but it refused to do so. Garret's parents challenged the School District's refusal at an administrative hearing to which they were entitled under federal and state special education laws. The administrative law judge ruled in favor of Garret's parents, and the School District appealed. The U.S. Supreme Court is expected to rule on this case in the spring of this year.

The IDEA's definition of "related services" to which children with educational disabilities are entitled specifically excludes medical services, other than for diagnostic and evaluative purposes. The IDEA, however, does not define the term "medical services." Courts in the United States are currently divided on this matter. Some adopt a "bright line" definition under which a service qualifies as "medical" only if it must be

administered by a physician, rather than a nurse, or other qualified person. Other courts, however, take the position that whether or not a given service qualifies as "medical," under the IDEA, depends not only upon whether a physician must perform it, but also upon the nature and extent of the service performed. Thus, for example, in one case a court held that the services at issue qualified as medical because during school hours the student required nearly full time attention of a nurse or other trained person for administering procedures and monitoring of his condition, without which the student would immediately die.

Case 4

In June of 1998 the Food and Drug Administration (FDA) approved Thalidomide for use in the United States. In 1960 the FDA had denied approval to Thalidomide even though at that time it was used widely throughout the world as a sedative. Shortly after the FDA refused to approve Thalidomide unmistakable evidence emerged of gross birth defects in the babies of women who used the drug. The shockingly horrid nature of these defects attracted attention throughout the world, and led to a world wide ban on Thalidomide in 1962. As a result of the FDA's decision not to approve Thalidomide there were only 17 Thalidomide babies in the United States, compared with 10,000 world wide.

Despite the 1962 ban, use of Thalidomide did not cease completely. At some time in the mid 1960's an Israeli physician prescribed Thalidomide for leprosy patients (as a sedative) and to his great surprise the patients' lesions and fever quickly disappeared. Soon leprosy patients were treated with Thalidomide on an experimental basis, and by the 1970's the Public Health Service began a compassionate use program for leprosy patients, using Thalidomide obtained from foreign manufacturers. In 1989 a team of scientists at Rockefeller University reported finding that Thalidomide might have beneficial effects in the treatment of cancer and AIDS. Other scientists are currently experimenting with Thalidomide for treatment of lupus and other auto-immune diseases. In 1997 a panel of scientific advisers voted 8 to 2 that the FDA approve the use of Thalidomide for leprosy patients, of whom there are currently about 7,000 in the United States. In June of 1998 the FDA granted such approval. It did not approve Thalidomide for any other use besides treating leprosy.

Celgene, the manufacturer of Thalidomide, which sought FDA approval, proposed, and the FDA approved, a set of controls for distributing the drug. Under Celgene's plan drug stores must register in order to buy Thalidomide, pharmacists are forbidden from dispensing more than a month's supply to patients, and there are no automatic refills. Before receiving Thalidomide patients have to register in a national data base. Doctors and patients must undergo extensive education about Thalidomide. Furthermore, women of child bearing age using Thalidomide have to show proof they are using contraceptives, and must take pregnancy tests at least once a month.

Speaking of Celgene's plan, Dr. Murray Lumpkin, Deputy Director of the FDA's Center for Drug Evaluation, expressed the opinion that it makes Thalidomide the most heavily regulated drug in the United States. Dr. Norman Fost, a pediatrician and medical ethics specialist at the University of Wisconsin, observes that no control regulations, regardless of their stringency, can make it impossible that a pregnant woman who uses Thalidomide will give birth to a deformed baby. The goal, according to Dr. Fost, however, "is not to produce zero risk." Instead, says Dr. Fost, "you .. can get it close to zero without limiting access to women in a way that is unreasonable."

