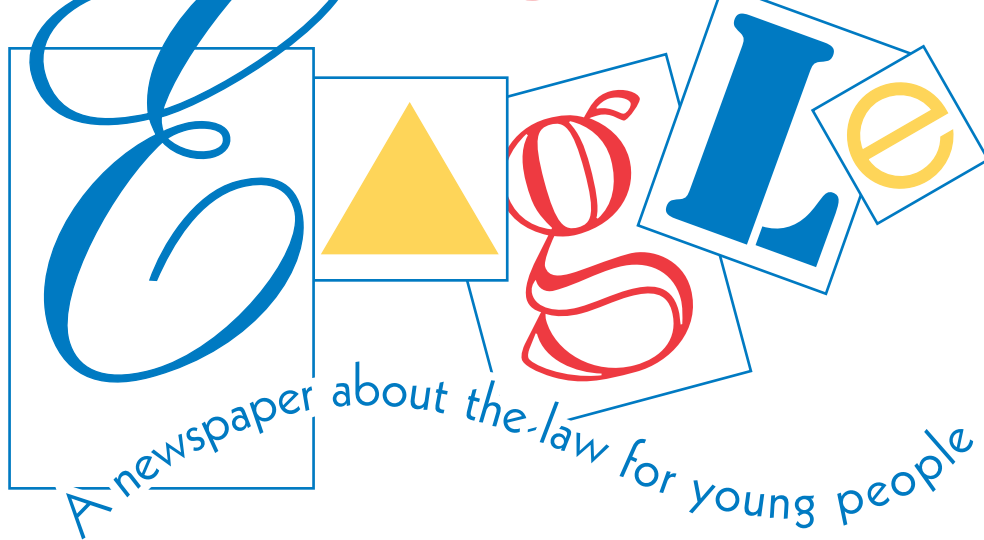


THE LEGAL



SPRING 2004

A Burning Question: Protect the Flag or the U.S. Constitution?

by Roberta K. Glassner, Esq. and Jodi L. Miller

Old Glory, the Stars and Stripes — the American flag has many names and some groups think burning it should be a crime. Others see the burning of our flag as a right protected under the First Amendment to the U.S. Constitution.

The United States Congress is now considering, for the fifth time, a proposal to amend the U.S. Constitution giving “Congress the power to prohibit the physical **desecration** of the flag of the United States.” This measure was



introduced and approved in the U.S. House of Representatives in 1995, 1997, 1999, 2001 and most recently in 2003. While the House has approved the amendment all five times by an overwhelming majority, the U.S. Senate has not. The last time an amendment was considered in 2000, the measure fell short of the two-thirds majority needed by only four votes.

What sparked this controversy?

Two rulings by the U.S. Supreme Court set the path of the Flag Protection Amendment in motion. In 1984, a man named Gregory Lee Johnson marched through the city streets of Dallas during the Republican National Convention as part of a political protest. When the marchers reached the Republican Convention Center, they stopped so that Johnson could set the American flag he was carrying on fire. No one was physically injured, but many of the onlookers were seriously offended by the burning of the flag.

Under Texas law, anyone who desecrated the American flag — whether by burning or any other form of disrespect — committed a criminal act. Johnson was charged with the crime of flag burning and found guilty in a Texas court.

Johnson’s lawyer **appealed** his **conviction** to the Texas Court of Appeals, arguing that Johnson’s burning of the flag was his way of expressing his opposition to the Republican Party. His lawyer

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Can Good Sportsmanship Be Legislated?

by Dale Frost Stillman

Knute Rockne, arguably one of the greatest college football coaches of all time, once said, “One man practicing good sportsmanship is far better than 50 others preaching it.”

While today’s youthful amateur athletes may practice this sentiment, it seems their parents and coaches don’t always adhere to the same standard. Sports rage, as the relatively new but growing phenomenon has come to be called, is on the rise, especially among parents whose children are involved in competitive sports.

Last summer, Nicola Antuofermo was arrested after he allegedly punched an umpire while coaching his 10-year-old son’s all-star baseball game in Hazlet. His son, the catcher, was struck on the head with a bat by a hitter on the opposing team as he completed his swing. According to an article in *The New York Times*, Antuofermo ran out to see if his son was all right, but the umpire would not stop the game “because the batted ball was fair and the play that the hit had set in motion was not completed.” An argument then ensued. Witness accounts differ

about whether a punch was thrown, but a Monmouth County grand jury charged Antuofermo with assaulting the umpire.

