

STATE OF WISCONSIN VS. CARSON WHITE

*"You must be the change you wish to see in the world."
~Mahatma Gandhi~*

Background

In 2001, the National School Climate Survey documented the experiences of lesbian, gay, bisexual and transgender (LGBT) students in America's high schools. It examined the prevalence of school-based harassment and victimization, the frequency with which LGBT students heard homophobic language, and the factors that contributed to or detracted from their overall feeling of comfort and safety.¹ A total of 904 LGBT youth from 48 states and the District of Columbia completed the survey.

The results from this survey found that for many of our nation's LGBT youth, school can be an unsafe and even dangerous place. School is where homophobic remarks can be frequently heard, often by faculty and staff. The majority of the youth in the survey reported being verbally harassed because of their sexual orientation or their gender expression. A large number of youth reported experiencing incidents of physical harassment, physical assault and sexual harassment.

All students, including lesbian, gay, bisexual and transgender (LGBT) youth, deserve the right to a school environment that is safe and conducive for learning to occur. However, every day in the U.S., lesbian, gay, bisexual, and transgender youth of school age suffer harassment, abuse, and violence at the hands of their peers. These students spend an inordinate amount of energy figuring out how to get to and from school safely, avoiding the hallways when other students are present in order to escape slurs and shoves, cutting gym classes to escape being beaten up—in short, attempting to become invisible.

Statement of Facts

On December 13, 2002, Pat Walters was in the hall of Clearwater High School near classroom 107 when s/he was involved in a fight with Carson White. After an investigation, the Clearwater County D.A. charged Carson with battery and disorderly conduct and informed the court of her intent to also use the hate crime statute.

Witnesses for the State

Pat Walters
Officer Bugg Winchester
Baba O'Riley

Witnesses for the Defense

Carson White
Dana Reuter
Vice Principal Faye Zelleger

¹ Hatred in the Hallways, Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Students in U.S. Schools, Human Rights Watch, May 2001

Disclaimer

All names used in the 2003 mock trial case are fictitious and were created to be gender-neutral, and any similarity to the name of an actual person is strictly coincidental. All witness statements have been intentionally written to be sexual preference neutral. Any witness testifying to their own sexual preference will be considered as creating a material fact that is outside the scope of mock trial materials.

939.48 Self-defense and defense of others.

(1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

940.19 Battery (1) Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class A misdemeanor.

947.01 Disorderly conduct. Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

History: 1977 c. 173; 1979 c. 131.

•• This statute does not require a victim, but when the disorderly conduct is directed at a person, that person is the victim for the purpose of prosecuting the perpetrator for intimidating a victim under s. 940.44. State v. Vinje, 201 Wis. 2d 98, 548 N.W.2d 118 (Ct. App. 1996). Application of the disorderly conduct statute to speech alone is permissible under appropriate circumstances. When speech is not an essential part of any exposition of ideas, when it is utterly devoid of social value, and when it can cause or provoke a disturbance, the disorderly conduct statute can be applicable. State v. A.S., 2001 WI 48, 243 Wis. 2d 173, 626 N.W.2d 712. Purely written speech, even written speech that fails to cause an actual disturbance, can constitute disorderly conduct, but the state has the burden to prove that the speech is constitutionally unprotected "abusive" conduct. "Abusive" conduct is conduct that is injurious, improper, hurtful, offensive, or reproachful. True threats clearly fall within the scope of this definition. State v. Douglas D. 2001 WI 47, 243 Wis. 2d 204, 626 N.W.2d 725.

939.645 Penalty; crimes committed against certain people or property. (1) If a person does all of the following, the penalties for the underlying crime are increased as provided in sub. (2):

(a) Commits a crime under chs. 939 to 948.

(b) Intentionally selects the person against whom the crime under par. (a) is committed or selects the property that is damaged or otherwise affected by the crime under par.

(a) in whole or in part because of the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, whether or not the actor's belief or perception

was correct.

(2) (a) If the crime committed under sub. (1) is ordinarily a misdemeanor other than a Class A misdemeanor, the revised maximum fine is \$10,000 and the revised maximum period of imprisonment is one year in the county jail. (b) If the crime committed under sub. (1) is ordinarily a Class A misdemeanor, the penalty increase under this section changes the status of the crime to a felony and the revised maximum fine is \$10,000 and the revised maximum period of imprisonment is two years.

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WIS JI-CRIMINAL

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SELECTING THE PERSON AGAINST WHOM A CRIME IS COMMITTED BECAUSE OF RACE, RELIGION, ETC. - § 939.645

[THE FOLLOWING INSTRUCTION SHOULD BE GIVEN IMMEDIATELY AFTER THE INSTRUCTION ON THE OFFENSE CHARGED.]

The complaint alleges not only that the defendant committed the crimes of battery and disorderly conduct¹ but also that s/he intentionally selected the person against whom the crime was committed in whole or in part because of the defendant's belief or perception regarding the sexual orientation² of that person.

If you find the defendant guilty of either battery or disorderly conduct or both, you must answer the following question³:

"Did the defendant intentionally select the person against whom the crime of battery and/or disorderly conduct was committed because of the sexual orientation of that person?"

Before you may answer this question "yes," you must be satisfied beyond a reasonable doubt that the defendant intentionally⁴ selected Pat Walters as the victim of the crime of battery and/or disorderly conduct in whole or in part because of the defendant's belief or perception regarding Pat Walter 's sexual orientation, whether or

not that belief or perception was correct.⁵

If you are satisfied beyond a reasonable doubt that the defendant intentionally selected Pat Walters as the person against whom the crime of battery and/or disorderly conduct was committed because of his/her belief or perception regarding the sexual orientation of Pat Walters, you should answer the question "yes."

If you are not so satisfied, you must answer the question "no."

COMMENT

Wis JI-Criminal 996 was originally published in September 1988 and revised in 1990. It was withdrawn in June 1992. This revision was approved by the Committee in August 1993.

A brief history of the "hate crimes" statute and its review in the courts follows note 5.

