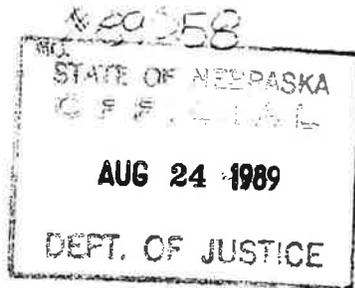


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General



DATE: August 23, 1989

SUBJECT: Proposed Legislation Prohibiting Publication of Sexual Assault Victim Information.

REQUESTED BY: Senator Ron Withem, District 14

WRITTEN BY: Robert M. Spire, Attorney General
Linda L. Willard

You have informed us that you propose introducing legislation similar to Georgia's statute, Ga. Code Ann. § 16-6-23 (1988), which would make it illegal to publish the name, address and other identifying information of a sexual assault victim. Your concerns revolve around the United States Supreme Court case of Florida Star v. B.J.F., 57 U.S.L.W. 4816 (June 21, 1989) which involved a law suit brought by a rape victim against a Florida newspaper for publication of her name in violation of state laws.

The United States Supreme Court held in the Florida case that a newspaper could not be held liable for printing the name of a rape victim lawfully obtained from local police reports. The concerns expressed by the Supreme Court regarding the construction of the statute in the Florida case as to ambiguity and over breadth appear to be addressed in the Georgia statute which you propose to use as a model for your legislation.

In the Florida case the newspaper obtained the victim's name from a police report made available to the press in a location accessible to the public. The Supreme Court makes it clear that liability may not be imposed for printing sensitive information when the government fails to police itself. Thus, it would be incumbent upon government entities who possess information not to release it or make it available to the public prior to court proceedings. The statute could not impose a negligence per se

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standard on publication of identifying information and the courts would have to look at each violation on a case-by-case basis to determine if the information had been lawfully obtained through official sources.

The Florida case seems to imply that the state may impose restrictions on the publication of sensitive information that is not normally available to the public. Once the information becomes available to the public, as in a court document, the state could not bar its publication unless it could show that it had a need to further a state interest of the highest order.

It is our conclusion that the problems which the Supreme Court noted with the Florida statute in Florida Star v. B.J.F., supra., do not exist with the Georgia statute which you referenced.

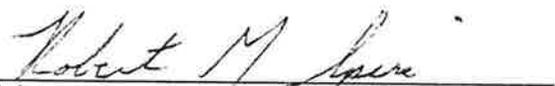
Respectfully submitted,

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Approved By:



Attorney General

28-12-6