

student press law center

# report

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## *Surviving Underground*

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## Student Press Law Center Report

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# Alternative press is battlefront in today's post-*Hazelwood* world

*Growing number of undergrounds may start next generation of cases*

Quietly, over the course of the last four years, a change has been taking place in high school journalism.

Confronted with the Supreme Court's disastrous 1988 decision in *Hazelwood School District v. Kuhlmeier*, which significantly cut back on the free press protections of high school journalists, increasing numbers of students began to look for ways to have their say outside of official student publications. The result, as reflected in information collected by the Student Press Law Center, has been an explosion of underground newspapers that are beginning to set an agenda for

the high school press that could lead into the 21st century.

The high school censorship section of this issue of the *Report* (see page 9) begins with stories of alternative newspapers at five different high schools that fought censorship battles during the last school year. Some of these papers are similar to their school-sponsored counterparts, although often more hard-hitting, offering serious criticism of school policies and officials. Others are less "mainstream," using humor as well as strong language and illustrations to shock readers as much as to inform them. School officials found both kinds objectionable and took action against the students who produced them.

Many of these underground student journalists fought back. Three lawsuits have been filed since the first of the year by student journalists who believe they have a First Amendment right to distribute non-school-sponsored publications at school without being punished. Those lawsuits may set the stage for the comeback of the high school press. If courts continue to affirm the

strong protection they have given the underground press in the past, school officials may realize that their *Hazelwood*-inspired censorship has pushed them into an arena where they cannot win. School-sponsored publications may ultimately benefit.

The resurgent underground press has also raised the thorny issue of whether "indecent" language should be protected in a student publication. Many alternative publications have rejected the stylistic niceties of more traditional newspapers. No four-letter word is considered off limits if it expresses the depth of their feeling. Yet a single off-color phrase can bring down the school's censorship ax. The courts will inevitably be compelled to decide what "harm" such language does and whether the First Amendment must fall in its presence.

For those who thought *Hazelwood* was the last word on high school press freedom, the underground press is a wake-up call. The battle for free expression by students has only just begun. ■

## The Report Staff

Frank Eichenlaub is a senior at Indiana University majoring in political science and journalism. He is a reporter at the *Daily Student* and is considering attending law school after graduation. Frank formerly attended Ferris State University in Michigan where he was editor in chief of *The Torch*. Frank is from the Detroit area.

Timna Tanners from Spokane, Wash., is a junior at Pomona College in Claremont, Calif., majoring in politics. Timna will be managing editor of *The Student Life* in the spring of 1993 when she returns from a semester in Toledo, Spain.

Alexa Vermeer is a Washington, D.C., native and a second-year law student at Georgetown University. She has a degree from Northwestern University's Medill School of Journalism and has interned with *USA Today on TV*, *Naples Daily News* and *ABC News*.

Molly Ostarch from Corpus Christi, Texas is a second-year student at the University of Houston Law Center. Molly has a degree in journalism and political science from Southern Methodist University where she served as news editor of *The Daily Campus*.

## Burying the Buckley Amendment

The signing of the year's major education bill on July 23 put another nail in the coffin of the Buckley Amendment as a tool for the cover-up of campus crime. The new version of Buckley now explicitly says that campus law enforcement unit records are not education records and thus cannot be denied to the media or the public based on federal law.

From the reaction of the U.S. Department of Education, one would think this was all their idea. "With this change we make it easier for parents and students, faculty and neighbors to know if the campus is safe," said Secretary of Education Lamar Alexander. The version of the bill that passed was one that he recommended to Congress.

What Alexander did not say is that his

recommended legislation was only proposed after Sen. Tim Wirth (D-Colo.) introduced a similar bill, which had been prompted by the Department of Education sending over a dozen letters threatening to withdraw federal funding from schools that released campus crime reports. The Education Department continued to support schools that wanted to sweep crime under the rug after the bill had been introduced.

Alexander did not mention that when the SPLC and three student journalists filed a lawsuit to stop him from using Buckley as a crime cover-up tool, he fought us every step of the way. That record stands. It is now up to the Department to demonstrate that its actions as well as its words are behind open campus crime information. ■

# COOPERATION

Despite Buckley hassle, many campus law enforcement officials want to come forward with crime information

At Rutgers University in New Jersey, a number of date rapes had occurred on campus during the spring of 1991, prompting the student newspaper, the *Daily Targum*, to look into the issue.

A reporter approached the Rutgers public safety department. But rather than shutting off the faucets of information to stem perceived damage a story might cause, public safety poured out data — sources, books and research.

Soon a group of *Daily Targum* reporters busied itself with the data — they eventually churned out a six-part series on date rape.

"We could never have purchased that as crime prevention material," said Leslie Scoville, assistant vice president for public safety at Rutgers.

Scoville uses this story to illustrate a point that appears to be widely held in the campus law enforcement community: not only do public safety departments want to give out crime information, but — for the safety of the community — they need to.

This view places campus law enforcement officials squarely on the side of student journalists, who for years have struggled to wring even the slightest drop of campus crime information from their schools.

In denying access to information, colleges and universities have traditionally hidden behind the federal Family Educational Rights and Privacy Act, also known as the Buckley Amendment. Buckley penalizes schools for the release of "education records," which many schools have said also means police reports.

But if many campus law enforcement officials had their choice, it appears that campus crime information, including police reports, would be available to the public. The former or current campus law enforcement officials contacted by the *SPLC Report* each agreed that campus crime information should be accessible.

"Philosophically, I don't know of any [campus police] who don't agree with that," said William Whitman, director of the Campus Safety and Security Institute, an organization that researches campus crime issues.

The first reason campus police give as to why they would rather disclose campus crime information is that it makes their jobs easier: a well-informed public is one that is able to take precautions to protect itself.

"You never have enough police out there," Scoville said. "We want our community to be as informed as possible. It helps us protect our community."

Scoville's department is not content with letting journalists approach her department. They are "very aggressive" in making information available to the public and have even devised a fax network with which to contact the student newspaper, Scoville said.

Shelley Snow, associate news editor of the *Daily Targum* at Rutgers, said the paper hears it from Scoville's department when a reporter forgets to ask them for crime information.

"They get on me," Snow said. "They say [the students] can't be safe if they don't know what's going on."

Scoville said, "They're helping us notify the public. We actually seek out the press. We need them."

Another reason cited by campus police officials is that they have

an obligation to students to inform them of the dangers that exist in their communities.

"I think that the public should be aware of the possibility of becoming a crime victim," said Horace Johnson, director of public safety and chief of police at Western Kentucky University.

Western Kentucky has opened police reports to the public for all of Johnson's 17 years with the university and has only tangled with the Buckley Amendment once.

That came during the 1991 court case, *Bauer v. Kincaid*, in which SPLC Executive Director Mark Goodman testified that Western Kentucky was one of 24 schools surveyed that routinely released police reports. The survey showed that none of the schools had lost funding for disclosing this information.

After Goodman's testimony, Western Kentucky received a letter from the Department of Education advising it that releasing police reports could jeopardize the university's federal funding.

"We continued to do what we thought was right," Johnson said. His department still releases reports.

While all the officials preferred to release police reports, most also said that not doing so may even create a dangerous situation on campus.

"I think the danger is not being open and honest with your student population," said David Ostrowski, director of campus police and public safety at University of Wisconsin at Parkside. Ostrowski was once a student newspaper editor.

"I think there needs to be an understanding that just

(See SAFETY, page 5)

*'They're helping us notify the public. We actually seek out the press. We need them.'*

—Leslie Scoville  
Public safety official

# The Buckley stops here

Change may end act's role in campus crime cover-up

WASHINGTON D.C.— Already staggering from court decisions and state legislatures, the Family Educational Rights and Privacy Act received a knockout blow in July from President George Bush that may have effectively ended the act's role in the campus crime cover up.

In July, Bush signed the Higher Education Amendments of 1992, an omnibus education bill that included a provision to change the Family Educational Rights and Privacy Act, commonly called the Buckley Amendment.

The change says Buckley no longer includes: "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement."

Colleges and universities nationwide have continually denied access to campus police reports by citing Buckley, which penalizes schools for the release of "education records."

Schools claimed the police reports were "education records." But others said Buckley provided an excuse to withhold the reports.

"The Buckley Amendment is a rotten interpretation by the colleges and universities to hide scandal," said Howard Clery, co-founder of Security on Campus. "This language says they can't."

The Department of Education also said schools that mix actual education records with police reports must still make the reports public.

"If the law enforcement unit creates a record ... and shares a copy with another component of the institution, the record maintained by the law enforcement unit would not be covered by the Buckley Amendment while the copy maintained

by the other component would be," according to a letter written by Secretary of Education Lamar Alexander to Vice President Dan Quayle in urging the bill through Congress.

The change is effective immediately and allows disclosure of police reports to be determined by open records laws and school policies.

"With this change we make it easier for parents and students, faculty and neighbors to know if the campus is safe," Alexander said.

But the change in Buckley received a mixed initial reaction.

At the Community College of Philadelphia, the student newspaper, the *Student Vanguard*, has struggled for years to gain access to police reports. The paper has retained an attorney and, even after the change, expects to end its struggle in court.

"I'm pessimistic," said Ted Piccone, an attorney with the firm Schnader, Harrison, Segal and Lewis who is representing the *Student Vanguard*. "I think we'll have to litigate."

Meanwhile, at Adams State College in Colorado, an administrator said the school is ready to change its policy of providing the student crime summaries, rather than the actual reports.

The change in Buckley was much embraced by at least one member of the campus law enforcement community.

"This looks perfect from a law enforcement point of view," said William Whiunan, director of the Campus Safety and Security Institute, an organization that researches campus crime issues. Whitman served on campus police departments for 20 years.

He said most of law enforcement

officials had been constrained by the confusion over Buckley.

But even before the recent change, schools that cited Buckley to deny access to police reports did so with less credibility after Buckley suffered a series of losses in courts and state legislatures.

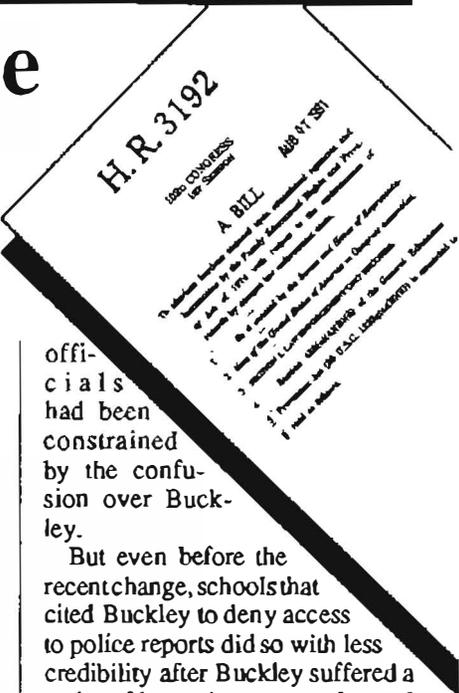
Three state legislatures — West Virginia, Massachusetts and Oklahoma — recently enacted laws promoting the release of campus police reports, while similar measures are pending in California and Pennsylvania. And at least four courts have ruled in favor of the student media in questions regarding Buckley.

Still, there is evidence that Buckley might not yet be dead. At Pierce Community College in Washington state, no change was expected in the school's policy of withholding student names on police reports.

The change says that records of a "law enforcement unit" are not covered by Buckley. But Pierce maintains that it has no "law enforcement unit," said Richard Montecucco, a senior assistant attorney general advising the school.

"They really don't enforce the law," Montecucco said.

Security on Campus, which pushed for (See CHANGE, page 7)



## Safety

(Continued from page 4)

because you're on a university campus, the outside world doesn't stop at your doorstep," Ostrowski said.

While none of the officials — except Johnson at Western Kentucky — had any problems with Buckley, each said that schools not releasing police reports are genuinely struggling with Buckley.

But that struggle has lost its legitimacy. In July, President

George Bush signed a bill that exempts the records of a law enforcement unit from Buckley. (See above story.) Even before that, four courts and three state legislatures had acted against the interpretation of Buckley that many schools use.

If, in the aftermath of Buckley, colleges and universities continue to struggle with releasing campus police reports, their law enforcement officials might have some advice.

Said Johnson from Western Kentucky: "I think we should be honest with the people in our community. I think everyone should have a right to know about the environment in which they live." ■

# Schools continue to cry Buckley

Even with FERPA dead, editors face court battles over access

The Buckley Amendment received its last rites over the summer and even the Department of Education pronounced its application to campus police reports dead.

But schools continue to use Buckley, also called the Family Educational Rights and Privacy Act, to deny student access to police reports. And student editors are heading to the legal system for help.

In Arkansas, the American Civil Liberties Union announced in July that it would file suit against the University of Central Arkansas on behalf of the student newspaper, the *Echo*. The ACLU will seek access to uncensored campus police reports.

The *Echo* receives police reports, but the university, citing the Buckley Amendment, continues to block out student names.

"They're not budging until God tells them differently," said editor Kim Green. "They are not going to release this information until they're forced to."

University legal counsel Julie McDonald said the police reports become education records when passed through the university system.

But the Department of Education has said that police reports can still be made public even if they come into contact with education records.

McDonald declined comment on the Buckley clarification because she had not read the legislation.

Green said the lawsuit would be filed before classes begin in September.

Meanwhile, discussions between the Community College of Philadelphia and attorneys representing the student newspaper, the *Student Vanguard*, have stalled and a lawsuit appears inevitable, said former editor Bill Cunnane.

"We're still trying to get into a dialogue with them," Cunnane said. "[But] I don't expect to get what we want." Campus police dictate crime reports to reporters from the paper but omit the names of students, faculty and administrators, Cunnane said.

Ted Piccone, an attorney with Schnader, Harrison, Segal and Lewis who is representing the *Student Vanguard*, said he plans to notify the school of the recent clarification to the Buckley Amendment. But he expects little to change.

"We'll just have to sue them," Piccone said.

Meanwhile, Meg Smith, former managing editor of the *Pioneer* at Pierce Community College in Washington, said the university has left her with only one option — a lawsuit.

The *Pioneer* has received access to campus police reports, but the university relies on the Buckley Amendment to refuse to release student names.

Smith said this practice forces her to write unbalanced stories. One such case involved an international student who struck an instructor during class.

"I wanted [the student's] side of the story," Smith said. "It reeks of censorship. They don't have any right to censor his side of the story."

The *Pioneer* was looking for legal representation at the end of the summer so they could file a lawsuit. (Also see *CHANGE*, page 5.)

In Alabama, journalists for the *Chanticleer* had more luck. Jacksonville State University officials agreed in July that it would allow public access to police reports.

Editors of the paper were advised by Boyd Campbell, an attorney in the firm Blanchard, Calloway and Campbell.

(See *COURT*, page 7)



## SPLC Lawsuit Update

The Student Press Law Center has not yet determined if it will continue its lawsuit against the Department of Education in light of a new federal law changing the Buckley Amendment.

SPLC lawyers are analyzing language that amends Buckley in the Higher Education Amendments of 1992, signed into law by President George Bush in July. The new language exempts from Buckley the records of a law enforcement unit.

Many schools, with the blessing of the Department of Education, have denied students access to campus police reports and have used Buckley as a reason.

The SPLC and student editors Lyn Schrotberger of Colorado State University and Sam Cristy and Clint Brewer of The University of Tennessee filed suit against Secretary of Educa-

tion Lamar Alexander in October 1991 after the department said it would enforce Buckley against schools releasing campus police reports.

"We need to determine just exactly what effect this new legislation will have on the reporting of campus crime," said SPLC Executive Director Mark Goodman.

In November 1991, U.S. District Court Judge Stanley Harris issued a preliminary injunction against the department and Alexander prohibiting them from "withdrawing or threatening to withdraw federal funding" from schools that release campus police reports.

Harris found that Buckley, also called the Family Educational Rights and Privacy Act, would violate the First Amendment if used to prevent the disclosure of police reports that name students. ■

# State crime bills inch toward passage

Several states inched closer to passing campus crime legislation over the summer, but these bills took a back seat to federal legislation.

A bill that would open campus crime reports at California colleges and universities cleared another hurdle over the summer but took its lumps along the way.

AB 3739, introduced by Assemblyman Pat Nolan (R-Glendale), passed the Senate Education Committee in July and was scheduled to be heard in the Senate Appropriations Committee in August.

The bill would require schools to make campus police reports public within 48 hours of the crime.

It passed the Assembly in May — although it will need to return there to get approval of the Senate amendments. The bill was expected to reach the governor's

desk in August.

But the Senate Education Committee amended AB 3739 in several places. One amendment will give police 48 hours before crime reports must be made available to the public, rather than one business day.

Another amendment changes the amount of a fine assessed to violators. Formerly \$1,000 a day for a violation, the new language says a school can be assessed a fine of up to \$1,000.

A campus crime bill that passed the Pennsylvania Senate unanimously in May remained in a House committee when the General Assembly recessed in July.

Bill 1378, which would require campus police departments to keep police logs and open those logs to the public, passed the Senate 48-0 in late May.

Sen. Richard Tilghman (R-Bryn Mawr) introduced the bill in October 1991.

"It's a tough bill for anybody to be against," said Greg Jordan, research analyst for the Senate Appropriations Committee. "It sailed right through the Senate."

The House will return from recess in late September. The Senate will return for an abbreviated work period in September and then return after the November election.

The General Assembly's two-year legislative session ends the last day of November, when the bill will die if it has not been acted on.

Jordan said Tilghman will reintroduce the bill if it should die in November. But he expects the bill, which is currently in the House Education Committee, to pass in the fall. ■

## Court

(Continued from page 6)

The agreement puts an end to a "temporary" university policy of denying access to campus crime reports that began in April 1991. The policy followed an incident in which an entire sorority had been arrested.

"It was definitely negative publicity," said managing editor Melanie Jones. "Obviously the university didn't like it that much."

"To me, the best way to protect myself is to be informed," Jones said. "People are more cautious if they know what's going on."

While some students sought legal advice, others planned to pursue the issue during the fall 1992 semester.

At Temple University in Philadelphia, editor in chief Amy Lynn Dixon of the *Temple News* knows about campus crime from both sides of the issue — as victim and journalist.

Dixon and a friend were mugged on campus earlier in the school year by two men, one of whom had a gun.

But the university's summary described a sanitized version of the crime, reporting that the muggers had "what seemed to be a gun," Dixon said.

Dixon said students are unable to protect themselves based on the university's version of crime. The *News* receives university summaries and only when an arrest occurs.

She has circulated letters to administrators and will press the issue in the fall.

Other newspapers reporting similar problems are: Arkansas State University, State University of New York-Stony Brook, University of Hawaii, Adams State College in Colorado, Brown University in Rhode Island, Guilford Technical Community College in North Carolina, Massachusetts Institute of Technology, University of Maine-Orono and University of Kansas. ■

## Change

(Continued from page 5)

the passage of the Buckley change, urged in April that the definition of "law enforcement unit" apply to "any campus police or security department that deals with crime on campus."

But a spokesperson for the Department of Education said the definition of "law enforcement unit" will be for individual schools to determine.

Another indication that school policies may not reform immediately is that the Department of Education will not notify schools of the Buckley change, said a spokesperson for the department.

The omnibus education bill contained other nuggets for student journalists. The bill requires institutions that grant athletic scholarships to annually report their sport programs' revenues and expenses.

The bill also calls schools to disclose grants totalling \$250,000 or more in a calendar year from foreign sources or contracts.

Meanwhile, the education bill also contains the Campus Sexual Assault Victims' Bill of Rights Act, which could effect student media's access to information about sexual assaults.

Schools must now inform victims and the accused of the results of disciplinary proceedings stemming from sexual assault allegations. The results could be given to the media.

Also, schools must counsel sexual assault victims on their option to notify campus and local police.

In related news, the Department of Education has issued regulations for the Student Right to Know and Campus Security Act of 1990. The act requires colleges and universities that receive federal funding to publish crime statistics, with the first report due Sept. 1, 1992.

The act also requires schools to make "timely" reports of campus crime. But the Department of Education does not define "timely," leaving that to the individual schools. ■

# Police report battle heads to court

Bemidji State editor challenges university, Minnesota open records law

MINNESOTA — Jana Studelska, managing editor of *The Northern Student* at Bemidji State University, has joined the growing number of student journalists who have sought legal remedies to cure their campus police report headaches.

In May, Studelska filed a lawsuit in U.S. District Court in St. Paul against the university's president, the director of campus security, the vice president of academic affairs and members of the board of trustees.

Studelska is seeking access to BSU's campus police reports, challenging a university policy that relies on Minnesota law to refuse access to that information. She claims that the policy violates the First and 14th Amendments of the U.S. Constitution.

Studelska claims Bemidji State has misinterpreted the state law, called the Minnesota Data Practices Act, and asks the court to bar the university from withhold-

ing crime reports based on the state law. While the BSU police make available weekly summaries, gaining access to police reports has been a problem for Studelska for several years. Studelska decided to pursue the issue when she compared a batch of police reports that she had obtained with the weekly summaries that were routinely available.

She found police reports for crimes that had not been included on the weekly summaries and called the summaries "very sanitized."

"I realized we had been lied to, manipulated and not taken seriously," Studelska said. "This year, I thought it was time to get serious."

Unlike many universities that deny access based on the federal Family Educational Rights and Privacy Act, commonly known as the Buckley Amendment, Bemidji State has routinely denied access to police reports based on state law.

But the Minnesota law contains pro-

visions that closely resemble language in the Buckley Amendment, before it was changed in July.

A part of the Minnesota law calls "educational data" confidential, including law enforcement records. Studelska claims this phrase conflicts with another part of the act that says crime reports, or "arrest data," are public information.

But J.P. Barone, the special assistant attorney general representing BSU, said

the risks to her physical safety, and the knowledge critical for avoiding such risks," Studelska said in the lawsuit.

According to the complaint, BSU has denied access to campus police reports, which describe occurrences of violent crime, assault and criminal sexual conduct on campus, since Studelska has attended the university.

