

Brief defends intervisitation policy

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Government Editor

(Editor's note: This is the third of a four-part series dealing with the intervisitation suit now before the state supreme court.)

In the intervisitation suit now before the New Mexico Supreme Court, an answer brief has been filed by Ray O. Sage of Darden, Sage, and Darden university attorneys.

The attorneys are representing the members of the NMSU Board of Regents, Richard Pesqueira, vice president for student affairs, and NMSU.

Reasons for the regent's regulation prohibiting intervisitation include the

prevention of fornication, limitation of venereal disease, maintenance of order, prevention of student pregnancies, prevention of burglary and vandalism, limiting the use of drugs and alcohol, protection of privacy and the prevention of rape and other sexual

Regulation protects

peace, health, safety,

morals and welfare'

offenses, the brief says.

These objectives give reason and validity to the anti-visitation regulation, according to the brief.

The regulation simply limits visitations in dormitory rooms by

members of the opposite sex and does not violate the students' right of association, the brief says.

"To carry the student's argument to its logical and inevitable conclusion, the regents have no power to prohibit male and female students from associating together anywhere on campus. May males enter female restrooms to associate with females? May female students enter the dressing rooms of the football team to associate with male players?"

"The line must be drawn somewhere. Exactly where is a matter of judgment and discretion. The regents have chosen to draw the line at the dormitory bedroom door.

"Generally accepted standards of conduct' still do not include mixing males and females together in private bedrooms, at least not in the opinion of the New Mexico Legislature, which has made it a misdemeanor for any sheriff, jailer or guard to keep male and female prisoners in the same cell or room, unless they are man and wife. If the intervisitation regulation of the

'Allowing boys and girls to meet in dorm rooms will make fornication easier'

regents violates the students' right of association, why does this statute not violate the rights of association of the prisoners?" the brief adds.

The anti-visitation regulation protects the students' right of privacy, and does not violate the state constitution, the brief says.

A female who elects to "do what comes naturally," with her boyfriend in her dorm invades her roommate's privacy.

"She must either remain as a spectator or be disposed for the night to seek lodging elsewhere.

"The student's attempt to equate their dormitory rooms to a private home. It is obvious the two are not the same. The regents have the duty (and must have the corresponding

power) to provide a safe place for the students to live.

"This court is not asked to protect the right of privacy of married couples in their own homes to preserve the sanctity of marriage. Quite the contrary. This court is asked to order the regents to provide a place and opportunity, on state property, to engage in illicit fornication," the brief says.

"The regulation here challenged seeks to protect the peace, health, safety, morals, and general welfare of those students at NMSU who reside in dormitories on campus. All students must have a place suitable for study, without distractions caused by loud music, conversation, laughing and the noise attending gatherings of college-age boys and girls.

"Students should be given a little opportunity as possible to indulge in the use of marijuana and alcohol. This temptation is increased when boys and girls are mixed together in locked bedrooms.

"The spread of venereal disease should be prevented. Allowing boys and girls of college age to meet in the privacy of dormitory bedrooms

will make fornication easier and more convenient and will increase the spread of venereal disease. The same is true of student pregnancies which interrupt the educational process and student abortions, which may endanger student health.

"While some may argue we cannot legislate morality and premarital sexual intercourse will occur off campus in any event, it cannot be denied mixing boys and girls of college age together in dormitory bedrooms will encourage fornication.

'We disagree we

cannot legislate morals'

"Most parents (particularly those with daughters) and many college-age boys and girls still consider premarital sexual intercourse immoral. Many types of sexual activity are criminal including cohabitation as husband and wife by unmarried persons.

"We disagree with the claim of the advocates of permissiveness we cannot legislate morals and submit, on the contrary, legislation of morals began with the Ten

Commandments and has continued to date. The entire field of criminal statutes 'legislates morals', the brief contends.

"The courts have recognized sex is a valid basis for classification, and does not deny equal protection of the laws, if there is any reasonable or rational basis for the classification. Women's 'Lib' and constitutional amendments notwithstanding, men are not women. Men do not give birth. Only women are raped," the brief adds.

"The question is not whether the students, or their parents, or even this court, think the regulation wise or unwise. The point is the regents, who alone have the constitutional and statutory power to govern NMSU, thought it wise.

"The students think it too restrictive. There may be some who think it too liberal, since it allows visitation at time of move-in and homecoming. Perhaps it should be changed.

"If so, only the regents have the power, and the corresponding responsibility of changing it," the brief says.