This instruction is drafted for the enhancement of penalty provided by § 939.645, Penalty; Crimes Committed Against Certain People or Property. The statute was created by 1987 Wisconsin Act 348, effective date: May 3, 1988. Wis JI-Criminal 996 is drafted for cases involving a crime against the person; Wis JI-Criminal 996.1 is drafted for cases where the crime is against property. The penalty increase depends on the ordinary penalty for the underlying crime:

- If the penalty for the underlying crime is less than that of a Class A misdemeanor, the revised maximum fine is \$10,000 and the maximum period of imprisonment is one year in the county jail.
- If the penalty is ordinarily a Class A misdemeanor, the revised maximum fine is \$10,000 and the revised maximum period of imprisonment is 2 years. NOTE: This changes the status of the crime to a felony.
- If the crime is ordinarily a felony (of any class) the maximum fine may be increased by not more than \$5,000 and the maximum period of imprisonment may be increased by not more than 5 years.

Section 939.645(2).

The penalty enhancement does not apply to a crime which already requires proof of the victim's race, etc. § 939.645(4). One such crime is that defined in § 943.012, Criminal Damage to Religious and Other Property, also created by 1987 Wisconsin Act 348.

The penalty enhancement under § 939.645 should be alleged in the complaint and information along with the underlying crime. Section 939.645(3) expressly provides that "the court shall direct that the trier of fact find a special verdict as to. . . [the penalty enhancement issue]." This comports with the Committee's usual recommendation that facts which increase the

range of penalties be submitted to the jury in the form of a special question. The following form is suggested for the verdict:

We, the jury, find the defendant guilty of battery and disorderly conduct, under Wis. Stat. § 940.19, at the time and place charged in the complaint.

We, the jury, find the defendant not guilty.

If you find the defendant guilty, answer the following question "yes" or "no":

"Did the defendant intentionally select the person against whom the crime of battery and disorderly conduct was committed because of the sexual orientation of that person?"

1. Section 939.645 applies only to crimes "under chs. 939 to 948." § 939.645(1)(a).
2. The penalty enhancement provided by § 939.645 applies not only to victims selected because of race but also to victims selected because of "religion, color, disability, sexual orientation, national origin, or ancestry." § 939.645(1)(b). The references to "race" in the instruction must be changed to refer to the appropriate term if one of the other bases for selection is involved.
3. Section 939.645(3) requires the use of a special verdict. See the Comment preceding note 1, supra.
4. Although § 939.645(1)(b) uses the word "intentionally," it apparently does not have its usual meaning. See § 939.23(3). First, the statute's provision that the actor select the victim "in whole or in part" because of status seems to be a lesser standard than the typical "mental purpose" requirement. Second, the context of this offense makes it unlikely that the "aware that his or her conduct is practically certain to cause that result" alternative is likely to apply. Third, the general rule that "intentionally" carries with it a knowledge requirement appears to be superseded by the 1992 amendment of the statute which made "belief or perception" of the victim's status sufficient.
5. The phrase "in whole or in part because of the actor's belief or perception regarding the race. . . whether or not the actor's belief or perception was correct," was added to the statute by 1991 Wisconsin Act 291, effective date: May 14, 1992.

History of the Wisconsin "Hate Crimes" Statute

Section 939.645 was created by 1987 Wisconsin Act 348, effective date: May 3, 1988. It was amended by 1991 Wisconsin Act 291. (See note 5, above.)

The instructions for this offense were originally published in 1988 but were withdrawn in 1992 when the Wisconsin Supreme Court found that the statute was unconstitutional. The instructions were restored in 1993 after the United States Supreme Court reversed the Wisconsin decision.

In State v. Mitchell, 169 Wis.2d 153, 485 N.W.2d 807 (1992), the Wisconsin Supreme Court concluded that § 939.645 unconstitutionally infringed upon free speech by punishing thought rather than conduct. The court focused on the statute's phrasing: "intentionally selects the [victim] . . . because of ... race... .":

Without doubt the hate crimes statute punishes bigoted thought. The state asserts that the statute punishes only the "conduct" of intentional selection of a victim. We disagree. Selection of a victim is an element of the underlying offense, part of the defendant's "intent" in committing the crime. In any assault upon an individual there is a selection of the victim. The statute punishes the "because of" aspect of the defendant's selection, the reason the defendant selected the victim, the motive behind the selection. . . .

While the statute does not specifically phrase the "because of . . . race, religion, color, [etc.]" element in terms of bias or prejudice, it is clear from the history of anti-bias statutes, detailed above, that sec. 939.645, Stats., is expressly aimed at the bigoted bias of the actor. Merely because the statute refers in a literal sense to the intentional "conduct" of selecting, does not mean the court must turn a blind eye to the intent and practical effect of the law - punishment of offensive motive or thought.

. . . . A statute specifically designed to punish personal prejudice impermissibly infringes upon an individual's First Amendment rights, no matter how carefully or cleverly one words the statute. The hate crimes statute enhances the punishment of bigoted criminals because they are bigoted. The statute is directed solely at the subjective motivation of the actor - his or her prejudice. Punishment of one's thought, however repugnant the thought, is unconstitutional.

169 Wis.2d 153, 167, 170

The court indicated that its decision was supported by the decision of the United States Supreme Court in R.A.V. v. City of St. Paul, 112 S.Ct. 2538 (1992), which was decided one day before the decision in Mitchell. R.A.V. involved a different approach to the "hate crimes" issue in that the ordinance in question attempted to punish directly speech or other expressive conduct motivated by racial or other discriminatory prejudice: "The ideological context of the thought targeted by the [Wisconsin] hate crimes statute is identical to that targeted by the St. Paul ordinance - racial or other discriminatory animus. And, like the United States Supreme Court, we conclude that the legislature may not single out and punish that ideological content." State v. Mitchell, 169 Wis.2d 153, 172.

The United States Supreme Court reversed in Wisconsin v. Mitchell, 113 S.Ct. 2194, decided June 11, 1993. Chief Justice Rehnquist, writing for a unanimous court, held that the Wisconsin version of a "hate crime" statute did not violate First Amendment protections. Although it allows more severe punishment if a victim is selected because of a particular status, the court found this was no different from the standard practice which allows judges to consider a variety of factors in deciding on the sentence to be imposed:

Mitchell argues that the Wisconsin penalty-enhancement statute is invalid because it punishes the defendant's discriminatory motive, or reason, for acting. But motive plays the same role under the Wisconsin statute as it does under federal and state antidiscrimination laws, which we have previously upheld against constitutional challenge.

