No. 01-4155

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MARGARET HOSTY, JENI PORCHE, and STEVEN P. BARBA, individually and d/b/a INNOVATOR, Plaintiffs-Appellees, v. PATRICIA CARTER, Defendant-Appellant, and GOVERNORS STATE UNIVERSITY; BOARD OF TRUSTEES OF GOVERNORS STATE UNIVERSITY; DONALD BELL; TOMMY DASCENZO; STUART FAGAN; PAUL KEYS; JANE WELLS; DEBRA CONWAY; PEGGY WOODARD; FRANCIS BRADLEY; PETER GUNTHER; ED KAMMER; DOROTHY FERGUSON; JUDY YOUNG; CLAUDE HILL IV; and PAUL SCHWELLENBACH, Defendants.	)	On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 01 C 0500 The Honorable SUZANNE B. CONLON, Judge Presiding.

DEFENDANT-APPELLANT PATRICIA CARTER'S
PETITION FOR REHEARING
WITH SUGGESTIONS FOR REHEARING EN BANC

LISA MADIGAN
Attorney General
State of Illinois

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

Attorney for Defendant-Appellant.

MARY E. WELSH
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2106

TABLE OF CONTENTS

Page(s)

SUGGESTIONS FOR REHEARING EN BANC 1

ARGUMENT 3

I. The Panel's Opinion Conflicts With the Ninth Circuit's Decision to Uphold a University's Right to Restrict Student Speech Based on Content 3

II. The Panel's Decision Conflicts With This Court's Prior Recognition That Hazelwood Cast Doubt on Students' Speech Rights, as Other Judges, Including Justice Souter in 2000, Have Indicated 6

III. The Panel Misapprehended Both the Legal Landscape and the Evidence 8

A. The Panel Misapprehends Pre- and Post- Hazelwood Case Law 8

B. The Panel Misapprehends or Overlooks Undisputed Evidence 10

C. The Panel's Conclusion That the Law Governing Post-Secondary Schools and Their Students Was Clearly Established in October 2000 Overlooks the Ninth Circuit's 2002 Opinion in Brown, the1999 Panel Decision in Kincaid, and Justice Souter's 2000 Cautionary Note in Southworth 12

CONCLUSION 14

TABLE OF CONTENTS

Cases | Page(s)

Anderson v. Romero,
72 F.3d 518 (7th Cir. 1995) 13

Antonelli v. Hammond,
308 F. Supp. 1329 (D. Mass. 1970) 9

Baxter by Baxter v. Vigo County School Corp.,
26 F.3d 728 (7th Cir. 1994) 6

Bazaar v. Fortune,
476 F.2d 570 (5th Cir.), modif'd on reh'g,
489 F.2d 225 (5th Cir. 1983) 9

Bethel School Dist. No. 403 v. Fraser,
478 U.S. 675 (1986) 6

Bd. of Regents v. Southworth,
529 U.S. 217 (2000) 4, 13

Brown v. Li,
308 F.3d 939 (9th Cir. 2002), cert. denied,
__ U.S. __, 124 S. Ct. 1488 (2003) 3-5, 12

Crawford-El v. Britton,
523 U.S. 574 (1998) 10

Dickey v. Alabama St. Bd. of Educ.,
273 F. Supp. 613 (M.D. Ala. 1967)
vacated as moot sub nom. 402 F.2d 515 (5th Cir. 1968) 9, 13

Harless by Harless v. Darr,
937 F. Supp. 1351 (S.D. Ind. 1996) 10

Hazelwood School Dist. v. Kuhlmeier,
484 U.S. 260 (1988) . . . . passim

Hope v Pelzer,
536 U.S. 730 (2002) 13

Joyner v. Whiting,
477 F.2d 456 (4th Cir. 1973) 8

Kincaid v. Gibson,
191 F.3d 719 (6th Cir. 1999), rev'd,
236 F.3d 342 (6th Cir. 2001) (en banc) 6-7, 12