The FDA's decision to approve Thalidomide for use in treating leprosy has its critics, who believe that Dr. Fost severely underestimates the problems of putting an effective control procedure into place. In this regard, Roald Hoffman notes, in a New York Times Op Ed column, that recently Brazil attempted to implement controls similar to those contemplated by the Celgene plan, and there are now several dozen documented cases of Thalidomide deformed babies in Brazil. Apart from this concern, there is also the troubling question of whether any of the benefits associated with the use of Thalidomide warrant the risk that even one more Thalidomide baby will be born. Mr. Randy Warren, the leader of the Thalidomide Victims' Association of Canada, poses this question. Mr. Warren, who was born without hips, has feet where his knee caps should be, and underwent twenty four operations by the time he was sixteen, asks rhetorically: "One baby born for every hundred lives extended? If there is a number, I would like to know what it is? How are you going to measure that?"

Case 5

In January of 1997 a federal jury in Greensboro, North Carolina awarded a supermarket chain, Food Lion Incorporated, more than \$5.5 million in punitive damages, to be paid by the American Broadcasting Company (ABC). The damage award was in connection with a lawsuit brought by Food Lion concerning a segment of ABC's Prime Time Live program, which accused Food Lion of selling rat gnawed cheese, spoiled meat, and fish that had been washed in bleach to kill the odor. Food Lion denied these accusations, but did not sue ABC for slander. Instead it brought action against ABC for fraud and trespass, complaining that ABC reporters gained access to the Food Lion meat department by submitting false resumes to get jobs, and then used hidden cameras to film there.

The jury's verdict in favor of Food Lion, a subsidiary of a multi-national conglomerate, headquartered in Belgium, that operates 1,100 stores in 14 states, was only the second time a jury has awarded punitive damages in a case involving hidden cameras. The purpose of punitive damages is not to compensate a plaintiff in a lawsuit for losses actually suffered as a result of the defendant's conduct, but instead to punish the defendant for conduct the jury considers unacceptable, and to deter future similar conduct. In order to keep the jurors focused upon the issues of fraud and trespass, rather than slander, the judge instructed them that in reaching their decision they were to assume the accuracy of the Prime Time Live segment. (No evidence was presented at the trial, one way or the other, in regard to the segment's accuracy.) Keeping the judge's instruction in mind the jury awarded the corporation only \$1,400 in actual damages, despite claims at the trial that ABC's Prime Time Live report had resulted in corporate losses of more than \$1 billion from drops in sales and stock value. The \$5.5 million jury award, in the words of one juror, was intended to send a message to ABC that it has to "go about gathering news in a different way."

In a statement commenting upon the jury's award, Roone Arledge, President of ABC, said: "If large corporations are allowed to stop hard hitting investigative reporting the American people will be the losers." "Food Lion would never contest the truth of the broadcast; these people were doing awful things in these stores," claimed Mr. Arledge. Tom Smith, President and Chief Executive Officer of Food Lion, expressed pleasure with the jury's verdict. "This case is not about money," Mr. Smith said. "We believe," he continued, "that this jury has said that ABC must be held accountable when it breaks laws that everyone else is expected to obey."

Subterfuge by newspaper reporters has a long tradition, going back to at least 1887 when Nellie Bly, a reporter for the New York World, gained admittance to the New York City Lunatic Asylum by feigning insanity. Bly's report on her ten days in the asylum exposed dreadful conditions badly in need of reform. In a similar vein, recently organizations investigating racial discrimination in white collar employment

compared the job hunting experiences of pairs of applicants, one white and one african-american, sent out to apply for jobs with fake credentials and resumes. Commenting upon the jury's award in the Food Lion case, Bob Steele, Director of the Ethics in Journalism program at the Poynter Institute in St. Petersburg, Florida said: "This verdict has the potential to chill important investigative reporting and to prompt news organizations to back off." On the other side of the question, Paul Starobin, a contributing editor of the Columbia Journalism Review, expressed the opinion in a New York Times Op Ed column, that ABC was driven by commercial rather than journalistic motives. In this regard, Starobin wrote: "Diane Sawyer, the Prime Time Live anchor said that 70 current and former employees of [Food Lion] had attested to unhealthful food handling practices in on the record interviews with the show's researchers. But that wasn't sexy enough so ABC went undercover to dramatize the tale."

