

# student press law center report 5-fall 1977

*A Report on Current Controversies Involving the First Amendment Rights of Student Journalists*



*Drawing by Mary Wagner, reprinted with permission*

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## Appeals Courts Weigh Potential Landmarks In Student Press Law

*Two nationally-publicized court cases, which may become landmarks in defining the First Amendment rights of high school students writing for school-funded newspapers, have been argued in the United States Courts of Appeals and are expected to be decided during this school semester.*

The Fourth Circuit (Richmond, Virginia), on June 10, 1977, heard the appeal in *Gambino v. Fairfax County School Board*, a case in which the editors of the *Farm News*, student newspaper at Hayfield Secondary School in Fairfax County, Virginia, are suing Fairfax County School officials for censoring an article concerning the sexual practices and awareness of students at Hayfield. The Fairfax school board appealed the District Court decision in favor of student journalists Gina Gambino and Lauren Boyd.

The Second Circuit (New York City), on March 31, 1977, heard the appeal in *Trachtman v. Anker*, a case in which an editor of New York City's Stayvesant High School *Voice* is suing the City's Board of Education for censoring a sex survey. Both the school board and the plaintiff, *Voice* editor Jeff Trachtman, appealed the District Court ruling that the *Voice* could conduct a sex survey among juniors and seniors, but not among freshmen and sophomores.

It is not known when the courts will announce their decisions, but lawyers in both cases anticipate word in the near future.

*Gambino v. Fairfax County School Board*  
429 F. Supp. 781 (E.D. Va. 1977)

The February decision of Federal Judge Albert Bryan, Jr. in the *Gambino* case became the first specific discussion by a court of law on the First Amendment rights of high school journalists writing for a school-funded newspaper.

The decision stated in part that the *Farm News* "was conceived, established, and operated as a conduit for student expression on a wide variety of topics. It falls clearly within the parameters of the First Amendment."

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# Courts Weigh Appeals

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Bryan wrote: "Once a publication is determined in substance to be a free speech forum, constitutional protections attach and the State may restrict the content of that instrument only in accordance with First Amendment dictates."

The controversy at Hayfield Secondary School began in late November 1976, when Lauren Boyd, editor-in-chief of the *Farm News*, prepared an article for publication entitled "Sexually Active Students Fail to Use Contraception." The report summarized the findings of a poll taken by *Farm News* assistant editor Gina Gambino on the sexual activities and awareness of the students at Hayfield.

After reviewing the article, *Farm News* faculty advisor Stewart Hill told Boyd that the article would have to be submitted to Hayfield principal Doris Torrice.

Torrice refused to allow Boyd to print the story, stating that certain parts of the article, dealing with the availability of contraceptives, contradicted a school policy forbidding the dissemination of information on birth control in sex education classes.

## Advisory Board Opposes Story

When Boyd appealed the decision to Superintendent John Davis, he referred the article to Hayfield's Advisory Board on Student Expression. The Board, composed of two students, two administrators, and one classroom teacher, decided on December 1 to prohibit publication of the article.

The following day, Davis affirmed the Board's ruling.

Boyd and Gambino contacted the Student Press Law Center in nearby Washington, D.C. for assistance. Attorney Christopher Fager, director of the Center, prepared a written appeal of the Superintendent's decision for the Fairfax County School Board.

At a meeting of the Board on December 6, Fager, Boyd, and Gambino presented the written appeal and oral argument. By a vote of 6 to 4

the Board denied the appeal and upheld the Superintendent's decision.

On December 21, 1976, Boyd and Gambino filed suit in the United States District Court against Fairfax County School officials.

On February 23, 1977 Judge Bryan announced the decision in favor of Boyd and Gambino. Calling Boyd's article "innocuous," Bryan argued that the school board's "fears of irresponsible journalism are met first by the fact that no evidence of it has surfaced in the past or in the article here in question, nor has there been any demonstrated likelihood of it in the future."



Bryan also awarded Boyd and Gambino attorneys' fees, and issued an order prohibiting interference with the publication of Boyd's article.

On March 11, 1976, the Fairfax County School Board filed an appeal with the United States Court of Appeals for the Fourth Circuit. Attorneys for the board asked Bryan to stay his order allowing publication of the article while the appeal was in progress. The request was granted.

The National Association of Secondary School Principals (NASSP) asked the appeals court on March 30, 1977, for permission to file a "Friend of the court" brief in support of the school board's position. In their argument, the NASSP declared that the law "requires that at least some minimum moral stan-

dard be established and maintained by the board or some other governing body of public school districts." Therefore, the principals said, censorship was necessary to preserve the community's "moral" decision not to include contraception in the curriculum. Publication of the article might have "dire effects" on discipline in the public schools, the NASSP added.

## *Trachtman v. Anker*

426 F. Supp. 198 (S.D. N.Y. 1976).

*Trachtman v. Anker* stems from a controversy that began in November 1975, when the staff of the Stuyvesant High School *Voice* prepared a survey dealing with students' sexual attitudes and habits, including questions on such topics as homosexuality, abortion, and masturbation. When Principal Gaspar Fabricante heard about the survey, he told the *Voice* staffers they would have to ask permission from the school district officials first.

## Galenter Prohibits Distribution

The *Voice* submitted the proposed questionnaire to Administrator of Student Affairs Sanford Galenter, who refused to allow distribution.

The Staffers then attempted to appeal the decision to Irving Anker, Chancellor of the Board of Education for New York City. Anker failed to respond to the *Voice's* inquiries.

In March 1976, the Board of Education decided it would not permit the survey to be taken.

In July 1976, Trachtman, a *Voice* editor, filed suit in United States District Court, charging that the Board's action was a violation of the First Amendment.

Federal Judge Constance Motley ruled, on December 15, 1976, that the *Voice* could conduct the survey on juniors and seniors, though not on freshmen and sophomores. "Some of these children, who are as young as 13 or 14, may be too young and immature to be exposed to a comparison of their sexual attitudes and experience with that of their peers."

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## FCC Judge Cancels Student Radio, University Appeals

WXPB (FM), a student-operated radio station licensed to the Trustees of the University of Pennsylvania, is awaiting a decision on its license renewal appeal to the Federal Communications Commission (FCC).

On March 22, 1977, based on hearings held in September and October of 1976, FCC Administrative Law Judge Walter Miller recommended to the FCC that the station's license not be renewed. (See SPLC newsletter #4.)

Citing nearly two dozen violations of FCC regulations, including poor technical quality and alleged obscene broadcasts, Miller said, "If there were times when the station was operated in harmony with the FCC, University, and its own rules and regulations, it was purely fortuitous." Miller also ruled that "the Trustees failed to demonstrate that WXPB has broadcast any meritorious programming."

The University appealed Miller's recommendation to the full FCC, but the seven commissioners have not yet reached a decision.

## Fired Adviser Nicholson Still Suing

Don Patrick Nicholson, former journalism teacher and newspaper advisor at Torrance (California) High School, is still awaiting a final decision in his suit against the Torrance School Board.

In March, 1970, Nicholson was fired by Principal Carl Ahee on the grounds of "insubordination." Nicholson had been protesting Ahee's use of the Rotary Club's "Four-way Test"—the club's guidelines for daily living—as the school's only guidelines for student publications.

The test consisted of four questions:

1. Is it the truth?
2. Is it fair to all concerned?

3. Will it build goodwill and better friendships?

4. Will it be beneficial to all concerned?

Believing that the test was both unfair and naive, Nicholson and his staff began to publish articles without first submitting them to Ahee for review. Ahee objected to some of these pieces, including an article on the problems of Chicanos living in Torrance and a news story which contained the results of a survey of police-student relations. Ahee also considered reviews of the movie *Midnight Cowboy* and the musical *Hair* "unsuitable."

When Nicholson and Ahee clashed over publication of these articles, Nicholson was fired. Although over 500 students and parents protested the firing, the school board backed up Ahee's action.

In 1973, after being unsuccessful in finding a job because of his firing, Nicholson filed a suit in U.S. District Court against the Torrance School Board seeking \$118,000 in damages and back pay.

Final judgement has not been rendered in Nicholson's suit. However, on June 30, 1977, after long delays caused in part by illness of the judge, the judge entered an order which stated: "Judgement for the defendants (School officials), opinion to follow." So far, no opinion has been issued.

## School Appeal Blocks Pliscou Trial

A lawsuit filed against the Holtville, California School District by student Lisa Pliscou is still pending in the U.S. Court of Appeals. (See SPLC Report #4). The suit charges that school officials violated Pliscou's First Amendment rights by prohibiting her from publishing an alternate newspaper.

Pliscou, who had been assistant editor of the *Saga*, the official school paper, and Linda Rombut, *Saga* editor, were removed from their positions in the fall of 1975. Robert Wynkoop, the paper's new advisor,

claimed that their removal was due to "restructuring" of the journalism class. Both girls declined Wynkoop's offers of page editorships.

They then approached the school's chapter of Quill and Scroll Honor Society, of which Pliscou was president. The club voted to publish a second newspaper, the *First Amendment*, to be funded by advertisements and to be produced in the students' spare time.

School officials, including Principal G.O. Beaman, refused to sign the necessary activity forms which would allow the group to sell ads. Beaman said that school policy forbade the publication of more than one student newspaper and that he feared that the proposed paper might be "superior to the school newspaper."

After an appeal to the Holtville School Board failed, Pliscou filed suit in the U.S. District Court in San Diego, charging that school officials had violated her rights to freedom of speech and freedom of the press. The suit sought \$1.6 million in damages and an injunction against any further interference with the *First Amendment*.

In December, Federal Judge Gordon Thompson, although refusing to grant an injunction, ordered the school to allow Pliscou and the Quill and Scroll club to publish their newspaper.

In January 1976, school district officials filed an appeal of Thompson's ruling. A trial to determine if Pliscou should be awarded damages will not be held until a decision is reached in that appeal.

## Courts of Appeals

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In early 1977, after Anker decided to appeal Motley's decision, Trachtman filed a cross-appeal contesting the limited distribution of the survey. Claiming that the validity of the survey would be damaged if it did not include freshmen and sophomores, Trachtman sought to have the appeals court strike down the restriction.