In December of 1991, Studelska reached an informal agreement with the

campus police that would allow *The Northern Student* access to the reports. But when she returned from break, she was denied access. The university in January 1992 then offered Studelska a "weekly narrative" of incidents occurring on campus, rather than the actual reports.

"The denial by government officials of access to such information in an arbitrary manner and without legitimate justification constitutes an abridgment of

[Studelska's] First Amendment guarantees," Studelska says in her lawsuit.

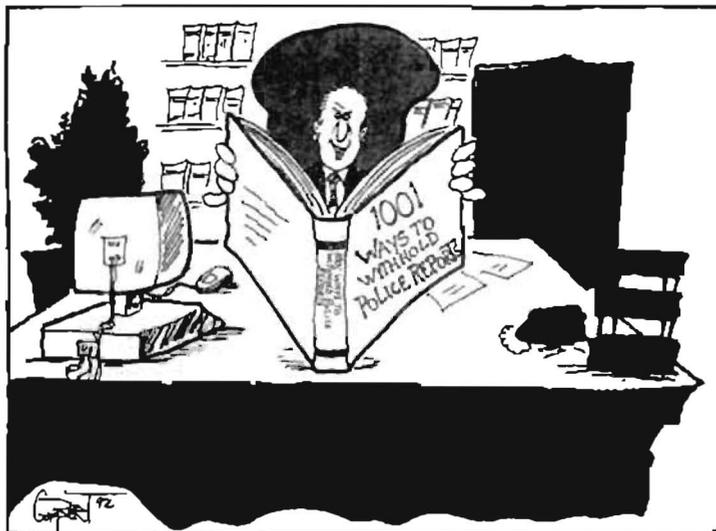
Studelska claims a First Amendment right to receive information such as police reports and says the university policy violates this right.

Studelska's is only the second lawsuit to challenge the application of a state education records privacy law to campus police reports.

In 1986, a court ruled in favor of the University of Florida at Gainesville student newspaper and required that the university provide public access to police reports on that campus in *Campus Communications v. Criser*, 13 Med. L. Rptr. 1398 (Fla. Cir. Ct. 1986).

The Minneapolis law firm of Faegre & Benson is representing Studelska. Studelska has asked for a summary judgment and BSU has filed a motion to dismiss.

A hearing has been scheduled for October 1992. ■



there is no conflict in the Minnesota law.

"It's very clear what part of [the statute] applies to [BSU]," Barone said. "It's a pretty clear statute."

In her 14th Amendment claim, Studelska says BSU denies her equal protection because there is no difference between "educational data" the university calls confidential and "arrest data" the Minnesota open records law makes public.

Local police are required by state law to give access to "arrest data," but BSU's interpretation of the Data Practices Act leads the school to deny access to the same information. The result is that "adult student perpetrators are inexplicably given greater privacy rights than their non-student counterparts," Studelska said in her complaint.

"[BSU has] further subjected [Studelska] to a denial of equal protection by denying her access to information necessary for an accurate appreciation of

# What's Going Down



## Student journalists discover undergrounds

With legislation to counter the *Hazelwood* decision being shoved aside in favor of redistricting bills, budget related bills and bills that appeal to voters in an election year, student journalists meanwhile turn to an old alternative that has attracted a lot of recent attention: underground publications.

Part of the reason for this sudden focus on non-school-sponsored newspapers lies in action begun in the courts.

At high schools in Michigan, Oregon and Washington, students punished for publishing underground newspapers have appealed their penalties and taken administrators to court. Alternative publications in the past have been well protected under the First Amendment.

But because underground newspapers remain sensitive territory in many places, it may take a few successful cases to pave the way for those who want to publish alternative papers. And for students who want to air their views and shock people in the process, they will be less likely to receive the protections that the law requires from high school officials.

An underground paper must cause a substantial disruption of school activities, be libelous or be legally obscene to be censored or seized, according to the 1969 *Tinker* Supreme Court decision standard. But at high schools in California and Wisconsin, editors of undergrounds were expelled for distributing material they admitted was tasteless. These editors received less support than their counterparts at schools with less extreme underground papers.

On the mainstream high school journalism front, journalists continue to battle censorship with less protections in the law than undergrounds have. Restrictions from the *Hazelwood* decision remain secure in many places and high school administrators have become more anxious about student journalism as a result of the increase in underground papers.

The recent veto of free expression legislation to protect school-sponsored papers that had already passed both houses of Wisconsin's legislature provides the most troublesome example. Gov. Tommy Thompson justified his veto with the fear students would lack an adult influence and could print what they wanted in undergrounds, a forum which the bill would not have affected.

The First Amendment guarantees independence of underground publications that state legislation cannot restrict. The rights of school-sponsored publications, however, can be restricted, as in Wisconsin, where student journalists were denied protections on the basis of fear of underground publications.

It seems that officials fear the impact of alternative newspapers and are responding by limiting the freedoms of school-sponsored papers. Student journalists in turn respond to increased restrictions by using an alternative forum for their ideas. To end this cycle either students must stop pushing their limits in undergrounds or school-sponsored papers must be given the freedoms students desire. But in the meantime, it looks like undergrounds are here to stay. ■

## Underground editor sues to distribute

WASHINGTON — Karl Kearney's underground newspaper caught the attention of administrators at Evergreen High School who suspended him for three days after his second issue included a condom.

Kearney, who was a junior last year, first printed *The SubTerrestrial* last December. After the first issue was distributed in the bathrooms at the Seattle school, the administration took no action. When the second issue appeared with a condom in January, the principal called Kearney into his office and suspended him soon after.

In late May Kearney's lawyer Michael Danko, a cooperating attorney for the American Civil Liberties Union in Washington, filed the lawsuit, *Kearney v. Evergreen High School*, against the school district. A trial date has been set for spring 1994, although Danko is trying to move that date up.

The suit seeks to have the disciplinary action removed from Kearney's permanent school records. It also asks that the district be required to establish new guidelines for student publications, for attorney's fees and damages from the seizure of the underground newspaper.

"It's a continual commitment to protect personal rights in order to keep them," said Danko. He added that the case seems straightforward, and that the ACLU is confident that they will "prevail."

School board policy allows distribution of materials that are not disruptive, libelous or obscene, or do not invade the privacy of others or violate the law or demean others on the basis of race, religion, age, sex or ethnic origin. Another section of the school board's policy guarantees students' free expression.

"We see no valid cause to have suspended Karl Kearney," said ACLU Executive Director Kathleen Taylor. "Some of the newspaper's articles included street language that many students use though some people may find offensive."

When Evergreen principal Ernie Olson

(See KEARNEY, page 10)

# Publication means no graduation

## Student expelled for printing 'tasteless' underground paper

**WISCONSIN** — For producing an admittedly "not [in] good taste" underground newspaper, Brad Petrie was expelled from Menasha High School two weeks before graduation.

The school board voted to expel Petrie for a semester and withhold his diploma. If Petrie discontinued publishing the underground paper, stayed off district property during his expulsion and attended counseling with his family, the district would agree to pay the \$25 fee for a general education degree.

"It has nothing to do with free speech," said Roberta Hoppe, president of the school board, to a local newspaper. "It has to do with the defamation of character of other people."

Petrie's expulsion followed the publication of an almost 40 page "special graduation issue." Some of the features in the underground paper were a comical guide to the SATs, naked cartoon characters, pictures of students superimposed on advertisements and repeated attacks on the principal.

According to Menasha's superintendent of schools, William Decker, the content of the paper was offensive in its "treatment of pornography and its way of treating human beings." He added that the paper "exposed private things about individuals such as girls' phone numbers."

This was the second issue of Petrie's newspaper distributed on school grounds. He was warned after the first issue and given a three day suspension, the maximum suspension allowed in the state.

Decker said at that time that the principal worked with Petrie and offered to allow him to distribute if he followed the



guidelines for the school newspaper. After a conference with Petrie's parents, the principal agreed that the paper could be published if it were cleared through him first.

Petrie's mother has commented publicly on plans to sue the school, but Petrie has said that he will follow the school board's requirements and attend a local community college next year.

Gretchen Miller, legal director from the American Civil Liberties Union, said that Petrie contacted them, but the ACLU will not be representing him.

"[The paper] is hard to defend," said Mike Walter, editor of the *Appleton Post-Crescent* referring to Petrie's publication. But in an editorial he did offer his support for free expression rights for high school students. ■

## Kearney

(Continued from page 9)

met with Kearney's parents, he informed them that their son would be suspended for failure to cooperate with school officials and for distribution of lewd, inappropriate and unacceptable materials.

"The allegations that the paper was obscene and disruptive are not going to hold up," said Danko. He called the failure to cooperate charge "a bogus issue."

Kearney explained the charge of failure to cooperate with his refusals to answer questions that he said

were incriminating when called into the principal's office. He said that the administrators were frustrated with him and used "scare tac-



tics," suggesting that he comply with answering their questions or he would not graduate.

Kearney put out another issue of *The SubTerrestrial* and after he served his suspension, he filed suit.

In Kearney's third issue of the underground paper was a discussion of the condom controversy, a copy of the

words to the Beatles song "Imagine," a defense of the paper and general criticism of the Evergreen administration. In a column, writers also

encouraged students to wear stickers with "ST" on them, designed to support the publication.

The third issue generated no official reaction from the school administration, said Kearney. He said that about 10 to 15 people contribute to *The SubTerrestrial* but he and some friends do most of the work.

"I have a history with trying to get the students to care about anything besides themselves, and I figured an underground newspaper would be the best way to get alternative ideas out to students," said Kearney.

He plans to continue publishing the underground during the next school year.

Danko said that he would like to settle the case out of court if the district would remove the suspension and apologize.

"We think they have constitutionally appropriate policies," said Danko referring to the school board, "but in this instance they are not following them." ■

# Students sue for underground rights

*Journalists on school-sponsored, alternative publications join forces*

OREGON — Tigard High School students decided to take their principal to court after he censored the school-sponsored newspaper and suspended students for distributing an underground newspaper.

The case, *Barcik v. Kubiacyk*, was scheduled for a hearing on July 31. According to the attorney representing the students, Jonathon Hoffman, the case could set an important precedent for the



rights of student journalists.

The students are claiming that the censorship of the school-sponsored newspaper and the off-campus newspaper violates both the Oregon Constitution and the First and Fourteenth Amendments of the U.S. Constitution. They want to prohibit the school board from interfering with the publication or distribution of either newspaper, and from disciplining or harassing students for activities related to publication of a newspaper. The students are also suing to have the suspension taken off their records.

"I think legally [the school district]

has a very weak position with respect to the state constitution," said Hoffman. Oregon has traditionally been a pioneer in looking to state constitutional protections, according to Hoffman.

Oregon appellate courts have upheld broad protection for free speech, going beyond the protection of the First Amendment. Even obscenity is protected under the Oregon Constitution.

The underground newspaper *Low-Spots*, a play on the name of the official student newspaper *Hi-Spots*, first came out last January. In that issue, the newspaper was described as "a student run outlet for the expression of opinions usually not allowed anywhere else, outside from normal conversation."

The *Low-Spots* contained articles that criticized the school system, political correctness, the administration, the flag salute and conformity. All submissions were signed with pen-names and articles contained occasional profanity.

Before the first issue was printed, the principal warned editors Scott Barcik and Tom Jansen not to use the school's property or facilities. The editors did not use the school's facilities, yet despite efforts to discourage distribution on school grounds, copies of the paper were handed out on campus.

Mark Kubiacyk, principal at Tigard, called the *Low-Spots* editors into his office on the day that the paper was distributed on school grounds and informed them that they were to be suspended for seven days each. Seven days is the maximum number of days a student may be suspended in the district.

The students were told that the reason for their suspension was "for disrupting the educational process and for distributing *Low-Spots* to Tigard students." As an alternative punishment Kubiacyk told Barcik and Jansen that they could each write a 10-page paper on student First Amendment rights.

After the conflict with Barcik and Jansen, Bob Skrondal, journalism adviser to *Hi-Spots*, suggested to the school-sponsored newspaper staff that they write a news story and editorial on the contro-

versy surrounding *Low-Spots*.

Editor in chief Shannon Kasten took the idea to the *Hi-Spots* editorial board which unanimously agreed to run an editorial supporting the idea of an underground newspaper, but not necessarily the contents.

Before the *Hi-Spots* editorial was printed, *The Spots on My Dog*, another underground publication, came out with language that was interpreted by administrators as threatening to the principal. A controversial sentence in *The Spots on my Dog* read, "So if you must do something, don't insult him, kill him," referring to the comments about the principal in *Lo-Spots*. The author of the underground, who is not involved in the lawsuit, was suspended for seven days.

Knowing that the school-sponsored paper was about to come out with an editorial in support of underground publications, the assistant superintendent of the district asked for a copy of the editorial. Upon receiving the news story and editorial he took them to his lawyer to check his legal right to censor them.

Principal Kubiacyk went to the journalism class the following day to inform the *Hi-Spots* staff that he and the school board had unanimously decided that the editorial could not run as written.

"[The editorial] probably would have been fine, but in light of the inflammatory publication I interpreted the editorial as a blanket endorsement of underground newspapers," said Kubiacyk. Kubiacyk also cited a history of violence in the school and his concern for the safety of the students and staff.

"The district denies they censored the student newspaper, but when [the students] asked if they could publish with the editorial they were told no," said Hoffman. "When they asked if they were being censored, the district also said no."

"I told them it couldn't be run as it was and I tried to lay out why I was concerned," said Kubiacyk. "They really weren't willing to reconsider when I asked them to."

(See TIGARD, page 14)

# Editors beat rap on school suspension

MARYLAND — Five students were suspended for 14 days and charged with “gross misconduct” for their involvement with *Bottled Hamsters and Nasal Spray* at Eleanor Roosevelt High School in Greenbelt.

After the November 1991 issue of the comically titled underground newspaper lampooned the principal, five students were suspended for publishing and distributing an unauthorized paper on school grounds. A hearing examiner recommended in July that the suspension of two students who appealed to the Howard County Board of Education be invalidated and taken off their personal and academic records.

Kurt Wimmer, attorney from Covington and Burlington in Washington D.C. for David Mattingly, one of the students, appealed the Suspension Appeal Committee decision, which was upheld. He then carried the appeal to the superintendent of schools.

Wimmer and the attorney for Karen Snell, the other student appealing the suspension, took part in an oral hearing in May.

The hearing examiner decided that there was “no evidence presented of actual distribution of the publication on school grounds,” by Mattingly or Snell. Although both students admitted to editing and writing articles for *Bottled Hamsters and Nose Spray*, both denied they distributed the paper.

As the students were charged specifically for distribution, in

the category of “gross misconduct and persistent disobedience,” the hearing examiner’s recommendations did not involve a discussion of free speech.

“It’s really not a victory,” said Wimmer. “[The decision] avoids the First Amendment and allows the rule [against distribution] to stay in the books.”

The parody in the November issue described a farcical arrest of Principal Gerald Boarman for indecent exposure while he attended a

“large but Lovely Ladies” show held after school hours at the school auditorium. According to court documents, the publication *Bottled Hamsters and Nasal Spray* has been published annually for several years without the school’s approval. ■



# School, editor settle underground dispute

MICHIGAN — Instead of agreeing to take the day off when suspended by his principal for “behavior surrounding the publishing of [an] independent newspaper,” Jeff Redding found a lawyer and prepared a lawsuit against the school.

Redding, former editor in chief of the underground newspaper *The Emery* was given a one-day suspension last February. Administrators at Huron High School charged him with putting up unauthorized posters on school grounds to solicit writers, selling candy on campus to raise funds and using the school’s computers for publishing the newspaper.

“We did these things for necessity, not for the sake of breaking the rules,” said Redding in explaining his motivation for repeating the infractions. He

said he and his staff sold candy to recover from debt from publishing the newspaper and posted flyers to advertise for writers. He added that a reporter used the school’s computers without his knowledge, but Redding was told that he would be punished because he was the leader.

When the Ann Arbor School Board voted not to hear his appeal of the suspension, Redding found a lawyer to represent him in a lawsuit against the school. Julie Field, a cooperating attorney with the American Civil Liberties Union in Michigan, filed a complaint the day before the date set for Redding’s suspension and a Michigan circuit court granted a temporary restraining order so that he did not serve the suspension.

After four months of debate and hear-

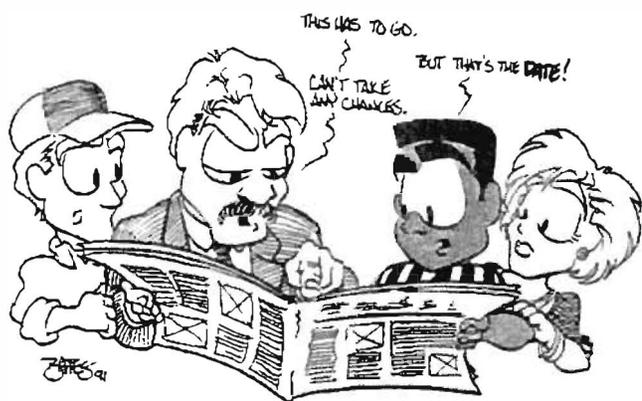
ings, the school board agreed on June 24 to a settlement that required it to take the suspension off of Redding’s record, review the rules that led to the suspension and give Redding his diploma. In return Redding and his lawyer dropped the lawsuit.

“We fully expected to prevail in the lawsuit because it was not a case of a violation of due process or First Amendment rights,” said Tony Duerr, attorney for the Ann Arbor School District. “The plaintiff was disciplined for violating rules that we think are valid rules.”

According to the settlement the school board agreed to review the policies, regulations and guidelines relating to fundraising, sign posting and student publications in general. The board is

(See *EMERY*, page 15)

# School official finds no humor in Twain quote



## Principal fires adviser for allowing criticism

TEXAS — When the student newspaper at Cotulla High School asked students what one thing they would change about their school, one student replied “the principal.” He probably thought he was being funny. Principal Sam Robinson, however, did not.

After a series of restrictive policies for the paper were enacted in reaction to the quote, journalism teacher Donna VanCleve wrote a memo to the principal saying she “respectfully disagreed” with his actions and felt he overreacted. Following this action she claims she was subjected to repeated harassment from the principal.

“He can’t come into this type of job and not be able to take these type of put-downs,” said VanCleve. “He’s insecure in his authority.” Soon after she protested the censorship, VanCleve

*‘She is no longer employed because of her actions and because she refused to accept my authority over student publications.’*

—Russell Ballard  
Principal

received a poor evaluation from the principal.

She worked at Cotulla for one year, until what she calls a “power play” between her and the principal led Robinson not to renew her contract. Because teachers at Cotulla who are not tenured must get the principal’s approval to be renewed, VanCleve feels she was not rehired because of the personality conflict.

“She is no longer employed because of her actions and because she refused to accept my authority over student publications,” said Robinson. “It was basically a situation in which she was not willing to accept district guidelines.”

He claims VanCleve failed to fulfill her role as adviser in overseeing articles. Robinson said he was compelled to censor the newspaper because VanCleve allowed material that he felt was libelous and constituted a personal attack on himself.

According to Robinson, an adviser should allow controversial articles, but in those that have a “personal tone,” she should control the content.

(See COTULLA, page 18)

PENNSYLVANIA — Apparently, quoting Mark Twain at Blackhawk High School is now an offense punishable by three days suspension.

Jessica McCartney and Heidi Schanck, both recently graduated from Blackhawk in Beaver Falls, were given the assignment of reading school announcements over the public address system. They were also given a copy of *A Teacher’s Treasury of Quotations* and asked to recite a quote.

When reading through the book, they found this quotation by Twain: “In the first place, God created idiots. This was for practice. Then he made school boards.” Because there had been local controversy with the school board, the girls thought the quote was appropriate and funny, and read it over the public address system.

Ed Giannini, the principal, disagreed with their decision and gave both girls three days of in-school suspension and ordered them to write apology letters to the school board, the teachers and the students. Both McCartney and Schanck had no disciplinary problems before the incident.

Because of pressure from the girls’ parents and the local newspaper, Giannini reduced the punishment to two days and did not put the suspension on the students’ records. Edward Young, the school board’s lawyer who took Giannini’s calls, said although the suspension took place during exams, the students were

allowed to take their tests, and only sat in the office during classes without final exams.

The reason given to McCartney for the disciplinary action, was “disrespectful behavior,” grounds for suspension in the student handbook.

According to Schanck, most of the other students do not pay attention to what is read over the public address system. She talked to a school board member who said other school board members did not find offense with the quote.

“Most of them thought it was funny,” said Schanck. “The principal just panicked.”

The community of Beaver Falls became involved in the issue when parents of both girls wrote letters to the newspaper. TV stations and a talk show program also covered the incident.

Although she consulted an attorney about the incident, Schanck decided against legal action when the school decided to take the suspension off her record. But she said that if they had not dropped the suspension, she may have considered suing.

“I think the principal completely overreacted and had no business suspending them for even five minutes,” said Marion Dimick, executive director of the Pittsburgh branch of the American Civil Liberties Union.

“I don’t think it was right for them to suspend us for what we said. We just thought it was funny,” said McCartney. ■

## Tigard

(Continued from page 11)

After meeting with the principal, Kasten and editorial editor Marce Edwards called the printer and told him to pull the editorial and print instead "Censored by Mark Kubiacyzk, Russ Joki, Al Davidian, Tigard-Tualatin School Board." Joki, the superintendent of the district and Davidian, the assistant superintendent, helped make the decision that the editorial could not run.

Another issue in the students' complaint is that the superintendent changed the publications policy without warning following the editorial controversy. Neither the adviser nor the students were asked for input or suggestions for the change.

The old policy had prohibited only material considered obscene, libelous or likely to cause a "material and substantial disruption of school activities." The old policy also read, "No student publication, whether non-school-sponsored or official, will be reviewed by school administrators prior to distribution or withheld from distribution."