Case 6

Several years ago a young woman who had stopped to rest while biking along an isolated road near Carbondale, Illinois was approached by a male stranger who struck up a conversation. When the young woman said she had to go, the stranger put his hand on her shoulder and said, "This will only take a minute. My girl friend doesn't meet my needs." The man then added, "I don't want to hurt you." This last statement sounded like an ominous threat to the woman (the man was a foot taller than her and outweighed her by over eighty pounds.) The man then quickly lifted the young woman and carried her into the woods alongside the road. She did not scream or try to fight because no one else was present, and the woman feared this might prompt the man to beat or choke her. Once he and the woman were out of view from the road, the man pulled off the woman's pants, pushed up her shirt, exposing her breast, and subjected her to several acts of oral sex. The man subsequently was put on trial for criminal sexual assault. At the conclusion of the trial the court acquitted the man, concluding that, given the facts described above, he had not used physical force in the manner necessary to sustain a conviction for criminal sexual assault in Illinois.

The laws of nearly all fifty states in the U.S. require proof of the use, or threat, of physical force in prosecutions for rape, or criminal sexual assault, which state courts, like the Illinois court in the above example, tend to interpret in narrowly strict terms. To cite another example, in a 1988 Montana case, a high school principal was alleged to have succeeded in making a student submit to have sex with him by threatening to block her graduation. The Supreme Court of Montana held that even if the allegations were true the principal would not have committed a criminal offense under Montana law, which the court interpreted strictly to say that a conviction for criminal sexual assault requires proof of actual or threatened use of physical force. Proof of other kinds of threats -- e.g. to block graduation from high school, the court concluded, does not suffice in this regard.

Women's rights groups, and legal scholars, have commented that the laws of rape and criminal assault reflect a distinctly gender biased male perspective concerning what coercive physical force means with respect to sexual relationships. In this connection, a 1999 survey conducted by the University of Chicago found that 22 percent of American women felt that at one time or another in their lives they had been forced to have sex, while only 3 percent of American men said they had ever forced a woman to engage in sexual activity with them. After taking into account the possibility of lying on the part of both the men and the women, and of a small number of men physically coercing a disproportionately large number of women, the researchers concluded that many of the men in the survey simply didn't realize that women with whom they had had sex felt the men had physically coerced them into doing so. In the words of the researchers, "There seems to be not just a gender gap, but a gender chasm on perceptions of when sex is forced."

One proposal, often voiced by women's rights groups for reforming the law of rape, and criminal sexual assault, to accommodate a woman's perspective on the meaning of forced sex is expressed in the slogan, "No means no." A 1988 survey of undergraduate students, however, raises questions in this regard. Thirty nine percent of the women reported that they sometimes said 'no' even though they "had every intention to and were willing to engage in sexual intercourse." Of the sexually experience women, 61 percent said they had done so. Some of the women said they had said 'no' to a date because they "want[ed] him to be more physically aggressive." A study in 1994 of students in Hawaii, Texas, and the midwest produced similar results, as did a 1995 study at Penn State.

Referring to the current state of both the law of criminal sexual assault, as well as to commentary upon, and criticism, of that law by women's rights groups and legal scholars, University of Chicago Professor of Law Stephen Schulhofer has written: "Despite decades of discussion and years of ambitious feminist reforms, adequate protection of sexual autonomy remains elusive, in part, because freedom from unwanted sex and freedom to seek mutually desired sex sometimes seem to be in tension."

Case 7

The August 1987 closing of General Motors' Firebird/Camaro assembly plant in Norwood, Ohio, which resulted in the loss of 4,400 jobs, typifies the devastating impact of large-scale workforce reductions on individuals and groups within a community. The Norwood plant, which had operated for sixty four years, provided approximately 30 percent of the City's tax revenue and supplied the School District with \$2.6 million per year. Its closing had a severe effect on the private sector economy of Norwood that was felt by suppliers of services - such as supermarkets, restaurants, and banks - and small businesses that provided the plant with miscellaneous goods and services.