## Fired Adviser Seeks Reinstatement By Filing Legal Notice of Claim

Jim Engmann, a teacher at Union Grove (Wisconsin) High school is currently involved in legal action to be re-instated as journalism teacher and advisor to the school paper, the *Bronco Times*. Engmann was fired in March, 1977, after a censorship controversy between himself and Principal Earl VerBunker. (see SPLC report #4).

In October 1976, the newspaper staff and the administration had clashed over the use of the word "pissed" in a headline. VerBunker impounded the issue when he learned of it, but over half of the 1,000 copies had already been distributed

In January, the Board proposed that VerBunker replace student Beth Polnasek as editor-in-chief. This proposal caused such a furor among the students and the local press that the idea was tabled until a March board meeting.

At the March 7 meeting, the *Bronco Times* staff read statements in support of their position from Women in Communications, Inc. and the Society of Professional Journalists, Sigma Delta Chi. The Board decided to table the proposal for the remainder of the year.

Shortly after the March meeting, Engmann was notified that his contract would not be renewed for the following year. As reasons, the Board specifically cited his permitting the use of the word "pissed," which, they claimed, "brought disrepute upon the school system." The Board also cancelled the school's publications class, ostensibly because of low enrollment.

In Wisconsin, in a case such as Engmann's, a notice of claim must be filed before a law suit can be brought. Once the notice is filed, the defendants have sixty days to correct the wrong before a law suit can be filed.

Michael Stoll, a Wisconsin Education Association attorney represent-

ing Engmann, filed a notice of claim in late June, and is waiting for a result. If the Board fails to re-instate Engmann within sixty days, they may face a federal law suit.

The future of the *Bronco Times* is still in doubt. "The school board dropped the idea of having the principal become editor-in-chief," says Polnasek, "but they also dropped the class which was responsible for publication of the newspaper and the yearbook.

"If anything, it [the newspaper] will be an extra-curricular activity next year," she adds. "The staff will probably have to work outside after school hours."



## Bristol, R.I. Principal Confiscates Papers Containing Article Banned in Fairfax

In May 1977, when the principal of Bristol (R.I.) High School confiscated and destroyed an issue of the school paper, the *Pegasus*, co-editor John-Paul Sousa responded by re-printing the paper on his own.

Principal Anthony Iasiello seized the papers because of an article dealing with contraception and abortion which Sousa had reprinted from the Hayfield (Fairfax County, Va.) *Farm News*. The article, which was banned by Fairfax school officials, was the beginning of a legal battle over the rights of student journalists (see page 1).

Sousa contacted Gary Yesser, an American Civil Liberties Union volunteer attorney, for help in the matter. Yesser, in turn, contacted the Student Press Law Center for assistance. It soon became apparent, however, that the matter was more complicated than it seemed. Sousa had published the article against the wishes of the staff and the editorial board, who had voted not to print it. When Sousa had originally submitted the planned copy to Iasiello, he had

appeared to accept the principal's censorship of the article. He replaced the Fairfax piece with other material, which was approved by the staff and the principal, but then secretly inserted the article before sending the paper to the printer.

In the light of these facts, Yesser and Sousa agreed not to attempt a court battle, fearing that Sousa's actions would obscure the issue of freedom of the press.

Sousa then convinced the *Bristol Phoenix*, a local paper and the regular printer of the *Pegasus*, to print a second run from the plates of the banned paper.

Sousa printed 500 copies of the paper, which was identical to the original except for a disclaimer of the paper's official status and the crossing out of the names of the paper and the names of the staff members who disapproved of the paper's distribution. A handful of volunteers, including a local minister, helped Sousa distribute the papers outside the school grounds.

## Police Seek Sources

# Prosecutor Subpoenas HS Journalists

A first-year journalism teacher and two high school journalists have successfully resisted a Missouri prosecutor's attempt to make them reveal confidential information relevant to a marijuana arrest.

In what may be the first case of high school journalists being subpoenaed to reveal information relating to a crime, advisor Gail Barth and student journalists Anita Kelly and Greg Singleton of Eldon, Missouri's *Maroon and Gold* were ordered to appear in court last May to identify sources cited in a story

Barth explained that the prosecutor has told a number of professional reporters that he intends to continue his attempt to learn the names of the sources quoted in the *Maroon and Gold*.

Barth plans to maintain the confidentiality of the paper's sources. "My students were reporting in good faith. They knew that the people did not want their names disclosed," she says. "It was a case of common sense and conscience, I guess."

Barth, Kelly, and Singleton consistently refused to release the names

we gave them a flat 'no' as to giving out any information . . . That was when they decided on giving him [the defendant] probation."

She says that she does not know why the prosecutor and defense attorney didn't "go ahead and bring us into court and try to strong-arm us there."

The article on police-youth relations was one of two controversial stories in the May issue of the *Maroon and Gold*. Another piece reported that the school board of Eldon, a central Missouri community of 3500, had banned the American Heritage Dictionary from its junior high school.

The school board action overrode the recommendation of a local committee established to review the dictionary, when a small group of citizens strongly protested that the dictionary contained vulgar words and phrases.

The cover of the May *Maroon and Gold* features a large photo of the dictionary wrapped in padlocked chains.

"The issue was a bomb," according to Barth. "They [the local citizens] just weren't ready for it."

"My students were reporting in good faith. They knew that the people did not want their names disclosed. . . . It was a case of common sense and conscience, I guess."

entitled, "It's a problem: Police-Youth relationship."

The article, which discussed animosity between local police and youth, quoted five alleged witnesses to a February marijuana arrest as saying that no marijuana was seen until it fell from the pocket of the arresting officer.

Later in the month, Barth, Kelly and Singleton received subpoenas to appear at the trial of the accused youth. Miller County Prosecutor Ken Oswald, who issued the subpoenas, said "I feel it is necessary that we find the name of the source on the state's behalf and in the interest of the defendant."

But before the three were asked to provide the names of their sources in court, they met with the prosecutor, defense attorney and an attorney of their own in a conference which resulted in an out-of-court solution to the marijuana arrest.

According to Barth, "The prosecutor has no plans to subpoena any of us again, but . . . as far as we're concerned (the controversy) isn't dead yet, it's just kind of in limbo."

of their sources, even though both the prosecutor and defense attorney wanted the information released.

According to Barth, "They wanted to feel the three of us out and see if we were going to give them the information they wanted . . . But in the hearing in the prosecutor's office

## Minority Paper Loses Court Fight

Mario Rodriguez, editor of the South Miami (Florida) High School *Cobra Beat*, has lost his suit against principal Warren Burchell. Rodriguez, charging that Burchell had violated the First Amendment by trying to suppress the *Cobra Beat*, plans to appeal the decision.

The *Cobra Beat*, a publication of the Spanish Spirit Club, first appeared on September 21, 1976. The next week, Burchell notified Rodriguez that both he and the newspaper were to be placed on "probation." He said that the *Cobra Beat* had been approved as a magazine and that the staff was following a newspaper format instead. Burchell felt that the

*Cobra Beat*, if published as a newspaper, would compete with the school's existing publication, the *Serpent's Tale*, and would cause "divisiveness."

The next day, Burchell gave Rodriguez a list of guidelines that he was to follow. The guidelines included requirements that all articles appearing in Spanish also be translated into English and that all articles be written in a news feature style, rather than stressing "immediacy." Burchell also directed that future issues of the *Cobra Beat* be submitted to an assistant principal before publication.

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# Students Win Release of Vote Tallies

## White Plains High Breaks Policy

The *Orange*, the student newspaper at White Plains (New York) High School, has won a fight to publish the vote totals from a student election, rather than just the names of the winners.

The paper first attempted to obtain the vote counts on June 3, the day after an election of the General Organization, the White Plains student government. Editor-in-chief David Sanger wanted the results for broadcast on WPHS, the *Orange's* in-school radio station, and in time for the newspaper's June 4 deadline.

Student officials refused to release actual vote tallies, fearing that to do so might adversely affect a run-off election to be held four days later. Knowing the sometimes capricious voting habits of students, said Sanger, the GO was afraid that "some students might vote for whichever candidate received a plurality in the original election, so that they might be identified with the winners."

GO representatives also believed students who had lost the election by large margins would be humiliated if the results were made public.

The *Orange* argued that, in such instances, they would "exercise judgement" in publishing figures.

They claimed that "these results belonged to everyone, especially the students of White Plains High School." According to Sanger, "suppression of the results was tantamount to vote tampering," since withholding the vote counts would deny unsuccessful candidates the right to support another candidate or to call for a recount.

Instances of alleged election fraud also made it imperative that the full results of the vote be published, the *Orange* claimed. "Registration was extremely sloppy," said Sanger, and "it was possible for students to vote twice at some polls."

*Orange* reporters had also seen candidates electioneering near the polls, and there had even been instances of candidates seen entering voting booths with students.

In a meeting with GO officials, Sanger said he considered their action a violation of the New York State Freedom of Information Act, and the *Orange* was prepared to take legal action to compel the release of the election results.

On June 4, after consultation with a lawyer, the student government released the requested information. They did complain, however, that they did not like what they called "veiled threats" from the *Orange*.

Student officials have agreed to meet with the *Orange* in the fall to form a policy that will attempt to avoid such conflicts in the future.

## Oregon School Liberalizes Stand

In a case that is similar to the controversy at White Plains, the *Rogue News*, of Ashland (Oregon) High School, attempted to publish the vote counts from an April student election. Student officials and Principal Gaylord Smith refused to release the information, arguing that the feelings of unsuccessful candidates would be hurt if the vote totals were made public.

*Rogue News* editor Diane Ziemba, who felt that she was doing her readers a disservice by not fully reporting election results, appealed to the school board. There she was told that the matter was not the board's responsibility and that the conflict should be resolved by the principal, the Student Senate and the newspaper staff.

After pressure from Ziemba and editorials in support of her position in the *Rogue News* and the *Ashland Daily Tidings*, Student Senate members informally polled their classmates' sentiments.

