

LAW STUDENT

has his day in

FIRST AMENDMENT ‘COURT’

Only in his “wildest dreams” could 29-year-old David LaSpaluto have imagined arguing a First Amendment case before a U.S. Supreme Court justice.

But he did just that in March when he and classmates from the University of San Diego School of Law won the 10th annual National First Amendment Moot Court Competition, co-sponsored by the First Amendment Center and the Vanderbilt University School of Law. (See story, page 34.)

Sandra Day O’Connor presided over the arguments in the fictitious case of *Flanders v. Mayhem Entertainment*. LaSpaluto, Trevor Rush and Michael Faircloth had to defend the manufacturer of a violent video game blamed in the shooting of a gym teacher by an 11-year-old student.

“Only in my wildest dreams did I ever think I would argue before a United States Supreme Court justice,” LaSpaluto said. “It is an overwhelming experience, one that I will talk about for the rest of my life.”

LaSpaluto, now an associate at Gray, Cary, Ware & Freidenrich in San Diego, was eager to join the competition for several reasons. “I was interested, first of all, because of [the moot court’s] prestige and reputation. ... The competition has become known as one of the best run, best organized and most fun.

“But the First Amendment issue also was a big draw,” he said.

As an English major and a writer in college and graduate school, LaSpaluto said he gravitated toward studying First Amendment law after the Oklahoma City bombing in 1995. “I started hearing about all

these books [that were available on] making bombs,” he said. “I was amazed at how available they were. I ended up writing a story for a local magazine titled ‘Books That Go Boom.’”

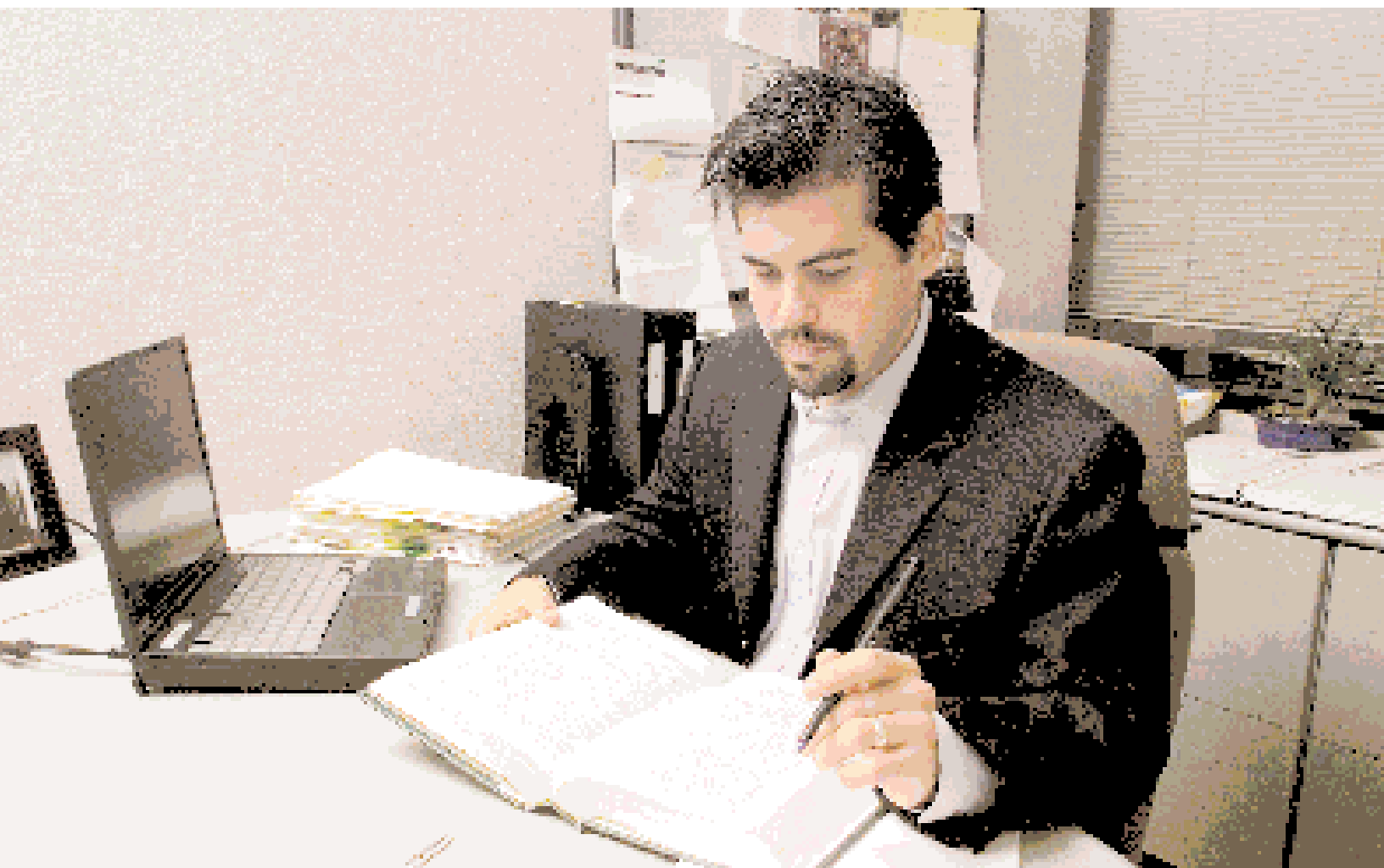
When he got to law school and began studying constitutional law, “it was the First Amendment I was waiting for. The rules are sometimes surprisingly amorphous, simply because it’s difficult to set hard and fast rules on what’s good speech and what’s unprotected speech, what’s obscene and what’s not.”