Mazart v. State,
441 N.Y.S. 2d 600 (N.Y. Ct. Cl. 1981) 9

Milliner v. Turner,
436 So.2d 1300 (La. Ct. App. 1983) 10

Muller by Muller v. Jeferson Lightshouse School,
98 F.3d 1530 (7th Cir. 1996) 5

Perry Educ. Ass'n v. Perry Local Educators' Ass'n.,
460 U.S. 37 (1983) 4, 9

Rosenberger v. Rector and Visitors of Univ. of Va.,
515 U.S. 819 (1995) 7, 13

Schiff v. Williams,
519 F.2d 257 (5th Cir. 1975) 9

Stanley v. McGrath,
719 F.2d 279 (8th Cir. 1983) 9

Tinker v. Des Moines Independent Community School Dist.,
393 U.S. 504 (1969) 8

Trujillo v. Love,
322 F. Supp. 1266 (D. Colo. 1971) 9

Wilson v. Layne,
526 U.S. 603 (1999) 12

SUGGESTIONS FOR REHEARING EN BANC

In 1988, the Supreme Court held in Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988), that the First Amendment allows high school officials to restrict ungrammatical or poorly written articles in a school-sponsored newspaper, but the Court explicitly declined to decide whether it is appropriate to accord the same deference to post-secondary school officials. Here, the panel concludes it is not appropriate. It further holds that the First Amendment prohibits even content-neutral review of a university-sponsored newspaper. In addition, the panel holds that the legal principles were clearly established in 2000. The panel's decision warrants en banc consideration, for it appears to conflict with decisions by the Supreme Court and this Court, and it raises many questions of exceptional importance.

One of these questions arises from inter- and intra-circuit conflicts the panel overlooked.[1] The most obvious conflict is with an August 2002 Ninth Circuit decision upholding a university's right to impose even content-based restrictions on students' academic speech. Furthermore, the panel's view that Hazelwood did not "muddle the landscape" enough to make the law unclear conflicts with this Court's prior ruling that Hazelwood cast doubt on the extent of students' First Amendment rights in schools. Another question of exceptional importance for en banc consideration is

---

[1] These conflicts required en banc consideration prior to publication under Circuit Rule 40, which states that when an opinion will overrule a prior decision by this Court or create a conflict between or among the circuits, it shall not be published without en banc consideration. Circuit Rule 40 also states that such an opinion shall contain a footnote indicating compliance with this procedure. No such footnote appears in the opinion here.

posed by the staggering breadth of the panel opinion: it appears to impose an absolute ban on even content-neutral review of government-sponsored speech in a government-created forum. If so, it appears to conflict with decisions by the Supreme Court and this Court.

Even if rehearing en banc were not warranted, rehearing by the panel is. The panel misapprehends and overlooks evidence in the record concerning the nature of the newspaper as a nonpublic forum, an issue the panel does not explicitly address even though it is the first step in prior restraint analysis. The panel also overlooks the lack of any evidence that Dean Carter intended the review for anything other than errors of punctuation, grammar, and the like, which are not speech on matters of public concern protected by the First Amendment. Similarly, though the panel concludes that Dean Carter's calls were the proximate cause for no paper being printed after October 31, 2000, one Plaintiff candidly conceded that the "chief deterrent" to publication was the Student Communications Media Board.

The most important ground for rehearing is the panel's holding that the law governing the respective rights of post-secondary schools and their students were "clearly established" in 2000. Not so. The panel overlooks the 2002 Ninth Circuit decision, in which 2 judges agreed this was an open question; a 1999 Sixth Circuit panel decision (reversed in 2001) upholding a university's right to confiscate a yearbook based on poor quality and content; and Justice Souter's caution in a 2000 concurrence that post-secondary schools and their relations to their students are only "different and at least arguably distinguishable" from their high school counterparts.

ARGUMENT

I. The Panel's Opinion Conflicts With the Ninth Circuit's Decision to Uphold a University's Right to Restrict Student Speech Based on Content.

The panel holds that the First Amendment prohibits non-content-based review and approval of school-sponsored speech at post-secondary schools, and it characterizes application of Hazelwood in this context as "an extreme step." Slip op. at 6. This view conflicts squarely, albeit silently, with the Ninth Circuit's August 2002 decision in Brown v. Li, 308 F.3d 939 (9th Cir. 2002), cert. denied, __ U.S. __, 124 S. Ct. 1488 (2003), which upheld the university's right to disapprove a student's academic speech based on its content. The court reached this conclusion using 3 different rationales, 2 of which address (and disagree about) the applicability of Hazelwood.[2] These opinions reveal just how unsettled the law is in this area.

