Guarding Free Expression
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Newspaper theft’s cure is action
Less cavalier attitude by campus administrators and police needed

The hundreds of censorship incidents reported to the Student Press Law Center each year never stop being disturbing, but they do become predictable. Removal of editors or advisers, withdrawal of funding and prior review by school administrators are a few of the methods for controlling the student media that we have come to expect from troubled schools across the country.

Occasionally, a single method of censorship becomes so prominent in a short period of time that our expectations are confounded. This spring we confronted such a surprise. As the cover story in this issue of the Report describes, the SPLC uncovered a rash of newspaper theft at colleges and universities that poses a major threat to freedom of expression on campus.

As of late July, more than a dozen college newspapers reported that they have lost thousands of copies of their publications since the beginning of 1993 to thieves who objected to the publications’ content. At the University of Pennsylvania, for example, approximately 14,000 copies of The Daily Pennsylvanian were removed from distribution points in April by students who objected to a conservative columnist published in the newspaper. At Florida State University, approximately 10,000 copies of The Florida Flambeau were removed from distribution bins on campus in March on the day that the newspaper published endorsements for student government elections.

From our perspective, the problem of newspaper theft has reached epidemic proportions. While the problem is not a new one, the number of publications telling us they have experienced it is at least five times greater than during a typical year. And if the trend continues, the loss of advertising revenue it results in could pose a threat to the financial health of many student newspapers that serve as the primary forum for student discussion and debate on campus.

Responsibility for the growing theft problem can be attributed to at least two sources: schools that refuse to soundly condemn such thefts as inappropriate and illegal and law enforcement officials who refuse to arrest and prosecute the thieves as criminals. Too many school officials have treated newspaper theft as an insignificant prank, if they reacted to it at all. Their attitudes have perpetuated the problem and have demonstrated how little some of our nation’s educational leaders appreciate the importance of free expression.

At Dartmouth College, school officials went so far as to describe the conservative Dartmouth Review as “litter” and “abandoned property.” They refused to protect the newspaper’s distribution on campus.

This tacit support for theft by school administrators only prompts more theft incidents and a growing disregard for press freedom. Those colleges and universities that wish they could get away with censorship themselves have found that encouraging prospective censors to do their dirty work for them is an effective method for punishing the student media.

Law enforcement officials who refuse to file criminal charges against publication thieves because they claim that free newspapers cannot be stolen also deserve the blame for this crime wave. The 1988 prosecution by a Florida state attorney of four students who took copies of a free publication on the University of Florida’s Gainesville campus demonstrates an effective law enforcement response. Each of the students in that case was sentenced to six months probation and 25 hours of community service and required to pay $100 in court costs after pleading no contest to the charge of theft. Because of the support of a campus police detective, criminal charges are now pending against a student at Southeastern Louisiana University relating to a theft incident that occurred there in March. More campus law enforcement officials should follow these examples.

But as long as some school administrators and law enforcement officials refuse to treat newspaper theft as both a crime and a serious threat to press freedom, no student publication can feel safe in exposing its readers to a broad range of viewpoints. In the face of this threat, the SPLC pledges its support and assistance to college student publications that want to fight newspaper theft.

The Report Staff

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Good Enough to Steal

College papers are stolen across the nation as students dispose of words rather than disprove them.

They didn't want anyone to read it. Whether "they" are student government officials or angry readers, whether "it" is a newspaper's conservative column or a revealing investigative story — all are true examples of newspaper theft, a potent form of student-inflicted censorship that has hit at least 19 campuses within the last academic year.

From California to New Hampshire, newspaper theft has spread across the country, often leaving questions about the definitions of free speech and justice in its wake.

The motives for the thefts vary. Some papers have been stolen by groups claiming to exercise their First Amendment right to protest editorial content that they find offensive; others disappeared from dispenser bins at the hands of nameless thieves.

From finding out "whodunit" to attempting to fit the punishment to the crime, college journalists across the nation have found that dealing with newspaper theft can be a tough struggle for their First Amendment rights.

Whodunit — and why?

Who would steal a college newspaper?

While a free newspaper does not hold the allure of money or jewels, there are those who contend that the fact that they are stolen is a small reflection of the worth and power of words.

"It shows that ideas do matter," said Ben Novak, a Pennsylvania State University trustee. "This is what a college or university education is all about. What we now have to learn is how to deal with ideas in a civilized manner."

But many of those who confiscate hundreds or thousands of newspapers say their actions do not imply a fear of ideas, but are simply an attempt to exercise what they consider to be hateful speech from their community.

At Pennsylvania State University, 6,000 copies of The Lionhearted, the conservative student newspaper of which Novak is adviser, were taken from sites around campus in late April — and, around midnight, 200 copies were found burning on Novak's lawn.

Penn State Women's Studies professor Donna Hughes said that she sees the taking of papers as a protest against "the really misogynistic content" of The Lionhearted.

"The point has been protest, but it has been framed as censorship," Hughes said. "No reporter wants to talk about the content of the paper. It's men wanting to hide the issue — men can always hide behind the First Amendment."