The City of Norwood felt that over the years it had undertaken numerous measures to benefit General Motors. For example, the City expended \$750,000 to construct an underpass to accommodate rail traffic to and from the plant, as part of an earlier agreement under which General Motors undertook a \$200 million project to modernize the Norwood facility. The City, as well as the union at the plant (United Auto Workers, Local 674) complained that General Motors refused to cooperate in a full exploration of alternatives to the plant closing. In this connection, during 1987 the union offered savings worth \$112 million that year and \$200 million in 1988. Despite this, General Motors characterized the decision as an unavoidable response to increased competition in the "sporty road car" segment of the market. Such competition, General Motors maintained, made it clear that the Company could not support two separate production facilities. According to General Motors, its other Firebird/Camaro assembly plant in Van Nuys, California had distinct advantages over the old, inefficient Norwood facility; for example, Norwood's three story layout made it impossible to utilize new production systems.

In January of 1987, James F. MacDonald, President and Chief Operating Officer of General Motors made the following statement at congressional hearings:

General Motors has established community and joint GM-UAW transition teams at Norwood who will work with every employee, hourly and salary, to ease the transition. Employees who are laid off could be eligible for job opportunities anywhere in General Motors' U.S. operation. Financially, employees with one year or more of seniority receive Supplemental Unemployment Benefits. This combined with State unemployment compensation amounts to 95% of the employee's take-home pay for up to a full two years. If the Supplemental Unemployment Benefits run out before re-employment, employees with 10 or more years of seniority are provided from 50 to 75 percent of the individual's pretax pay, depending upon seniority. Limited benefits are also provided. The UAW-GM National Human Resources Center gives

counseling, explanations of benefits and retraining programs for displaced employees.

As of August 17, 1988, 2,200 Norwood employees either retired or accepted buyouts of their GM benefits. Only about 100 of the Norwood employees went to work at other GM plants.

A study prepared for the Joint Economic Committee of the U.S. Congress in 1976 reached the following conclusions about the overall social costs of unemployment. According to the study, "a one percent increase in the aggregate unemployment rate is associated with 37,000 deaths (including 20,000 cardiovascular deaths, and 920 suicides) along with 650 hospital admissions, 4,000 state mental hospital admissions and 3,300 state prison admissions." The study also found that a one percent increase in the unemployment rate results in \$3.3 billion of increased public aid expenditures.

Case 8

According to the Information Technology Policy Office of the American Library Association (ALA) 15% of the 11,600 public libraries in the United states with internet access have installed filtering software intended to prevent patrons from accessing pornographic material inappropriate for children. Filtering software works by blocking certain key words and/or thousands of pre-selected websites considered to have objectionable content. The use of filtering software by public libraries has recently generated much controversy. A group of library patrons in Loudoun County, Virginia, along with the American Civil Liberties Union (ACLU) and various web publishers, have filed a lawsuit in which they contend that the use of filtering software by the County's public library infringes upon their right of free expression under the First Amendment of the U.S. Constitution. In direct contrast, a parent in Livermore, California recently sued the Livermore Public Library for failing to install software, that would restrict access of children to pornographic material on the internet.

For the past two years, the Public Library in Austin, Texas has struggled with policy issues related to filtering software, which, in the words of the Library's Director, Brenda Branch, pose the question of "how to balance the rights of adults with the need to protect children." In the summer of 1996 the Library installed highly restrictive software on all of the fifty two computers in the Library system with internet access, that not only blocked pornographic websites, but others as well dealing with artistic and scientific subjects of interest to library users. In response to criticism of the Library's policy Austin city officials convened a community roundtable which included Ms. Branch and other librarians, Electronic Frontiers-Texas, a local civil liberties group that focuses on internet issues, the ACLU, the City, and a representative of the local PTA. As a result of the roundtable meeting the Library disabled the key word blocking part of the program and reduced the number of filtered categories to four: "gross depictions," "sexual acts," "partial nudity," and "full nudity." Currently there are plans to have one unfiltered computer at every branch library in the Austin system by October of 1999, which will be out of public view and available only for use by patrons over 18 years of age. Minors will not be allowed to use the unfiltered computers even with parental permission, or accompanied by parents.

