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Legality of search challenged

Phi Psi alcohol case continues; decision due next month

By Jen Deselms
Senior Reporter

A decision will be made in mid-January whether evidence obtained during the search of buses chartered by the Phi Kappa Psi fraternity Sept. 13 can be used against 61 people ticketed on alcohol-related charges.

In Saunders County Court Wednesday, Kirk Naylor, attorney for a Phi Psi member involved in a test case probing the legality of the bus search, said the law enforcement officials didn't have probable cause to stop the buses.

Four buses chartered by the Phi Kappa Psi fraternity were stopped

Sept. 13 in Saunders County on Route 64, 9 miles south and 4 miles east of Fremont. All 135 passengers were ticketed for either minor in possession or procuring for a minor.

In October it was decided that charges would not be filed against 74 of 135 people ticketed, but 60 others await the outcome of a test case involving Ryan D. Kennell, a Phi Kappa Psi member charged with minor in possession.

Naylor said he wanted to show through witness testimony that police had no reason to stop the buses.

Inspector Thomas Nesbitt of the Nebraska State Patrol testified that he and officers from the state patrol and Saunders County were searching for buses taking members of an Omaha fraternity to the Chief bar in Yutan and a bar in Weston. Nesbitt said he had no idea what route the Omaha buses would take to Yutan or how many buses they would have.

Nesbitt said they stopped two buses from UNL's Alpha Tau Omega fraternity before stopping the Phi Psi buses. No open alcohol was found on the ATO buses.

Charles Wagner, Saunders County attorney, said after the hearing that police had cause to stop the buses because they had information that Omaha fraternity members would be drinking on a public roadway. Law enforcement officials were investigating a possible crime and came across another one when they stopped the Phi Psi buses, Wagner said.

Thomas Shires, a deputy with the Saunders County Sheriff's Department,

testified that he observed the Phi Psi buses at a rest stop near Swedeburg. Passengers were carrying silver cans outside of the buses, he said. Shires said he observed this from a quarter mile away with binoculars. He said he drove past the rest stop and radioed to all law enforcement officers in the area that the situation might involve minors in possession of alcohol. He said he received no confirmation that any officers heard his message.

After the hearing, Naylor said Shire's sighting at the rest stop was not probably cause to stop the buses because an officer can only use information he has to stop a vehicle and search it. Naylor said Nesbitt did not know about the sightings when he stopped the buses. Nesbitt did not mention the radio message during his testimony.

Naylor said police did not check to see who had actually been drinking but ticketed and detained everyone. He said this was unreasonable and unfair to those who had not been drinking.

The state is required to submit its briefs on the case Dec. 15 and the defense on Dec. 29. The state will submit its rebuttal to the court on Jan. 5.

Saunders County Court Judge Everett Inbody said he hopes to make a decision about the motion to suppress the evidence obtained in the search by Jan. 15.

If the motion is approved, all items seized from the motor vehicle in which the defendant was a passenger, all information obtained from the defendant and all observations made of the defendant will be suppressed.

Kerrey's cuts criticized

REACTIONS from Page 1

Because much of UNL's budget is tied up in salaries, Furgason said, course sections probably would have to be dropped "just to make it through the year." Permanent budget cuts would follow the next year, he said, as they did last year when UNL had to drop several majors that had few students.

Blezek said the series of cuts hamper NU's ability to aid in Nebraska's economic recovery through its research and service functions. They also further erode faculty morale, he said.

"Every time we go through this cutting exercise," he said, "we cut more of the spirit and pride of the faculty members."

Those planning the Scottsbluff nursing program also face the problem of making up money already spent. Rosalie Yeaworth, dean of UNMC's college of nursing, said some of the \$100,000 already had been spent on salaries for a student adviser and recruiter, advertisements for faculty positions and air-

plane trips to Scottsbluff to plan the program.

McVey said western Nebraska has a serious lack of people with bachelor's and advanced degrees to run and staff nursing programs. Thirty to 40 students in WNGH's present nurses' training program are taking required non-nursing courses for the program and had planned to apply soon to begin courses in the degree program next fall.

The threat to the Scottsbluff program angered Scottsbluff Sen. William Nichol, speaker of the Legislature and lieutenant governor-elect.

"I'm madder than hell about that," he said. "We're as far from Lincoln as Lincoln is from Chicago. It's tough to get our few marbles (from the state) out there, and I'd like to save a few peanuts out there."

Nichol said Kerrey should have left it up to the Legislature to decide whether taxes should be raised, rather than limiting his call of the special session to budget cuts. Adding another half-cent to the half-cent sales tax increase scheduled Jan. 1, he said, would have solved the problem.

Lincoln Sen. Jim McFarland supported Kerrey's refusal to consider tax increases because "we'd really get bogged down" if the call was expanded. But he said his constituents in central Lincoln aren't in favor of further NU cuts either.