LaSpaluto got a strenuous workout for his newfound expertise during the competition. He became the “swing oralist” for his team — he needed to be prepared to argue for either side in the case. “This meant rebutting myself!”

Preparation took months and tedious practice sessions, he said, on top of his regular studies. But the payoff was tremendous. “It really sharpened my thinking and arguing skills,” he said. “It made me think about what arguments work and which ones don’t — and how to fill in those gaps.”

The experience also reinforced LaSpaluto’s interest in First Amendment law and his appreciation for First Amendment principles. “The benefits of a free society, where we can speak our minds, outweigh the risks (of offensive speech),” he said.

“In the long term, we hear about the bad things in our society because we’re free to talk about them, out in the open. Then we, as a society, can see what our issues are, and deal with them.”



“Only in my wildest dreams did I ever think I would argue before a United States Supreme Court justice.”

— David LaSpaluto, 2000 law school graduate

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First Amendment

CHAMPIONING THE
CORNERSTONE OF DEMOCRACY

MANY AMERICANS willing to restrict speech, survey finds

The home of the brave would become the land of the not-so-free if public opinion were to prevail.

A majority of Americans surveyed for the “State of the First Amendment 2000” report would restrict public speech that is offensive to racial or religious groups and would ban public art that offends some members of a community. At the same time, they would allow prayers at public-school-sponsored events and permit schools to post the Ten Commandments in classrooms. They would applaud government involvement in rating TV entertainment shows, and would ban TV networks from projecting election winners while the polls were still open.

“The First Amendment is very much in play,” said Kenneth A. Paulson, executive director of the First Amendment Center. “The 45 words have gone unchanged since they were written by James Madison more than 200 years ago — unchanged, but not unchallenged.”

Among the findings:

- 81% agreed that, if the majority favors it, prayer at a public high school graduation is acceptable.
- 64% said students should be allowed to lead prayers at public-school events.



The ACLU's Nadine Strossen and National Public Radio's Juan Williams discuss “State of the First Amendment 2000.”

- 61% would let officials post the Ten Commandments in schools.
- 67% said public remarks offensive to racial groups should not be allowed.
- 53% said public speech offensive to religious groups should not be allowed.
- 51% said art offensive to some in a community should not be placed in a public place.
- 40% said musicians shouldn't sing offensive songs in public.