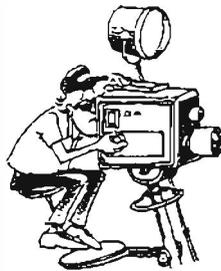
Kubiacyzk said that he was unaware that a publication policy existed until Skrondal gave him a copy during the controversy over the editorial. A week later the school district adopted the new publications policy.

Under the new policy, student publications subject to prior review include any publication written by students. Its list of materials that can be "modified or removed from publications" include writing that is inappropriate for the age and maturity of students, biased or prejudiced, or "disruptive to the school environment."

Skrondal did not want to comment on the case. Hoffman said Skrondal was told "the situation would have been better if he were not the adviser."

Hoffman said he would prefer to overcome restrictions on high school free speech through a court decision rather than through legislation, such as that considered in other states.

"If we recognize protection in the [state] Constitution, we don't need to depend on the whim of legislators," said Hoffman. ■



## Roll 'em

### Video students win case, best drama award

**CALIFORNIA** — A group of students at Tulare Valley High School scored two big summertime victories with their video about teen-age pregnancy.

First, the students won a court order in late June that barred their school from prohibiting the video from being entered in a statewide contest. A week later, the students learned the film had won the "Best High School Drama" award in the contest.

"I was happy as hell," said Adriann McGrew, one of 40 students who worked on the video, *Melancholianne*.

Objecting to the use of profanities in the fictional story about teen-age pregnancy, Tulare school officials refused to let the students show the video to the public.

But in early July, Tulare County Superior Court Judge Kenneth Conn issued a preliminary injunction that allowed the students to enter the contest and show the film to the public. The American Civil Liberties Union represented the students.

Conn found that the state constitution and the state Education Code do not allow public school authorities to "censor the video in question."

"It is a great victory for kids who are trying to talk about a subject that really is important to their lives in language that they use," said Jacob Weisberg, a Fresno attorney who assisted in the case.

The controversy began in January 1992, when the school's principal read a script of the film and objected to the use of 14 profanities. McGrew said that the students removed 12 of the words, but kept the rest of them because they were appropriate in their context.

"Where the big curse word is used is when they're talking about sex," McGrew said. "They're not talking about making love."

McGrew said the school, located in a county with one of the highest teen-age pregnancy rates in California, should be more receptive to new approaches to the problem. She also said she does not understand the school's objection, given that the students hear the words used in the film every day.

In fact, McGrew said the students heard similar language from the school superintendent, Ned Kehrl, when they met with him about *Melancholianne*.

"I made a comment about his generation not understanding our generation," McGrew said. "He said, 'That's bullshit.'"

Kehrl has admitted to using the profanity.

Although the students scored an early victory, the battle is not yet over. The school district announced in July that it would fight the students' lawsuit.

Tulare officials maintain that the state constitution and Education Code have vested them with the responsibility to set the curriculum of their schools.

"Part of that responsibility is to insist that professional standards of English and sound educational practices prevail in our schools," said Richard Ortega, president of the Tulare Joint Union High School District School Board.

But Ann Brick, the ACLU attorney representing the students, said that the state constitution and the state Education Code prevent — rather than allow — censorship by school officials.

"Although the [U.S.] Supreme Court has cut back on student First Amendment rights, we [in California] have a strong state Constitution," Brick said.

As the lawyers battle the issue in court, McGrew, who will be a senior, plans to work on another film when she returns this fall.

In the meantime, she said the students who worked on the film will have T-shirts made. The shirts will read: "*Melancholianne* says, 'Censorship is the only bad word I know.'" ■

# Policy requires staff to submit story topics

## Students voice protest before school board

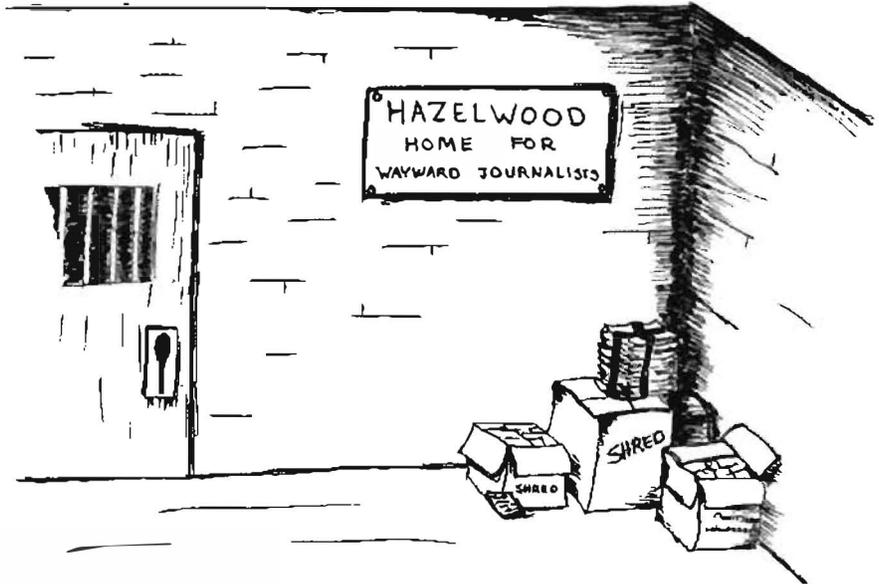
ILLINOIS — Student journalists at West Chicago High School reacted with indignation to a request from the principal for story topics before publication in April, claiming the action constitutes censorship.

School Board President Lawrence Hapgood asserted there was no censorship involved, that he and the principal thought it would be helpful to know of the topics that may be controversial. Principal Alan Jones explained to students that he wanted to help them to improve the quality of the paper.

Staffers for the student newspaper rejected this help and originally refused to give the principal their story ideas, but their adviser Tim Courtney complied with the request.

"It's still censorship because we don't know what will happen after we write the article," said Alicia Garceau, editor in chief of *The Bridge*. "By asking to know the topics, they still don't know the viewpoint."

Garceau suggested that the request for the topics began because of an issue



that featured stories on sexual responsibility and AIDS. She also contends that the principal originally wanted to review the whole paper before it went to press, but settled on the topics as a compromise.

Hapgood disagreed that the controversial articles prompted the review, but said the principal questioned that a survey in the newspaper on drug use was done scientifically. The school board and the principal received concerned calls after the survey was printed, said Hapgood.

In response to the students' protests, Courtney arranged for a special meeting between the school board and three representatives from *The Bridge*. Accord-

ing to Garceau, nothing was resolved at the meeting and next year's editors do not know if they will have to submit topics in the future.

Hapgood said he wanted prior knowledge of topics because he is unable to read the paper when it comes out because he may not be in the office when the newspaper is delivered. When told this at the school board meeting, Garceau responded that reading the paper should perhaps be a bigger priority.

"Apparently the students felt some sort of censorship was involved," said Hapgood. He added that the situation seemed to be a misunderstanding and that the school has not taken control of the contents of the newspaper. ■

# Emery

(Continued from page 12)

under no obligation to change these policies.

"Given the problems with the way the administration has dealt with the issue, and given the new and more liberal school board that has just been sworn in, I am confident that the board will do the right thing," said Field, discussing the likelihood that the school board will adopt a more equitable policy on student publications.

According to the settlement, the school does not have to delete all records of the disciplinary action, but there will be no mention of the suspension on Redding's

diploma, transcript or personal student file.

The school also conceded to releasing Redding's diploma, which had been previously held because Redding had not served the suspension.

Before considering a settlement, Field had been concerned with the chances of success in the lawsuit.

"An inherent problem in the case is that my witnesses are 16 and 17 years old and the administration are all grown-ups," said Field. "It's difficult to convince the judge to take [the students] seriously. I'm very pleased with the results."

Redding expressed dissatisfaction with the terms of the settlement, but said there was little he could do. He also

expressed that he wished his case could have set a precedent for other high schools.

Redding was also disappointed that the school board did not address what he felt was inconsistent behavior by the administration over the past year.

"The school board can't be objective when dealing with [its] own administrators," said Redding.

But Redding did say he was optimistic that the newly-elected school board would change its former publication policy to the benefit of the underground publications and the school-sponsored newspaper. Redding and staff members of *The Emery* plan to develop and propose a new policy on student newspapers to the school board. ■

# Poetic Injustice

Principal says to tear poem out of yearbook or go to another school

FLORIDA — A 10-line poem in the Princeton Christian School yearbook, *The Panther*, touched off more controversy than farewell tears when the school's principal ordered it torn from all the yearbooks.

Beginning "Farewell to my high school," the first letter in each line vertically spelled out "Fuck you PCS." Principal Charles Magsig announced that he would withhold the diplomas and report cards of students who refused to tear the poem out of their yearbooks and turn them in.

"I think it's pretty hysterical," said yearbook editor Melissa Tesmer. "I'm kind of disgusted that they went as far as they did."

Magsig and the publication's adviser had proofed the yearbook, but failed to notice the anonymous poem. When the yearbooks arrived in June and the poem was brought to his attention, Magsig himself removed the poem from some and ordered it torn out of all yearbooks.

"We are not a school that purports to put profanity into the community," Magsig told the *Miami Herald*. "Sometimes the only leverage private schools have is to withhold grades."

Magsig said he only removed the page from several yearbooks, although he said he did instruct the yearbook staff to remove the pages from other students' yearbooks.

Tesmer said the principal confiscated

her book and removed the offending page. The poem appears in the bottom of a page filled with photos of students.

Tesmer said she saw the message in the poem and was going to approach Magsig, but the pages had already gone to the printers.

"I don't believe the poem is right," said Tesmer, who has since graduated. "But it's called freedom of speech and freedom of expression and I don't want to stand in a student's way [of expressing himself]."

Tesmer's family purchased another yearbook from the company that printed them.

She said she would not have removed the poem herself. Another student who would not remove the poem from his yearbook, sophomore Richard Mann, retained an attorney when the school refused to release his transcripts.

Mann transferred to another high school and was unable to enroll in the summer classes he needed. Magsig relented and released the grades later in the month.

"I just think their position was untenable," said Robert E. Dillon, Mann's attorney. "[The book] was his property. It was paid for and delivered."

Students paid \$40 for the yearbooks.

On reconsideration, Magsig decided to apply his requirement to those students who planned to return to Princeton Christian School.



"Our stand was that you can keep the yearbook, but you can't have the yearbook in an unaltered form and continue at Princeton," Magsig said.

The school is affiliated with the Christian Church of the Nazarene.

Although Magsig said there are only several poems not yet removed, Tesmer said she knows of at least six other students who have not yet removed the poem from their yearbooks and do not plan to. ■

# Richwoods principal cuts the 'crap'

ILLINOIS — What was intended as a dose of humor for the holiday season backfired for the editor of the Richwoods High School student newspaper after he was fired for an "inappropriate" word in a column last December.

Before winter vacation, Principal James McCormick fired *The Shield* Editor Ashvin Babu for printing the word "crap." McCormick said that he decided to rehire Babu after the break, but would not comment on his decision.

Babu, who recently graduated from the high school in Peoria, said when

fired he was told only that the word was "deemed inappropriate." He was given no reason for his reinstatement, said Babu, and was simply notified that he was rehired.

The controversial word appeared in a humorous context on the editorial page. Different terms were defined using the word "crap" including "Bushism: read my crap."

"It's a reflection of the poor management of the administration of that school," said Babu in reference to the action taken against him. ■

**A little humor from the *Shield* to spice up your holidays:**

- Realism:** I don't remember crap
- Bushism:** read my crap
- Egocentrism:** I made all this crap
- Pessimism:** there will be more crap
- Realism:** Life is crap
- Idealism:** I can handle this crap
- Positive Christianity:** crap is what you make it
- Materialism:** Whoever dies with the most crap wins
- Atheism:** I don't believe in crap, therefore, it can't happen to me.
- Americanism:** Who gives a crap?

# High school keeps incest in the dark

*School rejects controversial story*

MISSOURI — Perhaps Demetrius Chapman thought he was exposing an important issue in a story he wrote for the student newspaper at Northwest High School in House Springs. However, Principal Richard Boyle did not allow the story to run, as it was a "controversial community issue."

Chapman, assistant editor of *Lion Country*, decided to write the article after he spoke to people at his high school who had experienced incest.

Before writing the story Chapman consulted his adviser, Debra Weaver, who guided him through the story. Then Boyle read the article and did not want it to run.

on the situation. Boyle claims that this version of the article was not the one he saw, but *The Riverfront Times* reporter said that Chapman's story was printed as they received it.

"Because many people think the subject is too harsh to talk about, a lot of young people are being coerced and molested right under our noses," wrote Chapman.

"I had concerns because I knew it would cause an uproar," Weaver told *The Riverfront Times* in reference to the article. "But I also thought it could do our students some good."

According to Ed Bishop, of *The Riverfront Times*,

*'Because many people think the subject is too harsh to talk about, a lot of young people are being coerced and molested right under our noses.'*

—Demetrius Chapman  
Censored student

"Controversial community issues will not be debated in the school paper because the people named have not been proven guilty or even charged. It's just not fair," said Boyle. Chapman cited in his article an incident where a priest at a local church was charged with molesting an altar boy.

Although the school paper did not run Chapman's story, *The Riverfront Times*, a local alternative newspaper, ran the article and an adjacent story

Boyle served as an assistant administrator at Hazelwood East High School during the court battle over censorship of the school newspaper. The Supreme Court decision *Hazelwood v. Kuhlmeier* gave increased authority to administrators to censor high school newspapers.

"I'm very cautious with letting kids have the opportunity to express themselves," said Boyle. "But let's be fair to everyone while we're doing it." ■



# Principal silences article on drunk driving arrest of school superintendent

ILLINOIS — Officials at Carpentersville Middle School last spring refused to print a student's story on the arrest of the school superintendent for charges of drunk driving.

Principal Russell Ballard said that the issue was "a matter of confidentiality," and could not be aired in *Cougar Crier*, the student newspaper.

Crystal Norrie wrote a story on the superintendent's arrest independently and without prior approval by the newspaper's advisers. After the advisers said they would not print the story until it was written in a more positive way, she appealed the decision to her principal.

"We were told that the story could not run, and we weren't given the opportunity to change anything," said Joy Norrie, Crystal's mother. She and her daughter went before the school board who she called "unsympathetic" to their request that the article be printed.

Ballard would not respond to questions about the incident. According to Norrie, he supported the decision by the advisers not to run her

daughter's article.

"The focus of a school newspaper is to be positive, to build pride in a school," Ballard told a local newspaper. "I would not want to see [the student newspaper] used as a forum that would be critical of students or staff."

The Norries attempted no further action to protest the school's decision not to print the article. But the elder Norrie expressed discontent with her daughter's treatment.

"She didn't write anything that wasn't true and I saw no reason why they couldn't print it," she said. "It's just sad. I think if [the superintendent] didn't want it to become an issue, he shouldn't have let the episode happen. He should be responsible for his actions."

School officials also told a student from nearby Dundee-Crown High School not to write an article on the superintendent's arrest. According to the local newspaper, the student was told that the high school had a policy of giving the accused person "a due process hearing before we start making accusations." ■

# School policy knocks out prior review

*New publication guidelines end battle between journalists, principal*

MAINE — Marking a victory for underground newspapers previously subject to prior review, Waterboro's District 57 School Board voted in May to adopt a new policy allowing distribution of publications not screened by an administrator.

The new publications and materials distribution policy ends a student battle that began when Massabesic High School's principal confiscated an underground newspaper last January. This action and the editors' outrage prompted the school board to reconsider its prior review policy.

According to Clay Conally, former editor of the underground paper *Horsepoop*, the old policy was unclear and basically said "students can't write anything unless the principal looks at it." The policy had also stated that non-school-sponsored publications were required to meet "the same standards that pertain to other student publications." This

policy violated the free press rights guaranteed to independent newspapers in the First Amendment, argued Conally.

The new policy abolishes prior review for all student publications, school-sponsored and underground. In addition, it spells out clearly the guidelines for student publications distributed on school grounds.

"It's obviously to our advantage that

they gave us the freedom to distribute," said Conally. Although he has graduated from Massabesic, he said that the new policy should help others who want to start underground papers.

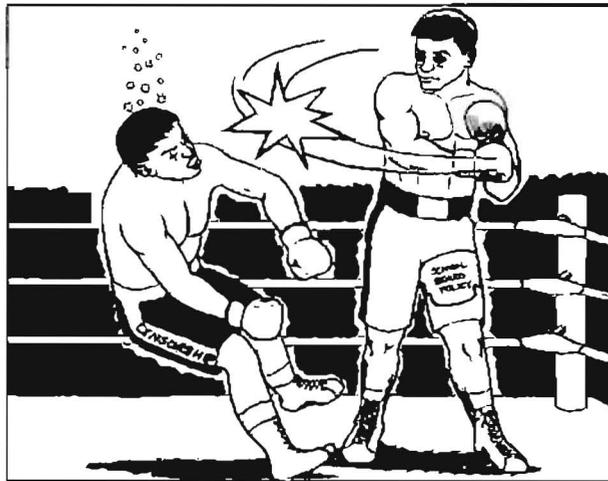
Another section of the policy mentions that a copy of outside publications must be given to the principal "at or before the time [of] distribution," with a list of the students distributing the materials.

James Stephenson, principal at Massabesic, explained that this service allows the principal to respond to questions. "It doesn't mean that I will be reviewing or judging."

The policy specifies that "voluntary review" is available for students who may wish to submit materials to the principal before distribution.

"If I feel that there is a potential problem I may give [the publication] to the school attorney to look over. We don't want the students to get into legal diffi-

(See MASSABESIC, page 19)



## Cotulla

(Continued from page 13)

Robinson also began referring to VanCleve in memos as a "long-term-sub." He later charged that she did not "follow due process" in purchase orders and that she behaved unprofessionally in her appeals to the school board.

After the offending quote ran, VanCleve was told that all future issues of the paper would be reviewed before they could be printed. Robinson designated himself and a school counselor to review all future issues, said VanCleve.

VanCleve claimed that when she and the staff got the papers back, they were edited for more than grammar and punctuation. She said that most writing that could have been viewed as making the school look bad was eliminated. The handwriting of the editing was not Robinson's, VanCleve also noticed.

Robinson admitted later at a school

board meeting that his wife had been the one editing the newspaper in his place, according to Leslie Kinsel, a Cotulla attorney who accompanied VanCleve to the first school board meeting. One of the things that she cut from the paper, says VanCleve, was an editorial on the

*'It was humiliating to have to submit the paper to him.'*

—Donna VanCleve  
Former adviser

importance of the First Amendment.

Robinson denies that his wife, a legal assistant who has no affiliation with the school district, edited the school paper. He claims that he edited the paper himself, but asked his wife for advice and she wrote a memo with notations.

VanCleve appealed to the school board after the principal cut the senior profiles, a section that focuses on the graduating class in the newspaper. The school board

reinstated the section, and VanCleve said she will not give Robinson the yearbook pages for prior review.

"I have done nothing in the yearbook that deserves someone looking over my shoulder, so we're not going to submit the pages," said VanCleve. "It was humiliating to have to submit the paper to him."

According to Kinsel, VanCleve has a legal claim against the school on the basis of harassment and unfair treatment. VanCleve said she does not plan on pursuing a lawsuit because she does not want to damage her relationship with the school and she doubts Robinson's contract would be renewed for the 1993-94 school year.

"I hate it that I feel that he's gotten away with [the harassment]. I know that his reputation has gotten damaged in the community," said VanCleve. She hopes to get her old job back after the principal is gone, although the school has already hired someone new for her position. ■

# Student says baloney to censorship

## Adviser, editor clash stems from profanity

WASHINGTON — When Winlock High School newspaper adviser changed a profanity in a student editorial to “baloney,” the editor and writer changed the word back with out telling her. This move almost cost the author his diploma and \$362.

In the last issue of the year, sports editor of *The Cardinal Atom* Duszyinski wrote an editorial about how the school’s soccer team had been kicked out of the league for playing too rough. Duszyinski wrote in the middle of the article in reference to the punishment, “This is total bullshit!”

Lyons changed the expletive without informing Duszyinski. When editor in chief Jason Millman and Duszyinski saw that the word had been changed, they changed it back to its original form.

Duszyinski reports that his adviser confronted him after the paper was printed and told him he had “ruined the whole issue.” Later he was called into the principal’s office, where he was told he must blacken out the offensive word in each newspaper, write an explanatory



letter to the local newspaper, stay out of the publications class and receive an “F” for the month’s issue.

If Duszyinski did not comply with the requirements, he would receive an “F” in the class and his grades and class credit would be withheld.

“I told him I thought the word bullshit was a word that most described my feelings and that the students and community probably hear the word every day,” said Duszyinski. “I thought that I was within my rights, especially because it was an editorial.”

“I do not feel that students need to use profane statements when expressing their opinions,” said Stemkoski in a

letter to Duszyinski’s parents. “He did not need to be insubordinate and go behind Mrs. Lyons back.”

Stemkoski charged Duszyinski with “willful disobedience” and with defacing school property, both punishable offenses in the school handbook.

Late in June, Duszyinski and his parents met with the principal. It was agreed that the offensive word would be blacked out and the papers would be distributed to the community. Stemkowski dropped the other charges and punishments.

“I don’t think the school handled this well at all,” said Millman. “It’s a very conservative town and we just tried to stir things up.” ■

## Massabesic

(Continued from page 18)

cutities,” said Stephenson. “We want students to know that they can use us as a sounding board and not feel threatened.”

According to Stephenson, the policy would be made available for all students at the school library “to encourage students to publish materials.” He also said that the school is eager to work with the students so they are aware of what is acceptable.

Along with customary restrictions for high school student publications, the guidelines prohibit materials that include “pervasively indecent or vulgar language” and “threats of violence, or ha-

arrassment based on race, religion, ethnic origin, handicap or gender.” Conally raised concerns that some of these provisions seemed too vague.

A policy committee, formed as a subcommittee of the school board, presented a proposal on March 26 that would cancel the practice of prior review. The school’s attorneys reviewed the policy and based sections on higher court rulings.