Although intended as a compromise approach, the Austin Public Library's policy has not satisfied the complaints of many individuals and groups in regard to the use of filtering software in libraries. The American Library Association supports unrestricted internet access for adults and children alike. In the words of an ALA spokesperson, "our policies are very carefully considered. We certainly have addressed the First Amendment implications of our stance against filtering, and to take any position accepting something less than that ... stance would be unacceptable." Supporters of the ALA position note that under a key words approach, one can only increase the effectiveness of a software package in filtering out objectionable material by making the

key words more inclusive, which inevitably will increase the amount of unobjectionable material to which library patrons will also be denied access. As for blocking pre-selected websites, supporters of the ALA position question how those sites are chosen, and, in this regard, whether public libraries have the right to delegate choices in this matter to a software company.

In contrast, supporters of the Austin Public Library's policies regard them both as reasonable and consistent with a wide range of restrictions society imposes on minors out of concern for their well being. In the words of one Austin, Texas parent, "if we live in a society that requires one to be 21 to drink, 18 to smoke, and ... 18 to purchase pornographic magazines, why [should it be] free and acceptable to view porno on the internet at a public library?"

Case 9

The year is 2020. The newly elected, and recently inaugurated, President of the United States was a participant in the Fifth Intercollegiate Ethics Bowl that took place in 1999. She believes strongly that the ethical dimensions of public policy often tend to get obscured or lost in the policy making process on the national level. One of her first acts as President has been to appoint a special panel of individuals, who combine outstanding records in their professional lives with a demonstrated ability to analyze and articulate ethical issues. The President is convinced the time is overdue to bring such individuals into the presidential policy advising process, along with the usual group of lawyers, economists, political analysts, and others with special kinds of expertise.

Recently the President has become intrigued by a proposal advanced back in the 1970's by several scholars in the field of business ethics, which attracted attention in the academic world, but, was largely rejected outside of academia (to the extent that anyone paid attention to it) as irrelevant in virtue of its lack of realism. The proposal called for the Congress of the United States to enact a legally enforceable right of freedom of speech in the workplace for all private sector employees in the United States. (A series of major cases decided by the U.S. Supreme Court in the 1960's, 70's and 80's established that the right of free speech protected by the First Amendment of the U.S. Constitution, applies to the workplace situation of public sector employees. These cases did not apply to private sector employees because the Bill of Rights of the Constitution is understood, within the framework of U.S. political institutions, to place limitations upon the actions of government, but not private, non-governmental, organizations.)

The proposal for a legally enforceable right of free speech for private sector employees was advanced to address a situation succinctly characterized in a statement made many years ago by Robert E. Wood, former head of Sears Roebuck & Co. Speaking of top corporate officers, such as himself, Wood said: "We stress the advantages of the free enterprise system, we complain about the totalitarian state, but in our individual organizations we have created more or less a totalitarian system." Despite decades of pronouncements throughout the 1980's and 1990's from organization relations specialists, heavily laden with words like "empowerment," "involvement," and "teamwork," many believe that the features of organizational life in the workplace, to which Mr. Wood might have pointed as prime examples of his generalization, have not passed from the scene in the first decades of the twenty first century. Large numbers of private sector business organizations at this time (2020) continue to terminate employees essentially without either notice or an explanation of reasons, and many private sector workplaces commonly inhibit, rather than promote, the free interchange of ideas, opinions, and attitudes.

The exact extent to which the above conditions characterize private sector work life is not easy to determine. As noted above, however, a widespread perception of their prevalence exists. Moreover, most private sector organizations – even those that would indignantly deny that Wood’s characterization applies to them – nonetheless, when pressed, tend to affirm that they have (and that, by right they should have) the freedom to fire employees at will. This attitude is often expressed in the form of statements about the need of employers to maintain efficiency and flexibility.

Here is the proposed wording for a legally enforceable right of free speech in the workplace that was advanced by business ethics scholar David Ewing in the 1970’s:

No organization or manager shall discharge, demote, or in other ways discriminate against any employee who criticizes in speech, or press, the ethics, legality, or social responsibility of management actions.