On June 2, based on the results of that poll, the Senate decided to release the vote counts to individual candidates, but not to allow their publication. The Senate also said that, in the future, it will retain the option of publishing election results or not.

## Minority Paper

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In a memo to the faculty advisor of the *Cobra Beat*, Burchell said that, "this in no way is to be interpreted that any censorship will be made of articles or features. It means that guidelines for fiscal

audit, magazine format, county policy and directives must be followed."

Burchell also complained that some *Cobra Beat* advertisers had also appeared in the *Serpent's Tale*, which he claimed violated an agreement that he and Rodriguez had made.

On October 9, 1978, he wrote to all *Cobra Beat* advertisers, saying that they would not have to pay for any advertisements appearing in the first

issue of the *Cobra Beat*. Ten days later, Burchell informed them that the *Cobra Beat* had ceased to exist.

On November 31, Rodriguez filed suit in U.S. District Court against Burchell on behalf of the twenty-five *Cobra Beat* staff members, seeking to have the paper "published in an uncensored form," free from administrative control.

## Kan., Penn. Advisers Fight Reassignments



### *School Board Defies Arbitrator's Ruling Adviser Plans Lawsuit in Response*

Despite an order by Arbitrator Hillard Kreimer, the Cheswick (Pennsylvania) School Board has denied journalism teacher Amy Faith sponsorship of the *Crusader*, the Deer Lakes High School newspaper. Faith plans to respond with a lawsuit charging the board with unfair labor practices.

Faith won an arbitration case against the school district in April

1977, charging that she had been transferred out of Deer Lakes High in order to remove her as sponsor of its student newspaper.

The arbitration award, which came in the aftermath of numerous censorship disputes—nearly a year and a half after Principal Ralph Mastandrea requested Faith's transfer—permitted Faith to return this fall to her previous teaching post at Deer Lakes High. The award also ordered the District to reimburse Faith for the monetary losses suffered from deprivation of her newspaper sponsorship.

When the award was announced, District Superintendent Anthony Marisco said that since the arbitrator had made no direct mention of the sponsorship, the district would wait for "clarification" before reinstating Faith as the *Crusader's* adviser.

### **Order Ignored**

In July the arbitrator stated that he had intended his award to include sponsorship of the paper. But the school board, on July 18, ignored the order and awarded the paper's sponsorship to another teacher.

Faith originally lost her sponsorship and senior high teaching position in May 1976, when Principal Mastandrea recommended that she be transferred to junior high school because "her work with the journalism class . . . has left much to be desired . . ." Faith responded by filing a formal grievance with the teachers' union, contesting the transfer and dismissal. [See SPLC Newsletter #3.]

She claimed that Mastandrea's action was actually prompted by a series of censorship disputes throughout the previous year.

### *Adviser Refuses to Censor Students, Loses Job, Sues School Board*

A Fort Scott, Kansas high school teacher is suing the local school board to protest her removal as newspaper adviser.

The teacher, Lily Kober, was re-assigned on March 16, 1977 to teach English only, instead of both English and journalism. This action was due, she says, to a series of disputes between herself and the administration over the content of the school paper, the *Tiger Times*.

The first of these incidents occurred in November 1976, when the newspaper ran an editorial critical of the school lunch program. (Among other things, they criticized the cafeteria's "soggy tacos".) Principal Bill Weatherbie, whose wife was one of the cooks, ordered Kober to submit all copy for future issues of the *Times* to him for review before publication.

In December, when Weatherbie was attending a conference, Kober submitted the *Times* copy to Superintendent Dr. R. E. Hicks, who removed a feature about the different types and purposes of editorials. This piece dealt in part with the "soggy tacos" editorial. The December 21 issue of the *Times* was published with a blank space where the article would

have appeared, but with no mention of censorship.

After publication, Kober was notified that she would be receiving three evaluations, in case she might be removed. Union rules require these evaluations before the removal of a tenured teacher.

According to Kober, the first evaluation was concerned with the December 21 issue of the newspaper. It charged that she was "insubordinate and could not go along with group decisions." The evaluation letter also contained a list of guidelines for her to follow for the censorship of future *Times* stories. The guidelines asked:

1. Is the article in "in good taste"?
2. Is the article "positive"?
3. Does the article contain any "scathing superlatives"?

The next two evaluations focused on subsequent issues of the paper, but "no one ever visited my [journalism] classes," says Kober. "they just looked at the issues."

On March 16, Kober received a letter stating that she had been re-hired. Later in the day, however, she learned she had been re-assigned

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Faced With Suit, Principal Compromises

# Students Gain More Liberal Policy

"Censorship," says Friendswood (Texas) High School student James Presnell, "was a fact of life."

Student journalists at Friendswood complained that common-place censorship by Principal Walter Wilson of the school paper, the *Lariat*, was crippling their morale. Presnell recalls, "some people refused to work on the staff because of it."

But this year, in the wake of strong student resistance, members of the *Lariat* staff can exercise greater freedom to publish what they please.

"I won't have a thing to do with cutting it anymore," says Wilson now. "If those babies write it, it's going to get printed."

Wilson had long made a practice of reviewing all *Lariat* material before

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"Censorship was a fact of life. . . . Some people refused to work on the staff because of it."

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publication and making any changes he thought fit. During the past school year, however, he had begun to encounter stiff opposition from the student staff.

On May 18, 1977, Wilson ordered Mrs. Penny Edmonston, the *Lariat's* adviser, to make several changes in the proof copy he had reviewed.

Among the changes requested was the deletion of an editorial feature on students' First Amendment rights that Presnell had written based on information provided by the Student Press Law Center and Nat Hentoff, of the *Village Voice*.

Presnell's piece cited the recent U.S. District Court case in which federal Judge Albert Bryan ruled unconstitutional the Fairfax County (Virginia) school board's censorship of an article on sexually active students' knowledge (or lack of

knowledge) of birth control. The Fairfax officials censored the piece because it contained information which violated a curriculum policy prohibiting instruction about contraception.

Although Presnell's article was generally concerned with students' rights to freedom of expression, Wilson objected to the story's references to the same sex-related topics that had been censored out of the Virginia paper.

According to Presnell, Wilson also demanded the deletion of a front cover illustration which he considered offensive and the removal of a news story which criticized the school system's athletic budget.

Wilson also requested the removal of a paragraph from an essay by student editorialist Joy Young. The piece, titled "There Was More To the Fifties Than Happy Days", reflected on the political tension and social change which occurred during the fifties. Wilson objected to a portion of the essay which discussed changes in sex roles and sexual attitudes during that period.

When the *Lariat* staff refused to accept the changes Wilson demanded, he offered to allow Presnell's piece to be printed if two "offensive" paragraphs were re-written.

Still not satisfied, Presnell contacted Patrick Wiseman, an American Civil Liberties Union attorney who felt the students had a case. He agreed to represent them and take the case to court if necessary.

Wiseman explained his view to Wilson, and Superintendent John Ward obtained an opinion from the school's attorney. Wilson agreed to allow the sports budget story and the cover illustration to be printed as planned. He still insisted, however, that the two paragraphs of Presnell's piece be re-written and that the paragraph in question from Young's editorial be deleted.



Sex and the Single Amendment see page 1  
FHS 2nd in UIL State see page 2

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The newspaper staff accepted Wilson's compromise and Presnell, who is the *Lariat's* editor-in-chief for the 1977-78 school year, decided not to try to force publication of the paper as originally submitted, saying, "I consider the relaxing of his [Wilson's] standards of censorship a victory."

## Arbitor

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In a legal opinion on Faith's dismissal, the Student Press Law Center said: "The underlying reason for the censorship of the student material appears to have been disagreement on the part of officials with the student views expressed. Under our constitutional system this reason is never sufficient to justify censorship . . ."

Responding to Faith's grievance, in September 1976, Mastandrea offered her a tenth grade English position with full reinstatement to her original position, but without the newspaper sponsorship. Faith refused the offer and continued to work on the arbitration case which she has won.

## Summaries and Citations of Major Student Press Cases

Student journalists, advisors, and administrators often ask the Student Press Law Center for citations of cases involving the student press and the First Amendment. The following are summaries of several major cases concerning students' rights to freedom of expression. Individuals interested in reading the full cases cited should go to a law library and ask a law librarian for assistance in looking up the cases.

*Tinker v. Des Moines*, 393 U.S. 503 (1969). The *Tinker* case is the landmark decision on the First Amendment rights of students. In this case, the United States Supreme Court ruled that high school students may not be prohibited from expressing themselves, in this case by wearing black armbands to protest the Vietnam war, unless the school proves that substantial disruption of or material interference with school functions would occur. In this now-famous decision, the court ruled that teachers and students do not "shed their constitutional rights at the school-house gate."

*Trujillo v. Love*, 322 F. Supp. 1266 (D. Colo. 1971). A federal District Court ruled that the fact that officials of a community college had labeled a newspaper a "teaching tool," when in reality it had functioned as a forum for student expression, did not permit censorship. The court decision reads, in part: "Having established a particular forum for expression, officials may not then place limitations upon the use of that forum which interfere with protected speech."

*Joyner v. Whiting*, 477 F. 2d 456 (4th Cir. 1973). The U.S. Court of Appeals upheld a District Court's decision that a college may not withdraw funding, fire editors, or in any way suppress

a student publication merely because it dislikes or disagrees with the newspaper's editorial content.

*Dickey v. Alabama*, 273 F. Supp. 613 (M.D. Ala. 1967). A federal District Court ruled unconstitutional a University's suspension of the editor of an official, school-sponsored newspaper for writing an editorial critical of state officials.

*Bayer v. Kinzler*, 383 F. Supp. 1164 (E.D. N.Y. 1974), *aff'd without opinion*, 516 F. 2d 504 (2nd Cir. 1975), the U.S. Court of Appeals affirmed a lower court's ruling that the seizure of a "Sex Information Supplement" to an



official high school paper by the administration was unconstitutional. The supplement was "primarily composed of articles dealing with contraception and abortion" and was "serious in tone and obviously intended to convey biological information rather than appeal to prurient interests." The District Judge said, "... It is extremely unlikely that distribution of the supplement will cause material and substantial interference with schoolwork and discipline."