“I’m very pleased, I think its an excellent policy. It gives the students the freedom to express themselves without the interference of schools,” said Stephenson. “I’m glad we’re not in the position of judge and jury of everything that they try to put through.”

Conally said that the school was concerned when the school board began to consider changing its policy of prior review because officials thought the school would be held legally responsible for what students wrote. After administrators consulted with lawyers and found that they would not be held responsible for non-school-sponsored materials, Conally said he was more optimistic that the policy would be changed.

“We’ve worked hard to meet the needs of students. Students from the underground newspaper played an active part in drafting the policy,” said Stephenson. Conally called the ordeal “a fun, learning experience.” ■

# School board gives censor thumbs down

## New restrictive policy gets test; student journalists score victory

TEXAS — Lyndon Baines Johnson High School principal Dorothy Orebo tried to make use of Austin's new restrictive publication policy, only to be overturned by an appeals committee at the end of the school year.

In September 1991 Austin's school board adopted a publication policy allowing prior review by administrators where there had previously been no written policy for school principals. Journalism advisers and students who protested prior review had been waiting since its implementation to see how strictly administrators would enforce the new policy.

As the first principal in the area to censor a student newspaper article under the new policy, Orebo tested the limits of her new authority. The article in the ironically named *Liberator* was written by sophomore Sholnn Freeman and was about two coaches who had been accused of violating recruiting rules of the University Interscholastic League.

According to Andy Drewlinger, the newspaper adviser at LBJ, the students wanted to cover the story partly because many students had assumed the coaches were guilty.

"The story had an admirable purpose," said Drewlinger. "It was meant to inform the students so they wouldn't jump to conclusions."

Supported by the students on staff, Drewlinger appealed the censorship decision to the school board. Drewlinger said that the students were especially surprised with Orebo's decision as she had refused to read the article.

The three school district administrators who served on the appeals committee disagreed with Orebo's censorship and

(See AUSTIN, page 21)



# Gay, lesbian advertisement gets hook in North Carolina

NORTH CAROLINA — A controversial advertisement was cut from the *Pirate's Hook* at Riverside High School in Durham last spring after the principal received protesting phone calls from parents. The ad offered counseling for gay, lesbian and bisexual students and was run in several other area student and commercial newspapers.

The student newspaper staff voted 10-2 to run the ad the first time they were presented with it. According to the principal, William Batchelor, he and the adviser met separately and also decided that the ad could be printed. Batchelor said that if problems occurred he was prepared to pull the ad.

When parents began calling him after the ad first appeared, Batchelor requested that the ad be run in a less visible location. The newspaper staff moved the ad,

*'We need to train journalists to write appropriately without offending people.'*

—William Batchelor  
Principal

but the parents who had complained were not satisfied. After the second printing, Batchelor decided to cut the ad.

While the parents who disapproved of the ad may have been pleased with his decision, there were many in the community who disagreed with the principal's censorship. After an article covered the incident in the local newspaper, members of the community took sides in the debate.

Two Riverside students wrote an article in *The Herald-Sun* stating that they believed Batchelor had the right to cut the ad, but attacked his basis for doing so.

According to Erin Iannacchione, one of the authors and editor in chief of the student newspaper, there were letters to the editor after the article ran defending both sides of the debate every day for about a month.

"All this came from one little ad that wants to help people," said Iannacchione. She is currently considering legal action with the help of the American Civil Liberties Union in North Carolina.

Batchelor defended his decision to cut the ad because he said that running the ad condoned its message, which upset many parents.

(See RIVERSIDE, page 21)

# 'Sobb' story concludes; records show suspension

FLORIDA — Nicholas Sobb, a recent graduate of Palm Beach Lakes Community High School, lost a court claim in May to overturn his suspension for handing a student photocopied pages from a book describing problems in society.

Attorney David Acton sued the Palm Beach County School Board to remove the three day suspension from Sobb's records. The state court judge refused to grant a temporary injunction to allow Sobb to avoid suspension.

Sobb gave a classmate copies of pages that some called racist written by former teacher Jack Morris. The student then turned the materials in to a teacher and Sobb was suspended.

The position of the book was that blacks receive excessive special treatment in schools, said Acton. He contended that despite the contents, the First Amendment grants the right to hand pages to another person in a non-disruptive manner.

According to Acton, the student was told he was disciplined for distributing materials that would incite racial tension and cause disruption. School officials had given Sobb a warning before for distributing literature on campus.

"A principal has absolute right to discipline a student for breaking the rules," said Hazel Lucas, school board attorney.

Sobb chose not to appeal the lawsuit and the school board allowed him to write a letter for his permanent record defending his position in the suspension. ■

# Austin

(Continued from page 20)

overturned the decision. Students waited for the panel's decision before printing the last issue of the paper. The article appeared in the paper on the last day of school, June 3.

"We felt the writing was good, nothing in it was inciting or inflammatory. It was well-written, a good piece of journalism," said Toni Turk, assistant superintendent for operations and member of the appeals panel. Turk did defend the principal's decision as she was under a gag order, and did not want to allow the paper to discuss an issue that she could not.

*'It was well-written, a good piece of journalism.'*

—Toni Turk  
Assistant Superintendent

The editorial policy written in the *Liberator* defined the

paper as an open forum. This could allow them to operate outside the confines of the *Hazelwood* Supreme Court decision, which restricted the free expression rights of high school journalists.

"I think [censorship] will definitely be a problem in the future because student writers aren't given the freedoms available in the real world and without that they can't grow in the real world," said Versiree Baker, editor of the *Liberator*. She admitted that the principal needs to be involved in the paper, "but not to tell us what to and not to write." ■

# Riverside

(Continued from page 20)

He said that he was advised by a local mental health professional that the ad could be damaging to students because high school males particularly are confused about their sexuality. Batchelor said that he was told that the content of the ad could lead these student "to go one way instead of the other."

When asked if he reads the student paper before publication, Batchelor replied, "No, but I wish I had." He added that the bias of some editorials could have been corrected if he had read the paper.

"We need to train journalists to write appropriately without offending people, to train them for the real world. Part of the reason that the [decision] exists, is that you can't turn 15- to 16-year-olds loose to write whatever they want," said Batchelor, referring to the

Supreme Court's *Hazelwood* decision that limited high school student's free expression.

Iannacchione's response to the principal's decision was "frustration and outrage." She said Batchelor approached the staff and said that he was going to cut

the ad because he was getting negative attention from parents. Iannacchione resented that the decision was final and not open to debate.

"He sat in front of us and explained the situation and that it was hard to appease the parents," said Iannacchione,

in reference to the principal. "He said that he felt like the issue was tearing the community apart, [his comments] were really quite drastic."

She added that she did not see the dissension in the community and that a school board had told her several other board members supported the decision to run the advertisement.

"There are still people out there that need that service. These people shouldn't have to think that they are doing something wrong," said Iannacchione. She added that she would continue to try to include the ad in the *Pirate's Hook* during the 1992-93 school year. ■



# The Underground Alternative



"LULU-SPOTS" THE NEW YORK TIMES



With censorship on the rise at school-sponsored papers, high school students have turned to underground newspapers where they have been given stronger legal protections

For many years the term "student press" was synonymous with a group of students who published their work on campus as a school-sponsored activity using materials and equipment provided by their school. Almost every high school had an official school newspaper that provided students with their sole outlet for campus journalism.

But the scholastic press in the early 1990s has taken on a new character, perhaps one more typical of the late 1960s and early 1970s. At high schools across the country, unofficial, non-school-sponsored, "underground" newspapers are turning up to present the viewpoints and ask the questions that more traditional publications may be missing. Despite the fact that underground newspapers do not provide all of the benefits of school-sponsored, adviser-assisted publications, students have found them an alternative to school-sponsored publications that have become parochial or dull. They have seen independent newspapers as better able to present controversial viewpoints, diverse topics and varied writing styles. And they have been inspired by the freedom of choice and opportunity that come with producing one's own publication. Their success has been aided by the ease of computer desktop publishing and the availability of inexpensive copying services. In addition, the Supreme Court's 1988 decision in *Hazelwood School District v. Kuhlmeier* has given a whole new reason and impetus for students "going underground": the threat of legally permissible censorship of school-sponsored publications.

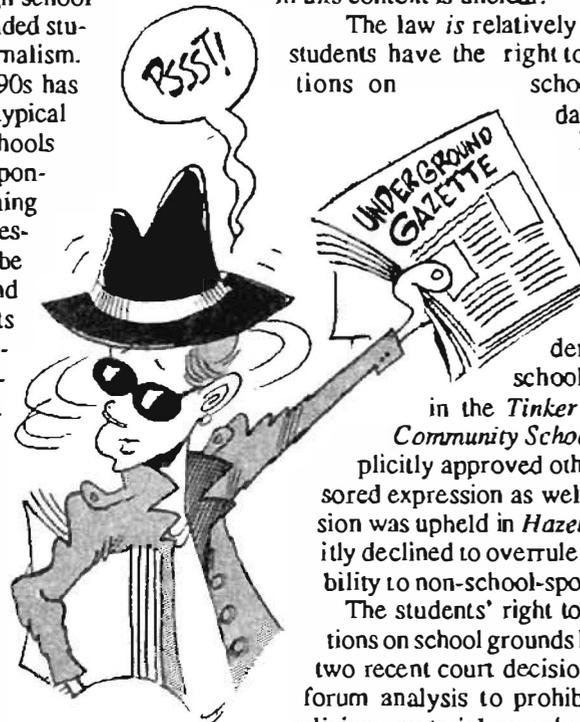
Despite the energy and talent behind them, these news and opinion sheets often find a less than welcome reception from school officials and sometimes face outright censorship. It is therefore important for underground newspaper editors to know that they are protected by the First Amendment from censorship by public school officials.

Because the First Amendment only protects against actions of government officials, private and parochial schools are not restricted by it in their ability to censor student publications, even underground ones. Thus private school students have limited legal avenues to battle censorship. But if their school has a specific policy protecting student free expression rights, they can use that as legal grounds for contesting the censorship. In some states, a state constitution's free expression provision

might provide protections for private school students as well. No private school newspaper censorship cases have ever been directly decided by a court, so the legal protection for students in this context is unclear.<sup>1</sup>

The law is relatively clear that public high school students have the right to distribute their own publications on school grounds during the school day. Countless cases have established that underground newspapers cannot be banned in the absence of exceptionally compelling circumstances. When the Supreme Court of the United States allowed high school students to wear black armbands to school in protest of the Vietnam War in the *Tinker v. Des Moines Independent Community School District* case in 1969, it implicitly approved other forms of non-school-sponsored expression as well. Protection for such expression was upheld in *Hazelwood*, where the court explicitly declined to overrule the *Tinker* standard's applicability to non-school-sponsored publications.<sup>2</sup>

The students' right to distribute their own publications on school grounds has been somewhat clouded by two recent court decisions in which the courts used a forum analysis to prohibit students from distributing religious material on school property. Property designated a public forum is open to unrestricted speech use by students. State courts cannot censor expression that takes place in a forum. One court in Colorado held that school hallways are not public forums and therefore places where expression can be censored given their purpose is to facilitate the movement of students between classrooms and not to provide a place for students to set up a soapbox.<sup>3</sup> Another court in Illinois found the entire high school where a student had distributed copies of a religious publication to be a closed forum thereby allowing the school to restrict any speech not part of its educational mission.<sup>4</sup> Though these cases dealt with the distribution of religious literature and not underground newspapers, courts could be willing to apply the same justifications to restricting undergrounds since they, like religious materials, are non-school-sponsored publications. The consequence of such non-public forum determination could include the ability of school officials to prohibit the distribution of anything they consider inappropriate, including hand-to-hand



distribution of notes from one student to another.

There could be some potential relief for underground newspapers, independent of the First Amendment, in a federal law known as the Equal Access Act.<sup>5</sup> It was enacted by Congress in 1984 to give student religious groups the same access to school grounds and facilities as other non-curriculum related groups. According to the Act, a public secondary school that has allowed one or more non-curriculum-related student groups to meet on school premises during non-instructional time may not deny other clubs access to meet on school grounds because of its religious, philosophical or political viewpoints.<sup>6</sup> The Supreme Court upheld the constitutionality of the Equal Access Act in 1990 and defined what types of clubs would and would not be considered curriculum related.<sup>7</sup> The Court held an activity would directly relate to the curriculum if the subject matter of the group is actually taught, or will soon be taught in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole or if participation in the group results in academic credit. Examples of non-curriculum-related groups include a chess club, a stamp collecting club, a community service club and a scuba diving club.<sup>8</sup>

It seems likely that in light of the Supreme Court decision, an underground newspaper would be considered a non-curriculum-related activity and would have the right to hold "meetings" on campus if the school had given access to school facilities to other non-curricular clubs. The Supreme Court has not explicitly granted an underground newspaper the right to distribute its publication under the Equal Access Act, however. In its decision, the Court did not address the issue of whether the definition of "meeting" in the Act includes distribution of publications. A federal court in Pennsylvania is the only court to decide how broadly the term "meeting" should be interpreted.<sup>9</sup> The court defined the word very narrowly ruling that distribution in the hallways was not a "meeting" as defined in the Act. In that case, the court said that it saw a distinction between meetings and distribution because with meetings, students could decide if they wanted to attend and take part in the discussion. Distribution in the hallways, the Court said, would not be voluntary because students would distribute the literature to anyone passing by.<sup>10</sup> Despite this decision, a strong argument could be made that both activities are equally voluntary. Just because students are offered a publication, that does not mean they are obligated to accept it. Students may decide for themselves if they want to accept or read a publication in the same way that they decide whether to be involved in a club.

Because there is so little case law on the topic, the implications of the Equal Access Act on the distribution of underground newspapers is not yet clear. For now, students should take solace in that fact that other courts hearing religious distribution disputes and numerous courts hearing under-

ground newspaper cases have stuck to the *Tinker* standard and held unconstitutional school policies that ban materials from distribution on school premises absent a showing of material disruption.<sup>11</sup>

In the *Tinker* case, the Supreme Court outlined the limits of a public school official's power to restrict non-school-sponsored student expression. In the words of the Court, student speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others is ... not immunized by the constitutional guarantee of freedom of speech."<sup>12</sup> All other speech, however, is protected. Since that decision in 1969, the burden has been on schools to reasonably forecast a substantial disruption of or material interference with school activities before a court would uphold their act of censorship of an underground newspaper. Under *Tinker*, school officials must make a "reasonable" prediction of disruption. They cannot base their prediction of disruption on "undifferentiated fear" or "a mere desire to avoid the discomfort and unpleasantness that always accompanies an unpopular viewpoint," the Supreme Court has said.<sup>13</sup> Typically, school officials must show some compelling evidence of imminent or immediate physical disruption. Past experience in the school as well as current events that might influence students' behavior would be relevant in showing the reasonableness of the prediction of disruption.<sup>14</sup> An underground paper may not be censored merely because the school officials dislike its content or because it offers harsh criticism of them or of school policies.<sup>15</sup> In fact, courts have said criticism is to be protected and fostered. Potential hurt feelings or stimulation of heated discussion will not satisfy the *Tinker* standard.<sup>16</sup>

Perhaps the best example of how the Supreme Court interprets the substantial disruption standard is seen in two cases that were decided three years before *Tinker*, but which the Supreme Court cited with approval. Both cases involved prohibitions in Mississippi schools against the wearing of "freedom buttons" that advocated equal rights for blacks. In one school, the buttons were peacefully worn and only caused "mild curiosity" and some discussion. The court found that the prohibition of the buttons at this school violated the students' First Amendment rights.<sup>17</sup> But a similar restriction at another school was allowed. At that school, the buttons were forced on students and thrown through windows, a situation the school and the Court saw as a substantial disruption of the school environment.<sup>18</sup>

Courts have said that libelous and obscene material can be censorable under *Tinker*.<sup>19</sup> However, both of those terms are used by the courts in their legal sense and not in the way many commonly think of them. Obscenity, for example, does not mean the occasional use of a four-letter word. The legal definition of obscenity relates to sexually explicit porno-

(See UNDERGROUNDS, page 44)



# What can we say?

## The Supreme Court's ruling in *RAV v. St. Paul* has thrown campus hate speech codes into limbo

WASHINGTON, D.C. — In a decision that could have an impact on hate speech codes at colleges and universities, the U.S. Supreme Court ruled unanimously in late June that a Minnesota city hate crimes law was unconstitutional.

Robert A. Victoria, who was 17 at the time, was charged with violating St. Paul's bias-motivated crime ordinance in 1989. The law makes it a misdemeanor to place a symbol that will "arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender."

All nine justices agreed in *RAV v. St. Paul, Minnesota*, 112 S. Ct. 2538 (1992), that the municipal law was unconstitutional, but for two separate reasons.

"The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects," wrote Justice Antonin Scalia in the majority decision. The concurring opinion said the law was unconstitutional because it was overbroad.

Broadly interpreted and extended to public colleges and universities, this decision questions the constitutionality of speech restrictions on many campuses.

Much speculation in major newspapers has questioned the impact of *RAV* on public college and university codes prohibiting racially motivated expression. Speech codes have been adopted at many public state schools including the University of Connecticut, where it is an offense to "laugh inappropriately," and the University of Texas.

Officials at University of Michigan and University of Wisconsin have tried to pass hate speech codes, but federal courts have ruled them unconstitutional. Michigan retreated from attempts to devise speech restrictions, but Wisconsin

still plans to reconsider a new draft of its proposal in light of *RAV*. (See *WISCONSIN*, page 28.)

Among experts in college media, opinions vary on *RAV*'s affect on hate speech codes on campuses and student journalism.

"I think it will make it more difficult for colleges to enact hate speech codes," said Edmund Sullivan, executive director of Columbia Scho-

lastic Press Association.

Tom Rolnicki, executive director of the Associated Collegiate Press, approved of the decision but speculated that it would not directly affect the student press.

"I think the decision that invalidated St. Paul's ordinance effectively invalidates a lot of speech codes," said Michael McDonald, from the Center for Individual Rights, a group that filed a brief in support of rejecting the hate crime ordinance. "I think [*RAV*] will have a far reaching impact with the result to force college administrators to reverse [speech codes] substantially to eliminate specific categories of words."

Although the ruling would not affect private universities, private school officials have commented that they plan to review their speech codes in light of *RAV*.

School board officials that were considering adopting policies to restrict derogatory remarks and protect high school students from verbal harassment in Maryland and Virginia, have also decided to review them because of the *RAV* decision.

"We want to ensure the type of environment we want for kids with out violating the Constitution," said Patsy Kaplan, public information officer of Howard County Schools in Maryland. She said the school district does not feel the *RAV* decision will affect the new policy, but that they want to ensure the policy's legality so it can be defended in court later if necessary.

Under the Educational and Personal Rights Policy, the principal could discipline or suspend students for "threats, intimidation, defamation, harassment or violence based on race, color, creed, religion, physical or mental disability,

national origin, gender or sexual orientation."

Fairfax County's school board in Virginia recently adopted a measure to include protection against demeaning comments on the basis of sexual orientation in their code of behavior. The code beforehand had covered only insults based on race, sex, religion, national origin or disability. ■



# Racism charges turn violent at UMass

*Daily Collegian*, protesters enter into negotiations to resolve conflict

MASSACHUSETTS — *Daily Collegian* staffers and protesters at the University of Massachusetts at Amherst have undergone talks throughout the summer to resolve charges of racism against the publication that came to a head when protesters stormed the newspaper offices in April and May.

In the most recent development in the *Daily Collegian's* history of strife, students protested perceived racism in the newspaper after the Rodney King verdict, compelling staff members to take the paper underground. Protesters have demanded more minority coverage and involvement in the paper.

Editors of the *Collegian* claim that protesters destroyed property when occupying the offices in late April. They claimed that a window was broken, but protesters denied these allegations.

In the second raid on the newspaper offices, after failed negotiations, more scuffles occurred. Editors claim that they received death threats from protesters.

In a related incident, photo editor Joshua Reynolds was allegedly attacked with a baseball bat and dragged up an escalator by Jose Belliard, who was protesting at the *Collegian* offices. Belliard was arrested after the incident, according to

university spokeswoman Karin Sherbin.

*'It's tough because I get attacked for stuff I don't believe in.'*

—Dan Wetzel  
Editor in chief

A protest leader said that Belliard's behavior was not sanctioned by the group of protesters.

*Collegian* editors later requested help from campus police in escorting staffers to deliver the newspaper.

Staffers decided to make the May 8 issue their last, ending the year early after publishing the newspaper from secret locations. There was some question at that time regarding whether the newspaper would be able to reopen in the fall, but the managing editor of the *Collegian* and next year's editor in chief Dan Wetzel said that the talks have helped resolve

the conflicts, and the paper should run in the fall.

After the newspaper went underground, protesters took most of the May 4 issues of the newspaper, replacing them with fliers accusing the editors of "racist and oppressive discourse."

The 102-year-old newspaper has a circulation of 19,000 copies and has experienced takeovers and racial unrest over the last 20 years.

Representatives from the *Collegian* have since discussed possible reforms with the protesters. The talks were sponsored by the Harvard negotiating project which helped plan the Camp David accord and is helping the groups without charge.

Among the proposals suggested by protesters were a "co-editorship of color" that would be filled by a minority student and have equal status to the editor in chief. This idea caused much controversy and has been dropped, but other reforms are being considered.

The *Daily Collegian* adopted a page for black affairs 20 years ago after students occupied offices and the paper was forced to go underground, said Wetzel.

Since that time, the *Daily Collegian* has featured pages for Jewish affairs,

lesbian, bisexual and gay issues, multicultural issues, third

world affairs and women's issues. According to Wetzel, students are asking for a women of color page because they feel the multicultural page is sexist.

Each page runs about once every two weeks and has a separate staff and editor. The pages feature a combination of photos, news and opinion pieces.

