

# THE PRESS & DAKOTAN

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**OPINION | OUR VIEW**

## Summit Center Pays For Yankton

It was not an insignificant milestone when the Yankton School District announced last month that it had made its final payment on its portion of the Summit Activities Center (SAC). Perhaps what was most notable about the event was how un-notable it had become.

This ending of the debt owed on the \$20 million facility belies its beginnings, which were controversial and (literally and figuratively) groundbreaking.

However, none of this registered if you don't recall those uncertain and contentious beginnings, and if the only place you've ever really known as Yankton High School is the grand facility on Summit St.

Rehashing it all now is almost besides the point. What counts is that the facility became an invaluable asset for the school district and for the community of Yankton. It changed the face of this place, and that fact should never be lost.

It could be argued that the SAC in part addressed the need of the school district to move into a bigger facility while, at the same time, dispensing with the district's old crackerbox of a middle school; and in part fulfilled some of the wishes tied to the old civic center ideas that were tossed around in the 1980s. The latter idea proposals aimed to give the community a venue (preferably along the riverfront) that could attract concerts, conventions, tournaments and other events that draw people to town. The idea never made it past the voters, but the spirit of it has been realized to a certain extent with the Summit Center.

The whole Summit Center project turned into a unique marriage between the school district and the city, particularly after a first effort to build a new high school near 31st St. on the Fox Run property was rejected by voters. But as a school issue, it needed 60 percent voter approval to pass, which it failed to receive. When the partnership with the city was formed, the threshold became 50 percent plus 1 vote, and the project passed on its next attempt. A lawsuit challenging the matter delayed construction on the project by a year (plus added to the project's cost), but the joint facility finally pushed forward, opening for business as a high school in the fall of 1996. The cooperative venture became an idea that was studied and copied by other communities.

The end result was a new high school with expansive possibilities; a new city facility that could handle recreational and wellness needs; an arena that could host state athletic tournaments, concerts and other large-scale events; a theater that could house concerts, plays and various presentations; a new middle school, converted from the old high school, that was light years ahead of the old facility on Walnut; and the dispensation of the old middle school, which is now functioning as a senior-living complex.

The Summit Center, conceived from glaring needs and born amid controversy, has become a hallmark of cooperation and, without any doubt, a facility in which this town can take great pride. It has changed Yankton for the better.

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## The Law And Morality

*EDITOR'S NOTE: This column was written by Thomas E. Simmons, an assistant professor at the University of South Dakota's School of Law. His columns, which will appear periodically, will discuss court decisions and legal matters.*

**BY THOMAS E. SIMMONS**

For the Press & Dakotan

Law is not directly concerned with morality. Future lawyers attend law school, not morality school. Cases are tried in courts of law, not courts of morals. A properly rendered judicial decision rarely invokes morality.

That's not to say that judicial decisions are amoral. A thoughtful application of law to facts simply doesn't invoke morals or moral blame any more than a well-engineered bridge or an accurately rendered portrait.

Englund vs. Vital was decided by the South Dakota Supreme Court in October. The case involved a twelve-year-old boy who struck a neighbor girl in the head with a rock at an intersection of three unfenced back yards in Hartford, South Dakota. The impact severely damaged the girl's skull.

One backyard belonged to the girl's parents. The second and third backyards belonged to Robert Smith, one of which he rented to the parents of the rock-throwing boy. The parents of the seriously injured girl sued Smith for negligence.

Negligence is the breach of a duty of due care which causes an injury. Before a landlord like Smith can be liable for negligence, the courts must first determine whether he owed a duty to the injured girl.

Only after a court finds a duty would a jury be allowed to decide if Smith had been negligent.

Before the incident, Smith had seen the boy throwing rocks and told him to stop. Given the boy's habit of throwing rocks, Smith agreed to remove the landscaping rocks from his tenant's yard. But three weeks passed and Smith had not yet removed the rocks when the girl was hit in the head with the softball-size rock.



Thomas E. SIMMONS

Typically, a landlord owes no legal duty to a neighbor of his tenant. A landlord who conveys possession of rented premises to his tenant is not liable for injuries his tenant may cause. Where a landlord retains control over a part of the premises (such as landscaping rock), however, a duty to act with care is imposed.

Four of the five justices of the South Dakota Supreme Court concluded that Smith had not exerted control over landscaping rocks on his tenant's yard. He had merely promised to remove them. He hadn't yet done so when the girl was injured.

The fifth justice, Justice Konenkamp, while agreeing that the case should have been dismissed before trial, gave the girl's parents the benefit of a doubt and found that Smith had not parted with control of the landscaping rock. Smith had, in fact, announced an intention to remove the rock and obtained a skid loader to do so.