Judge Graber, for example, interpreted the controlling factor in Hazelwood to be whether speech is curricular, which established that the paper there was a nonpublic forum and, in turn, determined that school officials should be accorded deference. 308 F.3d at 949. Here, by contrast, the panel rejects any distinction between curricular and extracurricular speech. Slip op. at 6. The panel thus implies that this factor has no bearing on the nature of the Innovator as a forum, but it then appears to conclude that no deference at all is warranted. Id. If so, the panel's conclusion conflicts with the Supreme Court's holding that even in a public forum,

[2] The third judge concluded that the speech was deceptive and thus not entitled to First Amendment protection. 308 F.3d at 955-56 (Ferguson, J., concurring).

speech may be restricted under certain conditions. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45-46 (1983).

Judge Graber also interpreted the Hazelwood Court as having left open the question whether the same degree of deference accorded to high school officials would be appropriate for post-secondary school officials, noting that the Court had explicitly refused to decide this question. 308 F.3d at 949 (citing 484 U.S. at 273 n.7). By contrast, the panel interprets the Hazelwood Court's refusal to decide as tantamount to the Court's acknowledgment that any deference to post-secondary school officials would be inappropriate. Slip op. at 7. In doing so, the panel also overlooks Justice Souter's observation in a 2000 concurrence that post-secondary schools and their relation to their students are only "different and at least arguably distinguishable" from their high school counterparts, noting that thus far, the Court had addressed only the right of high schools to restrict student speech. Bd. of Regents v. Southworth, 529 U.S. 217, 238 n.4 (2000) (Souter, J., concurring).

Judge Graber also stressed that "the First Amendment does not require an educator . . . to approve the work of a student that, in his or her judgment, fails to meet a legitimate academic standard." Brown, 308 F.3d at 949 (emphasis added). The panel's decision, however, requires a university to place its imprimatur on even unprotected speech, including obvious grammatical errors, hate speech, and libel, in a school-sponsored newspaper without any opportunity to prevent the inarguable damage to the university's reputation. By limiting a university to post-hoc remedies, the panel's decision conflicts with this Court's prior holding that content-neutral pre-

screening is permissible for even private speech because post-hoc remedies may be inadequate. Muller by Muller v. Jefferson Lighthouse School, 98 F. 3d 1530, 1541 (7th Cir. 1996).

In a lengthy opinion both concurring and dissenting in Brown, Judge Reinhardt agreed that the university had the right to reject the student's speech (a thesis) and that the question of which standard to apply was an open one. 308 F.3d at 956-67, 966, 960, 963 (Reinhardt, J., concurring in part and dissenting in part). Unlike Judge Graber, however, he interpreted Hazelwood as holding that school-sponsorship of the newspaper was the controlling factor. Id. at 963. Here, however, school-sponsorship is mentioned only in passing. Slip op. at 2, 5, 6.

Judge Reinhardt believed Hazelwood was inapplicable and suggested other possible standards, stressing that "different First Amendment standards [may be] applicable in different contexts to restrictions imposed at the university level depending on both the speaker and the nature of the particular forum" and emphasizing the importance of "distinguish[ing] student speech from university speech . . . and the speech of private individuals using the university's facilities." 308 F.3d at 960-64. Here, however, the panel neither distinguished between Plaintiffs' speech as individuals and their speech as staff for the school-sponsored newspaper nor took into account the nature of the forum.

Given these conflicts, en banc consideration is needed to secure and maintain uniformity of decision. The standard applicable to post-secondary schools and their students is a question of exceptional importance, warranting rehearing en banc.

II. The Panel's Decision Conflicts With This Court's Prior Recognition That Hazelwood Cast Doubt on Students' Speech Rights, as Other Judges Have Observed.

The panel held that Dean Carter was not entitled to qualified immunity because Hazelwood did not "muddle the landscape" enough to make the law unclear. Slip op. at 4-7. The panel's conclusion, however, cannot be squared with this Court's recognition, in a 1994 case the panel overlooked, that Hazelwood (and Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986)) did "cast some doubt" on students' rights even for private speech. Baxter by Baxter v. Vigo County School Corp., 26 F.3d 728, 737-38 (7th Cir. 1994).

