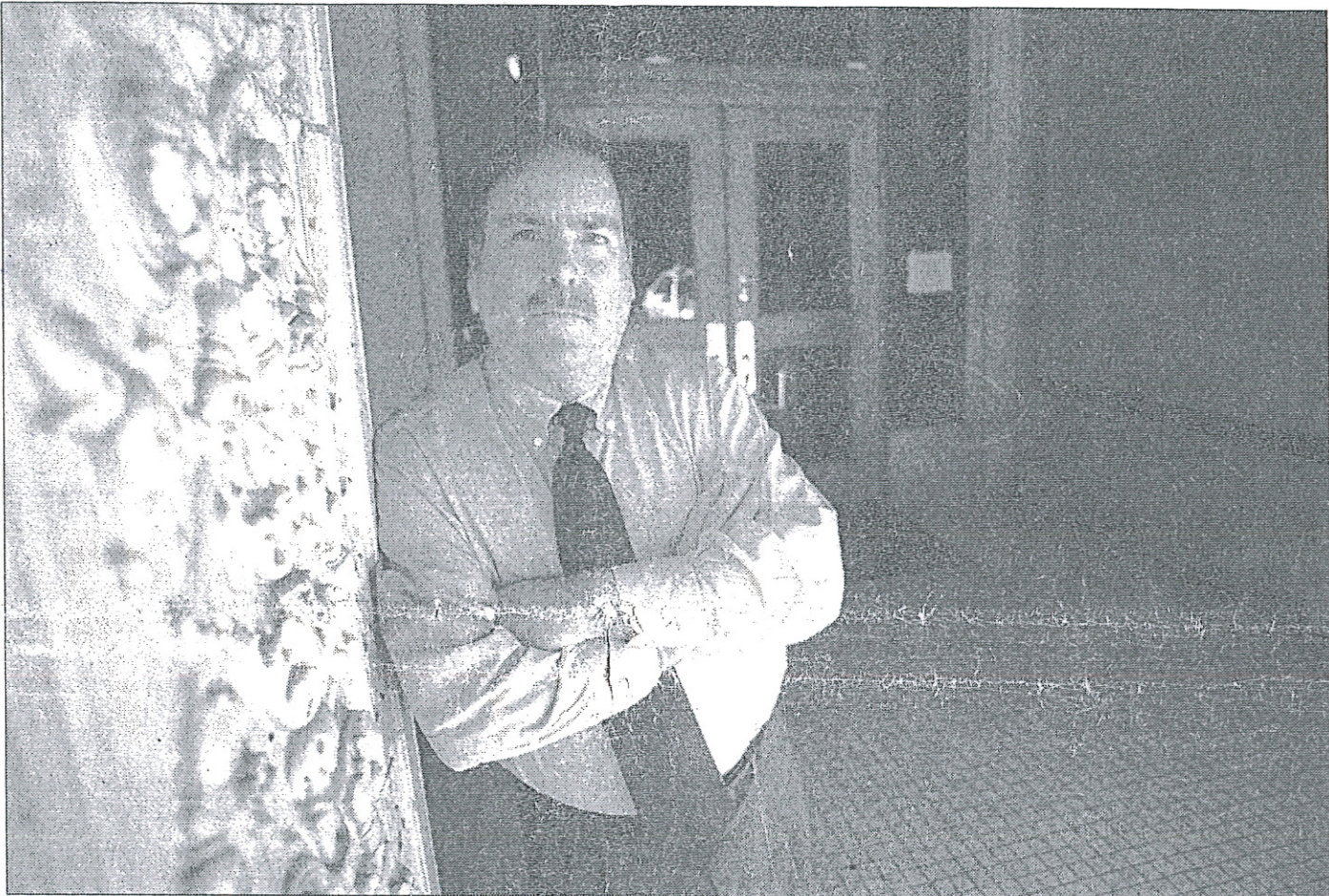


Daily Journal

CLASS ACTIONS



S. TODD ROGERS/Daily Journal

CHRISTIAN KEINER — "The true public duty of governing [school] boards is to provide a safe learning environment, not to conduct trials."