*Vail v. Board of Education*, 354 F. Supp. 692 (D. N.H. 1973). A federal

District Court ruled that school officials may not impose a flat ban against all underground publications. The decision said, "the Board has the burden of telling students when, how, and where they may distribute materials, consistent with the basic premise that the only purpose of any restrictions on the distribution of literature is to promote the orderly administration of school activities by preventing disruption and not to stifle freedom of expression."

*Shanley v. Northeast Ind. Sch. Dist.*, 462 F. 2d 960 (5th Cir. 1972). A U.S. Court of Appeals ruled unconstitutional the suspension of five high school seniors for the publication of an underground newspaper which advocated review of marijuana laws and contained information on birth control and abortion. The Court ruled "expression by high school students cannot be prohibited because other students, teachers, administrators, or parents may disagree with its content."

*Nitzberg v. Parks*, 525 F. 2d 378 (4th Cir. 1975). A federal Court of Appeals ruled that high school officials may only preview non-school sponsored, or underground, publications prior to distribution pursuant to existing rules. The rules must carefully specify the type of expression so that a reasonably intelligent student will know what is prohibited and what is not. All terms, such as "disruption" and "interference" must be clearly defined by the rules. These rules must also contain procedures for appealing administrative decisions forbidding distribution of student material and must provide for timely appeals.

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# The Law of Libel

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## A Practical Guide For Student Journalists

by Richard Weisman  
STUDENT PRESS LAW CENTER

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*Administrators, both high school and college, frequently cite the threat of libel suits as the reason for censorship of student newspapers. In fact, research conducted by the Student Press Law Center reveals that fear of libel is largely unjustified. Libel actions are rarely brought against student publications, and there is virtually no appellate record of libel decisions against student journalists.*

*Of course, understanding the law of libel is a basic responsibility of all journalists. What follows is an outline of the fundamentals of the law of libel. The analysis is not meant to be exhaustive, and students experiencing libel problems should contact a lawyer or the Student Press Law Center.*

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### Definition

"Defamation" is generally defined as a false communication which injures an individual's reputation by lowering the community's regard for that person or by otherwise holding an individual up to hatred, contempt, or ridicule.

In order to protect the individual citizen's reputation, the law prohibits two varieties of defamation. Oral defamation, which will not be dealt with here, is known as "slander." "Libel," the topic of this analysis, is defined generally as any written publication of defamation.

Written or printed material of any kind can be ruled libelous by a court. Books, newspapers, magazines, letters, circulars, and petitions could all be found libelous. If pictures, photographs, cartoons, caricatures, headlines, or symbols are defamatory they too might be deemed libelous.

Of course, the defamatory communication must be relevant to a specific individual in order for it to cause injury to reputation. For example, although it may not matter that a school cook is alleged to be unable to read French, a French instructor might be defamed by the same allegation.

### The Elements of Libel

As a minimum matter, for a communication to be considered libelous it must meet all of the following criteria:

1) *Be communicated to a third party*

2) *Be false*—Where truth can be proven, a statement will not be considered libelous. However, proving the truth of a statement in court can be a difficult undertaking. In certain cases where a defendant (the person being sued) has believed his statement to be truth and the plaintiff (the injured person who files a lawsuit), has maintained otherwise, lawyers have waged fierce court battles with no assurance of success.

Courts do not consider statements of abuse, indicating personal dislike—without suggesting any specific factual charges—to be either true or false, and thus they enjoy immunity from libel. Words of criticism, abuse, and even name calling are permitted if they are understood to be no more than opinion or are presented in a manner a reasonable person would not take seriously.

However, this should not be considered a free license to print anything in the form of a personal opinion. Some courts have ruled that certain opinions carry with them assertions of fact.

Journalists should also be aware that, regardless of a statement's truth or falseness, it may violate the law's separate protection of personal privacy. (The next SPLC Report will feature a legal perspective piece on the law protecting individuals from invasion of privacy.)

3) *Be regarded as referring to and reflecting on a specific individual, business, or product*—This criterion is not at issue if the allegedly libelous communication specifically mentions the plaintiff. But if the plaintiff alleges defamation in a communication that does not specifically refer to him, it must be proved that some of those who read the publication understood that the plaintiff had been referred to. In one landmark libel case, *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), a city commissioner in charge of police in Montgomery, Alabama was required to prove that several references to Montgomery's police department had, in effect, referred to and reflected on him.

4) *Injure the plaintiff's reputation in the eyes of the community*—"Community" in this context is defined as any recognized or identifiable group, even though it may be very small.

Courts have ruled, however, that when the group in question is virtually insignificant in size or adheres to anti-social standards, its reaction to alleged defamation will not be a standard for legal consideration.

5) *Be due, at least, to the defendant's "negligence"*—In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323(1974), the most definitive Supreme Court ruling on libel to date, the Court ruled that no one can be held responsible for "liability without fault." "Negligence," at least, is a requisite for successful prosecution of a libel suit.

# splc LEGAL ANALYSIS

The Court has defined "negligence" as an act which is unreasonable in light of what a reasonably prudent individual would do. Inaccurately reporting a name, for example, would be in most circumstances a "negligent" act.

Where a newspaper has acted reasonably in light of what a reasonably prudent newspaper would do, it cannot be held responsible for libel.

The Court's ruling in *Gertz* allows individual states the flexibility to require a higher standard than negligence as a requisite for libel. Thus, one state may hold a "negligent" individual responsible for libel while another state might find libel only if a communication is conveyed with "actual malice." In the three years since *Gertz*, courts in different states have applied varying standards in their libel law.

6) *Be published with "actual malice" when referring to a "public official" or "private figure"*—The First Amendment allows journalists a great deal of liberty to discuss matters of public concern without fear of potential libel.

An individual characterized as a "public official" or a "public figure" can be libeled only if a communication is published with "actual malice."

The Supreme Court in *The New York Times v. Sullivan*, defined "actual malice" as possessing knowledge that a communication was false or recklessly disregarding whether it was false or not. This is a standard beyond mere "negligence." There must be intentional conduct.

The Court explained that "reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice."

Individuals are rarely found to have published with "actual malice," though such findings have occurred.

*continued on page fourteen*

## The Rule of *New York Times Co. v. Sullivan*

At what point does the threat of damages for defamation inhibit the free exchange of ideas necessary for the proper functioning of a democratic society?

In 1964, the Supreme Court decided its landmark case in this area—*New York Times Co. v. Sullivan*. Despite frequent disagreements among the Justices as to the proper relationship between the law of libel and the protections of the First Amendment, the basis for the decision in *New York Times v. Sullivan* has not been seriously questioned. In that case, a city official in Montgomery, Alabama, sued the *New York Times* for carrying an advertisement that the Commissioner claimed libeled him. The ad sought support for civil rights efforts in the south and contained inaccurate references to certain police conduct surrounding civil rights protests.

The United States Supreme Court reversed the Supreme Court of Alabama's decision that the Commissioner had been libeled.

Justice Brennan, writing for the Supreme Court, said that the law of libel as applied by the Alabama court was unconstitutional because of its "failure to provide the safeguards for freedom of speech and of the press that are required by the First and Fourth Amendments in a libel action brought by a public official against critics of his official conduct."

Libel actions brought by public officials, said Justice Brennan, must be viewed "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

Brennan also quoted James Madison who said that, "Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press."

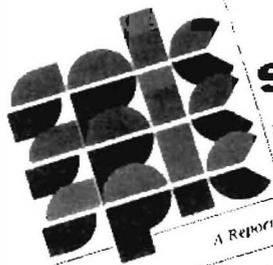
In this context, the Court reasoned, "erroneous statement is inevitable in free debate and that must be protected if the freedoms of expression are to have the 'breathing space' that they 'need...to survive.'"

But how to protect individual reputation and at the same time prevent self-censorship and an overly inhibited press? The Court's answer: "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice"—that is, with knowledge that it was false or with reckless disregard for whether it was false or not."

The effect of the *New York Times Co. v. Sullivan* decision was to sharply reduce a state's power to award damages for defamation of public officials while at the same time freeing the press to print critical information about those public officials.

# SPLC Reports

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## student press law center report 5-fall 1977

A Report on Current Controversies Involving the First Amendment Rights of Student Journalists



### Appeals Courts Weigh Potential Landmarks In Student Press Law

Two nationally-publicized court cases, which may become landmarks in defining the First Amendment rights of high school students writing for school-funded newspapers, have been argued in the United States Courts of Appeals and are expected to be decided during this school semester.

The Fourth Circuit (Richmond, Virginia), on June 10, 1977, heard the appeal in *Gambino v. Fairfax County School Board*, a case in which the editors of the *Farm News*, student newspaper at Hayfield Secondary School in Fairfax County, Virginia, are suing Fairfax County School officials for censoring an article concerning the sexual practices and awareness of students at Hayfield. The Fairfax school board appealed the District Court decision in favor of student journalists Gina Gambino and Lauren Boyd.

The Second Circuit (New York City), on March 31, 1977, heard the appeal in *Trachtman v. Anker*, a case in which an editor of New York City's *Stuyvesant High School Voice* is suing the City's Board of Education for censoring a sex survey. Both the school board and the plaintiff, *Voice* editor Jeff Trachtman, appealed the District Court ruling that the *Voice* could conduct a sex survey among juniors and seniors, but not among freshmen and sophomores.

It is not known when the courts will announce their decisions, but lawyers in both cases anticipate word in the near future.

*Gambino v. Fairfax County School Board*  
429 F. Supp. 731 (E.D. Va. 1977)

The February decision of Federal Judge Albert Bryan, Jr. in the *Gambino* case became the first specific discussion by a court of law on the First Amendment rights of high school journalists writing for a school-funded newspaper.

The decision stated in part that the *Farm News* "was conceived, established, and operated as a conduit for student expression on a wide variety of topics. It falls clearly within the parameters of the First Amendment."

