

Texas A&M The Battalion

Vol. 87 No. 158 USPS 045360 8 Pages

College Station, Texas

Tuesday, June 14, 1988

Court to let patients sue for vaccinations that cause disease

WASHINGTON (AP) — The Supreme Court said Monday the government may be forced to pay victims when a federally approved vaccine causes the disease it was intended to prevent.

The unanimous ruling is a victory for a Pennsylvania boy crippled by polio, but the Reagan administration says exposing the government to costly damages in such cases could threaten availability of life-saving vaccines for countless others.

In the vaccine case, the Food and Drug Administration, which licenses more than 40 vaccines, had no immediate comment on the ruling's possible impact.

The court reinstated a suit in behalf of Kevan Berkovitz, who was two months old in May 1979 when his pediatrician in Charleroi, Pa., gave him a dose of Orimune, a polio vaccine made by Lederle Laboratories.

Orimune, a form of Sabin oral vaccine, was licensed by the government in 1963.

Kevan was stricken with polio within a month after taking the vaccine and the U.S. Communicable Disease Center determined he contracted the disease from the vaccine.

The boy, now 9, is paralyzed from the neck down and uses a respirator to help him breathe. Monday's ruling provides an opportunity in court to seek compensation for him from the government.

His lawyer, Ellen Viakely of Pittsburgh, said of the ruling, "It's a case where the government knew that this particular polio vaccine violated its own regulatory safety standards. By the government's own regulatory standards, this vaccine was unsafe. But it licensed it anyway."

Viakely said the ruling will not effect cases in which those who received a vaccine had an allergic reaction.

Ronald Greene, a lawyer representing Lederle Laboratories, said the impact of the ruling was unclear.

He said the decision appeared to cover all government-licensed vaccines and possibly other drugs as well.

But he said the standards enunciated by the court may affect a limited number of cases.

"The facts alleged here are unusual and I don't know whether they (the Berkovitz family) can prove them," he said. "These are circum-

stances that are unlikely to arise" very often.

The polio vaccine is the only common vaccine clearly shown to cause the disease it was supposed to prevent, said Samuel Katz, chairman of the pediatrics department at the Duke University Medical Center.

Polio paralysis occurs in about one out of every 3.2 million doses of oral polio vaccine, said G. Scott Gebink, professor of pediatrics at the University of Minnesota Medical School.

Cigarette company held liable in death

NEWARK, N.J. (AP) — A federal court jury for the first time held a cigarette company partially responsible for the death of a smoker, finding Monday that Liggett Group Inc. failed to warn the public about the dangers of cigarettes and violated its promise to produce a safe product.

The jury awarded \$400,000 to Antonio Cipollone, whose wife Rose died of lung cancer in 1984, but rejected his claim of a conspiracy among the three tobacco companies that produced the products his wife used.

The damage award was based on the jury's finding that Liggett violated its expressed promise to consumers to make a safe product, thus contributing to Mrs. Cipollone's death.

It also found that Liggett failed to warn the public about the dangers of cigarettes, but awarded no damages because it found Mrs. Cipollone 80 percent responsible for her death.

Liggett, Lorillard Inc. and Philip Morris Inc. were exonerated of conspiring to mislead the public about the dangers of smoking. The jury awarded no punitive damages.

Mrs. Cipollone, who was 58 when she died, smoked Chesterfield and L&M cigarettes, both made by Liggett, before Congress required the U.S. surgeon general's health warnings on cigarette packs in 1966. She smoked for 40 years, later using brands made by Lorillard and Philip Morris.

"The tobacco companies have claimed for the last 20 years that they are invincible," Alan Darnell, an attorney for Cipollone, said. "This shows they are not... they are just like any other company."

Liggett Attorney James Kearney said he was pleased by the verdict. "The jury specifically rejected any claims of (punitive) damages," he said. "The floodgates have been closed even firmer than they were before."

As the jury forewoman answered each question from the court clerk, a gasp rose from the courtroom packed with industry lawyers, analysts and reporters.

Antonio Cipollone, who contin-

ued the case after his wife died following 40 years of smoking, remained impassive.

The panel of three men and three women resumed deliberations Monday morning after the weekend off.