MANHATTAN PARTNERSHIPS expand fight for free expression

The release of the “State of the First Amendment 2000” survey in June coincided with the opening of a new First Amendment Center office in New York City.

The location in midtown Manhattan is convenient to many of the nation's publishing and broadcasting companies, as well as arts, religious and other groups, for programs that help advance understanding of First Amendment issues.

Since its opening, the New York office has developed initiatives and partnerships to build support for the First Amendment.

One of the first initiatives was “Speaking Freely,” a weekly, half-hour television program devoted to

First Amendment and arts issues. (See page 32.) The center also established partnerships with New York institutions and organizations, including the Columbia University Graduate School of Journalism, the Whitney Museum of American Art and the Online News Association, to produce First Amendment programs.

Forums also are held at the center, particularly when the First Amendment is in the news or when an issue merits in-depth discussion by key players in the media, academia and public life.

The center also sponsors periodic exhibits that explore aspects of freedom of expression.

VITALITY, SIGNIFICANCE

of First Amendment emerge from forums with journalists, others

Nearly 850 newspaper executives from around the country got a crash course on the fundamental freedom that allows them to publish.

First Amendment Center Founder John Seigenthaler and Executive Director Kenneth A. Paulson met at The Freedom Forum World Center with each group of newspaper professionals attending the Reston, Va.-based American Press Institute. In 28 sessions funded by a five-year, \$1 million grant from The Freedom Forum, API participants were quizzed on their knowledge of the history and meaning of the First Amendment.

The editorial, advertising and circulation executives then discussed the challenges they faced at their newspapers and the latest First Amendment controversies in the news.

One of the biggest controversies over free expression in 2000 was the debate over the lingering use of the Confederate battle flag by some state governments. In South Carolina, protests erupted as the flag flew over the Statehouse and later on its grounds.

In February the First Amendment Center convened a panel of First Amendment scholars and advocates from both sides of the issue to talk about the practice and the implications for free expression.

Other First Amendment programs in 2000 included:

- Justice and Journalism: Access and accuracy topped the list of participants' concerns as journalists and



The Atlanta Constitution's Cynthia Tucker talks about the Confederate flag controversy.

federal judges exchanged views on how to break down barriers of misunderstanding and improve communications between the two groups.

- Partnership with the National Archives and Records Administration: The first in a series of First Amendment programs was held in September to celebrate the U.S. Constitution's 213th birthday.
- Technology programs: Adam Clayton Powell III, Freedom Forum vice president/technology and programs, convened discussions in the United States and around the world — most notably in Beijing — on free expression in cyberspace.

RELIGIOUS-LIBERTY GUIDELINES

reach every U.S. public school

The First Amendment Center's religious-freedom programs focus on America's schools — the institutions charged with inculcating civic principles and ideals in each generation.

In 2000 the center advanced the cause of religious liberty in schools and communities through these and other programs:

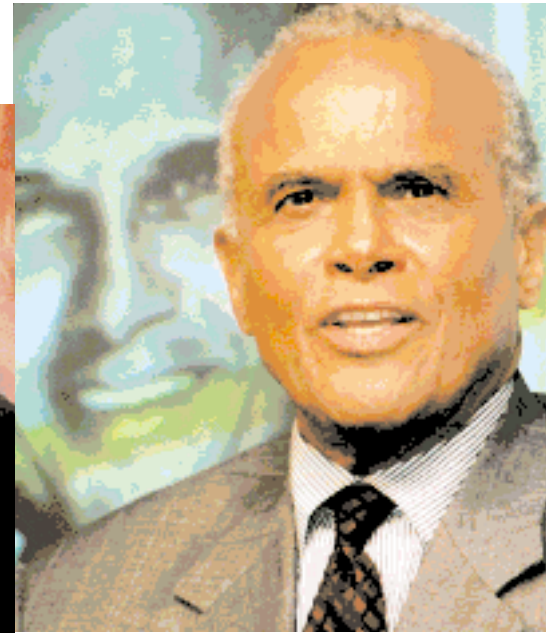
- Three First Amendment Center guides on religious liberty and public education, mailed by the U.S. Department of Education to every public school principal in the country.
- A series of leadership institutes for state education officials.
- Training for "gatekeepers" involved in religious-liberty issues, ranging from members of the Utah Legislature to multicultural education leaders in New York City.
- A conference for teachers who teach Bible courses in Southern states. Center staff also worked with school districts in various parts of the nation that have struggled with conflicts over Bible instruction.
- Partnerships with organizations such as the American Assembly at Columbia University and the National Bible Association. The center joined with the Council on Islamic Education to pro-