But Wetzel said he will not give out anymore pages as editor in chief. Wetzel says that he refused a Catholic group's request for a page, though he himself is Catholic and the group expected him to grant the request.

"I don't want to see another takeover

THE MASSACHUSETTE DAILY  
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*Staffbox featuring special pages editors*

in two years, but until we change the system, this will keep happening," said Wetzel, reflecting on the *Collegian's* history of violent protests at least every two years. He excused past editors' decisions to allow separate pages as a way to placate groups when under hostile takeovers.

Wetzel says he prefers a system of assigning beats to these issues rather than giving out pages. The issue of a system to represent minorities is under question in the talks.

"It's tough because I get attacked for stuff I don't believe in," said Wetzel, reflecting criticism he has received for content in the diversity pages. The editor in chief and managing editor are able to review the pages, but do not always look at them, said Wetzel.

Madanmohan Rao, third world affairs editor at the *Collegian* who protested against the paper, claimed that articles in the pages were censored. He said that some editors left because of the stress and racism at the paper.

He defended the need for the pages and lauded their presence as "integrating their message." Rao rejected alternative media as an outlet as he claimed

(See UMASS, page 26)

## UMass

(Continued from page 25)

it only reaches those who already have an interest in the issue.

*'Decision making should come from members of the same community.'*

—Madanmohan Rao  
Editor of Third World Affairs

"The *Collegian* is unprecedented because it has a special perspective of diversity in one newspaper," said Rao. "Being a student newspaper, it gives students the right to come to the paper. It's a paper with a conscience."

One of the proposals that the *Collegian* will probably adopt, according to Wetzel, is an independent election of the editors of the "special pages." Wetzel says this is "a sticking point they have to have," but that the editor could still fire a diversity page editor, just not have a role in choosing them.

"The editor in chief is always from one particular community and it's a big burden on that person to choose an editor from another group," said Rao. "Decision making should come from members of the same community."

Experts in college print media, however, have criticized the idea of independent pages within the newspaper.

"I don't think it's wise for a newspaper staff to give carte-blanche access to any groups in a non-traditional way," said Tom Rolnicki, executive director of the Associate Collegiate Press. "There's a need to maintain prerogative over content to maintain controls and integrity."

"They gave away the store by conceding pages to minority editors," said Edmund Sullivan, executive director of the Columbia Scholastic Press Association. "If they're serious about integrating coverage they need to train them for these positions. Instead of the majority of the staff truly and seriously working for a diverse staff, they opted for a quick fix."

Staff members agreed to demands made by the protesters in the past. Wetzel said that many believed there would have been physical violence involved if

## Court protects speech of outspoken professor

*Teacher calls blacks less intelligent than whites*

NEW YORK — Michael Levin, a controversial professor of philosophy who has said that blacks are less intelligent than whites, recently won a legal battle to protect his choice of speech in his classes.

A federal appeals court in Manhattan ruled in June that the City College of Manhattan at the City University of New York (CUNY) violated Levin's due process and free speech rights in creating a separate section of his course taught by another instructor. This decision upheld a lower court's ruling that CUNY had appealed.

CUNY set up an alternative class to Levin's introductory philosophy classes in 1990 after Levin wrote in an article that blacks on average were "significantly less intelligent" than whites. Levin claims that he did not preach these beliefs in class, only in outside writings and statements.

The U.S. Court of Appeals for the Second Circuit also affirmed that the threat of disciplinary action from a committee created to investigate Levin was a violation of his First Amendment rights. After offended students complained about two published letters and an article written by Levin, the college established a committee to investigate him. The committee was intended to define academic speech limits and suggested no disciplinary action against Levin.

"I believe my client felt pleased and vindicated by the ruling. I think [the judges] recognized the seriousness of the problems and that his rights had been violated," said Scott Univer, Levin's attorney.

Univer said that CUNY had decided not to ask the U.S. Supreme Court to hear the case. He based the school's reservations on the recent Supreme Court decision against a hate crime law in *RAV. v. St. Paul*.

"[The Supreme Court] basically said that any influence by the government to single out points of view for punishment will not be tolerated," said Univer.

Levin did not receive or seek damages in court. He is currently on leave from CUNY and is writing a book on racial differences.■

they had not complied.

"We could go record for record with every student newspaper in the country for minority representation on staff and in the paper," said Wetzel, defending the *Collegian* against claims that the newspaper is racist.

Because the *Daily Collegian* is an independent newspaper paying rent to the university but earning its revenues from advertising, the role of the university in the conflict has been debated.

The university has publicly said that it would like to leave the issue up to the students, but protesters demanded to speak with Chancellor Richard O'Brien to ask for increased hiring of minority faculty at the same time they were protesting the newspaper.

"This country is torn by racial concerns. However, this university can serve as an example of rising to those issues," said O'Brien after initial negotiations.

According to Sherbin, director of the news office at the university, school officials did not want to tell the sides what to do, but wanted to bring them together to resolve the conflict. The university did provide police protection for staffers who distributed the *Collegian* after the protests.

"The university is trying to address a long-standing issue while recognizing the integrity of the newspaper," said Sherbin. She denied charges by Wetzel that the university encouraged him to capitulate to protesters' demands.

In a staff editorial in the last issue of the *Collegian*, editors criticized "the apparent disinterest of the administration," blaming the administration for the racial problems at the university. Wetzel claims that the university has labeled the paper "an all white male club," and encouraged protesters against the *Collegian*.■

# Editor tumbles from position over racism

## *Principal declares editorial coverage 'irresponsible journalism'*

NORTH CAROLINA — Responding to a group of controversial pieces on the April issue editorial page, Broughton High School principal Diane Payne summoned the student newspaper editor into her office to confront angry students and teachers. Editor Ben Bolch was removed soon after from his position as editor in chief of *Hi-Times* for what Payne called "irresponsible journalism."

The editorials that provoked indignant responses from some teachers and black students included a letter to the editor protesting the use of the term African-American and an editorial cartoon criticizing the use of violence to force celebration of Martin Luther King Jr.'s birthday, both on one page. On another page were three controversial editorials, one criticizing a black security guard, another claiming a Broughton club for black males was exclusive and the last defending the Confederate flag.

"The student publication reflects the entire school," said Payne in explaining her objections to the April issue. "There were inaccuracies in editorials and articles. There should be an attempt to provide a balanced point of view."

The editorials were written and signed by individual *Hi-Times* staff members. The county's publication policy provides for free expression of ideas "so long as such expression does not interfere with the rights of others or unduly interrupt the educational process."

"[The principal] thought the articles should have been more balanced. But you can't solicit every side, every time," said Bolch.

When Bolch was called into the principal's office the day the paper came out, he said that he and the student who wrote the letter to the editor "were sort of assaulted with the principal present."

Payne removed Bolch from his position after the April issue, and had next year's editor take over a month earlier than usual. Bolch was also required to read an apology over the intercom to the security guard who was criticized in an editorial.

Payne said that Bolch was removed as editor because he did not follow procedures in consulting a faculty adviser before printing the newspaper.

At the time the April issue was published the regular journalism adviser, Dawn Woody, was on maternity leave. Woody left the position in March and an interim teacher took her place for the remainder of the school year.

"As a child, and not an adult, student journalists need

guidance. For whatever reason there was a lack of communication and [Bolch] took on a responsibility that a child shouldn't shoulder," said Woody. She said that when she served as adviser the practice was for her to read the articles after they were written and have final say before the paper went to press.

Bolch said that he was unaware that a faculty member was serving in Woody's place as adviser to *Hi-Times*. He did not consult the interim adviser or Woody before printing the publication.

A special edition of *Hi-Times* was published later in April that included 37 letters to the editor in response to controversy over the previous issue. Bolch said that Payne told him to write an article to include in the special edition of the paper, but never allowed it to be printed.

Payne chose not to run the article because "part of the content was not true." She claimed that Bolch's letter was supposed to be an explanation for his behavior.

"There was no way I was going to publish the statement in its entirety," said Payne. "It was insulting to some faculty members, and inappropriate for a student newspaper." She added, "[Bolch] created a lot of problems and did a lot of damage in our school and community with his irresponsible actions."

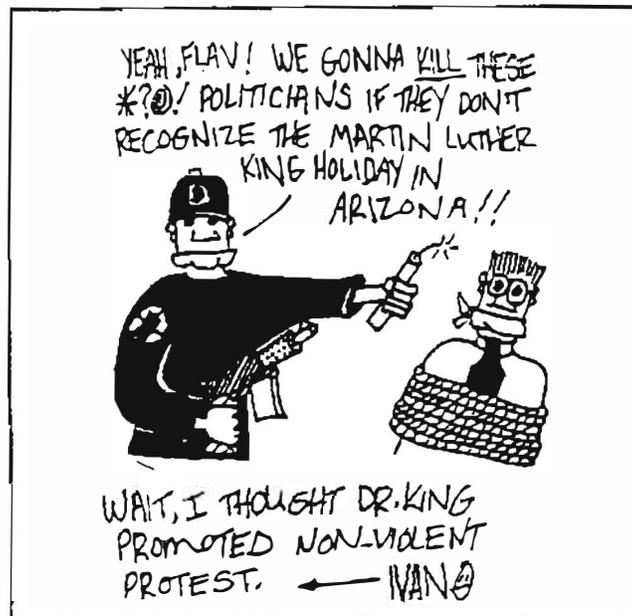
Looking for an alternative forum for his response, Bolch submitted his explanation and defense of the April issue's editorials to the *News and Observer*, a local newspaper. The paper printed the letter, which defended the individual pieces by saying, "Everyone has a right to express his opinion on any topic."

"The subjects in the articles individually had been written before in the mainstream press. But the cumulative affect was that it appeared to be an agenda," said Judy Bolch, the student's mother and assistant managing editor at the *News and Observer*.

Bolch says that as he was told he could "have nothing more to do with the paper," he did not attend the publica-

tion class for the rest of the year. He received an "A" for the class from the substitute teacher.

"At one point I thought the principal was open minded with the race issue, but in her political position she had to succumb to the minorities," said Bolch. "It was a tough position, but she could've stood up more for First Amendment rights than [for] oversensitivity." ■



Cartoon that was part of controversial editorial pages

# Wisconsin questions new speech code

**WISCONSIN** — The University of Wisconsin's second attempt at a hate speech code triumphed in its passage through the state legislature, only to suffer yet another setback at the hands of the U.S. Supreme Court.

The board of regents voted in March to adopt its second speech code, modified from an earlier code that was ruled unconstitutional by a U.S. district court. The new code prohibits epithets that insult, create a hostile educational environment or provoke an immediate violent response.

Early in July the legislature approved the speech code, and the university was free to enact the policy. At the same time, however, the Supreme Court is-

sued its decision in *RAV v. St. Paul*, ruling a Minnesota hate crimes law unconstitutional. In light of the ruling, a joint committee of the legislature that approved the bill requested that the board of regents reconsider the legality of the speech code.

"I think the language in the decision would suggest that this may [be an] exception [to *RAV*]," said Pam Hodulik, legal counsel for the University of Wisconsin.

The board plans to review the code in light of *RAV* in a hearing with their lawyers at their monthly meeting in September. The board will not enforce the code until that time.

The school's first hate speech code

prohibiting certain discriminatory and demeaning comments or behavior was found to be too broad by a U.S. District Court Judge last October. The case developed after the student newspaper at the Milwaukee campus along with other students filed a lawsuit against the university on the basis that the rule violated students' constitutional rights to free expression, due process and equal protection of the law.

Although the American Civil Liberties Union challenged the first code, Eunice Z. Edgar, executive director of the Wisconsin ACLU, said that the office has no plans to challenge the new code until they know if it has been implemented. ■

## Greeks boycott Penn State paper

**PENNSYLVANIA** — A *Daily Collegian* column some considered racist led to retaliation from the Greek system but not the Pennsylvania State University administration.

The column, written by Chino Wilson last January, discusses societal injustice done to blacks. It suggests violence against white people and calls them "devils."

Many members of the community suggested the administration shut down the newspaper for running the column, but the administration has no control over the independent *Collegian*, according to editor in chief Bridget Mount.

The Intrafraternity Council and the Panhellenic Council claimed they pulled their advertising for two weeks due to unsatisfactory Greek coverage in the paper. The boycott by the Greek system did not hurt the paper financially and the administration has a binding subscription contract with the newspaper until 2001.

"I think they were generally upset, but the Chino thing was the straw that broke the camel's back," said Mount.

At the time the column was printed, editors got death threats and "a lot of flack saying that we shouldn't have printed it." ■

## State free speech legislation scores no summer victories

**A**t a time when many legislatures are in recess or trying to resolve their budgets, California's law-making body has been considering a bill to protect college and high school students' free speech, and supporters say they expect the bill on the governor's desk in August. Michigan's legislature and the U.S. Congress have considered similar bills over the summer, but without much success.

California Senate Bill 1115, also called "Free Speech on Campus," was introduced in March 1991. If enacted the bill would protect speech on public and private college and high school campuses, except those controlled by a religious organization. The bill passed the senate in June 1991 and has been in the assembly since.

"[The bill] has done very well and we expect it to pass," said Brad Paul, legislative assistant to State Sen. Brad Leonard (R-Redlands), sponsor of the bill.

The Michigan Collegiate Speech Protection Act, a bill introduced in August 1991, died in committee after it was not acted on in the last session. House Bill 5059 was sponsored by State Rep. Stephen Dresch

(R-Hancock).

In Congress, Sen. Henry Hyde's (R-Ill.) Collegiate Speech Protection Act remains in the House Judiciary Committee subcommittee on Civil and Constitutional Rights. According to a representative from the subcommittee, there is no action planned on HR 1380, which would amend the Civil Rights Act of 1964 if enacted.

Brad Hunt, from the American Civil Liberties Union in Washington, D.C., said that he did not expect that the *RAV* decision would offer impetus for the House bill.

In the Senate, the Freedom of Speech on Campus Act, introduced by Sen. Larry Craig (R-Idaho), awaits a hearing in the Labor and Human Resources Committee. Craig's bill would amend the Higher Education Act and apply to schools that receive federal funding.

Brooke Roberts, legal director in Craig's office said that supporters were hopeful of scheduling a hearing before the recess in the middle of August, because Sen. Ted Kennedy (D-Mass.), chair of the Labor and Human Resources Committee, promised on the Senate floor on the record that the bill would be given a hearing. ■

# Kinder and Gentler

*Smiles, favors hide censorship by 'Robin Hood' administrations*

Censorship at the college level arrived neatly gift-wrapped at student publications during the end of the 1991-92 school year.

Administrators and student governments, in the guise of various favors and good deeds, censored college newspapers but became slicker and smarter in doing so. It was not censorship, they argued, although it certainly felt and looked that way.

Take Elgin Community College in Illinois, for example. Administrators initiated a study into the possibility of a magazine at their school, arguing that magazines are the wave of the future. It looked like a favor from the administration, but came as a shock to the students on the newspaper staff.

They were informed during finals week in December 1991 that their newspaper would be shut down and a magazine would begin in the fall of 1992. Thank you, but no thank you, said the staffers, who campaigned heavily and saved their newspaper.

At Parkland Community College in Illinois, editor Dave Jackson's term ended only one month after it began. The paper's publication board — in a move designed to unceremoniously dump Jackson — changed the length of the editor's term from 12 months to one.

Jackson had been editor the previous year and it was time to give someone else a turn, the adviser said. But earlier in the summer she had said differently, offering Jackson the position for another year.

Earlier in the year, a student group at Queens College in New York cut funding of the student paper, the *Q.C. Quad*. They said it was to help the newspaper and even put aside \$10,000 to set up another paper.

The *Quad* was not impressed.



The staff campaigned heavily and saved the newspaper.

But even at a time when some administrations and student governments became kinder and gentler, others became slicker and smarter.

In Louisiana, Jeff Gremillion, the editor of the student yearbook at University of Southwestern Louisiana, *L'Acadien*, was not reappointed to his position. Displeased by his earlier controversial work, the administration waited out his term and did not reappoint him for another.

But while the administrations and student governments above fancied themselves modern day Robin Hoods, the students they censored were less impressed. Some were unemployed and others nearly so.

The lesson of the year on these college campuses was that censorship by any other name, gift-wrapped or otherwise, is still censorship. ■

# Spicy yearbook costs editor job in Louisiana

LOUISIANA — Jeff Gremillion, the former editor of the University of Southwestern Louisiana student yearbook, had decided to add a little spice to the 1991 publication.

But the spice was not to the tastes of the university administration, which chose in June not to reappoint Gremillion for the 1992 edition of *L'Acadien* because of several controversial photos and stories he chose to print.

Gremillion and a university spokesperson agree the administration's decision was based on the controversial content of the yearbook and the ensuing pressure exerted by alumni and wealthy contributors.

But the agreement ends there. Gremillion said the decision amounts to censorship and will discourage future editors from covering controversial stories.

"At USL if you want to have any career as a student journalist, then you'd better produce work that pleases those who give a lot of money [to the university]," Gremillion said.

But Julie Simon-Dronet, USL director of public relations and news services, said the administration acted well within its rights to appoint a yearbook editor and the decision will not influence future editors.

"I think this is an isolated case," Simon-Dronet said. "There's certainly no message being given here."

The controversy revolves around two photos and two stories. One of the photos began a section on sex and relationships and showed a topless woman feeding spaghetti to a shirtless man.

"If we're going to cover the year accurately, then we're going to cover sex," Gremillion said. "And if we're going to do it, we're going to do it in a grown-up way."

The other photo pictured the school's mascot, a bulldog, sitting on an American flag draped with yellow ribbons. Gremillion said the photo illustrated the university's contribution to the Gulf War and introduced an article on that topic.

(See *USL*, page 30)

## Activities fund not public forum, court says

*Decision allows University of Virginia to deny funding to publication*

**VIRGINIA** — A federal court ruled in May that the University of Virginia could deny a student publication funding from student activity fees because it printed a religious magazine.

The case arose in 1990 after the university decided not to fund Wide Awake Publications' request for \$5,862 to offset the costs of publishing its magazine. Wide Awake is a recognized student-run organization whose primary purpose is to publish a Christian viewpoint magazine.

The Student Council, which makes all decisions regarding which student organizations will receive funding, based its determination not to fund Wide Awake on a university policy that prohibits religious, political, and exclusionary campus organizations from receiving money from the student activities fund.

Ronald Rosenberger, publisher of Wide Awake admits that his publication is written from a "religious perspective" but believes the magazine should not lose funding because of it.

As a result, Rosenberger and Wide Awake's staff sued the

University of Virginia claiming that school's policy violated the publication's rights to freedom of speech, freedom of the press, free exercise of religion and equal protection of the laws guaranteed by the United States and the Virginia constitutions.

Federal Judge James H. Michael rejected the freedom of speech claims stating the student activities fund was a "non-public forum," that is, property not "by tradition or designation" a forum for public communication.

Because of this, the court held the university was justified in imposing any reasonable restrictions on which groups could receive funding. The university could not, however, deny funding to a campus organization because the school officials oppose the speaker's viewpoints, the court said.

The publication, on the other hand, sought to have the activity fund designated a "public forum" which the court defined as property that the state has opened for public use. No state can legally limit access to a limited public forum unless

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## USL

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One of the two controversial stories reported that members of the volleyball team were removed after bringing alcohol on a team trip. The other story reported that the band, once considered rowdy, had cleaned up its act in the last year.

The photo of the topless woman first came to the attention of the administration in the fall of 1991 when the yearbook company, Jostens, that prints *L'Acadien* sent copies of the photo to several administrators.

An administrator and the yearbook's faculty adviser recommended that Gremillion pull the photo, but left the final decision to him.

The yearbook published — with the photos and the stories — and in April Gremillion applied to be editor for a second year. He was interviewed and recommended to the administration by the school's communications committee.

The committee interviews candidates for the position and then recommends its selection to the vice president of student affairs, who has final power of approval. The committee also recommended an alternate candidate, who eventually received the job.

After he was informed that he was the committee's first choice, Gremillion began work on the 1992 edition as he

had done the previous year. But in May he heard that his appointment had not yet become official.

Gremillion learned from the office of the vice president of student affairs that his appointment had been stalled as the administration dealt with the "university community."

Then in June, the vice president of student affairs wrote to Gremillion, informing him that he would not be of-

*'Financial contributions were placed before students' right to free expression.'*

—Jeff Gremillion  
Yearbook editor

ferred the job.

One member of the committee, who preferred to remain anonymous, said the university's decision did not surprise her. A first-year member of the committee, she could not comment on past editor selections.

She said the decision might have been made based not on the content of the yearbook, but the reaction that content aroused in the campus community.

Gremillion said that while the staff did receive some negative feedback from students, the administration was re-

sponding to feedback from alumni and wealthy contributors.

"Financial contributions were placed before students' right to free expression, and I believe that's a violation of the First Amendment," Gremillion said.

A university contributor and fundraiser — who graduated in 1937 from another university — wrote Gremillion a letter, chastising the yearbook's language and coverage.

Meanwhile, Simon-Dronet said Gremillion exercised poor judgment when he decided to print the material and when he did not heed the advice of the adviser and the administrator to pull the photos.

"I just don't see a problem with [the decision not to reappoint Gremillion]," Simon-Dronet said. "The basic premise is that he served his term and the book was printed."

But Gremillion said this misses his point. He said that future editors will hesitate to print controversial material if they know they may not be reappointed.

In fact, he said he has talked to students on the 1992 yearbook staff who said the coverage will be toned down.

"There's no question that this is a decision intended to impact and hurt the student press — whether [the university] chooses to see it or not," Gremillion said.

He said he hopes to have the decision overturned and has asked the American Civil Liberties Union to represent him. ■

# Editor battles to regain position

ACLU accepts case for student removed after printing steamy photos

MASSACHUSETTS — Former editor Greg Aubin of the Massasoit Community College student newspaper, *The Voice*, hoped to spark a discussion with his Valentine's Day issue.

He did. In fact, Aubin said they are still discussing the issue at Massasoit that led to his dismissal as editor of the newspaper.