Under a new law in New Jersey, an altercation like the one between Antuofermo and the umpire is now considered aggravated assault because it occurred during a school or town-sponsored athletic event and was witnessed by children under the age of 16. Before this law, the incident would have been classified as simple assault.

Simple assault can be classified as a disorderly persons offense, carrying a penalty of six months in jail, a \$1,000 fine or both, or a petty disorderly persons offense, which can carry a penalty of 30 days in jail and a \$500 fine.

Aggravated assault is a crime of the fourth degree and is punishable by up to 18 months imprisonment, a fine of up to \$10,000, or both. Assemblyman Gary Gear of Hamilton and Assemblyman Robert Smith of Turnersville, sponsored the bill. Explaining his reason for proposing the legislation, Assemblyman Gear said in an article he wrote for the *Sentinel*, “Outbreaks at youth sporting events have become widespread and seem to happen without provocation. Parents need to use more restraint in front of



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Dissection: Getting to the Heart of the Matter

by Cheryl Baisden

What would happen if you went to school and told your teacher you didn’t want to do the assignment that day? In most cases you would find yourself being sent to the principal’s office or receiving an F for the assignment. But if the New Jersey Legislature passes a proposed law, students will be able to refuse to complete a class assignment without getting into trouble.

The schoolwork you could refuse to do involves dissecting an animal, and it is something just about every New Jersey student is

asked to do in science class. But refusing to participate in the assignment won’t mean you can spend the time just hanging out with your friends while your classmates cut open a frog and explore how its heart and lungs work. Instead, the teacher will give you an alternative assignment that will teach you the same lessons as your classmates.

“There are a lot of options they can use instead of

dissecting an animal,” said Sandra Reynolds, an animal rights lawyer. “They can use a three-dimensional model of a frog that looks very real or they can use computer-generated images to understand animal biology. These teach you everything dissecting an

animal does, and no animals have to die in the process.”

A student interested in animal biology, who was upset about animals being killed only to be dissected, brought the concern to New Jersey



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maintained that flag burning is an act of free speech protected by the First Amendment to the U.S. Constitution.

The Texas Court of Appeals agreed. It held that although flag burning is not actually speech, it is a form of expression and, as such, has the same First Amendment protection as the spoken word. The Court of Appeals found the Texas law criminalizing desecration of the American flag unconstitutional and Johnson's conviction was **reversed**. The State of Texas took the case to the U.S. Supreme Court. In *Texas v. Johnson*, the Court **upheld** the decision made by the Texas Court of Appeals, holding that flag burning was a form of expression and that free expression may not be prohibited on the basis that it is offensive or disrespectful.

Congress Reacts

After the *Johnson* case was decided, the U.S. Congress reacted by passing the Flag Protection Act in 1989. The Act criminalized the conduct of anyone who "knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon" a United States flag. Shortly after the Congressional Act was passed, another protest group set fire to several American flags on the steps of the U.S. Capitol Building. The flag burners were prosecuted for violating the Flag Protection Act in the case known as *U.S. v. Eichman*.

Like Johnson's case before it, the U.S. Supreme Court heard the *Eichman* case in 1990 with essentially the same result. The Court ruled that the Flag Protection Act was unconstitutional and **dismissed** the charges against the flag burners. Again, the Court held that under First Amendment protection of free speech, the government may not prohibit the verbal or nonverbal expression of an idea merely because society finds the idea offensive or disagreeable, even where our flag is concerned.

Taking sides

Leading the fight for the proposed Flag Protection Amendment is the Citizens Flag Alliance, a non-profit, **nonpartisan** organization whose only purpose is to see the passage of this amendment. On the other side of the issue is the People for the American Way, a 20-year old nonprofit organization that advocates to protect or restore the civil liberties of American citizens.

In its literature, the Citizens Flag Alliance cites a letter to Congress that General H. Norman Schwarzkopf, the retired general who rose to fame as Commander of Operation Desert Storm in 1991, wrote giving his support to the proposed amendment.

