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By Stacey Colino

Long arm of the lawsuit SLAPPs at dissenters

ANY TIME THE LITTLE GUY STANDS UP FOR his rights, refusing to be intimidated by Big Business, he stands a chance of being quashed. Take the case of three California farmers who boldly criticized in writing two agribusiness giants. Had they known their sentiments would bring a lawsuit, they might have restrained their pens.

Their dispute began when Proposition 9, a project to bring more water from Northern California to the Central Valley and Southern California, was put on a 1982 ballot in central California. The three farmers, who supported the canal, ran a full-page ad in local newspapers criticizing J.G. Boswell Co. and the

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Salyer Land Co. and asking, "Who are Boswell & Salyer? And why are they trying to cut off our water?"

"Salyer and Boswell have enough water resources to outlast the next drought.... Smaller farmers don't have those resources, and Boswell and Salyer know this," the ad claimed. "If the small farms go out of business, Boswell and Salyer will be able to totally dominate California agriculture, setting prices where they want them."

Next thing the farmers knew, Boswell, but not Salyer, filed a libel lawsuit against "Family Farmers for Proposition 9," claiming the advertisement accused the company of price-fixing on farm commodities. Boswell sought \$2.5 million in damages from Jack and Jeff Thomson and Ken Wegis, prominent local farmers, along with 1,000 "John Does," so that anyone who joined the push for Prop 9 could become a defendant in the suit. The ad barely caused a stir—California voters rejected the initiative a few weeks later. But the lawsuit, hailed as "a legal battle between David and Goliath," grabbed headlines.

Eventually the libel suit was thrown out of court, but not before the case attracted attention as a new type of litigation: a Strategic Lawsuit Against Public Participation (SLAPP), also known as a political-intimidation lawsuit. "It was a transparent abuse of the legal system," says Ralph Wegis, the Bakersfield attorney who represented the Thomsons and Ken Wegis, his distant cousin. "Boswell was trying to intimidate the hell out of them, and it worked pretty well. No other farmers

wanted to come out against Boswell because they were afraid of being sued." (Attorneys representing Boswell refused to comment on the case.)

A chilling effect: SLAPPs, according to University of Denver law professor George Pring and sociologist Penelope Canan, who together coined the term, have become an increasingly popular way for big business and public officials to squelch political debate. The two have identified more than 300 such lawsuits in which individuals and interest groups had been sued for expressing their political, environmental or social views. Cases like *Family Farmers vs. J.G. Boswell Co.* are cropping up across the country and sending a clear and alarming message: if you speak up about your beliefs, you risk being sued.

That message is being sent through a variety of legal maneuvers.

- In 1981, Rick Webb, an environmentalist who raised blueberries and honeybees on a West Virginia farm, informed the U.S. Environmental Protection Agency that he believed a coal company had polluted the Buckhannon River so badly that fish were killed. The coal company nailed him with a \$200,000 libel suit that was eventually thrown out of court.

- Last year, a group of Washington and Warren County residents in upstate New York staged demonstrations and wrote letters to local newspapers protesting a plan to build a solid-waste incinerator near their communities. The two counties hit them with a \$1.5 million personal-damages suit that has since been dismissed.

- In 1979, the National Organization for Women (NOW) organized a boycott of conventions in states whose legislatures had not ratified the Equal Rights Amendment. The attorney general of Missouri socked NOW with a lawsuit on behalf of affected local businesses. That suit was also thrown out of court.

- In what may be the most bizarre case, the crew members of a Navy munitions train sued S. Brian Willson, a Vietnam vet who lost his legs in 1987 when their train ran over him

at a California demonstration against U.S. arms shipments to Central America. The crew members claimed they suffered "mental anguish and emotional and physical distress" from the incident. In January, a federal judge dismissed the case. Willson is now suing the U.S. government, the train crew and two supervisors at the naval station where the accident occurred.

Pring and Canan began studying this legal trend in the mid-'80s after discovering that a large number of lawsuits had been filed against environmental groups in the '70s. But after years of research, Canan says their work has only scratched the issue's surface. "We will never know exactly how many of these lawsuits exist because they are designed to mask their actual intent," she says.

Canan believes that the prime motivation behind filing these lawsuits is to stifle political expression—and that, she says, is illegal. The First Amendment guarantees citizens "the right to petition the government for redress of grievances" and protects such be-

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haviors as circulating petitions, writing letters to public officials, reporting violations or making complaints to government bodies, conducting elections, filing lawsuits, testifying at public hearings, demonstrating in public and conducting boycotts intended to influence government action. And while most SLAPPs eventually fail in court, they often succeed in an indirect and perhaps more insidious way: they force their targets to assume the financial and psychological burdens of defending themselves in court.

Skirting the issue: To get around the First Amendment, SLAPP filers cast the of-

fending behavior as defamation, business damage, personal injury, conspiracy, abuse of judicial process, abuse of civil rights or nuisance. "The courts have to accept most filings because they go in camouflaged as legitimate claims," Canan says.