Aubin said he was fired soon after the February 1992 issue was published because administrators objected to several photos he ran of couples, scantily dressed, kissing. One of the photos was of a homosexual couple and another was of an interracial couple.

"They had problems with the race issue," Aubin said. "I never figured they'd be racist."

But others at the college say that

*'I initiated the whole thing . . . most people didn't like the semi-nude photographs.'*

—Fred Leonard  
Former student senate president

Aubin was removed by the unanimous vote of *Voice* staff members in accordance with the newspaper's constitution and without input from the school administration.

The American Civil Liberties Union of Massachusetts has accepted Aubin's

case and planned to contact Massasoit by letter, informing the college that Aubin's First Amendment rights had been violated.

Aubin said that he will ask to be reinstated as editor.

The controversy began the day when the Valentine's issue hit the stands, according to Aubin. He said that the dean of students informed him that *The Voice* had been collected from the cafeteria because she was concerned that children might see the photos.

Aubin said he later found out that the papers had been collected from all over the campus and then were discarded. Only four newspapers were returned to him, he said.

"They pulled every one that was available," Aubin said. "They took them

## Wide Awake

(Continued from page 30)

it has a specific, compelling reason for doing so.

Wide Awake based its public forum argument on the claim that the university created the student activities fund "to encourage the exchange of opinions and viewpoints among students . . . in furtherance of the educational mission of the university."

The court rejected this argument noting that the University of Virginia's Board of Visitors had "consistently and purposefully" excluded certain groups, such as fraternities and sororities and political organizations, from receiving student activities moneys since the fund's creation in 1970.

This, the court reasoned, was evidence that

the university had not intended to "encourage the exchange of opinions and viewpoint," but rather to fund only those organizations whose activities, in the school's opinion, contributed to educational focus of the university.

Having concluded that the student activities fund was a non-public forum, the court then determined that the university's policy of not funding religious organizations out of fear of involving the school in religious matters was reasonable.

The court also found that the limitations were viewpoint neutral in that the school did not impose them because it objected to the content of Wide Awake's publication. As a result, the court declared the university policy constitutional.

Because of this finding, the court dismissed Wide Awake's equal protection claim because if there was

no evidence of discrimination on the part of the university, the publication could not claim that its constitutional rights were violated by being treated unfairly.

Finally, the court rejected the freedom of religion claims holding that the denial of funding did not obstruct Wide Awake's rights to practice its religion in any constitutional magnitude.

"It is logical to assume that publishing a magazine is easier if someone pays the bills," Michael stated in the opinion.

The judge noted that even though the organization would now have to raise the money for its publication, there were still no limitations on its right to produce and distribute its magazine.

Wide Awake Publications is appealing the decision. ■

from students if they would give [the paper] to them."

Aubin said that he has a source who saw the newspapers being discarded, but he declined to reveal the source's name.

But Fred Leonard, former president of the student senate, said that he had the newspapers collected and was acting within his authority in doing so. He said that because the student senate funds the newspaper, it serves as the publisher.

"[The newspapers] were offensive to a lot of people," Leonard said. "[The senate] made sure the issues didn't get circulated."

After the papers were collected, Leonard said that they were returned to Aubin.

But members of the administration tell different stories.

Director of Student Activities Ed Monteiro claimed that Aubin asked the college (See MASSASOIT, page 33)

# President pulls newspaper's plug

*Award-winning paper misses one issue; adviser resigns over summer*

KANSAS — In early April 1992, the Kansas Associated Collegiate Press presented 16 awards to the *Collegian* of Coffeyville Community College.

But the president of the community college was not similarly impressed — a week earlier he had shut the newspaper down for reasons that he and the paper's staff disagreed on.

*Collegian* staffers maintain that President Dan Kinney closed the paper after it ran an editorial critical of how he handled the resignation of the men's basketball coach.

"The criticism [in the editorial] was so ironic," said Anna Lechlitter, the paper's adviser who resigned over the summer, saying she could no longer work for Kinney. "It was that if you disagreed with [Kinney], you got fired."

Four days after the critical editorial appeared, Kinney announced that the *Collegian* would discontinue publication until the staff submitted to him a publications policy, Lechlitter said.

The *Collegian* missed printing one issue, but the school's board of trustees in late April allowed the staff to publish the last two papers of the school year.

Kinney never thought the staff would mobilize so quickly, said Don Edwards, who wrote the critical editorial and was editor during the controversy.

"When we came up with [a policy] in a week, it shocked the hell out of him," Edwards said. "[Requesting a policy] was obviously an attempt at the time to shut the paper down by default."

But several days later, the staff presented Kinney with a policy based on a similar one at Pittsburgh State University and guidelines from the Student Press Law Center. Kinney objected to parts that would allow the students to print racial, ethnic or religious slurs.

The students responded to Kinney's concern by adding a provision from *Associated Press* guidelines that deals with obscenities. Kinney also raised objections that the policy would allow students to criticize faculty and administrators.

"He doesn't think that students should be writing their opinions," Lechlitter said. "He doesn't think that controversial is-

sues or things that happen off campus should be in the student newspaper."

But Kinney remembers the story differently.

Kinney said he had reason to believe the students were going to print racial slurs. This belief, Kinney said, was based on problems in the past that he did not specify, although Lechlitter and this year's editor Dave Johnson said they had no idea what prompted his concern.

Courts have held that restrictions based on the content of student publications at public colleges, including racial slurs, are unconstitutional.

Kinney said his concern with the printing of racial slurs prompted him to ask the students to compose a publications policy.

It was only after the students submitted the policy allowing for the printing of racial slurs, Kinney said, that he decided to shut down the paper. He said the critical editorial and the closure of the newspaper are unrelated.

"I don't believe in any newspaper — whether you're *The Wall Street Journal* or the Coffeyville Community College *Collegian* — that there is any space for racial slurs," Kinney said.

Kinney also said that the newspaper published every issue it had planned to print and several more than it originally scheduled.

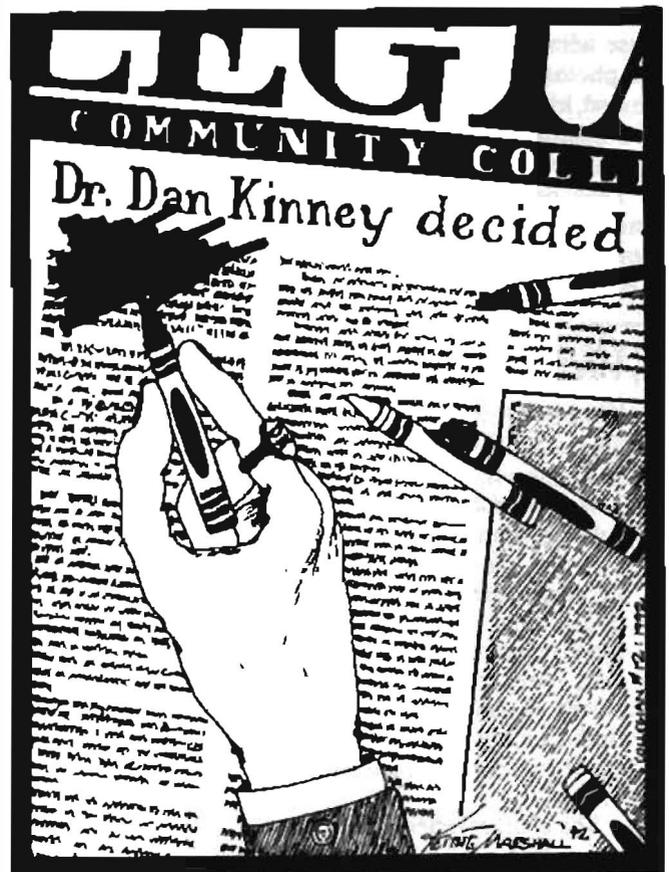
However, members of the staff said they planned to publish three more issues, but were only allowed to print two. The newspaper printed more issues than

it had in previous years because it changed from a monthly to a bi-weekly.

"I don't think this is a case of censorship," Kinney said. "I believe this is a case of standards. I don't believe student newspapers should print racial slurs."

But the staffers and former adviser disagreed.

"It's just plain censorship," Lechlitter said. "I don't know what else you'd call it."



Cartoon censored by students because critical of president

After the board of trustees allowed the paper to resume publication, the students said they even censored themselves as they put together the last two issues of the paper. They chose not to run a column and an editorial cartoon critical of their being shut down, Edwards said.

Moreover, the staffers contend this is not the first problem they have had with Kinney. According to Edwards, the *Col-*

(See COFFEYVILLE, page 33)

Massasoit

(Continued from page 31)

to collect the newspapers because the photos on the front had not been cropped correctly.

Monteiro said that the administration had the papers collected and then returned them to Aubin.

However, Dean of Students Marguerite Donovan said that the administration was not involved in the collection of the newspapers and does not know who was responsible.

"We're as clean as a whistle," Donovan said. "I don't know and I don't want to know [what happened to the newspapers]."

Meanwhile, Peter Bernard, who replaced Aubin as editor, claimed that Donovan had the newspapers collected because she found the photos to be offensive. Bernard said that Aubin collected the newspapers from Donovan's office.

Whatever the fate of the newspapers, most of those contacted by the SPLC agree that Aubin's dismissal was related to the photos in the Valentine's issue. Leonard, Donovan and Bernard called the issue, "the straw that broke the camel's back."

But the overwhelming factor behind Aubin's dismissal, according to Bernard, was that Aubin had a poor man-



agement style. Bernard said that he ran the newspaper "like Napoleon" and threw out student contributions.

Soon after the February issue of *The Voice* was printed, student senate President Leonard said that he arranged a meeting to discuss Aubin's job performance. Aubin said that he was notified of the meeting but did not attend, following the advice of a professor.

At the meeting, Leonard said two newspaper staff members voted to elect a new editor.

"I initiated the whole thing," Leonard said. "The newspaper had been taking a direction that most students didn't like. Most people didn't like the semi-nude photographs."

However, the administration tells the story differently.

Monteiro said that the newspaper staff initiated the meeting and put the number of voting newspaper members between seven and 11 students.

Unlike Leonard, Monteiro said the Valentine's Day issue was not a factor in the decision to dismiss Aubin.

But Aubin said that his entire staff had quit the previous semester; therefore, the students who voted were no longer staff members. According to the paper's constitution, those members who have submitted work are considered staff members.

He also said that few of his contributors were reliable and had quit only after he pressured them for their stories.

Aubin said that he had been under the impression that the editor kept the position for the entire year. He said further evidence that his dismissal and the content of the Valentine's day issue were related is that the vote came after one issue had been published and nearly a month into the new semester.

Aubin said he never received notice of his dismissal or the reasons for it.

"We're talking really, really slipshod," Aubin said. "Basically what they did was a stupid, stupid thing."

Aubin said the ACLU will request that he be reinstated — and the ACLU is prepared to pursue a lawsuit if its requests are not met, said attorney Melissa McWhinney of the Massachusetts ACLU.

"A public school may not discriminate on the basis of the content of a newspaper," McWhinney said. "It seems clear to me that he was removed because of the content of the newspaper." ■

Coffeyville

(Continued from page 32)

legian had another run-in with Kinney in November of 1991 following a surprise drug raid on campus.

The students planned to run a story on the raid with student quotes, but Kinney wanted to read the article before it went to press. The students brought the story to Kinney, who raised no objections.

"He told us he didn't want any student quotes in there," Edwards

*'He told us he didn't want any student quotes . . . I think he slept on it and changed his mind.'*

—Don Edwards  
Former editor

said. "I think he slept on it and changed his mind."

As for the 1992-93 school year, Edwards, who graduated in the spring, does not expect the *Collegian* to have any future problems with the administration. But he said he believes that the

staff will be "really careful for a month or two."

Johnson expected the publication policy to go before the board of trustees in August and to pass.

Lechlitter said, "I think

[Kinney] realizes now that his hands are tied. [The administrators] would be stupid if they tried anything." ■

# Happy Anniversary?

Bill of Rights issue scuttled after college fires editors; newspaper staff cites coverage as reason for removal

FLORIDA — The two editors of the Palm Beach Atlantic College student newspaper, the *Rudder*, planned to devote their next issue to the 200th anniversary of the Bill of Rights.

That was until December of 1991 when the West Palm Beach college administration fired both editors — who made up the paper's entire staff.

The students were told they were fired for insubordination when they contacted a local newspaper after a censorship controversy and because student leaders lacked confidence in their abilities, said Louis Maglio, who was editor in chief.

But Maglio said that they had upset the status quo at the Baptist-affiliated college.

"I think the real reason is that we covered controversial issues," said Maglio, pointing to the *Rudder's* coverage of abortion and homosexuality. "[The school] is really into the '50s, rock 'n' roll is Satanic kind of thing."

The controversy had its roots in the November 1991 issue of the *Rudder*, when the editors sought to run a letter from a bisexual student that discussed the school's ban on homosexuality.

The student had written to the paper's advice column, "Go Ask Alice," questioning what exactly the ban meant, said former managing editor Kittie Stuart. Homosexual students must undergo counseling or they may face suspension, according to the college's student handbook.

The editors planned to run the letter along with comments from "Alice" that were critical of the school's ban. Following the paper's review policy, the faculty adviser read the story and because he deemed it controversial sent it to a vice president for his review, according to Stuart.

In this case, the faculty adviser approved the story but the vice president did not. The students blacked out the portions that the vice president objected to with the word "censored."

The vice president also prohibited the students from running an editorial cartoon dealing with drugs. Instead, they ran a box that said "censored editorial cartoon."

The letter and "Alice's" response ran

Dan MacMillan, vice president for student development, declined to comment on the firing of the two editors.

"I don't want to comment on that anymore," MacMillan said. "I've commented on that for the past six months."

Stuart said the students sought legal advice from the ACLU, but because the school is private, they had no protection under the First Amendment. Also, Maglio said the school's policies provided them no relief.

MacMillan was quoted in the *Newsletter on Intellectual Freedom* as saying, "I don't see censorship as a related issue."

And one of the editors agreed.

"You can't have a

*'You can't have a censorship issue when it's the golden rule: He who has the gold makes the rules.'*

—Kittie Stuart

Former managing editor

in the November issue in their censored form. But students on campus who objected to the issue threw out over half of the 1,500 copies of the newspaper, Maglio said.

"The frightening thing is that the school was promoting the kind of thinking that takes these papers and throws them into the trash," Stuart said. "[Students] are not taught to open up their minds and examine things."

Maglio said the students contacted their faculty adviser at home and were told to wait to take action on the discarded papers until he was able to return to school. But Maglio contacted the *Palm Beach Post*.

After the *Post* ran a story on the controversy, the school fired the students, Stuart said. Both editors lost scholarships — Maglio \$1,250 and Stuart \$500 — they had received for their work on the newspaper.

During the semester after the editors were fired, the college published a newsletter that was edited by the wife of a vice president, according to the *Palm Beach Post*.

censorship issue when it's the golden rule: He who has the gold makes the rules," managing editor Stuart said. "[The school] paid for it; they had the right [to fire the editors]."

But editor in chief Maglio said that the students' free expression rights were violated when they were fired, especially after they contacted the local newspaper.

Maglio and Stuart decided to go underground and published two issues of their own newspaper, the *Udder*, last year. Despite losing about \$300, Maglio said the *Udder* was well received by the community and will return again in the 1992-93 school year.

Although it ceased publication after the school fired the two editors, MacMillan said the *Rudder* will return in the fall.

MacMillan said the school is currently looking at the relationships other student newspapers have with their advisers and administrators. He said the adviser will continue to read copy but they have not decided on the role of the administration. ■



Cartoon censored by school

## Editor fired after second censorship

ILLINOIS — The second time was not a charm for Dave Jackson, former editor of the Parkland Community College *Prospectus*.

In fact, Jackson said his second battle with censorship in less than four months led to his being removed in July as editor in chief of the newspaper.

Jackson said he was removed from his position after he pursued an investigative story over the objections of the paper's faculty adviser and the dean of students.

"They decided to ignore the Constitution and everything that makes this country great," said Jackson, who is looking for legal representation.

Although it was his second exposure to censorship at the college — the other occurring in late March — this latest incident was the most severe. It began in late June when the paper's adviser, Doris Barr, read a story Jackson was preparing for the next issue.

The story reported that the college contracted to buy carpeting from a company that may not have complied with legal requirements for state contractors. But he said Barr raised objections to the story when she checked it for spelling and grammar, a duty she performed each issue.

(See PARKLAND, page 37)

## Queens paper survives struggle for student government funding

NEW YORK — The same student organization that voted to shut down the Queens College student newspaper, *Q.C. Quad*, in May voted to save it 12 days later.

The Student Activities Corporation (SAC) voted to withdraw funding from the student newspaper on May 19, but restored the funding on June 1.

"Basically, the real important reason [SAC restored the money] is that I know we need a campus newspaper," said Charmaine Worthy, chair of the SAC, which was dissolved in June. "All my government wants from the *Quad* is just a good newspaper."

The SAC determined the budgets for all campus organizations and was made up of two administrators and seven students, all of which typically come from the student government.

Originally, the SAC said the newspaper did not "adequately cover" the campus and used too many news services, said editor in chief Bruno Navarro. The *Quad* uses stories from the *College Press Service*.

But Navarro said the SAC was retaliating for the *Quad*'s critical coverage of the student government.

"When they screwed up, we let everybody on campus know about it," Navarro said.

Court decisions indicate that either reason — too many press releases or the critical coverage — is an unconstitutional ground for censorship because both are based on the content of the publication.

The conflict came to a head when the *Quad* disclosed that the student government had discussed giving its members stipends. It reported that one member of the government suggested that the idea be put to a referendum, and he was soon after stripped of his powers,

Navarro said.

Students came out overwhelmingly in favor of putting the issue to a student vote, Navarro said, adding that the referendum eventually passed.

Navarro said the student government did not like that critical coverage. He also said the *Quad* gave less coverage to the student government than in past years, increasing the attention it devoted to other organizations.

The *Quad* stood to lose \$8,800 out of a budget of over \$40,000 by the funding cut, but most significantly would have lost access to its equipment and office space, Navarro said.

The student

government, after withdrawing the *Quad*'s funding, set aside \$10,000 to establish a newspaper run by the journalism department, even though the department had not been consulted, Navarro said.

"If this was allowed to happen it would have set a dangerous precedent," Navarro said. "I mean we were basically persecuted for doing our jobs."

One new stipulation of receiving its facilities and student government funds is that the *Quad* and the SAC started a media advisory board. The board is intended to develop the quality of the *Quad*, Worthy said.

"It's not a board to get involved in the internal policy of the *Quad*," Worthy said. "It's not a board developed for the purpose of censorship."

Navarro said the board serves as a buffer between the *Quad* and the student government. It will also help bring professional journalists to campus and offer suggestions, he said.

"Ultimately, [the media board members] have no say about what goes into the paper," Navarro said. "They don't get to see any articles before they go in. It's just to appease [the SAC]." ■

"I mean we were basically persecuted for doing our jobs."

—Bruno Navarro  
Editor in chief

# Observer survives administrative ax

*Community college proposes magazine to replace newspaper*

ILLINOIS — Managing editor Dawn Beers knew her newspaper, the *Observer*, had problems during the fall semester. She did not know how big.

Then, in December 1991, the Elgin Community College administration fired the paper's faculty adviser, changed the locks on the office doors and announced that the newspaper would cease publication the following semester but return in the fall as a magazine.

The administration contends that the decision to close the newspaper was to link it closer with the school's journalism program. But the staff saw it differently.

"I think they just didn't like some of the things we were writing," said editor in chief David Hartley. "If something goes wrong, they don't want that mentioned."

Almost immediately, the college agreed to allow the *Observer* to resume publication after the staff campaigned heavily on and off campus for the paper to be reinstated.

The staff had contacted area media and put up posters that read "Save the *Observer*." The *Chicago Tribune* and a local NBC affiliate covered the story.

But it was not until early May that the staff learned that the paper would be funded for the 1992-93 school year.

While the idea to reformat the *Observer* to a magazine has been laid to rest, the part-time adviser position has changed hands and students remain cautious about the future. Jim Murray, the school's athletic director and acting coordinator of student life, advised the paper after the adviser was fired.

Hartley said the problems began when the newspaper ran several controversial stories, the first of which appeared in the spring of 1991. That story reported that members of a student gay and lesbian group seeking to gain student senate approval had charged the senate with

discrimination.

But the *Observer* staff missed a production deadline, and the story appeared after the senate had approved the group.

"The administration didn't want us to write that story," Beers said. "It was bad enough to have a Gay and Lesbian Student Union, let alone give them publicity."

The newspaper also quoted a member of the organization who was openly gay on campus, but not with his family, said Richard Clute, the former adviser. The administration told Clute the paper had

that he asked the newspaper to correct several errors in the story.

But Clute said, "He stopped the printing of the newspapers without telling me. He never told me until four hours later."

Hartley said the presses ran only after a heated discussion between Murray and Clute.

The issue boiled over in December during finals week when Hartley received a letter that arrived after most students had finished classes, Clute said. It recommended that the newspaper discontinue

publication and resume in the fall as a magazine.

Soon after Hartley received the letter, the college changed the locks on the office doors.

"They said it was a security problem, but we found out later it was because they had fired our adviser," Hartley said. "They change the locks when they fire somebody."

Clute said the administration fired him because they faced a huge budget deficit. But he said the \$2,000 stipend he received as adviser will go to the

new faculty adviser in the fall of 1992.

Charles Rorie, vice president for instruction and educational services, declined to comment on Clute.

But he did say that no censorship took place at Elgin Community College, noting that the paper published as planned winter semester.

"There's been no censorship," Rorie said. "No issue of the paper's publication was delayed by administrative action nor was any issue censored by administrative action."

Hartley disagreed, saying, "When it was first going on I didn't think of it that way [as censorship]. But [now] I do think it is. I learned that you have to scream that word — [the administration] will just back down."