Members of a group calling themselves "The Black Community" at the University of Pennsylvania also cited the First Amendment in their removal of 14,000 copies of The Daily Pennsylvanian in April, saying in notes left on dispenser bins that they were protesting...
Theft
(Continued from page 4)

speech that they felt deliberately perpetuated "institutional racism."
The students objected to the editorial columns of a conservative student, who wrote on topics ranging from arguments against affirmative action to denunciations of Martin Luther King Day.

"Both [at Penn State] and at Penn, disenfranchised groups are fighting back against an established, moneyed mainstream," Hughes said. "If people feel they had power, they wouldn't be out taking newspapers."

Similar grievances have been voiced against two editorial columnists at the Northern Illinois University Northern Star, where several thousand papers disappeared in April following the airing of such complaints.

But two current newspaper theft prosecutions could set a precedent for future cases.

Charges were filed against two former Penn State students in July for the theft of The Lionhearted. Shannon Coulter, former co-director of the campus group Woman's Concerns, and Alisa Giardinelli were charged with theft by unlawful taking or distribution, receiving stolen property and criminal conspiracy. A preliminary hearing was scheduled for August.

And in a scandal that has rocked Southeastern Louisiana University's campus, student body president Mark Morice is awaiting trial on charges of criminal mischief for recruiting his fraternity brothers to steal copies of the paper, The Lion's Roar, that had an article critical of him.

Moricte was arrested by university police in March on charges of principal to felony theft for the confiscation earlier that month and was freed on $25,000 bail.

A grand jury indicted Morice in June for criminal mischief, a misdemeanor, instead of felony theft. Lion's Roar managing editor Dori Colona said that following the outcome of the trial, Morice will face disciplinary charges at the school for his actions.

Colona said that she believes in pursuing the case in the courts to the furthest extent possible.

"People still don't see this as being censorship, but there's no way that you can see it as anything but that," Colona said. "It's just ridiculous that people can't see it for what it is."

none of the schools that have reported a theft in the past year have done so.

"I don't think that there is an understanding of the seriousness of the problem," said Kimberly Steen, adviser to the University of Wisconsin-Stout Stoutonia, which had 5,000 copies stolen in late March.

Steen said that their case was turned over to the school's student affairs board, which would not treat the theft with the severity of a criminal case. The case was then sent to the Dean of Students, who Steen said was "not really looking at it."

"There's been no condemnation by the university," Steen said. "At least, I expected some kind of reaction. There was never any formal concern expressed to the students on the newspaper."

In some cases, school officials' lack of concern has led to acquittal in campus judicial proceedings or no administrative response at all.

Kim Green, editor of the University of Central Arkansas Echo, said that when her school's papers were stolen the day a story appeared that named a student accused of rape, nothing was done.

Green said that the school's student judicial board, which she called a "kangaroo court," was given jurisdiction over the case and took no action against a student who admitted to stealing the papers.

"They said the papers were free, and that they didn't think we had a right to say what we were saying," Green said. "I think it's an outrage."

And while Green and others faced with similar situations contemplate legal action, their intentions are often thrown off course by their administrations turning a deaf ear.

"The university is a powerful entity here," Green said. "We don't know which direction we can go in."

(See THEFT, page 9)
Georgia paper fights control

Student paper at Morehouse may go independent

GEORGIA — It is a war of words. Student staffers of the Morehouse College Maroon Tiger are considering making a clean break with the private Atlanta college and going independent. They contend that they have fought the administration for a year to gain editorial control of their paper.

"The key to regaining editorial control is getting [a] financial base," staff member Marlon Miller said.

Miller is not sure whether he should call himself the editor of the Maroon Tiger, since he has not been appointed by the administration to serve in that as-yet unfilled position.

"The administration does not want me to be editor in chief," he said. "They will not respect me or the business I try to conduct."

This culmination of the relations between Maroon Tiger journalists and administrators is typical of the discord that has led up to it. Throughout the year, students voiced discontent and the administration, staffers claim, responded harshly.

According to Terrence Johnson, former editor in chief of the paper, college officials required the Maroon Tiger's adviser at the time, Eileen Meredith, to "read and approve every story prior to it being printed."

In the process, the adviser did not approve two columns written by the paper's editorial page editor, Thomas Giovanni, Miller said. The first, titled, "Black Schools and White Money," addressed the lack of support for the historically black school from Morehouse alumni, and suggested that alumni should become more involved in supporting their alma mater rather than relying on outside groups or individuals for finances.

The second editorial detailed what Giovanni perceived as the flamboyant lifestyle of Morehouse College President Leroy Keith and its impact on the school.

As the year continued, Miller said, the Dean of Student Affairs, Raymond Crawford, told the printer of the newspaper not to print the paper unless they had heard from him.

Crawford declined to comment for this article.

After the second editorial was pulled, Giovanni and other editors protested outside of the administration's offices for several weeks.

According to Miller, within two days after an argument between Giovanni and Keith about the paper, Giovanni was placed on social probation, meaning that he could no longer participate in campus extracurricular activities, including the paper.

Keith also declined comment to the Report.