The court distinguished the decision in R.A.V., saying that it involved a law aimed at the content of certain communications deemed to be offensive. Mitchell, on the other hand, involves a statute aimed at conduct. Further, said the court,

. . . the Wisconsin statute singles out for enhancement bias-inspired conduct because this conduct is thought to inflict greater individual and societal harm. For example, according to the State and its amici, bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest. The State's desire to redress these perceived harms provides an adequate explanation for its penalty-enhancement provision over and above mere disagreement with offenders' beliefs or biases.

The court also rejected Mitchell's claim that the statute was overbroad, dismissing it as "too speculative." And, the court disagreed with the Wisconsin Supreme Court's conclusion regarding the evidentiary use of speech:

The First Amendment, moreover, does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent. Evidence of a defendant's previous declarations or statements is commonly admitted in criminal trials subject to evidentiary rules dealing with relevancy, reliability, and the like.

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WIS JI-CRIMINAL

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800 PRIVILEGE: SELF-DEFENSE: FORCE LESS THAN THAT LIKELY TO CAUSE DEATH OR GREAT BODILY HARM - § 939.48

Self-Defense

Self-defense is an issue in this case. The law of self-defense allows the defendant to threaten or intentionally use force against another only if:

- the defendant believed that there was an actual or imminent unlawful interference with the defendant's person; and,
- the defendant believed that the amount of force the defendant used or threatened to use was necessary to prevent or terminate the interference; and
- the defendant's beliefs were reasonable.

Determining Whether Beliefs Were Reasonable

A belief may be reasonable even though mistaken. In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the

circumstances that existed at the time of the alleged offense. The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of the defendant's acts and not from the viewpoint of the jury now.

State's Burden of Proof

The State must prove by evidence which satisfies you beyond a reasonable doubt that the defendant did not act lawfully in self-defense.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all the elements of battery have been proved and that the defendant did not act lawfully in self-defense, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

State of Wisconsin

Plaintiff,

vs.

CRIMINAL COMPLAINT

Case No: 02 CF 366

Carson White
1407 Marathon Avenue
Clearwater, WI 55555
DOB: 4/1/85

Defendant.

Complainant, on information and belief, being first duly sworn, upon oath, states that the above named Defendant, in the County of Clearwater, State of Wisconsin:

Count 1: Disorderly conduct; victim selected because of sexual orientation

The above-named defendant on or about Friday, December 13, 2002, in the Town of Clearwater, Clearwater County, Wisconsin, did engage in conduct that was violent, abusive, and otherwise disorderly contrary to sec. 947.01 and 939.51(3)(b) of Wis. Stats., a class B Misdemeanor, and upon conviction may be fined not more than \$1,000, or imprisoned not more than 90 days or both.

And further, invoking the provisions of sec. 939.645(1) and (2)(a) Wis. Stats., because the defendant committed a crime under chapters 939 to 948, and selected the person against whom the crime was committed in whole or in part because of the defendant's belief or perception regarding the sexual orientation of that person, the maximum penalty for the underlying crime is \$10,000, and the maximum term of imprisonment is one (1) year county jail.

Count 2: Battery; victim selected because of sexual orientation

The above-named defendant on or about Friday, December 13, 2002, in the Town of Clearwater, Clearwater County, Wisconsin, did cause bodily harm to Pat Walters, by an act done with intent to cause bodily harm to that person, without that person's consent and with the knowledge that the person so harmed did not consent, contrary to sec. 940.19(1), 939.645(1) and (2)(b) Wis. Stats., a Class A Misdemeanor (absent the aggravating circumstances alleged in the next paragraph, which convert this offense to a felony and increase the potential punishment), and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than nine (9) months, or both.

And further, invoking the provisions of sec. 939.645(1) and (2)(b) Wis. Stats., because the defendant committed a crime under chapters 939 to 948, and selected the person against whom the crime was committed in whole or in part because of the defendant's belief or perception regarding the sexual orientation of that person, the underlying crime is a felony with a maximum fine of \$10,000 and a maximum term of imprisonment of two (2) years.

And prays that said Defendant be dealt with according to law; and that the basis for the complainant's charge of offenses is:

PROBABLE CAUSE:

On December 13, 2002, Officer Bugg Winchester responded to a disorderly conduct and battery complaint at Clearwater High School in the town of Clearwater, Clearwater County.

It was there Officer Winchester interviewed the victim, Pat Walters. Walters told Officer Winchester that s/he had been attacked in the hall of Clearwater High School. Walters said s/he was hit on the back with something heavy and then hit in the face several times, had his/her hair pulled and was pushed down on the ground and kicked.

Walters identified the person who attacked him/her as Carson White and that while White was attacking him/her, Carson kept muttering, "dirty queer." Walters told the officer that s/he had something of a history with Carson over the Gay/Straight Alliance and had felt threatened in the past by Carson.

When asked why the fight occurred, Walters responded that it was over his/her support of the Gay/Straight Alliance and White's belief that Walters is gay/a lesbian. Prior to the incident, both students had been in an advanced biology class where the discussion started and after class as they were walking down the hall, White stated to Walters, "Why don't you go to Wyoming where they know how to deal with your kind?"

I have worked with Officer Winchester of the Clearwater County's Sheriff's Department before and found him/her to be truthful and reliable. I believe the reports were generated in the scope of his/her employment and in the ordinary course of the business of law enforcement.

I further believe the statements of Pat Walters, as contained in the officer's report, are truthful and reliable as a victim of the crime complained of.

Based on the foregoing, the complainant believes this complaint to be true and correct.