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# **Your subscription helps support the work of the Student Press Law Center**

The Student Press Law Center is the only national organization devoted exclusively to protecting the First Amendment rights of this nation's high school and college journalists.

The Center serves as a national legal aid agency providing legal assistance and information to students and faculty advisers experiencing censorship or other legal problems.

Three times a year (Fall, Winter, and Spring), the Center publishes a comprehensive Report summarizing current controversies over student press rights. In addition, the Reports explain and analyze complex legal issues most often confronted by student journalists. Major court and legislative actions are highlighted.

This year, the SPLC Report has been extensively revised and expanded to better meet the needs of students, teachers, and administrators.

In the past, the SPLC has distributed its Report at no cost. This school year, however, we need the support of those we serve and so we are asking you to buy subscriptions to the Report.

Your subscription price (\$5.00 for high school or college newspapers, \$7.00 for all other groups and individuals) will help us continue to serve as the national advocate for the rights of student journalists. Other contributions are tax-deductible.

Return the attached card, along with a check or money order to:

**The Student Press Law Center  
Room 1112  
1750 Pennsylvania Avenue NW  
Washington, DC 20006  
(202) 347-6888**

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# The Law of Libel— A Practical Guide

*continued from page eleven*

*Look Magazine* was recently found to have libeled former San Francisco Mayor Joseph Alioto. The court ruled that the magazine displayed "reckless disregard for the truth" because it relied heavily on an untrustworthy source whose information was contradicted and could not be corroborated by others.

Because the requirement of "actual malice" provides the defendant with much greater liberty than the "negligence" standard, a key question is whether the defamed individual is a public or private figure. The answer to this question often determines whether or not a communication is libelous.

## Public Officials Public Figures

The meaning of "public official" is fairly straightforward. In *Rosenblatt v. Baer*, 383 U.S. 75 (1966), the Supreme Court defined "public officials" as "at very least" those individuals who "have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs."

The legal definition of "public figure" is less clear. The Supreme Court has erected certain guideposts. In *Curtis Publishing v. Butts*, 388 U.S. 130 (1967), the first decision to extend the media's protection under the *New York Times v. Sullivan* rule to "public figures," the Court ruled that Wally Butts, as athletic director of the University of Georgia, qualified as a public figure.

In the *Gertz* case, a private lawyer, although involved in a lawsuit, was found not to be a public figure. In *Gertz* the Court cited two ways an individual can become a public figure:

1) By actively seeking publicity for one's activities; by thrusting oneself "to the forefront of particular public controversies in order to influence the resolution of the issues involved"; and 2) By assuming a role which can be expected to attract publicity—"roles of especial prominence in the affairs of society"—resulting in fame or notoriety.

The Court wrote that a person can be a public figure in one context without being one for all purposes. To decide an individual's status in a libel case the court suggested exploring "the nature and extent of an individual's participation in the particular controversy giving rise to the defamation."

Following *Gertz* the Supreme Court has heard one major case further differentiating between "public figure" and "private person." In *Time v. Firestone* 96 S Ct.

958 (1976), the Court declared Mary Alice Firestone a private rather than a public figure, even though she had been the wife of a member of an extremely wealthy family, was involved in a well-publicized 17-month divorce trial, and had called several press conferences during the course of the trial.

The Court wrote that Firestone ". . . did not assume any role of special prominence in the affairs of society, other than perhaps Palm Beach Society, and . . . did not thrust herself to the forefront of any particular public controversy in order to influence the resolution of the issues involved in it."

In the aftermath of the *Gertz* and *Firestone* decisions, courts of law have varied widely in determining if an individual is a "private" or "public" figure. This is an area of the law which remains in flux.

The following state and federal court decisions since *Firestone* indicate how courts have tended to define the terms "public" and "private."

An Illinois appellate court decided that two junior college teachers involved in a controversy over the classroom use of certain books "had become actively engaged in the college controversy." The teachers were considered public figures within the college community, "which was the community served by the publication"—the student newspaper which had printed the allegedly defamatory letter about the controversy and the two teachers.

The court warned, however, that its ruling should not be generalized. The court wrote: "We emphasize that we do not hold here that teachers in a public school are by that very fact public officials. Nor [are they] public figures either in the school community or in the local community served by the school. We simply hold that the plaintiffs here, as teachers in a public college, had, under the circumstances of this case, become public figures in the school community, which was the community served by the instant publication."

Similarly, the Fifth Circuit Court found a track coach at the University of Texas, El Paso to be a public figure for a "limited range of issues," including when he became involved in a controversy over recalcitrant, black athletes in the 60's.

A Maryland court, applying the *Gertz* criteria, found a high school principal to be "within the public figure/public official classification." The principal had claimed libel based on a series of newspaper articles about area school administrators.

Another example of what courts have considered a private figure is a Massachusetts Supreme Court decision involving an employee of a city school department and a member of a city Redevelopment Authority. A newspaper reported that the man had been involved in court proceedings regarding illegal possession of drugs, when actually his son had been involved. Citing *Gertz*, the court wrote that the man was clearly a private person.

## Reporter Seeks Teacher Evaluations

# Court Orders Disclosure of Univ. Survey

A student reporter from the University of Washington's *Daily* has won a court battle to have certain University documents made public. The reporter, Franc Fischer, has won the right to publish the results of a survey taken of seniors graduating from the College of Arts and Sciences regarding the three least valuable and most valuable courses and professors at the University.

The *Daily* first learned of the survey in March, 1977, when reporter Gerald

The University also claimed that release of the survey results would violate another clause which exempts "personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their privacy."

According to University President John R. Hogness, "To release the complete tabulations and thus those persons' names would constitute an invasion of those individuals' privacy.

school has reported any problems occurring because of the release of the survey results.

Fischer's court brief claimed that "a teacher's performance is not a private concern, involving private, secret facts; rather it is a matter of public interest, involving actions which are by their nature public."

In a decision filed June 20, Judge Frank Howard ruled that "disclosure of the records sought by [Fischer] would not violate the professors' right of privacy" and "would not substantially and irreparably damage any person" nor any "vital government functions."

"... a teacher's performance is not a private concern, involving private, secret facts; rather, it is a matter of public interest, involving actions which are by their nature public."

Robbins was researching a story on student evaluations of instructors. Robbins wrote an article, which appeared in the April 2 *Daily*, entitled "Faculty evaluations seldom seen by students." A week later, when Robbins attempted to copy the survey for a story, he was informed by the University's Public Record Officer that Dean George Beckmann was no longer allowing students access to the survey results.

Robbins then filed a Request for Public Records with the University, in accordance with the Open Public Records section of the Washington State Open Government Act. The University agreed to release the statistics regarding the most valuable teachers and courses, but withheld the least valuable totals.

When Fischer filed another request for the full survey results, the University went to Washington State Superior Court, seeking a permanent injunction allowing them to keep the records secret. The University administration maintained that this information was exempt from the Open Record Act under a clause which excludes "preliminary drafts, notes, recommendations, and interagency memorandums in which opinions are expressed."

Identification of those employees could expose them to practical disabilities, such as loss of future employment or friends, and perhaps acute embarrassment."

The psychology department and the law school at the University both require student evaluations of courses and instructors, which are used to aid students in course selection. Neither

Howard stated that "the policy of [the Open Records Act] is to provide the public with free and open access to public records, even though such access may cause inconvenience or embarrassment to public officials or others."

Howard also ordered the University to pay Fischer \$1,539.00 in attorney's fees.

## U. of Texas Administrators Block Paper

Administrators of the University of Texas at San Antonio are blocking the student government's attempt to establish a student newspaper.

On June 1, 1977, the student government met and voted overwhelmingly to establish a student newspaper. A group of representatives formed a commission to establish a student publication and named sophomore Celeste Scalise chairman of the commission and future editor of the paper.

The following week Scalise met with the Dean of Students, Dr. Dora G. Grossenbacher, who informed Scalise that the administration would not permit an official university publication.

Grossenbacher pointed out that the University had no journalism department, might not have enough funds to support the publication, and that the paper might not receive enough student support. Instead, she suggested beginning a newsletter to be supervised by the university's administrators.

Scalise says that she is currently working through "political channels"—that is, through higher officials in the Texas state government—to gain a more favorable attitude from university officials.



# Georgetown University Censors Abortion Ad

The editors of the *Hoya*, one of two student publications at Georgetown University (Washington, D.C.), were ordered by the administration in the spring of 1977 to discontinue an advertisement for an abortion clinic or face a cut-off of University funds.

After the April 15 issue of the *Hoya*, which first carried the ad, was distributed, Director of Student Activities Jeff Fogelson notified the newspaper staff and the *Hoya's* printer that the University would not pay for the next issue if the controversial ad appeared.

According to Associate Dean of Students Bill Schuerman, "the University does not want to appear to be a part of soliciting for abortions."

The Rev. Timothy S. Healy, President of the Catholic university, said that his order to stop the advertisement did not touch on the question of freedom of speech. That freedom, he said, did not extend to "the use of University funds for solicitation for purposes antithetical to the University's commitments."

"The University has said in effect that it will not pay for the issue," said *Hoya* managing editor Doug Schoppert. "That's censorship. There's no question about this. Father Healy's claim that this is not censorship is pure nonsense."

The *Hoya* staff agreed to stop running the ad because they stood to lose about a third of their \$30,000 annual budget if the University withdrew funds.

Schuerman indicated that the University makes a distinction between news or editorial copy and advertisement copy.

Associate Dean John Kramer disagrees. "There is no difference, on a First Amendment basis, between ads and news copy, as the University maintains."

Legal precedents back Kramer's view. In a recent case from Virginia concerning a student paper and an abortion ad, the U.S. Supreme Court ruled in favor of the paper, extending First Amendment protection to advertisements.

*Hoya* editor-in-chief Mark McAdams is considering legal action against the University. A First Amendment claim may have little chance of succeeding, however, because the University is a private, not a state organization. The *Hoya* is also considering a breach of contract suit against the administration, alleging violations of the school's student press guidelines.