Shortly following what would be the final issue of the paper on March 18, the adviser resigned under what Miller said were extenuating circumstances. Johnson was not permitted to select a new... (See MOREHOUSE, page 9)
University attempts to lock out paper staff

MASSACHUSETTS — When staff members of the University of Massachusetts-Boston's weekly newspaper, The Mass Media, arrived at their offices late last March, they found that the administration's locksmith had gotten there first.

That is about the only thing that the student staffers and the administration can agree upon, as students cry censorship and the school claims the students are crying wolf.

Locked out of the offices, now-acting managing editor Dan Currie sought a court injunction against the university in the beginning of April, and claimed that by locking the students out, the school had infringed upon the paper's First Amendment rights.

"They did it for reasons that didn't have anything to do with promoting a free press," Currie said, adding that when the shutdown occurred, staff members were working on stories having to do with their school's Student Activities Trust Fund deficit.

But student media adviser Donna Neal said the paper's allegations were "totally absurd," and that no system of prior review of editorial content existed at the paper.

Instead, Neal and other administrators asserted that the shutdown of the publication was in response to the financial deficit being run up by the paper.

"They decide their own salaries, they decide who gets paid - the administration has nothing to do with it," Assistant Vice Chancellor for Student Affairs Midge Silvio said. "They were choosing to drive the account into deficit."

Currie, however, said that payroll accounts, along with all other financial dealings of the publication, must be authorized and signed off by administrators.

"The Mass Media is not responsible for creating any deficit," he said.

In the face of these and many other disputes, Currie secured affidavits from other Mass Media staffers and sought a preliminary injunction against the university in Suffolk County Superior Court to open the paper's doors. Superior Court Associate Justice Hiller Zobel dismissed the case and sent it to a faculty dispute resolution program at the university.

The students and administrators decided upon a settlement to open the paper. Currently, student editors at the publication are no longer being paid (their salaries before the dispute were $6 to $7 an hour) and a special election was held to revamp the editorial board.

In spite of the reported "dispute reso-
Marshall University makes changes in how student newspaper is funded

WEST VIRGINIA — Mark Truby, new editor of The Parthenon at Marshall University, said that his school's administration does not see "the big picture" when it comes to freedom of the press.

In the aftermath of the paper's controversial decision to run the names of alleged rape victims in 1992 (a decision that was reversed in January), the school's administration refocused their vision of the paper's budgetary future, and decided that the paper should not be funded by student activity fees.

"The funding will be the same [amount] - there will be a reduction in student fee funds, and an increase in general operating funds," university spokesman C.T. Mitchell said, adding that funds would continue to be earmarked specifically for the Parthenon.

This decision comes following a recommendation by a student government committee to cut fees supporting the paper — a recommendation which has left some scars on the collective memory of the school's journalism students and faculty.

"People have responded to [this] as some way of getting back at the student media," Journalism Department Chairperson Hal Shaver said, adding that the funding change applied to other student publications in addition to the newspaper.

"Shaver said that Marshall's president, J. Wade Gilley, had initially tried to restructure the student media board that oversees student publications, which Gilley said would expand the input on publications policies.

Others, however, saw this move as an attempt to grab the reins of editorial control from the journalism department and the student journalists, after Gilley was quoted in The Charleston Gazette as saying that the board he proposed would not allow the newspaper to publish the names of sexual assault victims.

Although that proposal did not go through, apprehensions that the administration is attempting to exert control over the paper's content still exist.

"The student fee issue is a concern," Debra Bellumini, the paper's adviser, said. "They're shifting the money for funding into the general funds, where the university's president will have more control."

Truby said he fears the new labeling of the newspaper as a "laboratory" of the journalism department will allow administrators to exert that control.

"They're saying, 'You guys are not professionals and are not ready to have complete say over what goes in the paper,'" Truby said.

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Council to study publications' funding

VIRGINIA — The president of the College of William and Mary has appointed a committee to study future policies on funding student publications after a student humor magazine ran a comic strip that some black students denounced as racist.

The comic strip, which ran in April's issue of The Pillory, was titled, "The Adventures of Mighty Whitie." It portrayed a fight between a white superhero and blacks wearing T-shirts with "watermelon" and "fried chicken" written across them.

While editors said the comic was intended as a satire on stereotypes, many black students said they wanted school funding for the magazine — which is partially derived from student activity fees — to be cut.

While no decision has been made on funding for the upcoming year, the college's president, Timothy J. Sullivan, appointed several faculty members to serve on a committee to evaluate funding policies for student publications. The current policy is not content-based.

Professor Jack Edwards, head of the committee, said he will welcome student input, and that Sullivan requested the committee to have a report by December 1.

Ray Betzner, the current Publications Council chairman, said that Rodney Smolla would be acting as counsel to the committee. Smolla is the director of William and Mary's Institute of Bill of Rights Law.
Theft
(Continued from page 5)

At Dartmouth College, when copies of the conservative *Dartmouth Review* were repeatedly confiscated from campus residences this spring, the school's administration virtually defended paper thieves.