Subscribed and sworn to before me
And approved for filing on:

January 3, 2003

Complainant

Marcia Clarke
District Attorney
State Bar No. _____

Statement of Pat Walters

1. My name is Pat Walters and I live at 1723 Forest Street, just across from Hamilton Park. I am kind of upset still when I think about all that's happened. It really makes me sad and a little mad. People can be so ignorant! Well here goes. I am a junior at Clearwater. I was born on December 10, 1985, and am what is called a "good" student – meaning I do my work and get good grades. I live with my parents and little sister. I am a vegetarian-vegan to be exact- and I like all kinds of music. I am involved in lots of things but am most proud of being the president of the high school Gay/Straight Alliance. Last year I was vice-president of the student council.
2. I became concerned about the problems and discrimination faced by gay students when my friend and neighbor, Keith Perez, who is a sophomore at Princeton and gay, told me about some of the things that happened to him while at Clearwater High. I felt both sad and ashamed by what he told me. In some ways it reminded me of what African-Americans had to go through in the South (probably much of the North, too) during the civil rights movement. Keith told me about how kids would bump into him when he was in the halls and mutter, "Queer!" or "Faggot." Sometimes he got spit on, ignored a lot, and generally made to feel sub-human. People can be real ignorant. As if a person chooses to be gay; lots of parents would prefer their kid to be a bank robber. At least you can choose that line of work! But mostly Keith felt afraid and lonely. It was only when he got to college that he began to understand himself and that being gay was not a curse or evil in itself.
3. Last year some of us — my friends Freddie Hermes, Dave Crockett, and Rita Black — established the Alliance after seeing for ourselves the problems of discrimination faced by gay/lesbian students and students who were members of a minority here at Clearwater High. We wanted to give support and to give information so people would react rationally and not emotionally. Ever since I began to speak out for human rights, Carson White has said hurtful things to me and once even said s/he would "get me and my kind " when there was "the right time."
4. Of course, Carson was opposed to the school establishing a Gay/Straight Alliance. Carson was really vocal in student council. Carson went on and on about not spending any public money for such an organization. That to do so would taint the school and community. That it would encourage licentiousness-even I had to look up that word. Sometimes Carson would become really nasty and made things personal. Carson slipped me a note which read, "You won't be so smug when you get AIDS, queer." Carson wouldn't just say these things in council meetings but everywhere s/he went; sometimes it seemed Carson would seek me or someone associated with the Alliance out and just rag on us. We were all "perverts" and "unnatural" and were "going to hell and would drag the whole country with us." There were times when Carson said "going to hell" in such a way as to imply sooner

than we might expect. I took it for a threat. And there would be the graffiti: "kill all fags" and things like that.

5. But on to the assault: I did speak to Officer Winchester after it happened on the 13th of December 2002 and told Winchester what happened. I was in the hall and Carson came up to me - it seemed as if Carson had been waiting for me - and muttered some thing about evolution and our advanced biology class and I replied "You are just being silly; religion is just not science any more than is the Easter bunny! Carson got mad and hissed at me," Why don't you go to Wyoming where they know how to deal with your kind?" I glared at Carson and then turned abruptly and walked away. If my backpack hit Carson, it was not on purpose and I don't believe it did-I'd have felt it! Carson followed and got in front of me and then hit me in the face several times, grabbed my hair and pushed me down and then kicked me (I even had bruises the next day) all the while muttering, "dirty queer." Thankfully, Baba showed up and pulled Carson off of me, and I went off to the nurse and later spoke to Winchester.
6. In the past, I have gone to Zelleger to complain, but Zelleger says I am overly sensitive and that I have to remember other kids have free speech too. Zelleger did show me a school harassment form to fill out, and I did, but I figured it wouldn't do any good what with Zelleger's attitude. I heard Zelleger goes to the same church- or whatever- as Carson. Sure enough, I never heard about the form I turned in. And now look at Zelleger's "investigation" of the December 13th attack. I went to the nurse and had bruises but got DETENTION-same as Carson! Fair? Of course I believe in free speech, but no one has a right to hate speech. I have called Carson a bigot because s/he is one!
7. It is true I had an Earth Science class with Carson before the brouhaha over the Alliance, and I did comment on his/her anti-scientific approach to evolution, geology, and physics. Carson's problem is that s/he doesn't seem to know that in science a theory is different from a hypothesis. I may have said Carson's views were medieval. Which they are! Sure s/he's entitled to them, but they are just not science. And Carson keeps trying to push them on everyone. Such opinions simply don't belong in a science class. The arguments continued this year in Advanced Biology. So we disagree, but I don't think Carson's going to hell just because of that. You know there are religions that accept homosexuality and evolution and the big bang and all that. Don't forget at one time religion said slavery was just fine. Religion is not always right or at least the way people interpret it. In history class the other day we read about all the great generals in W.W.II who believed black soldiers just couldn't fight and if they were to be next to whites the army would suffer. Such prejudice! People admit now that the generals were wrong and Eleanor Roosevelt was right when she tried to get her husband to change the army. Took Truman to do it, against the advice of conservatives, I might add.

8. My passion is to do the right thing and fight for the rights of all people! Carson attacked me because s/he thought I was gay and I believe Carson should pay for it. Society must say loud and clear that hate crimes are not acceptable in Clearwater! Having a hate crime law does not give special rights to certain people; one is punished for why he does some thing, not for whom it's done to.

Dated this 13th day of December 2002.

Pat Walters

Statement of Officer Bugg Winchester

1. My name is Bugg Winchester. I have been the school liaison officer in Clearwater for the past five years; before that I was on traffic. Working with students is much more rewarding and varied. I got tired of sitting in a car all day.
2. As liaison officer my duties consist of:
 - A) providing a law enforcement presence within the school,
 - B) investigating any law enforcement calls/referrals and handling them appropriately,
 - C) as I am able, offering educational programs to the students and gathering information about student activities, interests, and criminal behavior.
3. I suppose I am the black sheep of the Winchester family. My grandfather, Charles, was a physician; my father and uncles have all been university professors. After six years I was able to graduate with a bachelors degree in psychology from UW - Clearwater. It took quite a while because I was supporting my family of four children, while working full time at a bar called the "Old Schoolhouse." I joined the Clearwater Sheriff's Department right after graduation. I was not such a good student and had my own run-ins with the law when I was young and foolish; of course nothing was on paper, yet I am sure some people remembered me. I was lucky that Superintendent Senn wrote a letter on my behalf.
4. I am in the Clearwater schools most days, so I have a chance to get to know many of the students; if not personally, at least by reputation. That is one of the good things about being the liaison officer, I am not just some cop the kids can blow off and not pay attention to.
5. Over the years the students' respect for property has diminished. There is a lot more graffiti and property destruction now than when I was a student! Even five years ago, it wasn't as bad. I'll admit that some of these kids are pretty good artists, but oil paint (and magic marker) on cement walls just are not smart! Some of the other students are just plain foul!
6. Recently some of the graffiti has been specifically targeted toward a certain group. In the weeks leading up to the incident between Pat Walters and Carson White, several such sayings were written on the walls and trophy cases outside the room where the Gay/Straight Alliance met. They were sayings like, "Death to all Fags" and "Lesbos are Losers." They weren't even very creative.
7. On the day of the altercation I was already off-duty having finished my shift at 3:30 with the students. I was having coffee and donuts with the guys at Dunkin Dinky Donuts. Principal Runaas reached me there by radio, and of course I responded right away. She was quite upset. It seems that there had been a fight between

students and one of them had been that troublemaker, Carson.