"Our judicial system is being used—and used effectively—to chill legitimate public participation in the government process," Pring says. "The protracted and costly nature of litigation provides the leverage."

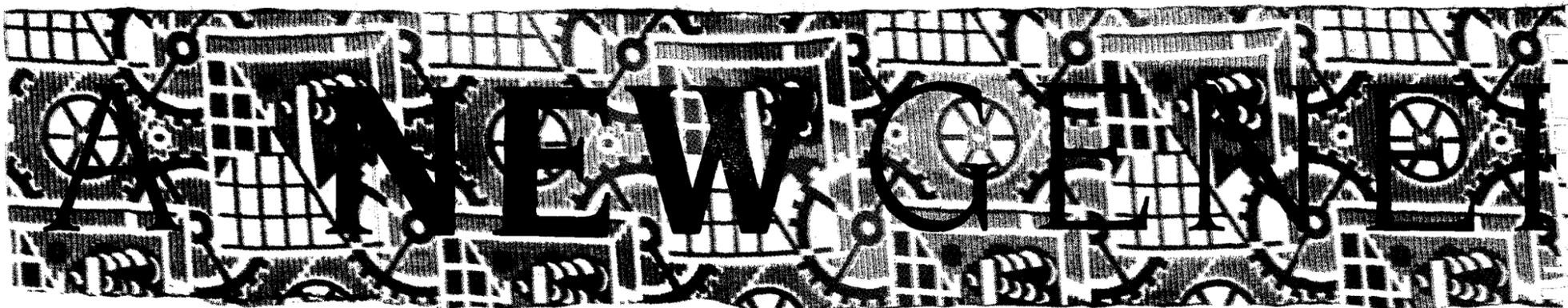
Pring and Canan report that in the cases they studied, the issues at stake frequently include metropolitan development (zoning, land use, real-estate development), the use of basic resources (air, water, wildlife), civil rights, performance of licensed professionals and adequacy of government service.

Activists—including individuals, public-interest groups and civic and social organizations—are particularly at risk of becoming SLAPP targets. The Sierra Club, for example, has been sued at least half a dozen times for its positions on environmental issues. Plaintiffs, on the other hand, are usually developers, public utilities, corporations, alleged polluters and state and local governments. Damage claims range from \$10,000 to \$100 million, with an average of \$9 million.

But collecting damages isn't always a priority behind these lawsuits. "These people don't file these lawsuits to win," says David Miller, an attorney with the American Civil Liberties Union (ACLU) in Denver who has defended several SLAPPs. "You file to intimidate people so they'll drop their opposition."

The fact that nearly two-thirds of all SLAPPs are eventually dismissed in court proves that filers don't have to have a good case; all they need is money and a lawyer. But before such cases are dismissed, they tax already overburdened courts and government-enforcement programs and force defendants to face lengthy court procedures—an average of 36 months—and costly legal fees. In addition to bearing the actual cost of defending the suit, SLAPP targets often suffer psychological trauma, threats to have insurance cut off, the diversion of resources from the original issue and an undermined belief in political participation. As Nancy Stearns, assistant attorney general of New York, says, "Even if the person filing the suit doesn't win, it has its impact. Most people sued under those circumstances can't really

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By Alan Snitow

Two generations are behind the rapid changes underway in the Soviet Union. The Gorbachov generation, which initiated the reform movement in the Communist Party, is now being met from below by a younger, more radical generation of reformers whose movement is independent of the party.

Elena Zelinskaya is a leader of this new generation. At 35 she is too young to have seen the purges, the war or the Holocaust, but she grew up in Leningrad surrounded by the survivors, immersed in their trauma and exhaustion. "Our parents, our grandparents were crushed completely."

Zelinskaya's generation was the first to grow up knowing of hardship but not directly experiencing it. She received better education than her parents, learned foreign languages and watched as "our elder brothers," the dissidents, were jailed, exiled or banished.

The people shaped by these experiences are now the leaders of a new social movement based on unofficial political and cultural clubs independent of the Communist Party.

These activists are not well known abroad, which makes it easy for self-appointed spokespeople to fill the vacuum for the important American market. Boris Kagarlitsky, who writes for many left publications and is now touring the U.S., has done just that. A fluent English speaker with a flare for self-promotion, Kagarlitsky has little if any influence in the Soviet movement itself.

Elena Zelinskaya's thinking is much more representative of the movement's mainstream. She became a journalist early on. In 1982, as a dissident, she started publishing an underground (samizdat) magazine for children called For Boys and Girls. Later she edited an influential magazine of the informal movement called Merkur (Mercury), and now she is the main editor for the Northwest Information Agency, a network of informal journalists in the Leningrad region and the Baltics. The next step being planned is publication of Leningrad's first independent mass-circulation newspaper.

This interview for a public-radio documentary on the informal movement is culled from hours of conversation in Zelinskaya's apartment late last year. I have left in some of her ragged but often refreshing English.

Tell me about the independent political associations that have been forming here and your role in them.

We are involved in the democratic movement. When we say "movement" we mean all associations, clubs, small and big groups—including the Leningrad Peoples Front—that have a democratic direction. Typically the groups are without exact borders or memberships but share an idea.