According to a press release issued by the *Review* in late April, Dean of Students Lee Pelton claimed that the students who confiscated the papers had "neither broken any laws nor violated the College's Code of Conduct." In addition, college spokesman Alex Huppe told the Associated Press that the *Review* was "litter" and abandoned property, which ought to be seen in the same light as "menus and free samples of soap."

"This is a very dangerous precedent that has been set," *Review* editor in chief Oron Strauss said. "They can pick up issues, and the college won't do anything about it."

In at least one case, a previous theft has set a precedent when the school's administration did not take a strong, determinate stand against newspaper theft.

Johnathan Burns, editor in chief of the University of Georgia's *The Red & Black* said that an anonymous caller who claimed responsibility for stealing 15,000 papers said he did not expect to be punished.

"The caller said, 'We saw at some northern school that they did it and didn't get in trouble. We didn't think we could get in trouble,'" Burns said.

Burns said he believes the caller was referring to the University of Pennsylvania, which has received national attention due to its former president Sheldon Hackney's nomination to head the National Endowment for the Humanities. (See P.C., page 15). The thieves have not been disciplined. But Hackney said in June charges would be filed against them in the fall.

"These guys saw something happen at Pennsylvania, and now it happened here," Burns said.

Morehouse
(Continued from page 6)

adviser, and three new advisers were chosen in place of the one former adviser.

Miller said the issue that would have been the final paper of the school year was not printed because of communication difficulties — not all three advisers had signed off on the edition.

As a result, there was no paper for the last month and a half of school.

"The process has been set up to hinder the publication of the paper," Miller said, adding that although seven issues were printed in the fall, the spring semester saw only four *Maroon Tigers*.

Miller said that the paper currently is not contemplating any legal action against the school. Rather, the *Maroon Tiger* is in the process of examining possible financial outlets in order to regain control over its editorial content.

Boston
(Continued from page 7)

lution," fundamental disagreements linger after the fact — mainly over the administration's action against the paper.

While administrators contend that the court's dismissal of the case illustrated that the school was not censoring the paper by shutting it down, staffers say that to put a lock on a paper is to put a lock on expression.

"It was taken to court as a First Amendment issue, and it was thrown out of court," Neal said.

"The fact is that on the day of the shutdown, I was denied the vehicle for communicating," Currie said.

"To my mind, if that's not a First Amendment problem, what is it?"
There for the taking?

College journalists do have options for stopping newspaper thieves

In the spring of 1993, the mass taking of student newspapers became a frequent occurrence on college campuses across the country and a crude but effective method of "chilling" the student press. Over a dozen student newspapers found that their efforts to report the news and offer opinions that represent alternative voices in their community were silenced by thieves who cleaned out the newsstands and sometimes even destroyed or burned the publications in public protest over their objection to its content. Many of these newspapers lost hundreds of dollars or more when they had to reprint newspapers or refund money to advertisers whose ads were never circulated. All were left wondering, can the people who take these newspapers get away with it?

That question has prompted a growing number of calls to the Student Press Law Center about the possibility of a legal response to the newspaper theft. As we first noted in the Winter 1987-88 SPLC Report, those who fall victim to thieves may have several legal avenues available to help them stop the taking of newspapers. Criminal prosecution, civil lawsuits and campus judicial proceedings can all be tools in the arsenal for fighting newspaper theft.

Catching the Culprits

The first and possibly most difficult step involved in fighting back against newspaper theft is identifying the perpetrators. If an initial taking occurs without evidence of who was behind it, a wise student publication will attempt to enlist the help of the campus police or security office. Law officers can be asked to keep an eye on newspaper distribution sites as they make their campus rounds. The paper could also place a notice in its own pages alerting readers that they should contact the editor or circulation manager if they observe anyone taking large quantities of the publication from newsstands.

Newspaper staffers can also play a role in catching the thieves. If certain spots seem theft prone, staff members can be assigned to watch during the most important distribution hours or whenever a theft might be expected to occur. It would not be wise for a publication staffer to wrestle with someone taking newspapers or to wait in a dangerous area, but if one can observe safely, he or she might catch a thief in the act. Several college publications have planted photographers on the scene of the takings and have been rewarded with hard evidence of the thieves' identity when they returned to commit their crime again.

But in many cases, simply identifying thieves is not enough to stop them. Only the threat of serious punishment will make the next potential thief think twice about confiscating publications. In that light, criminal prosecution is probably the most potent method for fighting newspaper theft.

Seeking Criminal Charges

The biggest limitation on pursuing criminal charges is that the ultimate decision to do so is out of a publication staff's hands. It is up to a criminal prosecutor to decide if there is enough evidence that a crime has been committed to justify the filing of charges. Newspapers that have experienced theft can and should file a police report and ask for criminal prosecution. But if the police or prosecutors are not interested, the criminal case ends there.

The most frequent explanation given by police and prosecutors for not pursuing newspaper thieves is their belief that "you can't steal free newspapers." Because most campus publications are distributed without charge, these law enforcement officials believe those who take them can collect as many copies as they want and do anything they choose with them.