8. Of course, I knew Carson from being around the school. In fact, I had even heard a few of the shouting matches over funding that Carson provoked. Carson seemed to think that only s/he knew the correct way to allocate school funding. I was worried that the discussions would get out of hand the way the words were flying, so I stood by outside the door.... but both sides were smart enough to keep their tempers in check. I never talked much to Carson before my investigation, although we do go to the same church, and I am acquainted with Carson's parents.
9. After talking with Principal Runaas, I asked where the students were. Both had been brought to the administration offices, and were sitting in separate rooms. Pat was in the nurse's office while Carson was talking to Assistant Principal Zelleger. I first talked to Pat.
10. Pat stated that s/he had something of a history with Carson over the Gay/Straight Alliance. Carson was very opposed to spending money on the Alliance, and made everything seem personal. Pat felt threatened in the past by Carson. On the day of the incident, Carson came up behind Pat. Pat, startled, turned around suddenly, hitting Carson with his/her backpack. At that point, Carson called Pat "a damn queer," and punched Pat. A scuffle ensued. Pat claims Carson also kicked him/her before anyone could separate them.
11. I read Carson his/her rights and asked if s/he was willing to waive them and talk to me. Carson waived his/her Miranda rights and admitted a struggle occurred, but asserts Pat provoked it. Carson was walking down the hall to the National Honor Society meeting when Pat attacked him/her with a backpack. Carson tried to defend him/herself, but Pat kept swinging. Eventually, they both did end up on the floor, Carson's foot became entangled in the backpack, and perhaps it looked like a kick when Carson was trying to pull his/her foot free.
12. When I asked Carson why Pat would attack him/her; Carson responded that it was over Carson's religious views and political activities. Carson has sought to prevent the Gay/Straight Alliance from getting funding from the student activity fund because this would leave less money for other organizations. Carson does not think an organization like that should be supported with tax dollars, especially now when school funding is so tight. Carson thinks if those people want to meet, they can do it elsewhere, on their own, out of sight, without any public support.
13. I asked Carson why s/he didn't just walk away from the Pat? Show Pat who the bigger person was? Carson said it was just time Pat got brought down a peg. Pat should know what people really think.
14. I asked Carson what s/he thought about discriminating against people who were gay or lesbian? Carson responded, they were fine, but s/he didn't believe in it. His/her

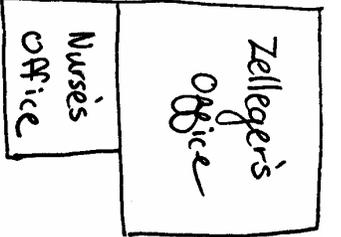
parent's tax dollars should not support it, and we should not be preaching that lifestyle to our children. It is just unnatural.

15. I then interviewed Vice Principal Zelleger who indicated there was very little problem with the Gay/Straight Alliance or with funding in the Clearwater School System. Zelleger seemed to prefer to handle the problem internally and didn't want the district attorney to review the matter for possible charges. I was assured that both students had been treated evenhandedly and this type of behavior would not happen again. Vice Principal Zelleger seemed to indicate that "Children will be children" and that we should be tolerant of their behavior. However, that was not my impression.
16. I had the opportunity to interview Baba O'Riley and Dana Reuter the following Monday. Both students impressed me as honest and forthright and were trying to be as helpful as they could be. Unfortunately, each was a distance away from the altercation, and the hallway has some natural obstructions. But Buba did seem to have the better view. I have prepared a rough sketch and attached it to my statement; this was prepared contemporaneously with my investigation. O'Riley and Reuter had been at some of the earlier student council meetings and had seen and heard the interchanges between Carson and Pat; they were not proud of them! Mostly it sounded like shouting matches.
17. Based upon Carson's statements, as well as Pat's, I think these two students had been feuding for some time. The incident with the backpack was just the right "excuse" for Carson to throw a punch. I will be asking Clearwater County District Attorney Marcia Clarke to bring charges against Carson and to consider the fact that the assault was motivated by Carson White's belief or perception regarding the sexual orientation of Pat Walters.

Respectfully submitted this 18th day of December, 2002.

Bugg Winchester

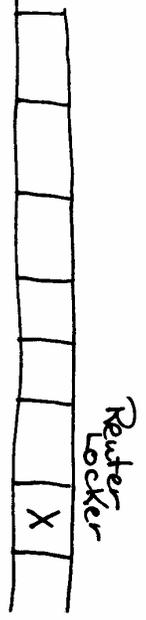
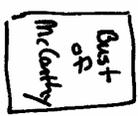
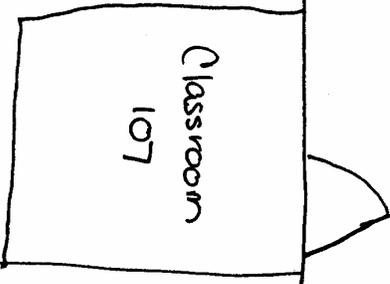
Hallway A