And yet, worried Justice Konenkamp, it was troublesome that a landlord could be sued for failing to protect a neighbor girl from a risk (a rock-throwing 12-year-old) that the landlord did not create. In such atypical circumstances, he reasoned, courts should consider whether "moral blame" is attached to Smith's conduct.

"Landscaping with rock bears no discernible moral culpability," Justice Konenkamp noted. To impose a duty on a landlord in circumstances such as these would impose a "banevolent extension" of liability. When a child is intent on harming another child, removing landscaping rocks would not create much of an obstacle. The child can always throw something else.

Justice Konenkamp agreed with the majority of the court that Smith owed no legal duty to the girl. That being the law, the court was right to dismiss the matter before it reached a jury. But it was the absence of moral blame, not the routine application of law to facts, which swayed Justice Konenkamp.

*Thomas E. Simmons is an assistant professor at the University of South Dakota School of Law in Vermillion.*

## Idiocy And The Constitution

**BY LEONARD PITTS JR.**

Tribune Content Agency

Fair warning: This is about the "Duck Dynasty" controversy. Yes, I know. I'm sick of it, too.

Still, relying upon my First Amendment right to freedom of speech, I will make a few observations about Phil Robertson, the grizzled Louisiana duck hunter turned reality TV star whose comments about black and gay people recently got him suspended — and then unsuspended — by A&E. If you find my observations disagreeable you may, relying upon your own First Amendment rights, protest to my employer. Assuming enough of you bring enough pressure, my employer may dump me. Feeling angry and betrayed, I might — here's that First Amendment again — blast my now-former bosses for defects of character, courage or cognition.

But one thing I could not say — at least not credibly — is that they'd violated my First Amendment rights. There is nothing in the First Amendment that says a private company can't fire you.

We'll return to the First in a second. Right now, let me offer the promised observations about Mr. Robertson: Man really needs to wake up and smell the 21st century.

His comments, made in an interview with *GQ*, are almost cartoonish in their stupidity. They sound less like they were made by a backwoods ignoramus than by someone doing a takeoff on a backwoods ignoramus.

For instance, Robertson explains his aversion to homosexuality by discoursing on the comparative merits of the male anus and the vagina. For good measure, he invokes bestiality and the Bible. He also notes how black people were "singing and happy" when he was young. "Pre-entitlement, pre-welfare ... they were godly, they were happy; no one was singing the blues." Ahem.

So anyway, A&E was shocked — shocked, I say, shocked! — to learn that a self-described redneck from the Louisiana woods harbored such illiberal views. It suspended Robertson, thereby igniting a scrum of conservative pols jockeying to express newfound love for the First Amendment.



Leonard PITTS

Louisiana Gov. Bobby Jindal says he can "remember" when TV networks still believed in it. Sarah Palin calls free speech "an endangered species." Mike Huckabee says, "Stand with Phil and support free speech."

Yeah. Because freedom of speech means you can say any asinine thing you want and nobody can call you on it or punish you for it. Right?

Um ... actually, no. Free speech means you can say any asinine thing you want and the government may not call you on it or punish you for it. If the feds came after Robertson, I'd hold my nose and stand with him. But he wasn't punished by the feds. He was punished by the free market.

The First Amendment gives each of us the right to bring whatever we wish into the marketplace of ideas — faith, gay rights, white supremacy, libertarianism, socialism, birtherism — without government interference. But if enough people don't buy what you are selling, you don't stay in the market very long. And if what you're selling offends enough people, the market will show you the door.

So Robertson's rights were not abridged because his network slapped his wrists. Those are the rules we play by. That's how America works.

A&E, calculating that Robertson had become a liability, dropped him. His fans raised an almighty ruckus and A&E chose discretion over valor, doubtless realizing the people most likely to be offended by the man probably weren't watching him in the first place.

Now Robertson returns — just in time for a new controversy. It seems an old video has surfaced in which he lists the qualities a man should seek in a prospective wife. She should be 15 or 16 years old, advises the duck hunter — and a good cook.

Great. So now we get to see how child marriage plays in the marketplace of ideas. God bless America.

*Leonard Pitts is a columnist for The Miami Herald, 1 Herald Plaza, Miami, Fla., 33132. Readers may contact him via e-mail at lpitts@miamiherald.com.*

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**ONLINE OPINION**

The results of the most recent Internet poll on the Press & Dakotan's Web site are as follows:

**LATEST RESULTS:**

**Who do you think will win the FBS college football championship?**  
Auburn . . . . .56%  
Florida State . . . . .44%  
**TOTAL VOTES CAST** . . . . .131

*The Press & Dakotan Internet poll is not a scientific survey and reflects the opinions only of those who choose to participate. The results should not be construed as an accurate representation or scientific measurement of public opinion.*

**CURRENT QUESTION:**

**How old is the car you're driving?**  
To vote in the Press & Dakotan's Internet poll, log on to our website at www.yankton.net.