That Hazelwood "muddled the landscape" is also demonstrated by the history of the sole post-Hazelwood decision the panel cites concerning a school-sponsored publication: the Sixth Circuit's 2001 en banc holding that a university did not have the right to confiscate a yearbook due to poor quality and inappropriate content because the evidence showed the yearbook was a nonpublic forum. Slip op. at 4 (citing Kincaid v. Gibson, 191 F.3d 719 (6th Cir. 1999), rev'd, 236 F.3d 342 (6th Cir. 2001) (en banc)). That decision, however, was published in 2001 and thus is not relevant to whether the law was clearly established in 2000. Baxter, 26 F.3d at 738 n.7. Moreover, the en banc panel cautioned that its ruling "had no bearing on the question of whether and the extent to which a public university may alter the content of a student newspaper." 236 F.3d at 348 n.6.

What was relevant for the panel's qualified immunity analysis was a decision the panel overlooks: the September 1999 Kincaid panel opinion, which held the

university did have the right to confiscate the yearbook for quality and content because the evidence showed that the university intended the yearbook to be a nonpublic forum, rejecting the applicability of the cases on which the panel here relies based on Hazelwood. 191 F.3d at 727-28. Also relevant on this point is that, as one of the judges on the Kincaid panel observed, no federal circuit court had taken a position as of September 1999 on the question left open in Hazelwood on whether the deference accorded to secondary schools would be appropriate for the post-secondary schools. 191 F.3d at 730 (Cole, J., concurring in part and dissenting in part).

The only other post-Hazelwood ruling the panel here cites is Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819 (1995), which is described as holding that the First Amendment prohibits a university from denying funds to a student magazine based on objections to content. Slip. op. at 4, 7. In Rosenberger, however, the issue was whether the university could discriminate based on viewpoint when funding private speech. 515 U.S. at 835. Here, by contrast, the speech is school-sponsored, not private, and Plaintiffs have never alleged, much less presented evidence of, viewpoint discrimination. Moreover, the panel overlooks the Rosenberger Court's observation that to preserve the purpose of a government-created forum, the government may discriminate based on content. Id. at 829-30; see also id. at 833 (when State is speaker, it may make content-based choices). The panel's decision that the First Amendment prohibits a university from requiring prior review of a university-created newspaper therefore appears to conflict with Rosenberger. This conflict too warrants en banc consideration.

At the very least, the Kincaid panel decision, coupled with the dueling rationales in Brown, Justice Souter's observations in 2000, and Rosenberger amply demonstrate that not all reasonable university officials would have been compelled to conclude in October 2000 that content-neutral review and approval of a school-sponsored newspaper would violate the First Amendment.

III. The Panel Misapprehended Both the Legal Landscape and the Evidence, Warranting Rehearing.

Dean Carter was entitled to qualified immunity at summary judgment unless Plaintiffs presented both sufficient evidence from which a jury could find she violated their First Amendment rights and that their rights were clearly established in October 2000. The panel concludes that Plaintiffs met their evidentiary burden, but it misapprehends certain evidence, and it overlooks other, undisputed evidence (and the lack of evidence) on essential elements of Plaintiffs' claim. The panel also misapprehends the vitality of many of its authorities, which appear to conflict with the analysis in Hazelwood and thus were overruled, as well as the lack of weight its lower court rulings have on qualified immunity.

A. The Panel Misapprehends Pre- and Post- Hazelwood Case Law.

Though the panel holds that courts have consistently viewed post-secondary school students' First Amendment rights broadly and that Hazelwood had no effect on their continued vitality (slip op. at 4-6), it overlooks that many of its pre-Hazelwood authorities rejected school-sponsorship as significant and rely on Tinker v. Des Moines Independent Community School Dist., 393 U.S. 504 (1969), which Hazelwood distinguished on this ground. Slip op. at 4 (citing Joyner v. Whiting, 477

F.2d 456, 460-61 (4th Cir. 1973), Trujillo v. Love, 322 F. Supp. 1266, 1270-71 (D. Colo. 1971), Antonelli v. Hammond, 308 F. Supp. 1329, 1336 (D. Mass. 1970), Dickey v. Alabama St. Bd. of Educ., 273 F. Supp. 613 (M.D. Ala. 1967), vacated as moot sub nom. 402 F.2d 515 (5th Cir. 1968);, Mazart v. State, 441 N.Y.S. 2d 600, 605-06 (N.Y. Ct. Cl. 1981)). To the extent that such decisions conflict with Hazelwood on the importance of school-sponsorship, they have been overruled.