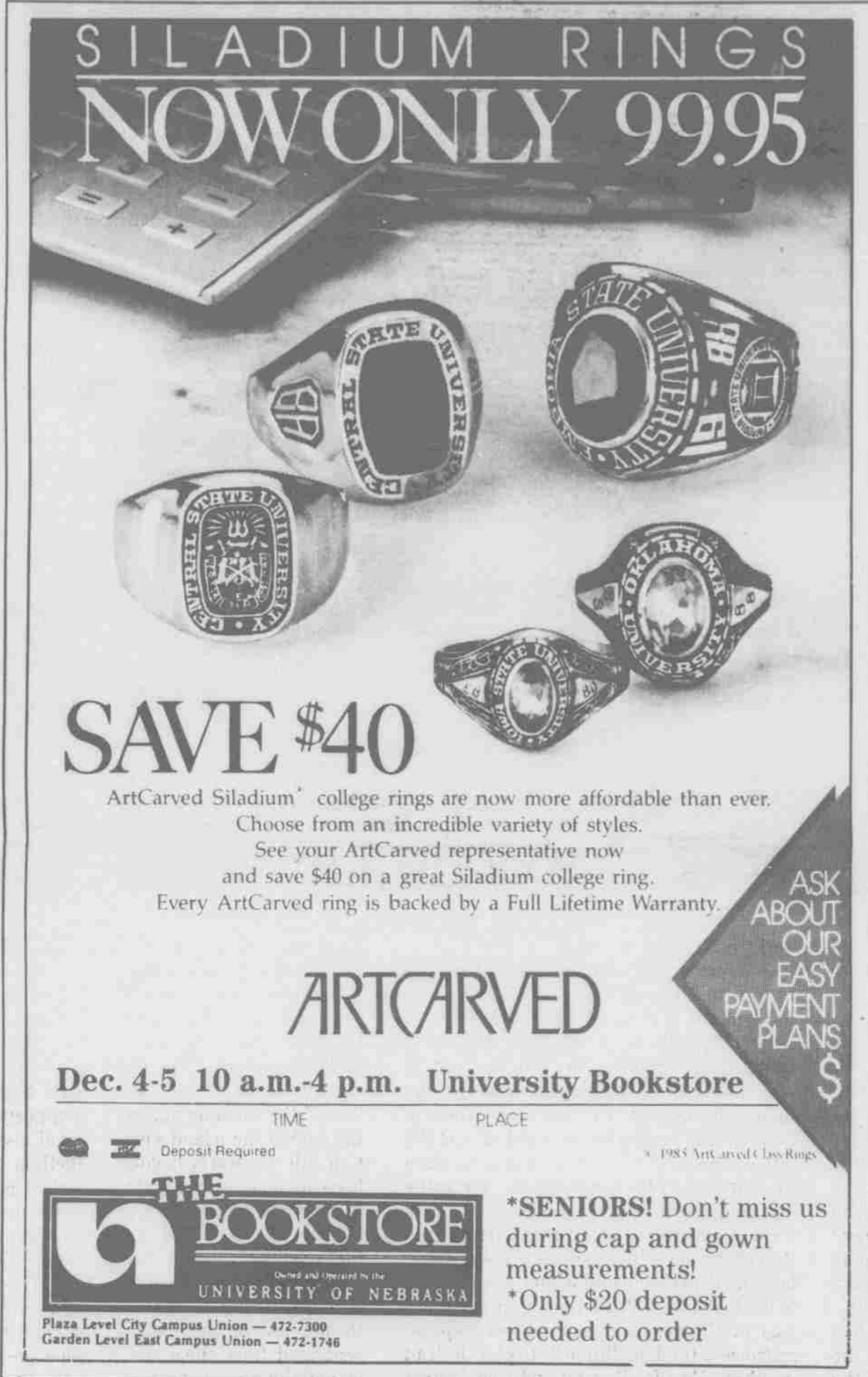
"I think that's general of all the Lincoln area," he said. "The university employs a lot of people, and our economy is somewhat dependent upon the university."

Furgason said Roskens, the chancellors of NU's three campuses and a member of the NU Board of Regents probably will testify for the university at the Appropriations Committee hearing Friday afternoon. The message they'll take to the committee won't be new, he said.

"It's just a matter that the Legislature and the powers-to-be in the state, including those in the public and private sectors, are going to have to decide what kind of university they want," Furgason said.

UNL student leaders plan to lobby against the cuts in similar fashion to last year's effort, Scudder said. UNL's Government Liaison Committee and university lobbyists will work on senators, she said, while student protests and phone banks may also be part of the effort.

Former ASUN President Gerard Keating, who helped lead last year's protests, will be consulted as well, Scudder said.



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