## Censorship in Private Schools

The distinction between private and public schools is often a key factor in determining whether or not student journalists enjoy the full protection of the First Amendment.

The Amendment protects individuals, including students, from censorship by local, state and federal governments. Since public institutions are government agencies, and act as arms of the state and local authorities, they may not violate the First Amendment rights of students. However, since private institutions are not government agencies, student journalists at private schools may not directly claim the benefits of the First Amendment.

Censored students at private schools and colleges must employ reasoned argument and political pressure to gain the freedom of expression guaranteed to their counterparts in public schools.

**Academic Freedom:** Many private schools would not think of censoring a student because to do so would violate the fundamental precept of modern education; namely, freedom of thought and expression are an essential part of the learning process.

**Citizenship Training:** Experiencing first-hand the rights and responsibilities of democratic citizenship is the best way to understand the workings of democracy. Schools engaged in censorship fail to teach students the fundamental value upon which a democratic society rests.

**State Schools Are Better?:** Free speech is an important component of quality education. Private schools failing to recognize those rights afforded students at public schools simply do not measure up.

**Freedom of Religion and Press:** Parochial schools have an obligation to support the spirit of the First Amendment's provision for freedom of speech out of respect for the Amendment's protection of freedom of religion. A religious institution, whose very existence is protected by the First Amendment, should not disregard the Amendment's other guarantees.

**A contract?:** Some private schools may describe student publications in catalogues or other material. These descriptions may contain language which tells students their freedom of expression will not be abridged. This language may represent a contract between the school and student editors which limits the school's power to censor.

**Politics:** Private institutions are often sensitive to pressure brought to bear by organized groups of students and faculty. If groups opposed to censorship publicize their views to the school's administrators, trustees, and the public at large, private schools may abandon censorship efforts.

## Student Photographer Jailed for Courtroom Photo

Wayne Scarberry, a student photographer for the *Daily Athenaeum* at the University of West Virginia, spent three days in a Monongalia County jail in October, 1976, for contempt of court. He was sentenced for taking a photograph from a corridor adjacent to a courtroom of accused murderer Eugene Clawson. Clawson was seated with his lawyer before court was in session waiting for Judge Marvin Kiger to appear for a hearing.

On October 13, Scarberry was assigned to get a picture of Clawson to accompany an *Athenaeum* story. Photography was prohibited in the jail, and Clawson walked from the jail to the courtroom in an enclosed catwalk which provided no access for photographers.

Scarberry spoke with a bailiff, the judge's secretary, and several sher-



iff's deputies, who told him no pictures could be taken in the interior of the courtroom.

"I knew I could not walk into the courtroom and take the picture without the judge's permission," said Scarberry. "But I didn't think I was doing anything wrong by taking

the picture from the hallway, as long as court was not in session.

"I deliberated with myself and decided that it was my job to take the picture and it was my editors' job to run the picture if they wanted to."

After the photo was published in the *Athenaeum* and distributed statewide by the Associated Press, Kiger issued

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"I have the highest respect for the courts. Where would we be without them? But where would we be without the press? As a photo-journalist, I am a reporter, only I work with a camera instead of a pencil . . ."

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an order for Scarberry to show cause why he should not be held in contempt of court.

Kiger, denying Scarberry's claim that the case was one of "serious contempt," refused his motion for a jury trial. A hearing was held on November 8.

Defense Attorneys made several motions to have the case dismissed, claiming the prosecution had not established that "there was any lawful order prohibiting the taking of pictures in the interior of the courtroom."

Monogalia County Deputy Clerk of Courts Maureen Wolfe testified that she could find no written record of a court order prohibiting courtroom photographs of prisoners. In his show cause order, Kiger said the court "had previously advised all news media concerning the rules and regulations regarding photographing or taking pictures in the interior of the Court Room."

Prosecutor David Solomon claimed the court has "inherent power" to control its domain, with or without a court order. He also cited Canon 35 of the American Bar Association code, which prohibits courtroom photography.

Kiger found Scarberry guilty of contempt of court and sentenced him to a three-day jail term, set to begin on the same day.

Although he served his sentence, Scarberry still maintains that his action had not disrupted the dignity or decorum of the court. "Of course, a judge must have control over his court," he said. "But where does his authority end? Does he have the power to cite me outside the courtroom, or outside the courthouse?"

It seems to me that a judge should have control over what goes on outside the courtroom when court is not in session."

William O. Seymour, an instructor of photo-journalism at the University of West Virginia, feels that Scarberry's case is clearly a First Amendment issue. Through Scarberry's conviction, he said, "not only are a photographer's rights endangered, but the whole freedom of the press is in danger."

"I have the highest respect for the courts," says Scarberry. "Where would we be without them? But where would we be without the press? As a photo-journalist, I am a reporter, only I work with a camera instead of a pencil. I was just doing my job."

Since the decision in Scarberry's case, Judge Kiger has retired. Two new judges have permitted the Press Photographers Association to give a demonstration on courtroom photography and will allow photographers to be present at a trial in the near future. Afterwards, the jury will be questioned about its effects.

Seymour, noting that the three states which currently allow courtroom photography have experienced no serious problems, feels the action of the new judges is a step forward. He says, "We are making progress because of Wayne's case."

# Fired Editor Talks Law Suit, Cites Censorship by Adviser

Don Johnson, fired editor of the Southern Arkansas University student newspaper, the *Bray*, plans to file suit against the University and the paper's adviser, Dick Davis, for prior restraint of an article written for publication last spring and for the subsequent removal of Johnson as editor-in-chief.

According to Johnson, Davis censored a front-page article that criticized the manner in which the SAU's Student Publications Committee selected this year's editor of the *Bray*. Two days after Johnson's attempt to publish the story, SAU President Dr. Harold T. Brinson fired him as the newspaper's editor.

In a related action, Brinson also fired Mike McNeill as editor of the yearbook and news editor of the *Bray*. In response to the firings of McNeill and Johnson, the entire staffs of the newspaper and yearbook resigned their positions.

President Brinson explained that his action came as the climax of building tensions. He said that Johnson and McNeill were fired because of their defiance towards Davis, failure to accept the responsibility inherent in editorship, and irresponsible behavior in general.

## Johnson Claims Otherwise

Johnson said that he was fired as a direct result of his effort to publish a news analysis on the selection of the paper's new editor. The article, planned for publication on April 21, 1977, stated that the selection made by the Student Publications Committee "should be considered invalid because of certain errors in the committee membership."

The story reported that although four members of the Publications Committee are supposed to be selected by the student government, only three had been. According to Student Body President Joey Baker, the fourth student committeeman was placed on the committee by mistake.



The article suggested that this fourth member had been especially influential in selecting the new editor of the *Bray*.

In addition, the article quoted a number of Committee members discussing their selection of Mrs. Terry Montgomery over the more experienced McNeill.

After reading the article and showing it to other faculty members, Davis told Johnson two days before intended publication that the story could not be published. He explained that A. M. Belmont, SAU English teacher and a member of the Student Publications Committee, had threatened to sue the university because of comments attributed to him in the story.

Jim Humphries, the student who compiled information for the story which Johnson wrote, asked that his name be removed from the piece.

"The quotes [from Belmont], they're all in context and I believe accurate," Humphries said. He explained that he wanted his name removed because the story had "a tendency to be slanted."

When Davis told Johnson that the story could not be printed as submitted, Johnson insisted that the quotes from Belmont were accurate, that two sources could confirm them, and that therefore the story should be printed.

"Davis told me I must take the story to Belmont and let him approve the quotes," said Johnson. "But I refused because this would be advance approval of copy and against *Bray* policy."

Belmont, in reference to the comments attributed to him in the article, said "I'm not sure if that's exactly what I said; I said it's in the general tenor; I probably would have said that." He complained primarily that the statements were to appear in a "headline, big bold print, out of context . . ."

## "Unfortunate Incidents"

According to Johnson, the same afternoon, Wednesday, April 19, Davis made his own front page and ordered the *Bray*'s publishing company not to print anything sent them by the *Bray* staff.

The following afternoon Davis distributed the newspaper himself. According to Johnson, three pages had been changed.

That night, Thursday, April 20, Johnson and McNeill appeared before the Student Publications Committee, which had met privately earlier in the day. Members of the Publications Committee asked the two students for information about the story.

The committee then recommended to President Brinson that Johnson and McNeill be fired, which they were the following afternoon. In his letter of dismissal to Johnson, Brinson wrote that "unfortunate incidents have made the working relations unwholesome and virtually impossible."

Soon thereafter the entire staffs of the *Bray* and the yearbook resigned. Davis produced the last three issues of the newspaper by himself. In the final edition of the *Bray* an unattributed story titled "Reasons Given For Recent Editor Firings" quoted Davis as saying that Johnson and McNeill were fired for "dishonesty and lack of proper ethics."

Johnson, who says that his dismissal resulted from his insistence that Davis had illegally censored his writing, has contacted the American Civil Liberties Union about initiating legal action.

## Minority Students Occupy Newspaper Office

Continuing conflict between the editors of the *Collegian*, daily student newspaper at the University of Massachusetts, and the paper's Black Affairs editors climaxed on February 24, 1977, when about thirty members of the school's Third World minority students occupied the offices of the *Collegian*.

The Third World students occupied the *Collegian* to protest the firing of Black Affairs Editor Rick Scott Gordon and his assistant Abdul Malik, who had produced a weekly *Collegian* section dealing with Third World news.

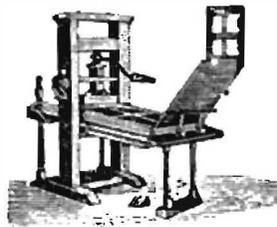
*Collegian* Managing Editor Charles O'Connor had fired the two Black Affairs editors the afternoon before the occupation, alleging failure to meet deadlines and misuse of *Collegian* resources. The evening after the firings, the Board of Editors met to discuss whether to uphold the decision.

During that meeting the Third World students entered the *Collegian* office single-file and, according to

witnesses, "calmly" told the staff to leave.

Editor-in-chief William Mills and three other *Collegian* staffers stayed inside the barricaded offices for about an hour and a half to hold discussions with the students in occupation.