In addition, in prior restraint cases when the government creates the forum, as here, the first question is whether a forum is public or nonpublic, which determines the applicable standard of deference. Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45-46 (1983). Here, however, the panel appears to misapprehend the applicable standard as "special circumstances" and the likelihood of public disruption from the speech. Slip op. at 4-5 (citing Bazaar v. Fortune, 476 F.2d 570, 575-79 (5th Cir.), modif'd on reh'g, 489 F.2d 225 (5th Cir. 1983) (en banc), Schiff v. Williams, 519 F.2d 257, 260-61 (5th Cir. 1975), Joyner, and Antonelli). Ironically, on rehearing in Bazaar, the dissent is based on the First Amendment right not to be compelled to sponsor the speech of another. 489 F.2d at 226 (Bell, J., and Roney, J., dissenting).

The panel also appears to misapprehend the relevance of its other pre-Hazelwood authorities to the issue of the standard applicable to post-secondary school-sponsored speech. Slip op. at 4-5 (citing Stanley v. McGrath, 719 F.2d 279 (8th Cir. 1983) (university failed to present any evidence that reduction in funding to school newspaper was motivated by anything other than objections to content);

Dickey (First Amendment prohibits expulsion from university due to content of speech in newspaper); Milliner v. Turner, 436 So. 2d 1300, 1302 (La. Ct. App. 1983) (university held not liable for students' defamatory statements because First Amendment permitted only advisory control).

Lastly, the panel's authorities generally concern censorship, rather than prior review, which alone is not a prior restraint, especially when, as here, the evidence shows approval has never been withheld. Harless by Harless v. Darr, 937 F. Supp. 1351, 1353-54 (S.D. Ind. 1996) (upholding review policy for private speech and noting that nothing in record suggested review had ever resulted in disapproval).

B. The Panel Misapprehends or Overlooks Undisputed Evidence.

Another ground for rehearing by the panel is that it misapprehended and overlooked undisputed evidence as well as the dearth of evidence on each essential element of Plaintiffs' claims.

For example, to survive summary judgment, Plaintiffs had to present evidence from which a jury could find improper intent. Crawford-El v. Britton, 523 U.S. 574, 600 (1998). Though the panel implies that Dean Carter intended the review to be for content (slip op. at 5-6), this is not a reasonable inference from the evidence. The only evidence as to Dean Carter's intent was her undisputed testimony that she wanted the review for grammar, punctuation, and other non-content-based grounds, given that the paper's advisor was at another school four hours away.[3] Doc. 44 at

[3] The panel also overlooks evidence showing that Dean Carter's concern was warranted. In just one article in the only issue of the paper in the record (Doc. 44 at Fagan dep. at ex. 3), one Plaintiff describes the Innovator's advisor's "decision to

Carter dep. at 9-15, 4-5. In addition, one Plaintiff admitted they had never been told not to publish an article based on its subject matter (Doc. 44 at Porche dep. at 180-81), while another admitted it was impossible to know whether the University knew what they intended to publish (Doc. 44 at Hosty dep. at 30, 26, 28, 124). Thus, there is no evidence that Dean Carter intended the review to be for anything other than grammar and the like, which are not speech on a matter of public concern and thus have no constitutional protection. Moreover, as in Harless, Plaintiffs failed to provide evidence to support their prior restraint claim because nothing in the record suggests that the review would result in restrictions on content.

The panel emphasizes the university's written policy against censorship or advance approval of content and form (slip op. at 2), implying that the policy alone establishes the university's intent to make the paper a public or limited public forum. The panel, however, overlooks undisputed evidence, corroborated by one Plaintiff's candid admission, about the actual practice. Indeed, the "common practice" was to submit the paper to the advisor, who reviewed it for sufficient fact-checking and to protect the university from liability and then signed off on it before it went to the printer. Docs. 36, 43 at ¶¶ 45-46; Doc. 44 at Hosty dep. at 23-24. There is no evidence that Dean Carter intended anything more than to ascertain that this practice had been enforced.