This belief is based on a misconception that campus news-
<table>
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<th>Publication</th>
<th>Type of Publication</th>
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<td>California Polytechnic State University</td>
<td>The Mustang Daily</td>
<td>Student newspaper</td>
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<td>The Highlander</td>
<td>Student newspaper</td>
<td>1,000 copies stolen</td>
<td>February 1993</td>
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<td>Middle Tennessee State University</td>
<td>Sidelines</td>
<td>Student newspaper</td>
<td>500 copies stolen</td>
<td>July 1993</td>
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<td>North Adams College</td>
<td>The Beacon</td>
<td>Student newspaper</td>
<td>More than 100 copies</td>
<td>October 1992</td>
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<tr>
<td>North Carolina State University</td>
<td>State Critic</td>
<td>Conservative</td>
<td>2,000 copies stolen</td>
<td>March 1993</td>
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<td>Trenton State College</td>
<td>The Signal</td>
<td>Student newspaper</td>
<td>5,000 copies stolen</td>
<td>October 1992</td>
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<td>The Hurricane</td>
<td>Student newspaper</td>
<td>300 copies stolen</td>
<td>March 1993</td>
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<td>University of North Carolina</td>
<td>The Daily Tar Heel</td>
<td>Student newspaper</td>
<td>More than 100 copies</td>
<td>April 1993</td>
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<td>The Badger-Herald</td>
<td>Conservative</td>
<td>10,000 copies stolen</td>
<td>April 1993</td>
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<td>Yale Daily News Magazine</td>
<td>Monthly magazine</td>
<td>2,000 copies stolen</td>
<td>February 1993</td>
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*This list is comprised of thefts not mentioned in "Good Enough to Steal" on page 4.*
Fighting Theft
(Continued from page 10)

papers may have to work hard to change. It stems from the notion that when a distribution box is filled on campus or a
stack of newspapers is left in the lobby of a dorm, the newspaper
staff is giving an open invitation to takers and has given up any "possessory interest" it has in the papers. But both custom
and logic suggest that is not the invitation given by the newspaper at all.

As long as there have been printing presses (and probably even before) there have been free publications distributed by
those who found a means to pay for their publication other than
by selling it. In the past, these journalists would likely have distributed their publication by handing it out in person at the
town square or outside a meeting hall. The common understand­
ning was that one publication would be given to each
person who wanted one, or maybe two if they asked for an extra
for a friend or family member to read. No reasonable person
would have thought he could grab a bundle from the distributor's
hands in order to diminish the reach of the publisher's message.

If a passerby had attempted such a stunt, the distributor and the police would probably have followed the thief in quick pursuit.

As towns grew and people spread out, the lonely pamphleteer could no longer reach all of his prospective readers by standing in one spot. Thus the distribution box became a vital means for reaching the entire community. The invitation being made by the publisher remained the same: take a single copy for yourself or an extra
or two for someone else to read. The community, by and large, understood that invitation and followed it.

One need only look to the level of controversy that the mass
taking of free newspapers on college campuses around the
country has caused to appreciate how the notion of taking a
single copy is the accepted custom. Why is everyone so
surprised when the press run of a free newspaper is confis­
cated? Why is it that the vast majority of free distribution
publications are not confronted with mass takings, even when they publish controversial stories that their readers do not like?
The notion that a reader is invited to take just one copy is such an accepted norm that few questioned it until the thefts began.

Logic also helps clarify the intention of the newspaper in placing newspapers in distribution bins on campus. Would a
rational newspaper continue to publish if it knew that every issue
could be whisked away by its opponents? Why would an ad­
vertiser buy space in a free publication if it knew that every
single copy of any issue could be destroyed without being
read? The life of every free distribution newspaper rests on
the notion that distribution by invitation to take a single copy is
appropriate and accepted.

Few law enforcement officials will have thought about
distribution of free newspapers this thoroughly, so some reme­
dial education might be in order. Many will understand that
who has the rightful "possessory interest" in the publication
when it was taken is a key issue. A newspaper staff can point
out that the publication was placed in distribution boxes around
 campus that belong to the newspaper with the school's con­
sent. If the boxes do not already say "take one," a newspaper
might want to think of adding that phrase. Similarly, a
publication might want to put in its masthead or any other
appropriate spot in the publication the sentence, "Single copy
free, additional copies $1 (or whatever amount deemed appro­
priate)." All of this information could help persuade a police
officer or prosecutor that the newspaper had not completely
given up possession of the publications. But even if the
newspapers had none of the language above and were distrib­
uted from a stack on the floor, custom and logic indicate that
the newspaper still claimed some right to possession of the
newspaper and was only inviting readers to take a single copy.

The specific criminal charge or charges that could be filed
against someone who confiscates newspapers could vary from
state to state. A charge of theft or larceny, which is typically
defined as the unlawful, intentional taking of property belong­
ing to another, would be the most obvious.1 A successful
prosecution would have to demonstrate that the accused had
taken and removed papers that were still the property of the
news organization without its consent and with an intent to deprive the news organization of them.2

Some prosecutors might choose to charge newspaper thieves with "malicious mischief," which is "the reckless, knowing or intentional damaging of another's property, or the damaging of property of another without a real right to do so."3 The
elements necessary for a successful criminal mischief
prosecution are damage to the tangible property of another, acts done without the right to do so, intention or malice and lack of the owner's consent to

Other criminal charges that could be pursued include crimi­
nal conspiracy, if a group is involved in planning the taking,
and receiving stolen property.