That's why we have no right to say we have new, independent political organizations. We have a movement, but not political parties or organizations like in the Baltic republics. The Popular Front in Latvia, that is a political organization. [Ed. note: There are independent coalitions called "popular" or "people's" fronts in many Russian cities, including Leningrad and Moscow. These popular fronts are not mass organizations, unlike those in the Baltic republics.]

Here in Leningrad, there is only one organization that we consider political, the Communist Party. "Political" and "independent," these are different things.

All the independent groups belong to the movement, and when we have an important event in Leningrad, all join together in one bloc. This happened during the elections to the Congress of People's Deputies in March 1989. Our electoral bloc was very strong and had great success, the biggest in the country. [Ed.: In 1989, Leningrad voters defeated all the city's top party leaders, even though they were running unopposed. More than half the voters crossed out the candidates' names, depriving them of the 50 percent vote they needed to be elected. This bloc re-formed for the current elections and is winning many seats in local and regional government.]

After the election, the Leningrad Popular Front was organized. It's not very big—several

thousand people—but it has a broad political outlook and is organized in every district of the city and in many big enterprises.

You must understand that the political opinions and views of most of the main new popular, independent organizations are similar to the opinions and views of the liberal wing of the Communist Party.

Last year, the unofficial, or "informal," press seemed to be small and isolated, but now joint work between Communist reformers and informal activists seems possible.

Yes. My friend Andrei Tsekhanovich and I work closely together as journalists and activists, but Andrei is a Communist. I am not. I am a very left dissident. Five years ago it was impossible not only to work together but even to sit at one table. Yes, we are from different political lives.

I studied in the dissident press and then, after perestroika, I worked in the informal press. [Ed.: The dissident press was underground before perestroika. Since 1985, samizdat, or self-published, magazines have been distributed more openly, although they are not formally recognized.]

Andrei all his life worked in the official press. He is an official journalist, and we have a funny alliance. When we write an article for the official press, we can use my unofficial contacts, my background and my information. When we need information from officials, Andrei visits them with his visit card like an official journalist and asks for information they would never give me. Andrei thinks that we together are an example that change is possible in our country, that people can change the way they think without a catastrophe. If we can work together, maybe these two parts of our lives, the dissident and Communist parts, can live together.

Now we in the informal movement have decided to organize and publish a new informal newspaper in Leningrad. So far we have an information agency and we are awaiting the new national press law that will change the whole situation in the press. After this law, with competition from an independent press, the official press will have to make changes, or it may die.

Andrei says that after the new press law the main danger to the official press will not be that they will have no subscribers but that journalists will leave them for the independent press. The economic situation in the official press is very bad, and the salary of a journalist

Great expectations, or, a tale of two peoples

When you visited the U.S. last year, what was the big difference between your expectations and what you found there?

You know, always I think that I am free of propaganda. I mean our Soviet propaganda. So, it was a big surprise to find my expectations of the U.S. still influenced by it. I expected the big difference in standard of living, but I never expected there would be a difference between American and Soviet people.

I was surprised that the style of relationships is very different. The people in America are very merry, very healthful—like children, you see. When I was talking with Americans in the U.S., I felt myself like an adult in a school for teenagers. They were very clever, many more clever than I, and they have a higher level of education and can understand things better. But in one aspect, the civil aspect, they are like children.

We Russians have had a unique experience in social life. We have seen such a thing you never read. The ordinary American man is younger than a small boy in the Soviet Union in this aspect.

Our life here is poorer than in America, but all the things we have, we have more deeply. Our relationships are deeper, but not so merry and easy. I have seen you are very friendly to each other, to people who you see the first time in your life—and the last time.

In the Soviet Union, if we are friends we are connected very closely, because if I tell my friend my political opinion, my life will depend on his silence. And so we are connected—maybe like in prison. You see, we have very close and deep relationships be-

tween people. This is a necessity.

Sometimes I think that Americans—including journalists and experts who ask us about our life here—see only the surface. They never try to understand deeper. Sometimes I think they are afraid to do it.

To know Russians better... it's very dangerous. You know, in the West there's a sort of euphoria just now about our political situation, about the changes, reforms and things like that. All people now love Russians. When I was in the United States, I felt like a pet. They all loved me very much and did everything I wanted. It was funny. I'm a very different person than they see. I have very hard work here, a very hard life. I'm not a young girl.

When my American friends visited me here in Leningrad, we Russians had a lot of problems agreeing among ourselves what they should do during their visit. Sometimes different Russians who worked with them wanted different things, and we discussed this in our usual style. My American friends were shocked by this. They said: "You are so aggressive. You cried."

Yes, we are aggressive. Maybe only our children or our grandchildren will become quiet, more suitable for European life, for American life. I think Europeans and Americans need us very much, need our experience, need our future. If here in Soviet Union we continue to live as we have in the past, we will continue to be very dangerous to the whole world.

It's true we need Western help right now, and this help must be without any illusions. You must help us like you would a very ill person. We must build relationships with you with open eyes.