"[The flag] represents our basic commitment to each other and to our country. Legally sanctioned flag desecration can only serve to further undermine this national unity and identity that must be preserved," Gen. Schwarzkopf wrote. "I am proud to lend my voice to those of a vast majority of Americans who support returning legal protections for the flag. The flag protection constitutional amendment is the only means of returning to the people the right to protect their flag."

In its corner, the People for the American Way cite a letter that General Colin L. Powell, who now serves as the country's Secretary of State, wrote to Congress in 2000.

"We are rightfully outraged when anyone attacks or desecrates our flag. Few Americans do such things and when they do they are subject to the rightful condemnation of their fellow citizens. They may be destroying a piece of cloth, but they do no damage to our system of freedom, which tolerates such desecration... I would not amend the great shield of democracy to hammer a few **miscreants**. The flag will still be flying proudly long after they have slunk away," Gen. Powell wrote.

Free speech or criminal act?

One of the key issues in the Flag Protection Amendment debate is whether or not the burning of a flag can be considered free speech and, therefore, would be protected under the First Amendment. Constitutional law attorney Gerard L. DelTufo Jr. of Matawan contends that a statement does not need to be verbal.

"You can speak without saying a word," DelTufo said. "The burning of a flag is a statement. You are saying that you are very upset with your country."

On the other hand, while DelTufo believes that burning a flag is free speech, he acknowledges that because the flag is considered a sacred symbol, someone could argue that burning it could have the effect of starting a riot. Freedom of speech, he says, is qualified as a right as long as it does not cause a danger to the public, which the government has a duty to protect.

Representative Randy "Duke" Cunningham of California, who is one of the sponsors of the Flag Protection Amendment in the House, disagrees with the free speech argument and told *The Seattle-Post Intelligencer*, "There are 10,000 ways you can express yourself. You don't need to desecrate the flag."

Is an amendment needed?

The Seattle-Post Intelligencer reports that 80 percent of

Americans are supportive of the proposed Flag Protection Amendment and all 50 states have some sort of law penalizing flag desecration. According to New Jersey Assistant Attorney General Boris Moczula, in New Jersey the burning of the American flag could be prosecuted under the law prohibiting the desecration of venerated or respected objects. This crime would be considered a disorderly persons offense and carry a penalty of six months in prison and up to a \$1,000 fine. Moczula noted that commentators have stated, "penalizing the desecration of symbols in certain cases may raise constitutional issues."

Even the Citizens Flag Alliance acknowledges on its Web site that to prosecute flag desecration cases is unconstitutional as a result of the U.S. Supreme Court rulings, which is why the organization is pursuing a constitutional amendment. It also concedes that flag burning is not a widespread problem in our society but takes the position that "if you are going to desecrate our flag, you shouldn't be able to do it with **impunity**."

Congressional testimony

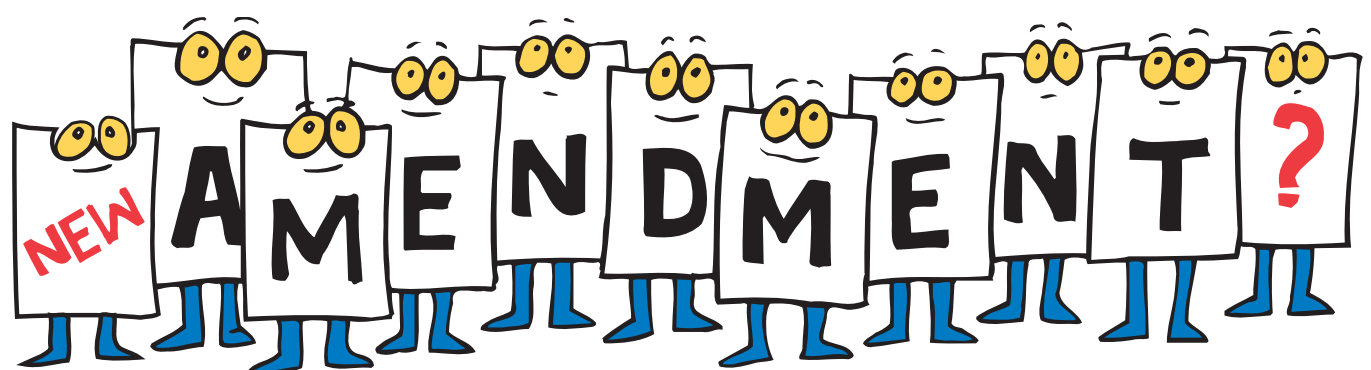
The Senate Judiciary Committee held a hearing in March to consider the Flag Protection Amendment. Gary May, a Vietnam War veteran, is one of many who testified during the hearings.