Other *Collegian* staffers produced the following day's newspaper at var-



ious spots around campus and at the *Ware River News*, where the *Collegian* is printed.

The one-night occupation caused no injuries or damage.

Following the occupation, the fired Black Affairs editors obtained funds from the Student Senate to start their

own publication, which they called *Grass Roots*.

Since the Senate appropriated enough funds to print *Grass Roots* but not enough to distribute it, the publication was printed as a center section insert to the *Collegian*. It became a weekly supplement, published on Mondays, varying in size from four to eight pages.

In addition, the *Collegian* accepted two new Black Affairs editors nominated by the Third World community. They produced a Black Affairs page several times a week and were given access to more space if it was requested early enough. The *Collegian* also added a Third World faculty member to the newspaper's Publishing Board.

*Grass Roots* has now changed its name to *Nummo News* and a new group of editors has taken charge in place of the students involved in the *Collegian-Grass Roots* conflict. *Nummo*, like its predecessor, is published as a center section in the *Collegian*.

## Students Contest Alcohol Ad Bans

### Kentucky Paper Wins Court Suit, Virginia ABC Compromises on Beer Ads

Two college newspapers, the University of Virginia's *Cavalier Daily* and the *Kentucky Kernal*, of the University of Kentucky, have recently been involved in controversies over the publication of advertisements of alcoholic beverages.

In the past, the Virginia Alcoholic Beverages Control (ABC) Board has flatly prohibited the advertisement of alcohol in college newspapers. In May 1977, after protests by the *Cavalier Daily* and the Virginia Intercollegiate Mass Communications Association, ABC regulations were modified to allow college papers to print beer ads, as long as the ads do not exceed one-half page in size and do not comprise more than twenty per cent of the paper's weekly advertising revenues. The Board still completely bans the advertisement of wine and liquor in college papers.

The Chairman of the ABC Board said this action was a

"compromise" and that he didn't want to see Virginia college papers filled with "page after page of beer ads."

The *Kentucky Kernal* took its case to state court, protesting the Kentucky ABC regulation which prohibits the advertisement of "alcoholic beverages in any educational institution's paper, magazine, book or pamphlet."

The *Kernal's* suit, filed in May 1977, claimed that it was not an arm of the University of Kentucky and could not be considered an "educational institution's paper." They also claimed that the advertising content of a newspaper is equally deserving of First Amendment protection as its editorial content. Therefore, they argued, the ABC Board's regulation was a violation of constitutional guarantees of freedom of the press.

In a decision filed on June 8, the court ruled that the *Kernal* had "alleged and proved that it is not an agency or branch of the University of Kentucky but is an independent newspaper not subject to control of U. of K. or any governmental agency." The court refused to consider the constitutionality of the ABC regulation, since it had been proved that it did not apply to the *Kernal*.

# Va. Editors Ask Judge for Protection

Two student reporters from the University of Virginia's *Cavalier Daily* are involved in a law suit against the school's Honor Committee, charging that its "confidentiality clause" is unconstitutional. The rules of the Honor Committee, which investigates students charged with lying, cheating or stealing, state: "Strict confidentiality should be maintained throughout the investigation."

The reporters, Robert Melton and Robert Godec, filed the suit in May 1977, after they were threatened with expulsion for breaking the confidentiality rule. They had written an account of the Honor Committee's investigation of student body president and former Committee chairman Kendrix Easley, who was accused of lying. The two reporters were subsequently ordered to stand trial and face possible discipline from the school's Judiciary Committee, which enforces Honor Committee regulations.

Editors of the *Daily* protested, maintaining that Easley, as a public figure, should be open to public scrutiny and that the student body had a right to know about the operation of the Honor Committee.

On May 19, attorneys for the reporters filed a suit in United States District Court asking for a temporary restraining order to prevent any dis-

ciplinary action that might be taken against them for publishing the story.

In the suit, the reporters claimed the information they published "was already a matter of public knowledge at the time the stories appeared." Therefore, they said, they were not really violating the confidentiality rule.

If their action was considered a violation of the regulation, Melton and Godec charged, then the confidentiality clause violated constitutional guarantees of freedom of speech and press. The suit also charged that the Judiciary Committee's practice of allowing students to be represented at trials by a third-year law student only, rather than by an attorney, was unconstitutional.

Federal Judge James Turk denied the reporters' motion for a restraining order on the grounds that they had failed to prove "irreparable damage" would occur if they stood trial.

On May 20, Melton and Godec appeared before the ten-member Judiciary Committee, which ruled that the confidentiality rule applied only to Honor Committee judges, advisers and witnesses. Their decision stated, in part, "the Committee in no way condones your judgement or action but merely concludes that the confidentiality rule does not appear to extend to yourselves."

Four of the *Daily's* sources, who had been Honor Committee witnesses, were also ordered to stand trial. One student, who had originally accused Easley was found guilty of writing a letter to the editor explaining why he had dropped the charges. He was suspended from school for the summer, but after an appeal to a higher school authority, his sentence was reduced to writing a ten-page paper on the confidentiality clause.

Two of the Honor Committee witnesses were cleared of charges, and the one remaining student who was accused of releasing information to

the *Cavalier Daily* will be tried in the fall.

Although Melton and Godec's suit is still pending, it will probably be mooted by a new Honor Committee rule which extends the confidentiality clause only to "primary sources" — that is, people directly involved in the investigation. This new regulation specifically exempts the *Cavalier Daily*, but any of its sources are still liable for punishment for releasing information.

## Adviser Sues

*continued from page seven*

to teach English only and that she would no longer be the *Times* adviser.

Kober filed a formal complaint with the school board through the grievance committee of the teachers' union. On the first Monday of April, Kober, accompanied by the president of the teachers' association and the chairman of the grievance committee, appeared before an executive session of the school board for a hearing.

Tuesday of the following week, another hearing was held at which allegations were heard. Principal Weatherbie claimed that Kober had been un-cooperative for the past three years. Kober, however, presented a 1976 evaluation form, signed by the principal, which said that she was doing a good job teaching journalism.

The next day, Kober was told that the school board was upholding her re-assignment "because they had no other choice."

On July 1, Kober filed a suit in United States District Court against the school district and seven members of the school board. The suit charges that their instructions for censorship of the school paper and her removal for failure to follow such instructions were "abridgements of her rights, the journalism students' rights, and the rights of all readers of said publication as guaranteed by the First and Fourteenth amendments."

## Governor Supports Campus Freedom

Florida Governor Rubin Askew vetoed a bill in June that would have established committees on each University of Florida campus to screen films and other educational resources for pornography.

Ron Sachs, a spokesman for Askew, said the Governor vetoed the bill because "the University must be free . . . to examine ideas in an atmosphere of freedom."

## Critical Report Sparks Prior Review at RISD

Editors of the *RISD Press*, student paper at the Rhode Island School of Design, and officials in the school's administration have agreed to establish an advisory or review board as a pre-requisite to further publication.

According to the proposal drawn up by *Press* editors, the board will "allow the students of RISD freedom of the press" and also "protect the institution in its ultimate legal responsibility for the publication."

The proposal comes as a stop-gap measure to prevent further growth of a severe rift between RISD President Dr. Lee Hall and *Press* Editors Andrew Young, Mark Hunnibell, and Daniel Walworth. Creation of the

board allowed the *Press* to publish a special summer edition in late July which Hall had previously refused to permit.

In June, Hall informed editors of the *RISD Press* and members of the Ad Hoc Committee of the Student Board that she would not allow them to use the school's facilities, funds, or name in publication of a special summer edition. Hall explained her action as a step to prevent the publication of libel for which the school would be legally responsible.

According to Andrew Young, the 1976-77 Editor of *RISD Press*, Hall feared that the *Press* would print a possibly libelous report by Jack Stewart, a former RISD Provost both hired and fired by Hall in the 1976-77 school year. Stewart's report, titled *How to bring RISD, kicking and screaming, into the 20th century*, included his analysis of RISD and recommendations for the future.

According to a special issue of *RISD Press* published on May 24, 1977, Stewart's report "is insightful and covers a broad range of problems here at RISD. Perhaps due to his particular status in the college, Mr. Stewart does not shy away from direct indictments or from naming names."

Editors of the *Press* maintained throughout the summer term, as they planned a special summer edition, that they would not reprint the report.

President Hall, fearing that they would print the report, refused permission to use the University's facilities, funds, and name for the edition, unless editors submitted all copy for administrative approval before publication.

The paper's editors continued to press for permission to publish a summer issue, and a week before publication in late July, they reached

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"For some persons, it may be more comfortable to live in a fantasy world in which nothing is bad and no one suffers. But ignoring a problem does nothing to solve it. It is up to the press, including the scholastic press, to make these problems known so that they may be solved."

*The Journalism Education Association*

"If rebellious student editors are unwilling to accept the ultimate veto power of a high school principal or college president, let them become their own publisher."

*James J. Kilpatrick  
Syndicated Columnist*

"It's vital to have truly free, contentious, even rude high school papers so that both the high school journalists and their readers actually experience, actually handle the First Amendment."

*Nat Hentoff  
Freelance Writer*

## SPEAKING OUT



"It will be a tragic day for American education if the first amendment rights are stretched and distorted to guarantee a total freedom of editorship to the students. Is a teenager sufficiently clairvoyant to decide unilaterally what is best for his community or public taste? Would he add excerpts from *Hustler* magazine, advertise pornographic literature, and publish the language of "Oh Calcutta" because he can interpret social values much better than adults, including his parents?"

*Owen B. Kiernan  
Executive Director,  
The National Association of  
Secondary School Principals*

"Censorship has been the downfall of our paper. Much needed talent ignores the newspaper because of its restrictive nature."

*James Presnell, Editor  
The Lariat  
Friendswood High School  
Friendswood, Texas*

"These young journalists are being taught today . . . that First Amendment rights are only for some people some of the time . . . If they do become professional reporters, having felt the knife so early, they are not likely to stick their necks out for the First Amendment."