In almost any criminal prosecution, two issues will be
important. One is demonstrating that the newspapers have
value and the other is showing that the thieves had the neces­
sary criminal "intent."

Establishing a value for newspapers may involve another
battle to overcome misconceptions. Some law enforcement
officials may believe that "free" means the publication is
worthless. It should not be difficult to show how wrong that
notion is. Even a free newspaper is paid for, in terms of the
money that goes into printing, staff salaries, photo supplies and
reporting expenses such as phone calls. Although subscri­
bors or readers may not pay these costs as each issue is distributed, the
money to cover them still has to come from somewhere.
Typically, it is generated by student activity fees or school
contributions that are the equivalent of an advance payment for
a bulk subscription and from advertising revenue. Obviously,
neither of those sources of money would last if the newspaper
did not have some value.

Demonstrating criminal intent should be no more difficult

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than showing that people who did the taking did so because they wanted to punish the newspaper or deprive others of access to it. Thus, the student who takes an extra copy to house train her puppy would be protected from a criminal prosecution. Similarly, the student who wanted to pick up 50 copies of the paper to pass out at his club meeting that night would be safe, unless he was seen throwing them in the trash because he did not like the coverage his club received. Most of those who confiscate college newspapers make no secret of their motivation: they are out to cover up a story they do not like or let the publication staff know that they oppose its content decisions. Thus demonstrating the criminal intent of newspaper thieves should seldom be difficult.

**One Reported Criminal Ruling**

Research by the Student Press Law Center has only uncovered one prosecution of students for stealing free distribution college newspapers. In February of 1988, four students at the University of Florida were charged with theft after they confiscated large quantities of a conservative campus newspaper, the Florida Review, that reported on dissension within the campus College Republicans group. The students eventually pleaded “no contest” to the charges and were sentenced to six months probation and 25 hours of community service and were required to pay court costs. As this issue of the Report goes to press, two criminal prosecutions are pending against those accused of taking college newspapers. Two students at Penn State University have been charged with theft, receiving stolen property and criminal conspiracy, and a student at Southeastern Louisiana University has been charged with criminal mischief. A successful prosecution in either of these cases should bolster future newspaper theft cases.

**Filing a Civil Lawsuit for Damages**

Student newspapers that have fallen victim to censorship by theft are not limited to asking that criminal charges be filed. They also have the ability to file a civil lawsuit against those who have taken their publications. The most likely civil lawsuit they might pursue is one for “conversion.”

Conversion is defined as an intentional exercise of dominion or control over a person’s property that so seriously interferes with that person’s right to control the property, the actor can be required to pay the other person the property’s value. When someone confiscates copies of a student newspaper, they “seriously interfere” with the ability of those who produce it to distribute the information in it to their readers.

To make a successful conversion claim one must show a possessory interest in the papers at the time they were taken, that they were in fact taken by those accused and damage resulting from the taking. A conversion claim requires an intent to exercise dominion or control over the property at issue, but it does not require malice. An act of conversion is not excused by good intentions or the thief’s belief that his actions were permitted by law.

is trash protect her from liability. In addition, a person may be guilty of conversion by actively aiding, abetting or instigating a taking by others.

One who takes a large quantity of newspapers for the purpose of destroying or denying others access to them exercises control over the paper’s property. Typically that control is permanent. In most newspaper thefts, the papers are destroyed; in other situations, the papers that are taken are dumped in the trash, soiled and never able to be used again if they are recovered. Even when the newspapers are recovered and usable by the publication staff, a distribution delay of half a day or more can have a significant impact on the paper’s ability to get out the news that readers want.

Property at issue in a conversion claim does not need to have a commercial or market value. In an 1851 case, the U.S. Supreme Court agreed that one copy of a newspaper valued at only six cents could be the subject of a conversion lawsuit.

The inconvenience of newspaper theft is considerable. Those who read the appear but are denied information; those who advertise the paper are not able to reach their target audience. In both contexts, the newspaper’s credibility will be damaged if it does not respond by reprinting the newspaper or refunding advertisers money. Either response represents damage done to the publication.

**Determining the Amount of Damages**

Generally, “market value” — that is the value of the property if it were sold, is used to determine the amount of damages thieves should be required to pay in a conversion case. But where market value fails to provide a true measure of damages, as it undoubtedly would with free newspapers, another measure may be used. One method would be to determine the cost of reprinting for the number of issues that were taken. However, that amount will not reflect the true loss to the newspaper if the paper did not reprint at the time. A better reflection of damages might be the cost of printing the stolen issues plus the value of the advertising revenue in those issues as well as an appropriate proportion of any other expenses that went into producing that issue of the newspaper.

The paper might also want to attempt to set some value to the damage suffered to its reputation for reliability with readers’ resulting from its absence or delay. Punitive damages might be available when the newspaper can show that the thieves acted with malice or the intention of doing harm to the paper, even when the actual damage suffered by the paper is only nominal.