**ON THIS DATE**

**By The Associated Press**

Today is Tuesday, Jan. 7, the seventh day of 2014. There are 358 days left in the year.

**Today's Highlight in History:** On Jan. 7, 1789, America held its first presidential election as voters chose electors who, a month later, selected George Washington to be the nation's first chief executive.

**On this date:** In 1610, astronomer Galileo Galilei began observing three of Jupiter's moons (he spotted a fourth moon almost a week later).

In 1800, the 13th president of the United States, Millard Fillmore, was born in Summerhill, N.Y.

In 1894, one of the earliest motion picture experiments took place at the Thomas Edison studio in West Orange, N.J., as Fred Ott was filmed taking a pinch of snuff and sneezing.

In 1927, commercial transatlantic telephone service was inaugurated between New York and London.

In 1942, the Japanese siege of Bataan began during World War II. (The fall of Bataan three months later was followed by the notorious Death March.)

In 1949, George C. Marshall resigned as U.S. Secretary of State; President Harry S. Truman chose Dean Acheson to succeed him.

In 1953, President Harry S. Truman announced in his State of the Union message to Congress that the United States had developed a hydrogen bomb.

In 1963, the U.S. Post Office raised the cost of a first-class stamp from 4 to 5 cents.

In 1973, sniper Mark Essex laid siege at a Howard Johnson's Motor Lodge in downtown New Orleans for about 10 hours, killing seven people before being slain by police sharpshooters.

In 1979, Vietnamese forces captured the Cambodian capital of Phnom Penh, overthrowing the Khmer Rouge government.

In 1989, Emperor Hirohito of Japan died in Tokyo at age 87; he was succeeded by his son, Crown Prince Akihito.

In 1999, for the second time in history, an impeached American president went on trial before the Senate. President Bill Clinton faced charges of perjury and obstruction of justice; he was acquitted.

Ten years ago: President George W. Bush proposed legal status, at least temporarily, for millions of immigrants improperly working in the U.S. Swedish actress Ingrid Thulin died in Stockholm at age 77.

**Five years ago:** President-elect Barack Obama met at the White House with America's four living presidents: George W. Bush, George H.W. Bush, Bill Clinton and Jimmy Carter. Russia shut off all its gas supplies to Europe through Ukraine in a price and payment dispute; the cutoff lasted nearly two weeks.

**One year ago:** President Barack Obama announced he would nominate former GOP Sen. Chuck Hagel as his next defense secretary, calling him "the leader our troops deserve"; Obama also chose White House counterterrorism adviser John Brennan to lead the Central Intelligence Agency. The No. 2 Alabama Crimson Tide rolled top-ranked Notre Dame 42-14 for the BCS championship.

**Today's Birthdays:** Author William Peter Blatty is 86. Pop musician Paul Revere is 76. Magazine publisher Jann Wenner is 68. Singer Kenny Loggins is 66. Singer-songwriter Marshall Chapman is 65. Latin pop singer Juan Gabriel is 64. Actress Erin Gray is 64. Actor Sammo Hung is 62. Actor David Caruso is 58. Talk show host Katie Couric is 57. Country singer David Lee Murphy is 55. Rock musician Kathy Valentine is 55. Actor David Marciano is 54. Sen. John Thune, R-S.D., is 53. Actress Hallie Todd is 52. Sen. Rand Paul, R-Ky., is 50. Actor Nicolas Cage is 50. Singer-songwriter John Ondrasik (Five for Fighting) is 49. Actor Doug E. Doug is 44. Actor Kevin Rahm is 43. Actor Jeremy Renner is 43. Country singer-musician John Rich is 40. Actor Dustin Diamond is 37. Actress Lauren Cohan is 32. Actor Brett Dalton (TV: "Marvel's Agents of S.H.I.E.L.D.") is 31. Actor Robert Richardson is 31. Actress Lyndsy Fonseca is 27. Actor Liam Aiken is 24. Actress Camryn Grimes is 24. Actor Max Morrow is 23.

**Thought for Today:** "There may be Peace without Joy, and Joy without Peace, but the two combined make Happiness." — John Buchan, 1st Baron Tweedsmuir, Scottish author (1875-1940).

**FROM THE BIBLE**

*For by grace you have been saved through faith. And this is not your own doing; it is the gift of God, not a result of works, so that no one may boast. Ephesians 2:8-9. Portals of Prayer, Concordia Publishing House, St. Louis*

**KNOW YOUR RIGHTS:** "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." — **THE FIRST AMENDMENT to the U.S. Constitution**

**FREEDOM OF THE PRESS: It's Your Right To Know!**