By Matthew Heller
Daily Journal Staff Writer

YUCCA VALLEY — It was a scandal that thrust this small High Desert town into the headlines as six of its high school's finest were accused of sexually abusing two underclassmen with a foreign object.

The six suspects, all members of Yucca Valley High's football team, were expelled after a contentious school board hearing in December 2000 at which they claimed their civil rights had been violated.

Since then, the scandal has receded from the limelight.

But the youths successfully challenged their expulsions in court, and five of them could be about to set a precedent for students around the state facing expulsion proceedings.

If the five prevail before an appellate court, school boards in future expulsion hearings would be required to subpoena witnesses, moving the process a step closer to a full-fledged trial. *Poist v. Brown-Dempsey*, E031001.

A state law passed in 1995 authorized school boards to subpoena percipient witnesses at the request of the district superintendent or the pupil. Most boards have determined that they have discretion not to issue subpoenas.

Do Expulsion Proceedings Violate Students' Due Process Rights? Lawyers Defending Several Young Men Argue That They Do

In September 2001, however, a San Bernardino County Superior Court judge overturned the Yucca Valley High School expulsions, finding that the Morongo Unified School District had denied the students due process by rejecting their requests to subpoena 19 witnesses.

According to Judge Bert L. Swift, who granted the students' petition for a writ of mandate, due process required the board to issue the subpoenas and the board violat-

ed a public duty by not doing so.

The school board has appealed Swift's ruling in what is the first test of Education Code Section 48918(i), arguing that having full-scale trials instead of informal school disciplinary proceedings would be way beyond the expertise of lay school board members.

"The true public duty of governing boards is to provide a safe learning environment, not to conduct trials," Morongo Unified attorney Christian M. Keiner of Sacramento argued in his appellate brief.

To some extent, the students' cause is moot given that they have completed their high-school education and cannot return to Yucca Valley High. At least three of them are in college.

But their attorney says they are continuing the legal fight because they believe that basic questions of fairness are at stake.

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MICHAEL FIUMARA — "Something needs to be done to even the playing field," said the Santa Rosa education attorney, above. Judge Bert Swift, inset, granted the Yucca Valley students' petition for a writ of mandate.

■ EXPEL: Precedent May Arise From Trial

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"Do you allow people to defend themselves?" sole practitioner Merele D. Chapman of Palm Springs asked. "Or do you allow people in power to ramrod things through?"

The California School Boards Association has filed an amicus brief on behalf of Morongo Unified, and the state's educational establishment is watching the case closely. So are education lawyers, who long have complained that the deck is stacked against students at expulsion hearings.

"Something needs to be done to even the playing field," said Michael A. Fiumara, of Fiumara & Tomlin in Santa Rosa.

According to their parents, the six Yucca Valley students — Robert Woodbury, Glenn Briggs, Nathan Leatherman, Steven Hill, Derrick Aguilar and Blake Poist — were clean-cut, college-bound kids. They had no prior school or police records, the parents said.

But in October 2000, another Yucca Valley High parent complained to police that the boys had committed sexual

their expulsions, filing suit in San Bernardino Superior Court in April 2001 against the district superintendent and her employer. *Woodbury v. Brown-Dempsey*, MCV03999.

"Their lives were destroyed," Chapman, their attorney, said. "They missed out on all the senior [year] stuff."

The first round in what could be a lengthy legal contest went to the students as Swift ruled that the district "denied [them] due process when it failed to issue subpoenas." He ordered the district to expunge the expulsions.

Poist, who is pursuing a separate civil-rights action against Morongo Unified, withdrew from the case after the school board filed its appeal.

Now the 4th District Court of Appeal in Riverside faces the quandary of interpreting the "may" in Section 48918(i). Does it give boards discretion to use the subpoena power itself, as the school district maintains? Or do boards only have discretion not to subpoena non-percipient witnesses — for example, character witnesses — as the students contend?

More broadly, however, the justices have an opportunity to determine what