One state, New York, has a statute on the books that prohibits the unauthorized removal or destruction of newspapers. Those who violate its provisions can be fined up to $1,000. But the law defines “newspapers” only to included those “general circulation” publications that are distributed ordinarily not less frequently than once a week. A college paper that comes out
Fighting Theft
(Continued from page 13)

on a less frequent basis would not be covered by the law.

Making a First Amendment Claim

A conversion claim may not be the only civil lawsuit remedy available to a newspaper that has had copies confiscated. At a public college or university, if the thieves were school officials or student government leaders, or those acting on their behalf, it might also be possible to pursue a claim for violation of First Amendment rights.

Court decisions from around the nation have consistently said that the college press is entitled to significant First Amendment protection. A public school cannot censor stories, fire editors or advisers, cut funding or take any other action against a publication to punish it for its content. Theft or confiscation of newspapers would certainly be seen as one of the forms of censorship prohibited by the First Amendment.

But for a valid First Amendment claim to exist, the person or persons taking the newspapers must be a "state actor" — that is, they must be acting on authority delegated by the school or some other state agency. When college administrators or employees are the culprits, this requirement is easily met. The same would probably be the case if the action was taken by a student government official, whose position is a result of authority delegated by the school administration. The state action requirement is less easily met when those taking the papers are rank-and-file students. Unless some tie to school officials can be shown, their actions will probably not be considered a First Amendment violation.

However, it might be possible to pursue a First Amendment claim against the school itself, even if students were the ones who did the taking. On some of the campuses where newspaper thefts occurred this spring, school administrators seemed to offer their support for the thieves. If a second theft occurred after there were indications of administrative endorsement, the paper might be able to make a claim for First Amendment infringement against the school itself. Such a claim might be a long shot, but the threat of it might wake up school administrators to the risks that go along with supporting newspaper theft.

Going to Court Without a Lawyer

The Student Press Law Center has pledged to help college newspapers who have fallen victim to theft pursue civil charges by helping them obtain local lawyers who will donate their time to argue the newspaper's case. But those publications that are lucky of the prospect of engaging an attorney for a lawsuit may still have an avenue for seeking damages: small claims court.

People who sue in small claims court usually do not use lawyers and may even be prohibited from doing so. Most such courts set a limit on the amount of damages you can request in a proceeding before them. In most states, that amount is $1,000 or less. But for making a point with newspaper thieves, a small claims court can be a valuable tool. Typically, one must obtain a form from the court, complete it and return it with a small filing fee and then be prepared to present their case before a judge. Small claims courts, like other judicial bodies, do require evidence of the claimed wrong, so witnesses, photos or a police report would be important. A claimant would also want to be prepared to show evidence of the value of the newspapers that were taken such as printing bills, advertising insertion receipts that were refunded or other relevant information.

On-Campus Remedies

Finally, those college newspapers that want to force thieves to face consequences on campus for their actions can pursue school judicial proceedings. At the University of Pennsylvania, school administrators adopted a policy prohibiting newspaper confiscation in 1989 after a theft incident on campus. After 14,000 copies of The Daily Pennsylvaniaian were taken by protesters this spring, school officials have said students will be charged with violation of that policy.

Even a school that does not have an explicit policy prohibiting newspaper theft may still have rules that can be used to punish thieves. Most colleges have policies that allow students to be punished through a campus judicial proceeding for committing a crime on campus. Newspaper theft would certainly fall within that prohibition. In addition, many schools have adopted free expression policies that make interfering with the expression rights of others a punishable offense.

A campus editor should be prepared to go to the campus judicial officer and demand that charges be filed against those who confiscate her newspaper. Many campus officials will not think of instituting these charges on their own. Prodding by the student press may be the only way to get the ball rolling.

Until law enforcement officials and school administrators take newspaper theft seriously, the issue will pose a threat to the college press around the country. But student publications can work to speed up that change in attitude by knowing their rights and by being willing to pursue a legal remedy when theft occurs.

If you have had a problem with the confiscation of student publications on your campus, call the Student Press Law Center at (202) 466-5242. We can help provide information that will assist in your fight against newspaper thieves.

2 Id.
3 54 C.J.S. Malicious or Criminal Mischief § 2 (1988).
4 Id.
6 Restatement (Second) of Torts § 222 A (1965).
8 Id. at § 3. Restatement (Second) of Torts § 244 (1965).
9 See Poggi v. Scott, 167 Cal. 372, 139 P. 815 (1914).
11 Id. at § 98.
12 Teel v. Felton, 53 U.S. 284 (1851).
14 Id.
15 Id. at § 114.
16 N.Y. General Business Law sec. 396-x (McKinney 1993 Supp.).
P.C. and Politics

Newspaper theft at University of Pennsylvania leads to national debate on freedom of speech

For students at the University of Pennsylvania, it was a question of free speech versus multiculturalism. For the president of the university, it was potentially an embarrassing road block to a high-ranking political appointment. For the nation, it sparked a debate on political correctness on campus.