"Preservation of the freedom of **dissent**—even if it means using revered icons of this democracy—is what helps me understand losing my legs," May told the committee. "Free expression, especially the right to dissent with the policies of the government, is one important element — if not the cornerstone — of the democracy that has greatly enhanced our country's stability, prosperity and strength," he said.

As evidenced by the opposing views of Generals Schwarzkopf and Powell, support for the amendment from veterans groups and those currently serving in the military has been mixed. Some, like May, are opposed while others passionately offer their support for the amendment. One such supporter, Major General Patrick Brady, testified before the House Judiciary Subcommittee on the Constitution in 2003. He told the committee that he worries about what the act of flag burning teaches.

"Burning the flag is wrong, but what it teaches is worse," General Brady testified. "It teaches that the outrageous conduct of a minority is more important than the will of the majority. It teaches that our laws need not reflect our values and it

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Good Sportsmanship CONTINUED FROM PAGE 1

their children and understand the seriousness of their violent and inappropriate behavior around youths.”

In the article, Assemblyman Guear said he can understand a parent’s frustration when a game official “makes a bad call or a coach does not use a child in a ball game.” Nevertheless, he contends that parents and spectators “have a duty to act maturely and responsibly in front of the children who are engaged in competition.”

In January 2003, Adrien Thomas, coach of the Wall Eagles, a youth hockey team, was the first person charged under the tough new law, according to *The Home News Tribune*. The incident in question had nothing to do with the play on the ice and instead involved an altercation with Thomas’ father and a parent of one of the team members. When Thomas intervened, the confrontation became physical and the police were called. Thomas later pleaded guilty to a disorderly persons offense and was fined \$750 in addition to being relieved of his coaching duties.

Is that necessary?

Another law intended to curb sports rage incidents, which Assemblyman Guear talked about in his article, bars abusive or unruly spectators from events.

As a condition for reinstatement to sporting events, the law also mandates 12 hours of anger management counseling for offenders.

School boards and youth athletic organizations can establish codes of conduct for “participating athletes, coaches, game officials, and parents,” the assemblyman said. The purpose of these codes of conduct, according to Assemblyman Guear, is to “ensure that adults set appropriate examples for children.”

Assemblyman Michael Patrick Carroll does not believe that a code of conduct law is necessary and was one of only four legislators who voted against the bill.

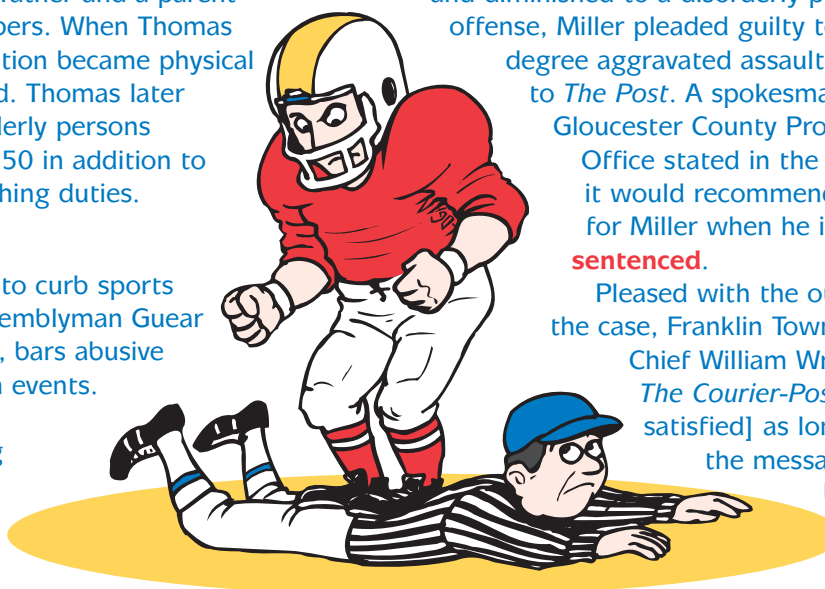
“Existing criminal laws provide adequate protection against idiocy,” Assemblyman Carroll said.

