THE COURTEOUS COURT

Two recent U.S. Supreme Court rulings demonstrate the justices' compassion and earn accolades from queer activists by Bob Roehr

A sharply divided U.S. Supreme Court ruled that school administrators may be held liable for ignoring sexual harassment among students.

In a 5-4 decision, the court said that, under a 1972 federal law known as Title IX, schools can be forced to pay damages for responding with deliberate indifference to a student's severe and pervasive sexual harassment by another student. The ruling in *Davis vs. Monroe County Board of Education* was issued May 24.

Justice Sandra Day O'Connor, writing for the majority, limited liability to cases in which administrators act "with deliberate indifference to known acts of harassment" and where the harassment "is so severe, pervasive and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."

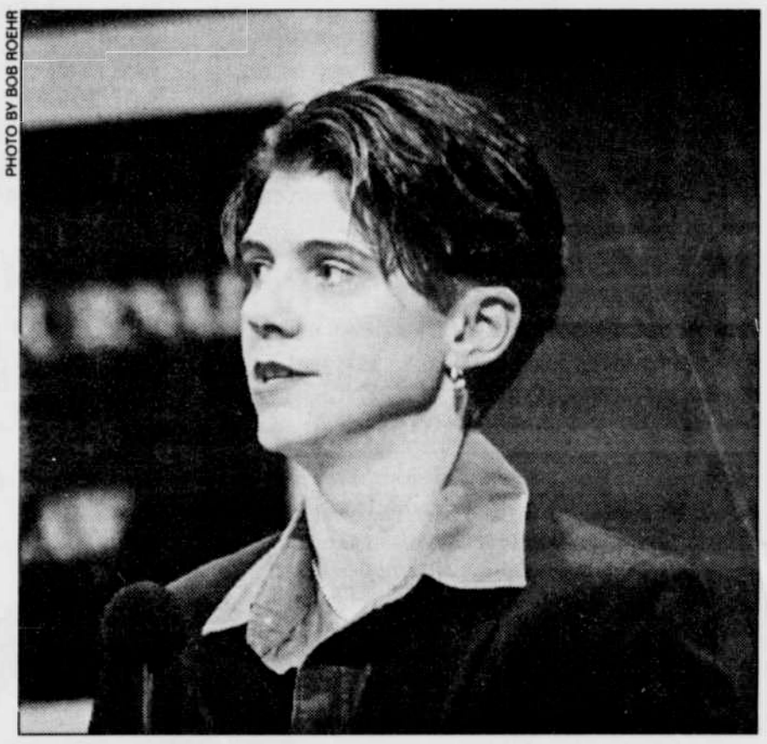

PHOTO BY BOB ROEHR

Rea Carey

Justice Anthony Kennedy wrote a scathing dissent for the minority, arguing that adolescent behavior is an accepted part of the school environment and that the intent of Title IX was never to inject the federal government into the local classroom.

The National School Boards Association had filed a brief in opposition to *Davis* but embraced the decision as a reasonable standard.

Spokeswoman Anne Bryant says if schools implement tough and clear sexual harassment policies, they will be less vulnerable to lawsuits.

Beatrice Dohrn, legal director for the Lambda Legal Defense and Education Fund, was pleased by the decision.

She notes a similarity between sexual harassment and sexual orientation harassment: "The line starts to blur in the context of schools. What we have is all kinds of very crude sexual and sexualized behavior and words. So it is rare that you have anti-gay harassment that you couldn't genuinely say is sexual harassment."

Shannon Minter anxiously awaited the decision, and was concerned by the questions the justices asked during oral arguments, fearing they would "come down on the wrong side of this." However, the attorney with the National Center for Lesbian Rights was "absolutely thrilled" by the outcome.

"I'm jumping up and down with joy," says Rea Carey, executive director of the National Youth Advocacy Coalition. "It is an incredibly powerful decision for any student in school. The Supreme Court is saying that schools need to start listening to students."

Minter says the May 24 ruling "sends a message that the Supreme Court does care" about harassed students.

"It is incredibly encouraging to see that Justice O'Connor really understood what was at stake," says Minter, who is preparing a California-based class action suit by a handful of lesbian and gay students who claim they have suffered anti-gay harassment.

Jim Anderson, spokesman for the Gay, Lesbian, Straight Education Network, calls the decision "a message that school officials can't afford to ignore."

But he laments that "more often than not, when schools create safe school plans, they often fail to remember that these policies need to include LGBT students."

One school administrator told *The Washington Post* he couldn't imagine a situation in which repeated complaints about harassment would go ignored by school officials.

"But I hear of those situations every single day," Carey says. "He can't imagine that, and yet gay students can't imagine the school responding in a positive way when they are being harassed. So there is some dissonance between the perception of some school administrators and the reality of gay youth in schools."

Minter adds: "The biggest stumbling block is getting schools past their denial about this issue. It's astonishing how difficult it is to get that message home."

Carey, meanwhile, urges the gay community "to take advantage of this historic opportunity and work in partnership with school systems to make sure that they do the right thing."

The high court also ruled that workers with disabilities do not lose the workplace protection of the Americans with Disabilities Act if they apply for Social Security Disability Insurance.

The 9-0 decision in *Cleveland vs. Policy Management Systems* also came on May 24.

Justice Stephen Breyer wrote that the laws "can comfortably exist side by side." He noted that it is common for people to simultaneously pursue two different legal approaches to an issue.

"This ruling spares people with disabilities from having to make the impossible choice between food and work," says Catherine Hanssens, a Lambda Legal Defense and Education Fund attorney. (The organization filed a brief with the court arguing this position.)

She says the decision will be particularly useful for people with HIV who may seek to leave and re-enter the workplace depending on their health status.