duce the first study of how national and state social-studies standards treat religion.

The First Amendment Center has become widely recognized as a fulcrum for helping schools and communities move from battleground to common ground on religious-liberty issues. The foundation has been laid for putting in place policies and practices that reflect a shared vision of religious freedom that will enable future generations of Americans to live with even the deepest of differences.

CONCERTS, AWARDS

celebrate power of artistic expression



Lest anyone doubt that songs can still shock the conscience, move the spirit and rattle the powerful, Bruce Springsteen and Greg Trooper have proved it anew.

Rock star Springsteen penned a song about the 1999 shooting of West African immigrant Amadou Diallo by four New York City police officers. And Trooper, a Nashville singer/songwriter, passionately performed “American Skin (41 Shots)” for two audiences gathered in Tennessee’s capital city to celebrate the power of music and the vitality of the First Amendment.

Trooper’s rendition of the song, in which the mantra-like lyric “41 shots” refers to the number of times police shot Diallo, was a highlight of the second annual “Freedom Sings” concert at Nashville’s Bluebird Cafe.

The July 25 concert, sponsored by the First Amendment Center to raise awareness of the connection between music and the First Amendment, included more than two dozen singers and musicians donating their time to perform songs that, in the words of Executive Director Kenneth A. Paulson, “had been banned by government, censored by radio or simply took a lot of courage to perform.”

Some songs raised the ire of lawmakers, even recently. Joy White, a key player in the alternative

country music scene, coursed through the long and complex “Living in the Wasteland of the Free” by Iris DeMent. DeMent’s recording of that song, which skewers everything from the campaign-finance system to executive pay, became a favorite of a Florida public radio station. A Florida legislator nearly succeeded in getting \$104,000 of the station’s state funding rescinded over the playing of the song.

Other “Freedom Sings” songs, like the Rolling Stones’ “Let’s Spend the Night Together,” performed by Duane Jarvis, got on 1960s television and radio only if some of the lyrics were toned down. (Mick Jagger sang “let’s spend some time together” on CBS and winked at the camera.)

Still others reminded listeners of the fever pitch of paranoia reached in the ’60s among some politicians who seemed to find illicit references even when none were there. Steve Forbert delivered a tender “Puff the Magic Dragon,” and 1970s pop star Andrew Gold offered up the Beatles’ “Lucy in the Sky With Diamonds.” Both songs — written for or inspired by children — were suspected of references to drugs.

The First Amendment Center also celebrated free expression in filmmaking when it awarded the second annual Freedom in Film Award to actor Harry Belafonte in August.

Belafonte, who is known as a free-expression advo-

AND TV SHOWS



From left: actor Ossie Davis and the First Amendment Center's Kenneth A. Paulson; actor Harry Belafonte; musician Steve Forbert; singer Aashid Himmons; the music group Swan Dive.

cate, said film has the power to change the world for good, but he noted that it also can inflict great harm.

The film industry is “perhaps the greatest force and the greatest power on earth, but it has done so many terrible things that it has yet to be held accountable for,” he said. “The impunity with which it exists, I think, has caused us a lot of problems and a lot of difficulty.”