Hallway B



X Altercation



Repaired by
Bugs Winchester

Statement of Baba O'Riley

1. My name is Baba O'Riley. I live with my parents Roger and Lilly at 714 Moon Drive.
2. I am a junior at Clearwater High. I do pretty well in school—I have a 3.75 GPA—but I feel that it is nothing but a teenage wasteland. The administration either stifles all expression (ex-principal Togar was the worst) or sweeps any problems under the rug. Like, Assistant Principal Zelleger simply tends to dismiss all confrontations, vandalism, and threats, as kids just being kids—especially when they are boys. Zelleger even laughed at the stunt where some still unidentified jocks stripped a gay student and shoved him naked into the girls' locker room.
3. I have been friends with Pat Walters since we were in first grade. Pat has always been honest, trustworthy, and kind to everyone. Pat's one fault could be that s/he trusts others and doesn't expect to be attacked either verbally or physically. I'm sure that Pat never expected Carson physically to attack. In all the years that I've known Pat, s/he has never started a fight or even taken a swing at anyone. Pat doesn't even like to harm animals—that's why Pat's a vegan and does volunteer work for the humane society.
4. The trouble here really all started when Carson was born—ha ha!! No, seriously, it really started last year when Pat started to become interested in forming a gay support group. One of Pat's friends, Keith Perez, who is now at Princeton, graduated from Clearwater two years ago. Keith told Pat and others after he graduated about all of the discrimination and abuse that he suffered while at Clearwater—all the while, the administration sitting on their hands. People like Togar were much more interested in burning records and banning free speech than in protecting gay students. I wouldn't be surprised if they secretly wished that they could expel all gay students, but since they couldn't, they looked the other way when kids like Carson physically and verbally abused gay students.
5. This atmosphere of tacit approval of harassment of gays, led Pat and several others, such as Freddie Hermes, David Crockett, Rita Black, and Lola Maloney, to form the Gay/Straight Alliance. The only teacher that they could get as a faculty advisor was Dr. Furter from the drama department. Some of the members were openly gay like Freddie and Rita; others were secretly gay (but everyone knows who most of them are anyway), and others are obviously straight (such as Pat—there is no way Pat is gay; I'd have known after all these years). Although I never joined the Alliance, I thought their hearts were in the right place.
6. The jocks and other jerks in school, like Carson, didn't care if the members were straight or gay: they branded them all gay or at best, gay lovers—or worse names that I won't repeat. Those jerks must have held a nighttime meeting and

decided this year they were going to harass Alliance members like they'd done in the past to the Goths and Freaks. All they were missing were the white sheets and hoods. I heard from Billy Jo that Lola opened her locker early in the year and found a noose hanging from the hook. Word has it that Carson plastered Freddie's locker with pictures from Playboy and Penthouse and hung a huge replica of a guy's thing in Rita's locker. I'm sure that Carson was involved—just like last year when Carson spit on some Goths from the second floor balcony.

7. Anyway, Pat was so upset by this type of behavior that Pat spearheaded the move to establish the Alliance. From the very beginning, Carson hated the idea and loudly protested it. Carson claimed that it was because s/he felt that tax dollars for the school were scarce and that the school should not be supporting this type of group. This was just a ruse, as I know that Carson hated gays and their friends. Carson's real intention must have been to ban all gays. According to what I heard once, Carson thought that they were all sinners and that they were going to the seventh circle of hell, that gays had led to the downfall of morals in this country, and that it was every God-fearing American's obligation to send all gays to hell. Carson even rudely grabbed me last month and said with a mean sneer: "Birds of a feather will get theirs, faggot lover"—and I'm not even a member of the Alliance; I can only guess what Carson said to Alliance members. And, last week I overheard from around the corner, Carson say to Zelleger that Pat and his/her kind were going to get their due. Zelleger seemed to agree and said, "You know I agree with you; they will be taken care of and won't be here forever." I'm sure that they were talking about expelling or harming gays.
8. I'll never forget seeing the "incident." I can remember like it was only yesterday. It was December 13, 2002, I was late and in a hurry—Mr. Townshend always is keeping us late—when I came down Hallway A. As I hurried around the corner to Hallway B, I could clearly see Pat and Carson in a heated argument half way down the hallway. The only other person in the hall was Dana Reuter, who was all the way down the hall on the other end and slightly blocked by the pedestal with the head of McCarthy somebody that Zelleger had placed in the hall. I couldn't hear everything that they were saying, but most of it was loud enough that I could grasp the general idea. As usual, Carson was spouting off something about "your kind" and getting "your due." Finally, after Carson said that "all you queers deserve to be beat and tied to a fence like that faggot in Wyoming," Pat, looked exasperated and gave up trying to discuss the matter politely. Pat then turned towards me and began to walk away.
9. I know Carson claims that Pat swung his/her backpack at Carson, but it never happened—Carson was just looking for an excuse to attack Pat because Carson thinks Pat is gay. At best, if Pat's backpack did hit Carson, it was only because Carson ran after Pat and was crowding her/him. And, even if it did slightly graze Carson, I know that Pat would never intentionally hit Carson with it and Carson should have known it. Everyone knows that Pat would never hurt anyone.

10. Next thing I knew, I saw Carson coming around from behind Pat, and Carson started shoving Pat and hit Pat in the face a couple of times. Pat started crying and put his/her hands to his/her face. Carson then called Pat a weak sissie and a faggot, and shoved Pat really hard into the lockers and Pat ended up on the ground at Carson's feet. Carson then started to kick at Pat, and that's when I ran in and separated them before Carson really hurt Pat. I was afraid that Carson would knock Pat unconscious or worse. I'm sure that Carson intentionally kicked Pat, which is something that you'd expect out of Carson—to get in a couple of cheap kicks while someone was on the ground. It also explains why Pat had nasty bruises on his/her chest and stomach when I saw Pat the next day. Pat's parents said that the doctors told them the bruises looked like kicks. Carson might have killed Pat if I wasn't there—Dana wasn't making any attempt to help, and there were no teachers around.

11. I think Carson intentionally hit and kicked Pat because Carson believed Pat to be gay and Carson hated gays. It's time we get people like Carson out of Clearwater High before something worse happens. Everyone should feel safe coming to school regardless of who they are. Students shouldn't feel afraid of coming to school because of scum like Carson. Carson should be kicked out of school and put in jail as a lesson to the rest of those jerks. If not, no one will feel safe in school—unless they are a jock or a friend of the jocks. No minority or anyone who is a little different is safe with jerks like Carson around.

Sworn and subscribed this 16th day of
December, 2002.

Notary Public
My commission expires: _____

Baba O'Riley

MIRANDA WARNING

1. You have the right to remain silent.
2. You have the right at this time to an attorney.
3. Anything you say can and will be used against you in a court of law.
4. If you are under the age of 17, anything you say can be used against you in a juvenile court prosecution for a juvenile offense and can also be used against you in an adult court criminal prosecution if the juvenile court decides that you are to be tried as an adult.
5. You have the right to talk to an attorney before answering any questions.
6. You have the right to have your attorney present during the questioning.
7. If you cannot afford an attorney, one will be appointed for you, before or during questioning, if you so desire.
8. Do you understand these rights?

I have read or have had read to me the above explanation of my constitutional rights and I understand those rights.