*Tom Wicker  
New York Times*

"If freedom of expression becomes merely an empty slogan in the minds of enough children, it will be dead by the time they are adults."

*Ben Bagdikian  
Professor of Journalism  
University of California, Berkeley*

# Mich., Montana Papers Face Libel Suits

## Baseball Player, Policemen, Sue Mich. *State News*

The Michigan State University student newspaper, the *State News*, is currently involved in two unrelated libel suits.

The first suit was filed in March, 1977 by Atlanta Braves pitcher Mike Marshall, who is suing the *State News* for \$2.5 million in damages. (See SPLC Report #4.)

In February, Marshall was arrested by campus police for "interrupting a scheduled tennis match by using an adjacent baseball practice area without a proper reservation." According to the *State News*, Marshall "walked onto the turf arena and began batting baseballs in all directions."

Marshall's suit also names the Los Angeles *Herald-Examiner*, *TV Guide*, and *Sporting News*, who ran news stories based on information from the *State News*. Marshall claims that "the stories directly contributed to my being traded from L.A. to Atlanta," by portraying him as "someone with no regard for anyone's safety."

The second suit, which seeks \$1.65 million in damages, was filed in June by three Lansing city policemen.

Stemming from the shooting death of burglary suspect Michael Smith by a police officer on May 4, the suit charges that the *State News* intentionally altered the facts and the statements of a witness in articles published about the incident.

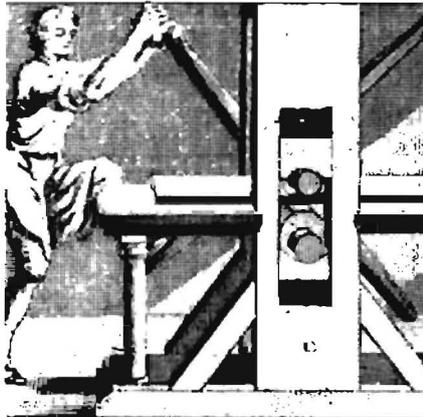
According to police statements, Smith became violent when police apprehended him and attacked them with a crow bar or tire iron. Police officer John Hersman, Jr. then shot and killed Smith.

In a signed affidavit, a secret witness for the *State News* claimed that Smith had been unjustifiably killed. According to the witness, Smith had no weapon and had stop-

ped running when the police ordered him to.

Ingham County Prosecutor Peter Houk, who conducted an investigation into the shooting, discounted the witness' statements and absolved the officers of any wrongdoing.

The policemen demanded a retraction of the *State News* articles, but the newspaper refused. The officers particularly objected to the lead paragraph of one story, which said that, if



the witness' affidavit was to be believed, the police had lied.

The three officers then filed a libel suit in Michigan State Court charging that the *State News* "did willfully and maliciously misinterpret, misquote, and misstate the substance of the alleged secret witness' statement."

The suit also charges that "actions of the defendants were done in a calculated and willful manner to provide misleading, false, and sensational and publicity-seeking charges without regard for the truth, without attempting to determine or reconcile any of the alleged discrepancies between the witness' oral statements and the police statements, and were printed with a willful and wanton disregard for the truth, and as printed constituted libel."

The newspaper has filed motions to dismiss both suits, but, according to *State News* General Manager Gerald Coy, the cases are just in "preliminaries."

## School Employee Sues Paper, Editor At U. of Montana

The *Kaimin*, the student newspaper at the University of Montana, and its editor are being sued for libel by the director of the University's print shop.

In 1974, a controversy arose between the *Kaimin* and the University over the high cost of printing the paper in the print shop. Carey Matovich Yunker, the editor of the *Kaimin*, wanted the *Kaimin* to establish its own printing facilities, a proposal that threatened the University with the loss of large revenues.

On October 8, in order to publicize the problem, she printed a two page spread featuring a series of memos about the matter written by herself, Al Madison, the director of the print shop, and Warren Brier, dean of the school of journalism. In an editorial about the memos she wrote:

*One of the memos is from Al Madison. His position, director of the University print shop, alone makes anything he would say on the matter suspect. As well, he is a congenital liar, an incompetent whose own operation has lost \$103,914.89 in the last four years.*

Madison, charging that the above paragraph was libelous, filed a suit on December 9 in Montana State District Court against Yunker, the *Kaimin*, the student government and its Central and Publications Boards, and the University of Montana itself.

Montana State libel law has a retraction clause which requires the plaintiff to notify the defendant at least five days before a suit is filed. This clause gives the defendant a chance to issue a retraction of the libelous material before the case

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## Libel Suits

*continued from page twenty-two*

may be taken to court. If a retraction is printed, no punitive damages may be awarded and the retraction will be taken into account when actual damages are assessed.

Yunker and the other defendants filed a motion to dismiss the case on the grounds that were not notified in time to print a retraction. The suit was dismissed in December, 1976.

Madison has since filed an appeal of that dismissal in the Montana Supreme Court, charging that the retraction clause is unconstitutional because it "purports to deprive the the Plaintiff of his rights to access to the court" and it relieves the defendant of "responsibility for abuse of exercise of the right of free speech."

Madison's appeal is expected to be heard in the Montana state Supreme Court sometime in September or October.

## SPLC Intern Opportunities

This Fall SPLC Report was researched, written, and designed entirely by two student interns.

*Julie Ford, 17, is a 1977 graduate of Upper Arlington (Ohio) High School, where she served as an editor of the nationally acclaimed *Arlingtonian*. She is currently entering her freshman year at Ohio State University.*

*Richard Weisman, 20, is a junior at Yale University. He has worked as an intern in the Washington bureau of the *Boston Globe*, has served as editor-in-chief of his high school paper, the *Red and White* (Norwich Free Academy; Norwich, Connecticut), and currently writes for the *Yale Daily News Magazine*.*

The Student Press Law Center offers internships during each school semester and during the summer for high school, college, and law students interested in either journalism or law. Interns research and produce the SPLC Report, handle requests for information on student press rights, assist the Director in litigation by providing para-legal support, and participate in the Center's fundraising activities. The Center provides its interns with stipends and academic credit.

Interested student journalists are encouraged to apply to:

*The Student Press Law Center  
Room 1112  
1750 Pennsylvania Ave, NW  
Washington, DC 20006*

## Corporal Punishment Ruled Constitutional

The Supreme Court has ruled five to four that corporal—or physical—punishment of students by school officials, no matter how severe, does not violate the Constitution's Eighth Amendment ban on cruel and unusual punishment.

The Court stated, however, that teachers and other officials are subject to criminal or civil penalties for using "unreasonable" or "excessive" force.

In addition to these legal restraints on corporal punishment, the states of Hawaii, Maine, Massachusetts, and New Jersey, as well as New York City, have legally barred physical punishment in schools. These local laws remain in effect since the Supreme Court sets only minimum standards as to what protections must be provided.

The new Supreme Court opinion was delivered last April in *Ingra-*

*ham v. Wright*, a case in which two Dade County, Florida junior high school students sought damages and relief against school officials for paddlings they had received.

According to the Court, "The evidence...suggest that the regime at Drew [Junior High] was exceptionally harsh." For example, co-plaintiff James Ingraham, because he was slow to respond to his teacher's instructions, once received over 20 licks of a paddle, causing him to develop a hemotoma—a severe bruise—that kept him out of school for 11 days.

The Court ruled that regardless of the severity of the corporal punishment inflicted in school, students are not eligible for protection by the Eighth Amendment's cruel and unusual punishment clause. Justice Lewis Powell, author of the Court's opinion wrote that under common law the

cruel and unusual punishment clause "was designed to protect [only] those convicted of crimes."

Justice Bryon White dissented in an opinion supported by the four minority judges, writing that a distinction between the rights of a student and criminal to protection by the cruel and unusual punishment clause "is plainly wrong."

Addressing the second point of legal contention in the *Ingraham* case—whether students have a constitutional right to an informal hearing before being punished—the majority of judges stated that a punished student is, in effect, given due process because he can later sue and recover damages if his punishment was "excessive."

Justice White objected again in his minority opinion, stating that this type of "due process" is "utterly inadequate to protect" against unfair physical punishment.

## Prior Review at RISD Press

*continued from page twenty-one*  
an agreement with the University's Provost Bruce Helander and other RISD officials to establish an advisory or review board which would review all copy before publication, including the summer edition.

The board made no attempts to censor the summer edition of the Press. At that time—and at the time of our printing—its specific duties and powers had not been clearly defined.

The board is comprised of three students—the paper's editor-in-chief, its managing editor, and a member of the Student Board—two faculty members chosen by the editor, and two administrators from the University Office of Public Affairs.

Although President Hall had not formally approved the board, she did lift her ban on publication of the summer edition.

## Youth Information

*Follow-up Reports: Organizing an Effective Youth Involvement Unit (Volume 1) and Toward Better Communication Through Resources Identification (Volume 2).* This is a two-volume, 168-page report containing "a little bit of information on a lot of different topics" relating to youth programs and projects. The report contains over 800 resources covering topics of interest to young people, such as the Buckley Amendment, alternative schools, drug abuse, child abuse, and youth rights and responsibilities. Volume 1 includes information on starting a youth advisory board, including a sample constitution. Volume 2 contains an extensive list of major youth-oriented programs and resources in the United States.

The *Follow-up Reports* are available for \$3.00 a set, post paid, from the National Network of Youth Advisory Boards, P.O. Box 402036, Ocean View Branch, Miami Beach, Florida, 33140.

## Juvenile Report

*Little Sisters and the Law.* Published in March, 1977, by the Female Offenders Resource Center of the American Bar Association. This report documents the frequently discriminatory treatment of female juvenile offenders in the criminal justice system. *Little Sisters* includes background information on the juvenile justice system, case histories, and statistical data and suggests alternatives to current methods of dealing with female juvenile offenders. *Little Sisters and the Law* is available, free of charge, from the American Bar Association, 1800 M Street NW, Washington, D.C. 20036.

### In Future SPLC Reports

- ☆ What is "Invasion of Privacy"?
- ☆ Model Guidelines for Student Publications
- ☆ What the New Copyright Law Means



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