Admitting that he doesn’t see the benefit of counseling, Assemblyman Carroll doesn’t believe it should be a mandatory part of punishment for offenders. Sports leagues “can and should set their own policies,” the assemblyman contends and “need not be prodded by the state.”

Sports rage in New Jersey

A recent report in *The Star-Ledger* of seven New Jersey parents who were charged with disorderly persons offenses in an incident that occurred at a youth hockey arena in Clifton Park, New York illustrates how sports rage-related incidents can get out of hand. Again, the episode had less to do with the hockey play on the ice and more to do with conflicting personalities in the stands.

Unfortunately, New Jersey has a history of sports rage-related incidents. In October 2003, two coaches for Franklin Township’s Delsea Knights midget football team in Gloucester County were also charged with fourth degree aggravated assault under New Jersey’s new sports violence law. According to an article in *The Courier-Post*, John Miller, a coach for the Delsea A-team, and Ray Bodine, a coach for the B-team, came to blows during an argument when Miller informed Bodine that his son was not going to play wingback for the team. Bodine ended up hospitalized for four days after the altercation, and Miller lost some teeth and suffered temporarily impaired vision. While Bodine’s case was **remanded** to municipal court and diminished to a disorderly persons offense, Miller pleaded guilty to fourth-degree aggravated assault, according to *The Post*. A spokesman for the Gloucester County Prosecutor’s Office stated in the article that it would recommend **probation** for Miller when he is **sentenced**.



Pleased with the outcome of the case, Franklin Township Police Chief William Wright told *The Courier-Post*, “[I’m satisfied] as long as the message has been duly delivered that this type of behavior will not be tolerated, not just in Franklin Township, but in any youth sports.”

Sports rage turns deadly

New Jersey is not alone in engaging in sports rage-related events. In 2000, Massachusetts made national headlines when a father, Thomas Junta, punched his 10-year-old son’s hockey coach into unconscious. The coach died two days later, and Junta was sentenced to six to ten years for **involuntary manslaughter**. Ironically, the fight started over the level of violence on the ice.

More recently, in Melrose, Massachusetts, assistant hockey coach Paul Johnson reportedly ripped a referee’s shirt as he passed him on the ice. Johnson was upset at what he thought was a bad call made by the referee, according to *The Boston Globe*. While the referee declined to press charges, the Massachusetts Hockey Association, the organization that governs youth hockey games for the state, banned Johnson from coaching for life.

Keeping sports rage in check in New Jersey schools

Some New Jersey schools don’t worry so much about the growing sports rage trend. Cindy Wyatt, athletic director at the Wardlaw Hartridge School in Edison, is proud that her school was awarded the Thomas Wachenfeld Sportsmanship Award for the 2000–2001

basketball season. Wyatt contends that “the disruptions we have are minimal, and we are very fortunate to have well behaved students and parents.”

Mike Rich, district director of athletics for the Franklin Township Public School District in Somerset County, laid the groundwork for good sportsmanship eight or ten years ago, long before a bill on the matter had been proposed. Rich established “pre-season meetings with the parents of team members.” Run by the coaches, these meetings inform parents what is expected of them in terms of team support and acceptable behavior at particular events. Rich, who has been an athletic director in New Jersey for 17 years, says he looks at an athletic event in the same way he would an English classroom. In other words, the behavior should be the same.

“Kids can get excited about certain subjects, just like in sports, but inappropriate language is not acceptable and needs to be confronted,” contends Rich.

If the offender is a student at a sporting event, Rich likes to talk to the person one on one.

“I’ll walk with the student away from the crowd, and remind him that the way he was acting was inappropriate,” Rich says. “This can solve the problem without letting it get out of hand.”

Rich maintains that his standing near a parent who is being inappropriate is often enough deterrent. Over the years Mike Rich has learned there is no one answer for each problem, or as he says, “no one glove fits every person.”