SUSPECT'S SIGNATURE

WAIVER

I understand my constitutional rights. I have decided not to exercise these rights at this time. Any statements made by me are made freely, voluntarily, and without threats or promises of any kind.

DATE/TIME 12/13/02 4:05 p.m.

OFFICER'S SIGNATURE

LOCATION
Clearwater High School

SUSPECT'S SIGNATURE

Statement of Carson White

1. My name is Carson White. I live with my parents at 1407 Marathon Avenue here in Clearwater. I am 17 years old and a senior at Clearwater High School.
2. Earlier today, December 13, I had just gotten out of my advanced biology class. In that class, we'd been talking about the theory of evolution, and I stated my position that evolution is nothing but a THEORY, and that "my" theory—that God created the universe and man in his own image—is every bit as strong a theory as evolution. Pat Walters is in my class, and after class, I was simply walking down the hall to my national honor society meeting when Pat Walters approached me and said, "I suppose you also believe in the tooth fairy and the Easter bunny, hey, Carson??!"
3. I was really angry and I clenched my fists. I told Pat Walters s/he was a pervert and then Pat swung at me a bunch of times with his/her backpack. I was swinging at him/her too. Walters called me a bigot too! I don't know who swung first, and honestly, I don't know if I hit Pat or where I hit him/her or what. I got hit—that I know—but I didn't get hurt, and I don't consider it a big deal.
4. You're telling me that Pat Walters says this fight was over his/her homosexuality! Well, it wasn't. I didn't even know Pat WAS gay until now! I just thought s/he supported the Gay/Straight Alliance!
5. It's true I have loudly opposed the use of school activity funds to support the Gay/Straight Alliance. I do strongly oppose the practice of homosexuality partly as a result of the suffering my older brother endured as a result of being abused by a homosexual. I simply cannot believe that our school supports homosexuality like this, when we can't even say the Pledge of Allegiance without a court battle! I think all the school activity money should be going to positive stuff, like, you know, sports!
6. I admit I do not like Pat Walters. We have had numerous disagreements over many issues, like school funding of the Gay/Straight Alliance, politics (we had some real blow-outs over Bill Clinton and Monica Lewinsky), sports, and, of course, evolution. I do believe that Pat's "anything goes" philosophy will lead (and, look, HAS LED) to moral decay which our founding fathers well knew was the fastest way to political ruin. Look at Rome! Pat Walters goes on and on attacking the Bible, but I say it's the basis for our way of life, and I'm not afraid to say so! Some of our disagreements have been ugly, though none of them involved actual violence before today. The worst incident before today was when Pat Walters spit on me and called me a bigot after a particularly heated Student Council meeting last fall.

7. It really gets me that a liberal like Pat Walters can ridicule athletes and just about everyone in administration thinks it's just fine, but let me or one of my friends question the value of something like the high school drama department reviving "HAIR" or some of the stuff they call "art" around here, and we're treated as if we were philistines! It's not fair! I have to admit Zelleger has always treated me fairly, though. Zelleger was my brother's hockey coach, and I don't know how my brother would have survived the abuse if it wasn't for Zelleger.
8. Pat Walters has ridiculed my deeply held moral and political beliefs, but I have never called him/her any names. I happen to believe that lots of his/her views, like supporting homosexuality, are both politically and morally wrong. Is that so bad?
9. You're telling me I could be charged with a felony "hate crime!!!!" Are you kidding? I have lettered all three years in three different athletic activities and have been offered a full sports scholarship to the University of Wisconsin—Clearwater! I have never been in any legal trouble before and have had hardly any disciplinary referrals here at Clearwater High School. If I'm convicted of a felony, my scholarship offer and university acceptance will be withdrawn!
10. I cannot believe that defending my beliefs can be called a "hate crime," while Pat Walters can call me a bigot, spit on me, threaten me, and ultimately hit me on the basis of MY beliefs. Why isn't Pat charged with a "hate crime"? Pat's the hater, not me!!!!

Dated this 13th day of December, 2002.

CARSON WHITE

Statement of Dana Reuter

1. My name is Dana Reuter and I am a junior at Clearwater High. I am friends with Carson White, one of his/her few friends at Clearwater High.
2. Carson and I have been friends for a long time, and we attend the same church. Carson may not have tons of friends, but only because people do not agree with his/her views. But you don't have to agree on everything with a person to be friends with that person. In general, Carson is a very good person who is not afraid to speak his/her mind and stand up for what he/she believes in, even if it is a minority view. Aren't we supposed to be able to speak our minds and views even if they are different than other people? That is what makes America so wonderful even if some things people say are offensive to others.
3. I do not dislike Pat. I wouldn't say we are friends but we have never had any problems between us. Pat told me s/he is not gay but started this group because of a friend who is gay. I believe Pat but still do not agree with his/her views. I have no special views on gays but I would prefer not to hang out with gays. I just don't understand it or really agree with it, but I also don't really care what people do in their personal lives, I just prefer not to be around gay people. I don't think there is anything wrong with that.
4. I was in the hallway at the time of the fight and heard Pat yell "bigot!" and turn and deliberately hit Carson in the face with Pat's backpack. I am pretty sure it hit Carson. There were some things in my way but for the most part I could see everything. I then saw Carson grab Pat and slap Pat twice and walk away. It looked like Carson was just trying to bat the backpack away or make sure Pat was not going to hit him/her again. It was not like Carson attacked Pat or was overly aggressive; it looked defensive to me and just a natural response to being hit in the face. Carson did look back but did not kick Pat. I wasn't exactly sure what was going on but as soon as I saw Carson and Pat rolling on the floor, I went to get help.
5. I have never heard Carson say anything inappropriate to Pat or others. No one can prove who did the graffiti at school but everyone seems to want to blame it on Carson. When Carson talks about his/her views, s/he does so logically and debates the issue, but does not start using hurtful names. But I have heard Pat say mean things. I even witnessed Pat spit on Carson during a student council meeting once. Now Pat is trying to play the victim. This is completely a political correctness thing and is ridiculous.
6. This incident has been completely blown out of proportion. Pat is just trying to use his/her political view and make a public statement. This has nothing to do with Pat being gay; s/he isn't even gay according to him/her. Pat preaches

tolerance but will not tolerate anyone disagreeing with him/her. That is hypocritical. Tolerance means accepting different views even if you believe someone else is a bigot! We do not all have to agree with alternative lifestyles.