The jurors asked few questions during deliberations, which began at noon Tuesday.

Cipollone charged that Lorillard Inc., Liggett Group Inc. and Philip Morris Inc. misled the public about the dangers of cigarette smoking and contributed to Mrs. Cipollone's death.

Funds to help teacher bring child home

By Stephen Masters
Staff Writer

After only two working days, \$2,700 of the \$6,000 required to airlift the hospitalized daughter of a Texas A&M professor from Munich, Germany to College Station has been donated through a local bank, said Frank Shannon, assistant director of the Development Foundation and friend of the Burnett family.

Laura Burnett, daughter of Dr. John Burnett, a marketing professor, has been in a coma since the May 30 accident in which she suffered a broken leg requiring special surgery, a broken wrist, broken rib and injuries to the forehead, side of the head and brain stem.

Complete details of the accident are unavailable, but it is known that Burnett's body rolled onto the hood and shattered the windshield of a Mercedes-Benz that struck her.

A friend of the family, Diane Blackburn of the A&M pathology and laboratory medicine department, said Burnett has been in a coma since the accident and her condition had not changed late Monday afternoon.

Insurance will not cover the costs to bring Burnett home, so a fund was decided on as the best solution, Blackburn said. Arrangements have already been started with the State Department for the air transportation, she said.

Shannon said the account for Burnett was opened at First Republic Bank Thursday.

"We have been real encouraged by the response of contributions," Shannon said. "As of 2 p.m. Monday, we have received \$2,500, \$1,000 of which has been donated by individuals in the community. This also includes several large contributions from churches and Christian student organizations."

Blackburn said the amount was up to \$2,700 by 4 p.m. Monday.

Dr. Burnett and Laura were in Germany touring businesses as part of a Study Abroad program, Blackburn said.

Laura, 19, is a junior at Texas Tech University.

Shannon said because Dr. Burnett is a member of the American Armed Forces Education Service, it was hoped that a discount could be attained on the military airlift, but it does not look likely at this point.

The family plans to try to return Laura by next week, he said, if the money can be raised by that time.

All donations are welcome and should be sent to the Laura Burnett Fund, in care of First Republic Bank, P.O. Box 2860, College Station, Texas 77841.

Donations should be designated to the attention of Lee Cargill.



Tiptoe through the tulips

Photo by Brad Apostolo

Mary Powell, an A&M employee, sprays flowers Monday. The plants have needed extra care lately

because of the lack of rain and the hot Texas weather.

A&M Faculty Senate approves resolution for ombudsperson

By Janet Goode
Senior Staff Writer

The Texas A&M Faculty Senate Monday approved a resolution by the personnel and welfare committee which calls for the establishment of an ombudsperson to serve the University and community.

Although the position of ombudsperson has yet to be clearly defined, the committee recommended the ombudsperson be an official of high status who is impartial and independent.

According to the committee report, the official would receive and investigate grievances and suggestions from faculty members, administrators, personnel and possibly students.

J. Benton Storey, former chairman of the committee and spokesman for the resolution, said he envisions the ombudsperson to be a common faculty member, "someone like us," who could privately speak to a person with a problem.

Storey said he hopes the ombudsperson will be available to students also, but said students are

not mentioned specifically in the resolution because the Senate hasn't had the chance to discuss the proposal with student representatives.

Storey said he realizes that existing programs and faculty members deal with grievances, but said there are often procedural problems that keep a person from airing a complaint.

"In some cases, in order for (an individual) to make a complaint about the department head, he must go through the dean," Storey said. "And to get to the dean, he must go through the department head. He ends up either waiting for the department head to retire or he goes somewhere else."

Storey said the result of formal procedure is administrative ignorance to problems that exist.

The committee recommended that the ombudsperson be appointed by the president, chosen by students, faculty and staff, and be confirmed by the Board of Regents. The report also outlines possible procedures which Storey said will allow for "free and easy" access of the ombudsperson.

"This (resolution) would make the ship of state here at the University move much smoother," Storey said.

Sam Gillespie, assistant dean of business, expressed concern that the resolution would overlap with duties of the dean of faculties and that the costs of the program would outweigh the benefits.