(See *ELGIN*, page 37)



done "irreparable harm" to the student.

But Clute said the story was timely because of the charge of discrimination and pointed out that the student was already "out" on campus.

Then, during the fall of 1991, the staff followed a story on an athlete who was academically ineligible, forcing the volleyball team to forfeit several games. In pursuing the story, they ran into "a brick wall" with the administration, Clute said.

The staff decided to drop the story, but a local newspaper ran it with comments from the administration, Clute said. When the *Observer* finally ran the story, Murray called the printers and stopped the presses, said Hartley, who will return as editor in chief the fall of 1992.

Murray has denied that he stopped the presses. He told the *Chicago Tribune*

## Parkland

(Continued from page 35)

Jackson said Barr told him the story might be libelous and "was not good for the image of the college." Meanwhile, Dean of Students Carol Steinman had received a copy of the story and raised objections, urging Jackson to run more positive news, he said.

She also would not allow the story to run unless the college attorney read it.

During the controversy, Jackson had been in contact with the Student Press Law Center, and based on the advice he received determined that the story contained nothing libelous. But he was again told the story had to be read by the college attorney.

Courts have held that both prior review and restrictions based on the content of a publication by officials of a public college or university are unconstitutional.

"Nobody was impressed that I was trying to protect my rights and attempting to stop this censorship," Jackson said.

Eventually, Jackson, under protest, and Barr took the article to the college attorney who agreed it was not libelous.

"My adviser proceeded to tell me that I had to pull out one paragraph in the article that she didn't like," Jackson said, adding that the Steinman also insisted that the paragraph be removed.

The paragraph reads: "[Director of Physical Plant Denny] Elimon said [contractor Ray] Lantz does not have an office. 'I believe he's working out of his

van,' said Elimon, 'but that's neither here nor there.'"

Under protest, Jackson removed the paragraph and the *Prospectus* printed the story that day.

But by that time, Jackson had already lost his job for the upcoming year. On the day the adviser read the story, the publications board was scheduled to meet.

At that meeting, Barr recommended to the board that another student be editor for the upcoming year. The adviser, Jackson said, had informed him at the beginning of June that he would be editor for another year.

Jackson said the publication board then changed the beginning date of the editor's term from June 1 to July 1 so that Jackson's term would officially end on July 1.

"I think [the dismissal] is related to me being willing to go out and dig for information and not be intimidated by other people," Jackson said.

But Barr said her decision to recommend another person for the job was not related to Jackson's story.

"It was related to the fact that he was editor for more than a year," Barr said. "The publications board felt it was time to pass the editor position on to someone else."

Barr would not comment any further on Jackson's dismissal.

However, Barr said that while she had concerns with the story, it was a group of students who voted to have it read by the college attorney.

But both Jackson and the current editor, John Hoffmeister, said that no vote ever took place.

"It was just between Dave and the adviser," said Hoffmeister, who then declined to answer more questions.

This incident came several months after the administration called a *Prospectus* cartoon racist and had all 7,500 copies pulled from the stands.

The cartoon, in response to a study that reported that students suffer from more stress than ever before, depicted a dark-skinned man encouraging students to relieve stress by shouting out loud.

Jackson said he was told by the administration that the editors were to vote on whether or not the *Prospectus* should be redistributed and that the vote would be "taken into consideration." The editors voted not to redistribute the newspaper.

The staff did reprint the same newspaper later, without the cartoon.

The issue of censorship boils down to a disregard for the First Amendment rights of students, Jackson said. He also said that his adviser did not want "to make waves" with controversial newspaper coverage.

"Here we have a public college that thinks they're beyond reproach," Jackson said. "This can't continue."

Jackson said that a member of the Board of Trustees, Jim Ayers, has started an investigation into the latest incident. Ayers could not be reached for comment. ■

## Elgin

(Continued from page 36)

Ironically, all parties involved do agree on something — the administration handled the situation "clumsily," as Rorie described it.

Clute said, "It's just a total folly; everything they've done they've backed up on. It's just a hodgepodge of mistakes and messes."

Meanwhile, Rorie called the experience "a healthy thing." He said

the newspaper will now have a faculty adviser who has closer ties with the journalism department, which was the college's original intent.

"We never looked at it as a closing down; we looked at it as a changing of format," Rorie said. "In retrospect, we probably did not give sufficient notice on what the intent was."

But Clute and the students said they understand the administration's intent: to eliminate controversial coverage.

"When you talk about a magazine, you're getting rid

of two types of stories — news and sports," Clute said. "If you get rid of news, you get rid of anything that's controversial."

Hartley doesn't expect any problems with the administration this year, but thinks the administration will try to censor the paper again in the future.

"I think probably two or three years after the current students are gone, they'll try [to censor] it again," Hartley said. "They've tried to get rid of the newspaper before."

Indeed, last year's controversy is similar to another

one that occurred at the community college in the 1978-1979 school year. (See *SPLC Report* Vol. II, No. 1.)

In 1979, the *Observer* ran a story critical of the student senate. The senate cut funding to the newspaper, although it was later restored at a reduced level.

More ironically, the paper's faculty adviser was fired that summer and the student senate tried to start a literary magazine with the former adviser of the *Observer*. The idea was eventually dropped. ■

# USC journalist eludes two subpoenas

*Former student's videotapes capture Los Angeles riot footage*

**CALIFORNIA** — A former reporter for the University of Southern California student newspaper, the *Daily Trojan*, avoided two subpoenas in July for videotapes that capture 100 minutes of the Los Angeles riots.

In the late spring, the state and the Federal Bureau of Investigation subpoenaed from Gregory Sandoval, a former USC student, three videotapes that capture the riots following the Rodney King verdict in late April and May.

The tapes show several beatings and also include footage of police leaving the scene of a violent encounter in the area where 90 minutes later Reginald Oliver Denny, a white truck driver, was pulled from his cement truck and beaten by four black men.

The government had sought the videotapes and any documents generated during Sandoval's business relationship with the cameraman, Timothy Goldman. Sandoval may still have to verify the authenticity of the tapes.

Los Angeles attorneys Glean Davis and Mary Ann Wymore of Mitchell, Silberberg and Knupp represented Sandoval. Davis said the subpoenas were the government's effort to piece together the riots in a way most convenient to them.

"If [the government officials] could get Greg to turn over the tapes, they were going to save themselves a lot of work," Davis said. "They just thought they'd make a stab at getting the tapes from Greg."

In arguing against the subpoena, Sandoval's attorneys said that, as a reporter, he was covered by the California shield law and the state and U.S. constitutions.

They also argued that the government made no effort to  
*(See USC, page 39)*



But Sandoval, who has since graduated from USC and who acted as an agent for the cameraman, learned in July that both subpoenas had been waived when the FBI received a copy of the tapes from the cameraman.

# Prosecutor waives subpoenas for college editor

**VIRGINIA** — Editor Christy Mumford knew the subjects of her April interview were headed to court after they were arrested on drug charges. But she never guessed that she might be forced to meet them there.

In July, the attorney for the state issued two subpoenas to Mumford, a student at James Madison University, but withdrew them later in the month after reaching an agreement with her attorneys.

Under the agreement, the state's attorney withdrew the subpoenas when Mumford signed an affidavit verifying that the April article she wrote about the two students was true to her knowledge.

Mumford was satisfied with the agreement.

"It doesn't compromise my principles and it doesn't interfere with my privilege as a journalist," she said. "I think it could have potentially turned out to be really damaging to me as a journalist in terms of my rights."

The subpoenas stemmed from an article that appeared in the *Breeze* in April.

Two JMU students, who had been arrested on drug charges, showed up in the newspaper office and offered themselves for an interview.

Mumford interviewed the students and wrote a story in which the students charged local police with harassing and

*'The prosecutor shouldn't be using me as a tool.'*

—Christy Mumford  
Editor

slandering them.

"I interviewed them not about their guilt or innocence but rather about the alleged harassment by the town police force," Mumford said.

A week later, the state's attorney said that Mumford might be called to testify in the trials of the two students. But she did not hear from the attorney until July when the two subpoenas arrived.

The state attorney's office declined to comment on Mumford because the trials were still on-going.

But Jim Lobsenz, a Washington attorney who represented Mumford, said the state's attorney appeared to be interested in one quote in the story.

The quote, by one of the arrested students, read: "We feel like we've been made bigger than we really are, so to speak. I believe these charges are trumped up."

The state's attorney felt this statement was an admission of some degree of guilt by the arrested student, Mumford said.

But Mumford argued that she was protected as a journalist under the U.S. Constitution.

"We feel that he's trying to use a student journalist as an arm of the police," Mumford said. "The prosecutor shouldn't be using me as a tool."

The affidavit signed in the agreement was not used in either student's trial, said Russell Stone, of the state attorney's office. ■

# Officials threaten editors with police action

## *Subpoena almost issued for anonymous letter writer admitting to vandalism*

NEW JERSEY — Student editors of *The High Times* at Ridgewood High School suddenly found themselves in the midst of a battle of wits with police after they refused to disclose the name of a student who wrote an anonymous letter to the editor.

The letter was written in February by a student admitting to acts of vandalism on campus, and was received by managing editor Katie McCurdy, who promised the student anonymity. The principal of the school did not let the letter be printed in the student newspaper.

"At first I thought we were fighting the censorship, then I realized that we were fighting to protect our source. I feel very used by [the administration], there was no acknowledgment by them that they were out of line," said editor in chief Catherine Gellis.

Police and school officials had been

looking for evidence to use against students they suspected were responsible for the vandalism. According to Gellis, school officials said if the girls did not

disclose the identity of the student who wrote the letter to the editor, they would be subpoenaed for the information later.

The principal gave Gellis and McCurdy's names to the police and

*'It seemed that it was not out of line to offer anonymity . . . we felt obliged and entitled to grant it.'*

—Catherine Gellis  
Editor in chief

turned in the newspaper with the published letter as evidence.

"We didn't feel the letter was in good taste because the student is bragging about the act [of vandalism] in the paper and the vandalism cost taxpayers money," said Jim Reamer, dean of students at Ridgewood. "The school newspaper would be rubbing that in their faces. Because the police were in an ongoing investigation we had an obligation to turn over the letter as an admission of the crime."

"It didn't seem right," responded Gellis when asked why she would not release the name of the student. "It seemed that it was not out of line to offer anonymity, therefore we felt obliged and entitled to grant it."

Because a subpoena against a high school student could have resulted in an unprecedented use of New Jersey's shield law at the high school level, the American Civil Liberties Union of New Jersey agreed to represent Gellis. The shield law protects journalists from revealing sources.

The prosecuting attorney Gil Sugarman decided against pursuing a subpoena later in the month. Sugarman said that the shield law may have affected the decision to drop the case, but would not comment further.

"My guess is that [the school's attorney] probably found it not politically worthwhile," said Brian Neary, a cooperating attorney with the ACLU who was to defend the students.

Another deterrent against pursuing the subpoena, said Lisa Zucker, legal director of the ACLU in New Jersey, was a court decision in New Jersey where the shield law was recently upheld. A not-

## USC

(Continued from page 38)

obtain the tapes by other means, although several were available.

Davis said the government could have used the portions broadcast by the professional media or interviewed people who lived in the area where the riots occurred. Also, the government tried to intimidate Sandoval with the subpoenas, Davis said.

"I think Greg, particularly, was targeted because he was a student," Davis said. "I think they thought that Greg would be less likely to fight them on it."

None of the numerous news organizations that aired the tapes received subpoenas specifically for them, Davis said.

Sandoval also contended that — contrary to the belief of the state — he was acting as a journalist for the student newspaper.

"I was out there reporting for the *Daily Trojan* not merchandising," Sandoval said.

Sandoval had been covering the riots in the South Central section of Los Angeles for the *Daily Trojan* when he met Goldman. Goldman, who along with two other men was filming the riots, asked Sandoval to become his agent.

Sandoval wrote a story for the *Daily Trojan* based on the tapes and, afterwards, began to act as Goldman's agent. The tapes have since been sold to California stations, all the major networks and even a Japanese news organization.

The tapes caused a sensation because they show that the police did not block off or warn people of the danger in an area where motorists were dragged from their cars and beaten.

Sandoval received 25 percent of the profits from the video sales, although he declined to give the amount the tapes have brought in.

"I didn't believe them when he told me what was on [the tapes]," Sandoval said. "If I hadn't called him, [Goldman was] going to dub over the tapes with Disney stuff." ■

*'We had an obligation to turn over the letter as an admission of the crime.'*

—Jim Reamer  
Dean of students

for-profit Latino newspaper was protected by the law recently in state superior court.

According to Helen Gellis, mother of Catherine, the police already knew who the youth was, but were unable to gather any evidence. Some students who were suspected to have been involved in the vandalism have since been apprehended.

"I just hope this doesn't come up again when they are trying the [students]," said Gellis.

"I'm upset that they turned [Catherine's] name over to the police. She was an innocent party," said the elder Gellis. ■

# Court Opens Foundation



## *Kentucky becomes third state to make foundation records open*

**KENTUCKY** — The Kentucky Supreme Court reversed a lower court decision in June and found, by a 6-1 vote, that the Kentucky State University Foundation is a “public agency” as defined by the state open records law.

The decision, in *Frankfort Publishing v. Kentucky State University Foundation*, No.91-SC-667-DG, 1992 WL 141813 (Ky. Sup. Ct. June 25, 1992), will allow the public access to the foundation records as permitted under the open records law.

The lawsuit was filed by Frankfort Publishing Co., which publishes *The State Journal*, after the newspaper was denied access in October 1989 to a KSU Foundation audit. The audit related to travel and entertainment expenses that were paid through the foundation.

A state circuit court found that the Kentucky open records law applied to the foundation as a “public agency.” But the decision was reversed by the state court of appeals.

In reinstating the circuit court decision, the Supreme Court ruled that any agency of a public body is subject to the open records law.

“There is no reasonable basis for excluding from the definition of a public agency the [KSU] board and its interlocking foundation,” the court said.

The KSU Foundation was separately incorporated from KSU in 1973 and receives funds, gifts and grants for the benefit of the university. It maintains offices on the campus, uses the services of university personnel and its board is the Board of Regents of the university.

“It is the clear intent of the law to make public the records of all units of government by whatever title for public

inspection,” the court said. Nationwide, there have been only a handful of court decisions or attorney general opinions that address this issue. But they have leaned towards openness.

K e n - t u c k y joined

Louisiana, Michigan, and South Carolina in applying its open records law to university foundations. An Arkansas attorney general opinion found a university foundation subject to the state open records law, but only as long as it relied on university funds and services to operate.

Meanwhile, two courts in West Virginia in the last several years ruled that university foundations in the state are not subject to the state open records law. ■

*‘It is the clear intent of the law to make public the records of all units of government by whatever title for public inspection.’*

—Kentucky Supreme Court

# Legislation withers under summer sun

## *Bill dies in Maryland, stalls in Pennsylvania*

**A**ccess legislation suffered through a summer drought as a bill promoting openness died in one state legislature and languished in another.

A Maryland bill that would have required the state’s colleges and universities to implement a sexual assault victims’ bill of rights died in the Judicial Proceedings Committee in April.

The bill would have given victims the right to be notified of the outcome of judicial proceedings against the people they accuse. Victims then could have reported that outcome to the media.

Sponsored by Sen. Christopher J. McCabe (R-Montgomery), the bill was not reported out of committee when the legislature’s session ended in April.

The bill died because it came up so late in the session said Wayne Rhodes, a legislative aid to McCabe. But Rhodes also pointed out that it paralleled legislation that President George Bush signed in July, which was one argument used against its passage.

“That’s a standard argument we hear very often,” Rhodes said. “[But] we feel that the state has a role to play and that any legislation at the federal level would be complementary.”

McCabe may reintroduce his bill, Rhodes said.

The General Assembly took another swing — and missed — at applying the state’s open records law to more Pennsylvania universities before it went into summer recess in July.

Rep. Ronald Cowell (D-Allegheny) attempted to require four Pennsylvania universities to adhere to the state open records law if they wished to receive state money. Cowell tried to include that language in a state budget bill, but failed when the House adopted a Senate bill without a similar provision.

Temple University, Lincoln University, Pennsylvania State University and

the University of Pittsburgh, which receive about 20 percent of their budgets from the state, would have had to open their records to the public or would have lost their state funding.

Meanwhile, another Cowell effort to open records at Pennsylvania schools, bill 1075, has been bottled up in the Senate Education Committee since June of 1991. The bill would make all Pennsylvania colleges and universities that

turned to the state for help, said Debby Schultz, research analyst for Rep. Cowell.

Schultz said the state agreed to help fund the universities if the schools allowed for some state oversight. But the oversight did not include subjecting the schools to the open records law.

State-related universities receive about 20 percent of their budgets from the state as opposed to the 50 percent the state-

Committee, Sen. James Rhoades (R-Schuylkill), has sponsored his own legislation that is less extensive than Rep. Cowell's. For example, Rhoades would require universities to give average salaries and travel expenses of certain departments, but not individual salaries or expenses.

Rhoades said his legislation if enacted has a better chance of withstanding a court challenge. He said a court might strike down a law that would make individual salaries public at an essentially private institution.

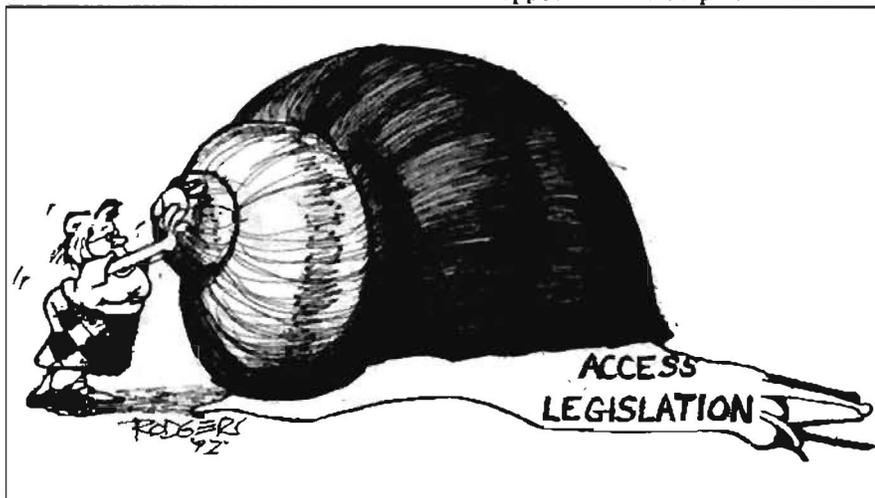
"There is a question of how much information can be required before we have an invasion of privacy because if they take it to court, maybe we'll end up getting nothing," Rhoades told *The Philadelphia Inquirer*.

Schultz said she expects the senator will let his bill and Rep. Cowell's die in committee.

"I really don't think that Senator Rhoades is going to move 1075 out of committee," Schultz said. "He'll move his own bill before ours."

Bill 1075 will die if not acted on before the General Assembly's legislative session ends the last day of November. The senate has a short work period in September and then will return after the November election to close out its session.

Cowell will try to attach his legislation to a bill that has already passed in the Senate when the House returns from its recess in late September of 1992, Schultz said. She added Cowell will reintroduce the legislation if it dies in committee in November ■



receive state money subject to the state open records law.

The state open records law does not currently extend to Temple, Lincoln, Penn State and Pitt because they enjoy a status that is unique to the Pennsylvania system. The schools are "state-related," rather than state-owned.

This distinction came about when the formerly private universities faced financial hardship — Pitt, Temple and Lincoln in the '60s and early '70s and Penn State in the late 1800s — and

owned schools receive.

But this distinction has made it difficult for the student newspaper at Temple University in Philadelphia to obtain information as simple as meeting minutes from the Board of Trustees, said Amy Lynn Dixon, editor in chief of the *Temple News*.

"[Temple] really can skirt the law," Dixon said. "They pick and choose when they can be private and when they can be public."

The chairman of the Senate Education

## Access Notes

The University of Georgia student newspaper, the *Red & Black*, has appealed a February ruling that opened the records of the organization court of the student judiciary but not its meetings. The school, seeking to keep the records closed, is also appealing the decision in *Red & Black v. Board of Regents*, No. D-90899

(Ga. Super Ct. Fulton County)(Feb. 20, 1992).

The case will go before the Georgia Supreme Court in the fall. The Student Press Law Center, the American Society of Newspaper Editors and the Society of Professional Journalists are among the media groups that are expected to file a brief on behalf of the *Red & Black*.

The University of Michigan has appealed a January decision in *Booth Newspapers v. Board of Regents*, 481 N.W.2d 778 (Mich. Ct. App. 1992), that called its presidential selection process illegal and ordered it to obey the Michigan

Open Meetings Act in future searches. The university petitioned the Michigan Supreme Court in February.

The University of California Board of Regents voted in May to allow increased public scrutiny of salaries and benefits for top university administrators.

The new measure opens increased meetings where executive pay is discussed, requires annual reports on executive pay and requires decisions of any closed-door meetings on such issues to be "fully and clearly" disclosed. ■

# State ruling reaffirms limits on censors

*Court relies on New Jersey constitution in dismissing libel case*

**NEW JERSEY** — An appellate court judge reaffirmed the limits of New Jersey school officials' ability to censor student publications in April when it dismissed a high school teacher's claim that she was libeled in the yearbook.

Sylvia Salek sued Passaic Collegiate School after the yearbook staff, in a section entitled "Funny Pages," published a photo of her sitting next to a male teacher with his hand raised to his forehead and a caption reading, "Not tonight Ms. Salek, I have a headache" and another photo of the male teacher eating with the caption, "What are you really thinking about Mr. DeVita?"

Salek claimed that the two photos were libelous because they gave the false impression that she had propositioned DeVita and that such impression had the effect of damaging her reputation in the school community. She also claimed that the photos and their captions were an invasion of her privacy and caused her emotional distress.