Franklin High School also has an announcer at every sporting event promoting good sportsmanship. The following announcement, or one very similar, is read aloud before each game: “Welcome to today’s competition. Your paid or complimentary admission to this event entitles you to enjoy an exhibition of skills developed by the students in an educational setting. Please give these students your positive encouragement and support. Booing, taunting or intimidating the officials or opponents is unfriendly and unacceptable.”

Rich believes that letting the spectators know what is expected of them before each event helps with crowd control. Although police are present at certain sporting events at Franklin High School, Rich stated that they have never been summoned to a sporting event to control unruly behavior.

Whether a school or township has experienced unruly behavior from parents or other spectators, and whether you agree with Assemblyman Guear or Assemblyman Carroll about the necessity of sports violence laws, New Jersey now ensures that poor behavior is punishable. There is a printed message to Franklin High School fans on the inside of their sports schedule stating something most spectators can agree on: “Be courteous, be enthusiastic, be fair, be a good sport, be a good fan. Enjoy the game. Let the athletes play the game, the coaches coach and the officials officiate.”

A Burning Question CONTINUED FROM PAGE 2

teaches disrespect for the values embedded in our Constitution as embodied by our flag.”

DeTufo thinks that by denying people the right to speak, however distasteful that speech may be, it gives those people undue attention.

“You have to let evil people speak because if you don’t, you give them life,” DeTufo said. “Good will always conquer evil and the majority of the people

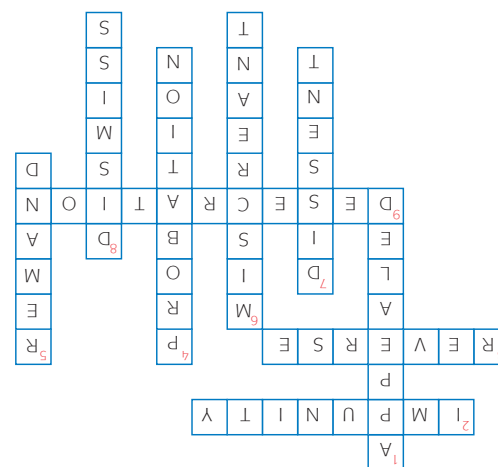
will always make up their own minds and come to the right conclusion,” he said.

Where the amendment stands

The U.S. Constitution has only been amended 17 times since the Bill of Rights was ratified in 1791 and it is a long process to do so. In order for the Flag Protection Amendment to pass and become an amendment to the U.S. Constitution, both the

House and Senate would need to approve the measure by a two-thirds majority vote. The House has given its approval; at press time, the Senate had not. If the Senate did approve the amendment, the measure would then be voted on by each state legislature and three-fourths of the states would need to approve it for the amendment to pass.

CROSSWORD PUZZLE SOLUTION



Senator Joseph Suliga's attention. The senator drafted the bill that is being considered by the Legislature. The bill's sponsor in the New Jersey Assembly is Assemblyman Wilfredo Caraballo.

"Since we introduced the bill my office has received a lot of letters from students who don't want to dissect animals," said Caraballo. "It can be very upsetting to some kids, and that's why we want to change the law."

Right now under New Jersey law the only way a student can refuse to participate in a dissecting assignment without receiving a failing grade is if their religious beliefs would be violated if they took part in the project. The First Amendment to the U.S. Constitution guarantees freedom of religion, but Caraballo noted that if a school district pursues the issue, even a student who has a religious basis for his or her refusal may need to prove it in court.

Dissection refusal laws have already been passed in Illinois, Florida, California, Pennsylvania, New York, Rhode Island, Maine, Louisiana and Maryland, according to the Humane Society of the United States, an animal rights group. In addition to New Jersey, Massachusetts, New Hampshire, Delaware and Vermont are considering laws that would give students the right to refuse to dissect animals in school.

A similar law to the one being proposed in New Jersey recently passed both the Virginia Senate and Assembly and is now being considered by Virginia's governor. Creating much heated debate, Virginia Senate Minority Leader Richard L. Saslaw called the bill a "bad case of political correctness."

"We are on our way to becoming a nation of wimps," Senator Saslaw told *The Virginian Pilot*. "It's just a frog, for crying out loud."