Case 10

Here is another issue that concerns the newly elected President. Certain important, and troubling, aspects of the economic condition of the United States that began in the last two decades of the twentieth century have continued up to the present time (2020). The standard of living for average and lower income Americans continues to stagnate or decline, and the historically wide gap between the lowest and the highest income groups in the United States continues to widen. IRS data for the year 2016 indicated that the top 4 percent of wage earners in the United States earned as much in salaries as the bottom sixty percent. In comparison, the top 4% earned as much as the bottom 51 % in 1989, and as much as the bottom 38% in 1970. Similarly, during the 1960's every 1% of increase in the gross national product (GNP) added \$2.18 to the weekly wages of the poorest 10% of workers. By the 1980's, however, the bottom 10% actually saw a reduction of about 30 cents per week for every 1% of increase in GNP. This trend has continued into the twenty first century. Speaking of the economic trends of the past quarter century (1995-2020) one economist has said: "The higher up you were, the more you gained, the further down you were, the more you lost."

The American workforce now (2020), as in the 1980's and 90's, has large numbers of cynical, distrustful, disheartened, and embittered individuals. Homeless persons, who became a common sight in United States cities in the latter part of the twentieth century, have increased in number rather than decreased.

The newly elected President has come to believe that the above described aspects of the American economy may reflect a deep problem in both the United States and world economies related to major technological innovations of the late twentieth century. These innovations, primarily associated with computer technology and the computerization of countless business and industrial processes may have resulted in a significant decrease in employment opportunities world-wide, especially for individuals with limited education. The President is persuaded that the current economic trends will continue for the foreseeable future. She thus considers it possible that economic policies of the past, designed solely to promote economic growth, which were based upon the assumption that such growth meant job creation, no longer can solve, or even significantly address basic economic problems of the United States.

The newly elected President has become convinced the country needs to take a closer look at new ideas that represent a dramatic break with past ways of thinking about economic and social policy. In this connection, she recently came

across an old book (1963) entitled Free Men and Free Markets by an economist named Robert Theobald (the word 'Men' instead of 'People' or 'Persons' in the title indicates the book is old.) Here is an extended quotation from Free Men and Markets that sums up one of its central ideas:

In a world in which conventional job availability will steadily decline, the principle of an economic floor under each individual must be established. This principle would apply equally to every member of society and carry with it no connotation of personal inadequacy or implication that an undeserved income was being received from an overgenerous government. On the contrary, the implication would clearly be one of responsibility by the total society for ensuring that no member of society lived in a manner incompatible with the standards acceptable to his fellow men merely because he lacked purchasing power.

We will need to adopt the concept of a ... constitutional right to an income. This would guarantee to every citizen of the United States, and to every person who has resided within the United States for a period of five consecutive years the right to an income from the federal government sufficient to enable him to live with dignity.

CITATION OF SOURCES
(Very Informal)

- Case 1. Article in the Chronicle of Higher Education, 9/4/98 at p. A54
- Case 2. Inspired by "Memories of Honor" by Rachana Kamptekar, Perspectives on the Professions, January, 1995
- Case 3. Cedar Rapids Community School District v. Garret F. 25 IDELR 439 (1997) - - - IDELR stands for Individuals With Educational Disabilities Law Review
- Case 4. Based on article in the New York Times, 9/23/97 at p. A1
- Case 5. Based on article in the New York Times, 1/23/97 at p. A1
- Case 6. Draws upon Stephen Schulhofer, "Unwanted Sex," Atlantic Monthly, October, 1998 at p. 55
- Case 7. Based on John Quinn, "A General Motors Plant Closing: Social And Ethical Responsibilities," in Proceedings of the 1989 Annual Conference of the Council on Employee Responsibilities and Rights
- Case 8. Based on article in the New York Times, October 18, 1998 at D1
- Case 9. See David Ewing, Freedom Inside the Organization (1977)
- Case 10. See Robert Theobald, Free Men and Free Markets, (1963)