Dean of Faculties and Associate Provost Dr. Clinton Phillips said that although this office would, in some ways, overlap with his job, he understands that some people may not want to come to a dean with their problems.

The resolution was approved with dissent.

In other business, the Senate approved a recommendation by the graduate council that will allow an undergraduate student to apply up to nine hours of advanced courses toward a master's degree.

Also approved was the recommendation that a maximum of nine hours of credit be given for coursework taken while a student is in "non-degree" status.

General strike near Moscow finds 1 dead

MOSCOW (AP) — A general strike was said to have virtually shut down Armenia on Monday, and a shotgun blast killed a policeman during weekend ethnic protests in the neighboring southern republic of Azerbaijan.

Foreign Ministry spokesman Genady I. Gerasimov said an Azerbaijani officer was killed by shotgun fire during protests in Baku, the Azerbaijani capital. Gerasimov identified the gunman only as an Armenian named Aganbegyan.

Azerbaijanis and Armenians are arguing over control of Nagorno-Karabakh, a region with a predominantly Armenian population that was assigned to Azerbaijan in 1923. The conflict is aggravated by the fact that most Azerbaijanis are Moslems and most Armenians are Christians.

On Sunday, rumors that two Armenians had been killed in Azerbaijan led to protests by Armenians in Moscow. They gathered in a cemetery and marched to the offices of the official Tass news agency.

AUSTIN (AP) — Regents of the Texas State University System voted 5-4 Monday to fire Robert Hardesty as president of Southwest Texas State University despite a united front of faculty, students, parents and townspeople supporting him.

It was the second time in less than a month that regents voted 5-4 to fire Hardesty. His May 19 ouster at a Huntsville meeting was overturned by State District Judge Jon Wisser of Austin, who ruled that regents had violated the Texas Open Meetings Act because the action was not on the agenda.

The dismissal is immediate. Hardesty, who attended the board meeting with his wife, Mary, was given five days to vacate the president's house at San Marcos.

After Monday's vote, which drew boos from some of the crowd of more than 300, Hardesty walked around the table, shaking hands with each regent. He lingered to talk briefly with Norman Elder of Del Rio, who had presented the case against Hardesty.

Elder, interrupted by hissing and laughter, said none of the regents bore any animosity toward Hardesty, a former speechwriter for President Lyndon B. Johnson. However,

Elder said Hardesty had failed to follow board rules by arranging contracts without board approval; used gift money to Southwest Texas State to fly first class, stay in hotel rooms costing over \$250 a night and pay dues to five private clubs.

"If airline coach and Holiday Inn are good enough for the regents, faculty and our staff when they travel, they ought to be good enough for our president or they ought to be paying it out of their own pocket," Elder said.

He said Hardesty had obtained reimbursement for personal contributions to certain charities.

Also, Elder said, Hardesty in 1987 had spent one of three working days out of the office and had made 11 out-of-state trips. In 1988, Elder said, Hardesty had made eight out-of-state trips by May and had been away from the office with even greater frequency.

Last November, Elder said, Hardesty was told by some regents to stay home to take care of business.

"The amount of time away doesn't make any difference, it's what you do when away," Hardesty said.

Regent Katherine Lowry of Austin, reading a statement for the four-

member minority, said: "I'm concerned about after-the-fact scurrying around to assemble evidence against President Hardesty. His loss is a disservice to the university..."

Hardesty said he would leave Southwest Texas with his head held high — proud of his 6-year stewardship at that institution and proud of the progress they have made. No other university has made so much progress in such a short period of time.

Asked if he would sue as a result of his firing, Hardesty said, "I have no idea — no time to think about it."

He said he would prepare a response, probably Tuesday, to Elder's comments.

At the meeting, former U.S. ambassador to Australia William Crook, a Hardesty supporter, said regent Ruben Escobedo of San Antonio should abstain from voting.

Regent Ed Longcope of San Marcos read a statement saying Escobedo had approached him in the men's room at a San Angelo regents' meeting, saying Republican Gov. Bill Clements' office had contacted Escobedo, and stated, "The governor wants Bob Hardesty fired."

Longcope said Escobedo told him