Martin L. Stephens of the Humane Society disagrees and claims that computer study is potentially more effective for students than actual dissections.

Colleges offer animal-friendly course study

The decision to give students the right to refuse dissection spread to colleges last year, when the University of Illinois passed a policy, also similar to the one New Jersey is considering. The May 2003 decision makes the University of Illinois the first major U.S. university to pass a dissection refusal rule.

Many veterinarian schools, and medical schools like Harvard, Yale and Robert Wood Johnson in New Jersey, also have programs that include no live animal dissections, according to Students Improving the Lives of Animals, the group that fought for the dissection refusal rule at the University of Illinois.

Taking things a step further, a new veterinary school at Western University in Pomona, California practices "no harm" medicine.



According to an article in *The Los Angeles Times*, the veterinary program at Western will only use animals that have died of natural causes or been

put to sleep by their owners and donated to the university. It is common for veterinary schools to purchase live animals in order for students to perform surgeries, the article said.

"I don't know that I could dissect an animal knowing that it was killed for that purpose," Rebecca Merlo, a student at Western's veterinary school, told *The Los Angeles Times*. "I'm glad I don't have to be a part of that."

While the students may be relieved, some seasoned veterinarians are concerned that the students are being deprived of valuable surgical experience.

Jack Walther, president of the American Veterinary Medical Association, told *The Times*, "From my own personal perspective, there is a certain necessity to doing some procedures on a warm body, if you will. It's just the reality of learning medicine," he said.

For Reynolds, the fact that veterinary school students have

the option not to dissect live animals but New Jersey's high school students do not is ludicrous.


"It doesn't make sense to me that veterinary school students don't have to dissect live animals but New Jersey's students in high school and younger are forced to," said Reynolds. "The number of animals that are killed for dissection purposes is horrifying, and it just doesn't have to be that way."

Where the New Jersey bills stands

According to the Humane Society, every year an estimated six million animals are dissected in high schools around the country, including frogs, fetal pigs, cats, rabbits, turtles and sharks. Many of them are taken from the wild and killed to supply the schools, while others come from animal shelters.

To take the place of live animal dissections, the Humane Society offers schools free computer programs, models and other material, which Reynolds said would be good alternatives to live animal dissection if the New Jersey Legislature passes the right to refuse law.

The original bill that Senator Suliga wrote was approved by the state Senate but died in the state Assembly when the prior legislative session ended in January. The bill has since been re-introduced by Assemblyman Caraballo for the current session and has been referred again to the Assembly Education Committee for consideration.

"There really is no reason why anyone should be opposed to this legislation," said Assemblyman Caraballo. "We're not saying that kids can't participate in dissecting in class, or that dissecting an animal doesn't teach something useful to kids. We're saying that kids who don't want to participate shouldn't be forced to against their will," he explained. "It just doesn't make sense. Today there are far too many other ways that kids can learn these lessons without having to actually dissect an animal and they should have a right to make that choice." 



appealed — when a decision from a lower court is reviewed by a higher court.

conviction — the result of a criminal trial where the accused or defendant is found guilty by a reasonable doubt.

desecration — the act of damaging an object for the purpose of getting a reaction.

dismiss — to terminate an action or lawsuit without further consideration.

dissent — to disagree with the majority.

impunity — freedom from punishment or consequences.

involuntary manslaughter — when someone accidentally kills another person.

miscreant — someone who does something evil.

nonpartisan — not adhering to any established political group or party.

probation — a non-jail sentence that judges can impose on someone who has been convicted of a crime.

remand — to send a case back to a lower court.

reverse — to void or change a decision by a lower court.

sentenced — to be punished by a judge in a criminal proceeding.

upheld — supported; kept the same.

CROSSWORD PUZZLE

ACROSS

- 2 freedom from punishment or consequences.
- 3 to void or change a decision by a lower court.
- 9 the act of damaging an object for the purpose of getting a reaction.

DOWN

- 1 when a decision from a lower court is reviewed by a higher court.
- 4 a non-jail sentence that judges can impose on someone who has been convicted of a crime.
- 5 to send a case back to a lower court.
- 6 someone who does something evil.
- 7 to disagree with the majority.
- 8 to terminate an action or lawsuit without further consideration.

PUZZLE