7. I think Carson being charged at all is ridiculous but then to add on some "hate" law is crazy. These laws are strange and give special rights to only certain people. That makes no sense. So if I get beat up, that is somehow less important than if someone who is gay gets beat up. We have laws on the books to protect everyone. We do not need special laws. That just aggravates the situation. And people wonder why people are frustrated with the gay/lesbian movement and special groups!
8. Our school was fine before Pat tried starting this group and getting funding. Why can't they just meet on their own time and why do they need funding? That should be what is being debated, not some minor incident that happened at school and should be handled by the school not by the prosecutor. The prosecutor is just trying to make a political statement and make a name for herself.

Sworn and subscribed this _____ 16th _____ day
of December, 2002.

Dana Reuter

Notary Public
My commission expires: _____

Statement of Vice Principal Faye Zelleger

1. My name is Faye Zelleger. I am one of the vice principals of Clearwater High School and have been since 1998. I hold a B.S. degree in Education and English Literature and a Masters degree in Educational Psychology. Prior to coming to Clearwater I was a teacher at Good Shepard School, a private school in Clearwater.
2. Having been at Clearwater for almost five years, I don't see a problem with discrimination. Sure, Clearwater has its cliques and not all the students get along with one another, but no one is outcast for their views. If anything, the administration is too liberal. If Clearwater has any biases - like most public schools - it is against conservatives. You have a few students who say things from time to time without thinking – but then again, so have we all.
3. A couple of years ago while I was coaching the hockey team at Clearwater, I wasn't thinking very clearly when I reprimanded my players for a particularly unstellar performance. Trying to serve as coach while remaining effective as an administrator was no easy task. I was very frustrated with the lack of effort during practices and after a particularly embarrassing loss to our archrival, the "Clearwater Crabs," I shouted at the players, "You played like sissies – you couldn't beat five faggots and a blind goal keeper." Of course I felt terrible as soon as I said it. I met with the team later and apologized – I said I probably shouldn't have used those exact words – but they really played badly that night! Some students complained about it so I naturally volunteered to stop coaching. Those words still haunt me to this day!
4. Last year Clearwater established a Gay/Straight Alliance. Pat Walters approached me after a Student Council meeting and said s/he thought that it was important to bring this kind of thing into the open. Pat went on and on about his/her friend Keith Perez who graduated from Clearwater High two years ago. Pat said that a lot of people mocked Keith for being gay. I don't remember any problems while Keith was in school, but he did write a really nasty letter to Principal Runaas after graduation, threatening to sue the school for harassment and discrimination. Nothing ever came out of the letter. It seemed to be a lot of adolescent anger directed towards the school.
5. Pat was very active and vocal in getting the message about the Alliance out. Pat put up posters, handed out stickers of pink triangles and rainbows, talked to the students, made announcements at other meetings, and made sure everyone knew about the Alliance. Some kids, including Carson White, spoke out against it, but the funding was granted and the Alliance established. I'm not necessarily in favor of the Gay/Straight Alliance. Clearwater already has a group that promotes diversity issues, and besides, it just seems to divide the school on what is already a sensitive issue. If people are homosexual, they should just keep it to themselves and not flaunt it all over the place, especially at a high school.
6. Pat came to me at the beginning of the school year and reported that Carson

and some other students were harassing him/her because of his/her involvement with the Alliance and that they had threatened to "get him/her." I tried to calm Pat down and I gave him/her a harassment form to fill out, but Pat never turned it in. I even asked Pat at the next Student Council meeting if s/he had completed the form since it hadn't been returned. I decided to look into the matter further because I didn't want anyone to get hurt. I found that while some words had been exchanged, and yes, Carson was involved, it was mostly Pat overreacting and Pat being overly sensitive. I talked to Pat and reminded him/her that others are entitled to their viewpoints as well and told Pat to come to me again if anything else came up. I talked to staff members and encouraged them to bring any harassing behavior or issues of concern to my attention. None of them ever did.

7. About a month after Pat came to see me, Officer Winchester approached me and said there was something I should see. Winchester showed me some graffiti marks on the trophy cases, but it was just some childish drawing and sayings. Winchester then took me to Carson's locker and showed me that there was a marker left on the floor by the locker. Officer Winchester wanted me to bring Carson into the office for questioning, and s/he seemed excited and said "it was about time I finally got to do some real investigative work and we should press charges immediately." Officer Winchester also said something about finally earning the respect s/he never received. Officer Winchester was overreacting. None of that was necessary. The marker could have belonged to anyone and was probably used to make the posters for the hockey tournament. The good officer just doesn't understand high school kids and jumped to conclusions.

8. I didn't see the incident on December 13th between Pat and Carson. None of the teachers or staff did. Dana Reuter asked me to break up a fight between Carson White and Pat Walters. Pat was taken to the nurse's office and Carson was brought to my office. Carson didn't seem physically hurt, but was quite upset. Carson told me that s/he had been running late for a National Honor Society meeting and Pat had turned around deliberately hitting Carson with his/her backpack. Carson said s/he was just defending him/herself and didn't mean to hurt Pat, and that it was Pat who called Carson a bigot and came after him/her. I tried to talk to Pat about what had happened but s/he wouldn't talk to me and instead just said that I was always on Carson's side and to leave him/her alone.

9. I was unable to determine who was at fault, so they both served detention. That is school policy and how we have treated altercations in the past. I think it is important that the school handle as much as it can internally on a case-by-case basis. I think this form of punishment was fair. Kids will be kids; name-calling and scuffles happen. I think the D.A. is pressing charges because it is an election year. This is a sure way to look "tough on crime" and a way for Ms. Clarke to get her name in the newspapers.

10. I have opinions on homosexuality. Who doesn't? I personally believe homosexuality is evil, unnatural and should be stopped, but I would never let that get in

the way of doing my job as Vice Principal or let that interfere with how I treat the students. I believe I followed the appropriate course of action in this case and that Carson and Pat were both at fault and have been punished accordingly within the policy established by the school board. The high school is now looking into ways to ensure that this type of behavior does not happen again and ways to prevent future incidents.

Sworn and subscribed this 20th day of
December, 2002.

Notary Public
My commission expires: _____

Faye Zelleger