The appellate court upheld the lower

court's dismissal, finding that the yearbook entries could not be considered libelous given they were clearly parody and no reasonable person could believe them to be factual.

The court went on to find no merit to Salek's argument that under *Hazelwood* — the 1988 U.S. Supreme Court decision upholding the right of public high school administrators to censor some school-sponsored student publications — the school had to exercise greater control over the content of the yearbook. Despite *Hazelwood*, the New Jersey court held that a desire to avoid discomfort to Salek would not have justified school officials in preventing publication of the photos and their captions.

Though the court did not mention the New Jersey constitution, its decision seems to reflect the broad free expression protection that the state constitution has been found to provide. In May 1991, a New Jersey state court held that the state constitution affords more protection to student journalists than does the

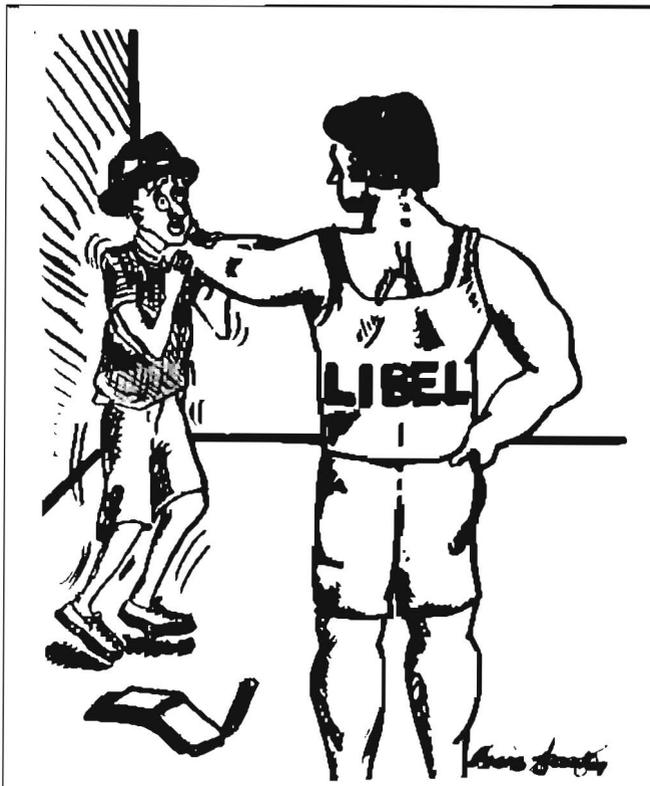
federal Bill of Rights.

The court deciding the Salek case also rejected Salek's invasion of privacy argument. It said such a claim required that a reasonable person would reach the conclusion that Salek and the teacher were involved in a sexual relationship. The court said that such a conclusion was unfounded.

In addition, the court held Salek's

emotional distress claims to be unfounded. The court said there can be no finding of emotional distress resulting from publication without an initial finding that she had been libeled in the publication. The court reiterated that libel did not occur because of the obvious satirical nature of the yearbook section containing the photos.

Salek's lawyer said that she is not appealing the decision. ■



## Reprinted photo leads to \$25,000 libel lawsuit

**ILLINOIS** — The *Daily Illini* at the University of Illinois in Champaign is currently in the pre-trial stages of a lawsuit with a student whose tennis photograph was used as a graphic in a book review. The student claims that the use of the photograph was libelous and an invasion of privacy and is asking for \$25,000 in damages.

On March 11, 1991, the *Daily Illini* ran a photo of Mark Krajewski with an article on the university men's tennis team. An altered version of the same photo ran six weeks later under the headline "Date Rape Through a Man's Eyes."

It was used to illustrate a review of a novel about a freshman woman's rape by a college tennis star and the trial that followed.

In the graphic, the picture of Krajewski was superimposed on a woman's face. Terry Dugan-Nolan, publisher of the *Illini* Media Company, claims that the student editors thought that the picture had been sufficiently altered so readers would not recognize the photo as Krajewski.

He apparently disagreed, and claimed that his character had been damaged. Although the newspaper printed an apology, Krajewski filed suit against the *Illini* in August 1991.

Attorneys for both sides are currently conducting hearings on the case. No trial date has yet been set. ■

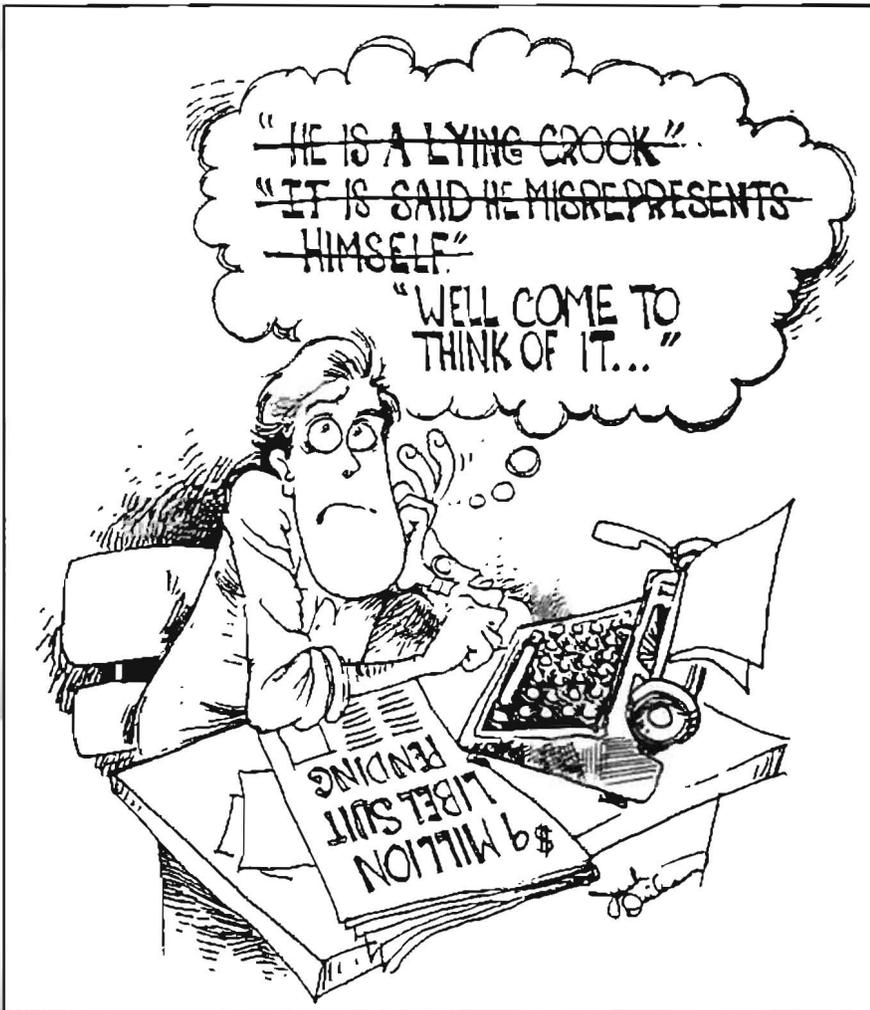
## Court dismisses 5-year suit

PENNSYLVANIA — A libel lawsuit against the Clarion University student newspaper filed in September 1988 was dismissed in May.

Richard Besnier, former athletic director of the school, filed suit after the *Clarion Call* reported a student senator's statements in a public meeting. The senator said that the university president commented in a private meeting that Besnier was removed from his position for misuse of student activities fees.

Since the lawsuit was filed, Besnier and his attorney dropped two student senators and the university from the case. The *Clarion Call* printed a retraction of the statement and an apology to Besnier, but the student newspaper and the long-since-graduated reporter who covered the story remained in the case until April.

The court decided after one hearing in May that *Besnier v. Clarion* would be dismissed against the remaining parties to the lawsuit, the school president and band director. ■



## Public safety officer sues over cartoon

Lawsuit claims officer depicted as incompetent in publication

CALIFORNIA — Public Safety officer Tom Nungaray is suing a publication of the student government at Cuesta College over a cartoon that he alleges exposed him "to contempt, ridicule and obloquy." Nungaray filed the lawsuit in April asking for \$50,000 in damages plus court fees.

The editorial cartoon in question depicts Nungaray in a situation where he as an officer will not go to rescue a building that is on fire because he has to apprehend a biker who is not riding in the bike lanes. Nungaray claims in the lawsuit that the cartoon caused him to suffer

*'I think it's a non-case. I don't think the person was harmed.'*

—Mike Hargett  
Superintendent for business

"loss of his reputation, shame, mortification and hurt feelings."

In the lawsuit Nungaray contends that the cartoon suggests that he is incompetent as a public safety officer. He originally filed a claim against the college in March, but it was rejected at that time by

Cuesta's insurance broker.

"I think it's a non-case. I don't think the person was harmed," said Mike Hargett, the college's superintendent for business. Clayton Hall, attorney for Cuesta in *Nungaray v. Cuesta*, claims there is no case and filed a motion to dismiss the case in June.

*The Gov* is a newsletter of the student government and is funded by the Associated Students of Cuesta College. The cartoon appeared in the February issue, and according to the student body vice-president Glenn Johnson, was submitted by an anonymous artist. ■

## Undergrounds

*Continued from page 23)*

graphic material.<sup>20</sup> Nevertheless, the Supreme Court has suggested that the use of off-color remarks and words could be substantially disruptive in a high school, and one federal court of appeals has found them to be so in an underground high school newspaper.<sup>21</sup> A number of courts, however, have protected such remarks.<sup>22</sup> Underground student editors might choose to avoid common profanity to place them on the most solid legal ground. However, it remains unclear whether such profanity could be legally censorable by school officials.

Often school officials demand the right to review unofficial student publications before they are distributed on school grounds. The courts are divided on the equality of this practice; some allow it and others do not. The most recent appellate case explicitly prohibits high school officials from exercising prior review of non-school-sponsored publications.<sup>23</sup> Because of this decision, students attending high schools in Arizona, California, Idaho, Montana, Nevada, Oregon and Washington cannot be required to submit publications for prior approval except in exceptional circumstances. As a result of a 1972 case, the same holds true for students in Illinois, Indiana and Wisconsin.<sup>24</sup> But federal courts with jurisdiction over Alabama, Arkansas, Connecticut, Florida, Georgia, Iowa, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New York,

North Carolina, North Dakota, South Carolina, South Dakota, Texas, Virginia and West Virginia have allowed limited prior review of non-school-sponsored publications.<sup>25</sup> Courts in the other states have not ruled on the issue.

The important thing to note about prior review is that no school is required

*'Freedom of speech [and] freedom of the press are available to all, not merely to those who can pay their own way.'*

—The Supreme Court

to do it, and those that do only increase the potential that they will be held legally responsible for what the underground newspaper publishes. Students can of course avoid prior review by distributing off school grounds where school officials have no legal control. Furthermore, even those courts that permit prior review on school grounds have allowed school officials to censor as a result of the review *only* when they can show the *Tinker* standard has been met.

Before schools can censor underground newspapers, due process requires that they set up adequate written guidelines delineating what kinds of material will be considered substantially disruptive and the procedure to be used to determine whether a publication should be restricted. Most courts say these

guidelines must be precise. They must inform a reasonably intelligent student of what is prohibited, specify the procedure for the decision to censor and provide for a prompt system of appeal.<sup>26</sup> But one court held that such guidelines inevitably contain vague language because they deal

with concepts involving elements of subjectivity.<sup>27</sup> Given this lack of uniformity in the courts, student editors should ask their school office for a copy of any policy they have relating to distribution of non-school-sponsored materials before distributing any underground newspaper. Such a policy could provide additional protections of students' rights and explain the procedure for prior review if such review is allowed.

Often school officials will attempt to justify their censoring actions by basing them on neutral-sounding restrictions that make no reference to an underground newspaper's content. The courts have recognized that school officials can make reasonable regulations as to the time, place and manner of distribution.<sup>28</sup> But the key word here is "reasonable." They cannot use time, place and manner restrictions to prohibit viewpoints they dislike.

One court has defined reasonableness in this context as "whether such regulations measurably contribute to the maintenance of order and decorum within the educational system, are calculated to prevent interference with the normal activities of the [school], or obstruction of its functions to impart learning and to advance the boundaries of knowledge, or are important in maintaining order."<sup>29</sup> In other words, a school can refuse to allow a newspaper to be passed out during English class, but cannot stop a student from distributing it during lunch period.

One neutral-sounding restriction common at many schools is a ban on the distribution of underground newspapers that contain advertising or that are sold rather than given away. School officials claim that the commercial nature of these publications makes them censorable. But as the United States Supreme Court has recognized, commercial speech is important because it informs consumers of ideas and goods and it is protected by the First Amendment.<sup>30</sup> Only if they can prove that the *Tinker* standard has been met, or assert some other compelling reason that cannot be dealt with in a less restrictive manner, can school officials make an across-the-board prohibition of underground publications that contain advertising.<sup>31</sup> Similarly, non-disruptive sales of underground publications would seem to be protected by the First Amendment under Supreme Court cases. "Free-



dom of speech [and] freedom of the press are available to all, not merely to those who can pay their own way," the Court has said.<sup>32</sup>

What about restrictions on anonymity? Can a school require all underground publications to print the names of the authors or publishers? In the states where the courts have approved prior review, there may be a practical need for an identifiable person who submits the material to the school official and who can be notified if it does not satisfy the guideline requirements. But in the states where prior review has been restricted, a prohibition against anonymous literature would be difficult to justify. One court has said that such a rule could be constitutional if the school could demonstrate a legitimate reason for it.<sup>33</sup>

The United States Supreme Court, however, has long recognized that the distribution of anonymous material serves an important function and cannot be prohibited outside the schools.<sup>34</sup> And another court has said that the same justifications apply in the schools. "[W]ithout anonymity, fear of reprisal may deter peaceful discussion of controversial but important school rules and policies," that court said.<sup>35</sup>

The law provides strong protection for First Amendment rights of underground journalists. Schools can only censor if they can show the compelling presence of substantial disruption and not just the fear of non-conforming views. Underground student editors can battle censorship by knowing their rights, publicizing the actions of their school officials and organizing students and community members to rally against censorship. They should call the Student Press Law Center or another legal resource if they are censored. In the end, they may find themselves educating their school officials about the law and the importance of the First Amendment to us all.

<sup>1</sup> See *The Private School Press: Winning*

*free expression rights when the First Amendment isn't enough*, SPLC Report, Spring 1992, at 25.

<sup>2</sup> *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271n.3 & 273n.5 (1988).

<sup>3</sup> *Henry v. Sch. Bd. of Colorado Springs Sch. Dist. No. 11*, 760 F. Supp. 856, 862 (D. Colo. 1991).

<sup>4</sup> *Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, No. 90-C-6604 (N.D. Ill. Oct. 18, 1991).

<sup>5</sup> 20 U.S.C. §4071.

<sup>6</sup> §§ 4071(a) and (b).

<sup>7</sup> *Board of Westside Community Schools v. Mergens*, 110 S.Ct. 2356 (1990).

<sup>8</sup> *Id.* at 2366

<sup>9</sup> *Thompson v. Waynesboro Area School District*, 673 F.Supp. 1379 (M.D. Pa. 1987).

<sup>10</sup> *Id.*, at 1383 - 1384.

<sup>18</sup> *Blackwell v. Issaquena County Bd. of Educ.*, 363 F.2d 749 (5th Cir. 1966).

<sup>19</sup> *Baughman v. Freiermuth*, 478 F.2d 1345 (4th Cir. 1973).

<sup>20</sup> *Miller v. California*, 413 U.S. 15 (1973).

<sup>21</sup> *Bethel Sch. Dist. No. 403 v. Fraser*, 106 S.Ct. 3159 (1986); *Bystrom v. Fridley High Sch.*, 855 F.2d 855 (8th Cir. 1988).

<sup>22</sup> *Jacobs v. Board of School Commissioners*, 490 F.2d 601 (7th Cir. 1973), *vacated as moot*, 420 U.S. 128 (1975); *Scoville v. Board of Education*, 425 F.2d 10 (7th Cir. 1970).

<sup>23</sup> *Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988).

<sup>24</sup> *Fujishima v. Bd of Educ.*, 460 F.2d 1355 (7th Cir. 1972).

<sup>25</sup> Currently, the rulings of those courts bind states in the 2d, 4th, 5th and 11th

Circuits. The 11th U.S. Circuit Court of Appeals was created out of three states - Florida, Georgia and Alabama - which were part of the 5th Circuit at the time of these rulings, and the 11th Circuit therefore still recognizes the precedent as valid and binding law.

<sup>26</sup> *Baughman v. Freiermuth*, 478 F.2d 1345 (4th Cir. 1973).

<sup>27</sup> *Bystrom v. Fridley High Sch.*, 822 F.2d 747, 752 (8th Cir. 1987).

<sup>28</sup> *Sword v. Fox*, 446 F.2d 1091, 1097 (4th Cir.), *cert. denied*, 404 U.S. 994 (1971).

<sup>29</sup> See *New Times v. Arizona Bd. of Regents*, 110 Ariz. 367, 519 P.2d 169 (1974).

<sup>30</sup> *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

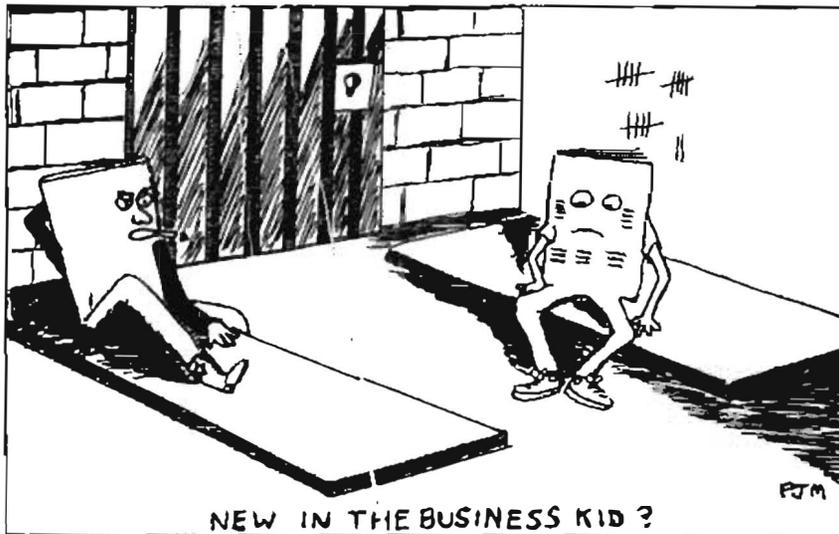
<sup>31</sup> *Hernandez v. Hanson*, 430 F. Supp. 1154 (D. Nebr. 1977).

<sup>32</sup> *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

<sup>33</sup> *Spartacus Youth League v. Bd. of Trustees*, 502 F. Supp. 789 (N.D. Ill. 1980).

<sup>34</sup> *Talley v. California*, 362 U.S. 60 (1960).

<sup>35</sup> *Jacobs*, 490 F.2d at 601.



<sup>11</sup> E.g., *Rivera v. East Otero Sch. Dist. R-1*, 721 F. Supp. 1189 (D. Colo. 1989) (Prohibition against distributing religious material that proselytizes a particular religious belief is a violation of the student's free speech rights).

<sup>12</sup> *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 512 (1969).

<sup>13</sup> *Id.* at 509.

<sup>14</sup> See, e.g., *Clark v. Bd. of Educ., Belton High*, No. 97-0244-CV-W-8 (W.D. Mo. Oct. 9, 1987).

<sup>15</sup> *Shanley v. Northeast Indep. Sch. Dist.*, 462 F.2d 960 (5th Cir. 1972).

<sup>16</sup> See, e.g., *Scoville v. Bd. of Educ. of Joliet Township High Sch. Dist.*, 425 F.2d 10, 14 (7th Cir. 1970).

<sup>17</sup> *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966).

(8th Cir. 1987).

<sup>28</sup> *Sword v. Fox*, 446 F.2d 1091, 1097 (4th Cir.), *cert. denied*, 404 U.S. 994 (1971).

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<sup>30</sup> *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

<sup>31</sup> *Hernandez v. Hanson*, 430 F. Supp. 1154 (D. Nebr. 1977).

<sup>32</sup> *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

<sup>33</sup> *Spartacus Youth League v. Bd. of Trustees*, 502 F. Supp. 789 (N.D. Ill. 1980).

<sup>34</sup> *Talley v. California*, 362 U.S. 60 (1960).

<sup>35</sup> *Jacobs*, 490 F.2d at 601.

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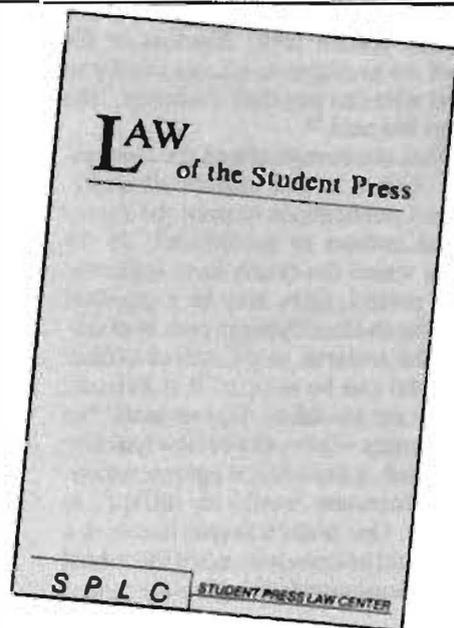
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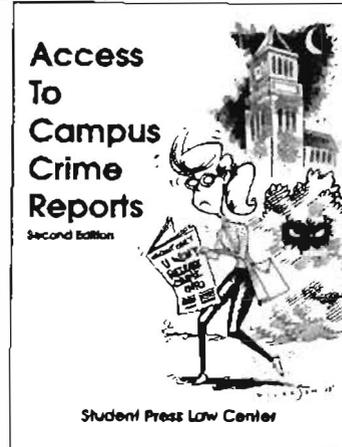
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