The first step to holding the film industry accountable for the ways in which it has negatively affected culture, Belafonte said, would be to create a platform for “moral debate on what is being done under the banner of (the) First Amendment at the expense and the destruction of social development.”

The First Amendment Center began offering a new forum for such debates with the July debut of “Speaking Freely,” a television program on New York’s MetroArts/Thirteen, an arts-oriented cable channel operated by WNET, the PBS station in New York City. Hosted by Paulson, the program is a weekly conversation about the First Amendment, the arts and American culture.

Guests included singer David Crosby, actor Ossie Davis, actress Jane Alexander, artist Andres Serrano, performance artist Holly Hughes and singer-songwriter Janis Ian.

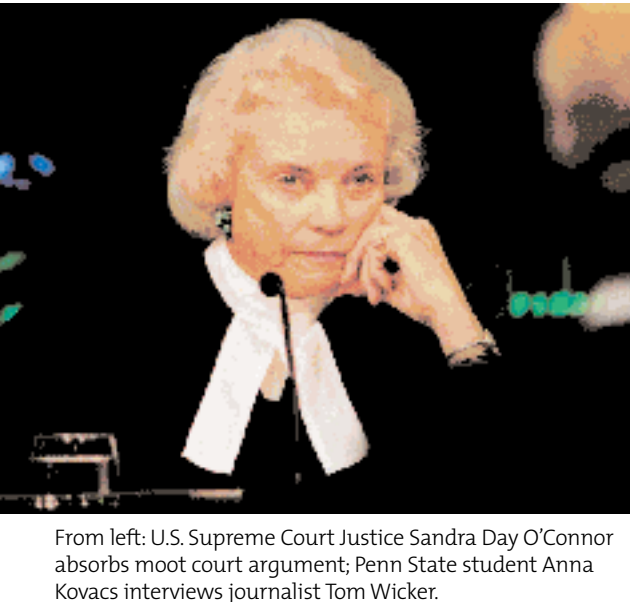
Ian said she considers herself a staunch supporter of First Amendment rights, in large part because of her early experiences. Ian encountered censorship in 1966 when she had her first major hit, “Society’s Child,” a song about interracial dating. She described it during the “Speaking Freely” program as “Black boy meets white girl, and nobody likes it.”

During performances of “Society’s Child,” some in the audience “would start screaming, ‘Kill the nigger lover!’ and try to drive me off the stage. My assumption became that sooner or later I was going to die on stage, that sooner or later one of these people would bring a shotgun.”

Censorship today is “more subtle,” Ian said. “In the music business, we don’t have censorship per se. But what we have is a search for the lowest common denominator,” the music that is easiest to sell to the largest number of people.

Ian steadfastly defended other controversial performers, including radio host Howard Stern.

“Without free speech, this country is no different from any dictatorship,” she said. “Part of our responsibility is to make sure that Howard Stern, as despicable as you may find him, gets the opportunity to talk locker-room trash on the air. I don’t like it. But I defend it.”



From left: U.S. Supreme Court Justice Sandra Day O'Connor absorbs moot court argument; Penn State student Anna Kovacs interviews journalist Tom Wicker.

ON COLLEGE CAMPUSES

Conferences, competitions spark interest in free-expression issues

The First Amendment Center took its message of the necessity of the First Amendment to college campuses in 2000.

"In many ways there are a lot more threats today and a disturbing lack of appreciation and support among the highest levels of college and university administrators for the whole notion of free expression and press freedom on campus," Mark Goodman, executive director of the Student Press Law Center, said during a First Amendment Festival at Penn State University.

Co-sponsored with Penn State's College of Communications, the festival was designed to raise students' awareness of free expression. About 1,500 students participated in the Oct. 2-3 festival. About 1,100 students attended a similar festival at the University of North Carolina on March 30-31.

Free speech has been a hotly discussed topic at Penn State. In 1999 five students were arrested after protesting the National Governors' Association's closed meetings on campus. The students hung a banner from the balcony of a building across the street from the meeting site and were arrested after they refused to remove it.