Similarly, though the panel concludes that Dean Carter's call prevented

---

move towards external legislation," meaning "litigation," and she uses "mitigated" to mean "exacerbated" (id. at 1), "complimentary" for "complementary" and "infer" for "imply" (id. at 8).

publication of the paper (slip op. at 7-8), the panel overlooks one Plaintiff's candid concession that the "chief deterrent" to publication was the Student Communications Media Board, the paper's publisher (Doc. 44 at Porche dep. at 36), not Dean Carter. The panel also held that Plaintiffs had no reason to complete the second December issue because the campus was on break in late December (slip op. at 8), but this reason does not apply to the earlier December issue or the 2 issues due each month thereafter through June.

C. The Panel's Conclusion That the Law Governing Post-Secondary Schools and Their Students Was Clearly Established in October 2000 Overlooks the Ninth Circuit's 2002 Opinion in Brown, the1999 Panel Decision in Kincaid, and Justice Souter's 2000 Cautionary Note in Southworth.

A government official is entitled to qualified immunity when judges disagree on a constitutional question because "it is unfair to subject government officials to money damages for picking the losing side of the controversy." Wilson v. Layne, 526 U.S. 603, 618 (1999). The panel here concludes that the First Amendment standard applicable when regulating post-secondary students' speech was clearly established in October 2000, but it does not take into account (1) the Ninth Circuit's holding in August 2002 in Brown that the university had the right to reject the student's speech for noncompliance with university standards and Judge Graber and Judge Reinhardt's agreement that the applicable standard was an open question; (2) the September 1999 Sixth Circuit panel decision in Kincaid, holding that the yearbook was a nonpublic forum so the university could confiscate it based on content and quality, and the January 2001 en banc court's explicit refusal even to say which

analytical framework applies to post-secondary school newspapers (236 F.3d at 238 n.6); and (3) Justice Souter's June 2000 concurrence in Southworth, just a few months before Dean Carter's calls, characterizing post-secondary students and their schools' relations to them as only "arguably distinguishable" from their secondary school counterparts. 529 U.S. at 238 n.4 (Souter, J., concurring). If a Supreme Court Justice could say no more than that universities and high schools were "different and arguably distinguishable" in June 2000, it surely was arguable in October 2000 that they were not.

Though the panel finds the law was clearly established, none of its authorities is from the Supreme Court (other than Rosenberger, which has been distinguished above) or this Court. Rather, the panel cites just a handful of cases, most of which are either federal district court rulings, which have no weight or authority and thus cannot "clearly establish" the law (Anderson v. Romero, 72 F.3d 518, 525 (7th Cir. 1995)), or lower state court rulings; all are from other jurisdictions. Slip op. at 4-5. One of the district court rulings was later vacated (Dickey), so its weight is nil. Under the circumstances, this smattering of pre-Hazelwood rulings does not provide the consensus that would have given Dean Carter the "fair warning" required to strip her of her entitlement to qualified immunity. Hope v. Pelzer, 536 U.S. 730, 740 (2002).

CONCLUSION

For the reasons stated above, Defendant-Appellant Carter respectfully requests that this Court vacate its opinion and set this case for rehearing en banc or rehearing by the panel.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

100 West Randolph St.
12th Floor
Chicago, IL 60601
312/814-3312

Attorneys for Defendant-Appellant.

____
MARY E. WELSH
Assistant Attorney General
100 West Randolph St.
12th Floor
Chicago, Illinois 60601
312/814-2106

APPENDIX

1. Hosty v. Carter, No. 01-4155 (7th Cir. April 10, 2003) 1

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

PROOF OF SERVICE

The undersigned, being first duly sworn upon oath, deposes and states that two (2) copies of the foregoing Defendant-Appellant's Petition for Rehearing With Suggestions for Rehearing en Banc were served upon the below-named parties by depositing such copies in the United States mail at 100 West Randolph Street, Chicago, Illinois, in an envelope bearing sufficient postage on April 24, 2003 before 5:00 p.m.

Margaret Hosty
9746 South 53rd Avenue
Oak Lawn, IL 60453

Jeni Porche
257 Juniper Street
Park Forest, IL 60466

Steven P. Barba
4700 West 97th Place
Oak Lawn, IL 60453

Richard Goehler
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth St.
Cincinnati, Ohio 45202-4182

____

SUBSCRIBED and SWORN to before me
this 24th day of April 2003.

____
NOTARY PUBLIC