Criminal charges were eventually dropped, but the students were disciplined by the university.

At UNC, the festival included a concert, panel discussions and a banned-books exhibit. The programs featured notable names in music, education, law, literature and journalism, including recording artist Bill Lloyd, artist Herman Brannen, former *Philadelphia Daily News* senior editor Chuck Stone and Pulitzer Prize-winning journalist Horace Carter.

While 2000 was the first year for the First

Amendment Festivals, it was the 10th year for the National First Amendment Moot Court Competition, co-sponsored by the Vanderbilt University School of Law.

The competition, held March 17-18, featured law students from 41 schools. They argued the fictitious case of *Flanders v. Mayhem Entertainment* that hinged on whether the First Amendment shields manufacturers of a violent video game marketed to children from civil liability in the shooting of a teacher by an 11-year-old student.

Teams from the University of San Diego School of Law and the South Texas College of Law were the finalists. The team from San Diego was declared the winner after both faced tough questioning from a bench that included U.S. Supreme Court Justice Sandra Day O'Connor.

O'Connor praised the competitors for their performance. "Each one of you performed extremely well, and it was indeed hard for the judges to declare a winner," she said. "Your performances are a hopeful sign for future advocacy."

Several of the competitors said the experience gave them a greater understanding of and appreciation for the First Amendment.

First Amendment Center Founder John Seigenthaler said that furthering such understanding and appreciation was one of the primary purposes behind the competition.

"It is sad but true that in many of the nation's top law schools, First Amendment law is not a subject that gets much attention in the classroom. At the same time, it is getting substantial attention in the nation's courtrooms," he said.

IN HIGH SCHOOLS

Awards bestowed for protecting students' rights



The First Amendment Center's Paul K. McMasters meets students from award-winning McLean High School.

Nine U.S. public high schools received the First Amendment High Schools 2000 award, a new program that honors public high schools for respecting and protecting First Amendment rights for students and teachers.

The winners were chosen on the basis of issues such as protecting textbooks and library books from censorship, allowing students or teachers to decline to stand or recite the Pledge of Allegiance, and championing students' artistic expression. In the final analysis, the issue of whether students had editorial rights over their media was pivotal.

Every U.S. public high school was invited to qualify. The winners were selected from among more than 200 schools that replied to a first-round questionnaire. They were:

- Davenport (Iowa) Central High School. The principal, students and student-newspaper adviser won unfiltered Internet access in the journalism classroom and media center.
- Johnsburg High School, McHenry, Ill. The school's policy manual specifies that control over the weekly student newspaper rests with the board of student editors. Johnsburg has been a driving force behind proposed Illinois legislation guaranteeing students control of their media.
- Lakewood (Ohio) High School. Students' right to free expression has been a tradition there since 1921. The student newspaper is declared an open forum to ensure First Amendment rights. Lakewood also provides faculty training on religious rights in the school environment.
- McLean (Va.) High School. It practices under the Fairfax County policy that "student publications operate under an open forum philosophy whereby a 'marketplace of ideas' exists."
- Mountlake Terrace (Wash.) High School. Students have the final say on what they publish in their newspaper, which also serves the surrounding community.
- Muncie (Ind.) Central High School. The newspaper adviser and students spent years fighting a controlling, adversarial school administration. Today they operate with freedom under new administrators who support and encourage enterprising student reporters and editors.
- Natrona County High School, Casper, Wyo. The school has protected students' decision-making power over their publications and has published clearly worded "Policies and Checklists" that cover everything from conflicts of interest to diversity.
- Oak Park High School, Kansas City, Mo. It is one of the few schools that sponsor journalism internships for students. Students also have the final say on what they publish in their newspaper and yearbook.
- Townsend Harris High School, Flushing, N.Y. The school teaches religion as literature and history, and encourages students to express their beliefs through class discussion, dress and participation in multicultural activities.

This was the first year of the program. There is no limit on the number of schools that will be recognized each year.