In April, 14,000 copies of the Daily Pennsylvanian, the student newspaper, were taken from their distribution bins by students calling themselves "the Black Community." The students indicated they objected to an editorial page student columnist, who often wrote about his conservative views on race-related policies at the school.

Like other college paper thefts, the incident probably would have received little notice. But the university's president was Sheldon Hackney — President Clinton's nominee for chairman of the National Endowment for the Humanities.

As Hackney's confirmation hearings neared, scrutiny of his reaction to the theft and subsequent controversy increased.

Hackney also had to explain his behavior in an unrelated incident involving a student who was charged with racial harassment after calling several black female students "water buffalo" as they were making noise outside his dorm one night. The charges were later dropped by the students.

The staff of the Daily Pennsylvanian, members of the national media and Republican senators were sharply critical of Hackney's response to the theft, saying that he had failed to condemn the students who had stolen the papers.

Hackney was touted as a symbol of "political correctness," a man who valued a speech code over freedom of speech.

But during his initial confirmation hearing, Hackney said his position had been misrepresented. "Free speech is a fundamental value for a university campus," he told the Senate committee. "I have not, cannot and will not compromise on open expression."

Hackney admitted that his initial statement after the theft had been "mushy," and that he should have "done things differently," but still defended his actions.

"I did come out and condemn [the theft]," he said.

But Stephen Glass, executive editor of the paper said before the hearing that the paper's staff was not supported by Hackney.

"The university has refused to condemn the activity as wrong," he said. "They've taken a middle of the road approach. That's appalling."

In his initial statement after the theft, Hackney said that "Two important university values, diversity and open expression, seem to be in conflict."

Glass said the paper is considering legal action against the students involved in the theft — and possibly against the university. Hackney was confirmed by the Senate as chairman of the NEH in August.
National leaders advocate free speech
Clinton, Rehnquist for censuring, not censoring

It just might be the commencement of something good.

In two separate university commencement speeches this May, First Lady Hillary Rodham Clinton and Supreme Court Chief Justice William Rehnquist used their time at the podium to voice support for freedom of speech on campus, and to decry blind subscription to "politically correct" ideology.

Both Clinton and Rehnquist's statements struck a particularly sensitive nerve at the University of Pennsylvania and George Mason University, respectively, as both schools have faced issues of censorship and freedom of expression within the past school year.

At the University of Pennsylvania, 14,000 copies of the student newspaper were stolen, and a freshman was threatened with expulsion for yelling "Shut up, you water buffalo!" at black sorority women. (See P.C., page 15.) Clinton said that the students should remember that freedom of speech is an inalienable right for everyone.

"We must be careful not to cross the line between censuring behavior we consider unacceptable and censoring," Clinton said to loud applause. "We have to believe that in the free exchange of ideas, justice will prevail over injustice, tolerance over intolerance and progress over reaction."

Rehnquist voiced similar ideas at GMU's Virginia campus, two weeks after a federal appeals court ruled that the school's penalization of a fraternity for staging an "ugly woman contest" was unconstitutional. (See UGLY WOMAN p. 17.)

"Ideas with which we disagree — so long as they remain spoken ideas, and not conduct which interferes with the rights of others — should be confronted with argument and persuasion, not suppression," the Chief Justice said.

Bills would protect student expression

WASHINGTON, D.C. — In the wake of recent debates on the legitimacy of speech codes on college campuses, two Republican legislators on Capitol Hill are responding to the prevailing currents.

Two proposed bills dealing with free speech on campus, one in the House of Representatives and one in the Senate, have until recently been subsumed beneath other issues.

But Brooke Roberts, aide to Sen. Larry Craig (R-Idaho), said recently that both the continuing debate on campus speech codes and a meeting with Sheldon Hackney, former president of the University of Pennsylvania, had "renewed [Craig's] interest" in his Freedom of Speech on Campus Act, which was originally proposed in 1991.

"Our original motive was to try to get schools to reexamine speech policies, and to rewrite ones that trample on students' rights," Roberts said. "There is a growing realization [that some codes] are unworkable and unfair."

The Freedom of Speech on Campus Act would "ensure that students attending institutions of higher education that receive federal funds are able to exercise the right to freedom of speech," according to the text of the bill.

Roberts said that the bill may be reintroduced in the Senate at the beginning of the 1993 school year.

In the House of Representatives, aides of Representative Henry J. Hyde (R.-Ill.) said that they do not foresee immediate action on Hyde's proposed Collegiate Speech Protection Act, but that speech codes are undergoing reevaluation across the country.

Unlike the Freedom of Speech on Campus Act, which would withdraw federal funds from colleges maintaining speech codes, the Collegiate Speech Protection Act would amend the Civil Rights Act to let students take legal action against schools with codes.

The proposed legislation would invoke a federal stamp of authority on students' rights to freedom of speech.

The bills would apply to public institutions and also extend to private schools, since both are recipients of federal funds through Pell grants, Stafford loans and other federal funding.

Sam Stratman, Hyde's press secretary, said that as a result of student conflicts with speech codes, such codes are and will be "falling like dead flies."

"What we have seen is a greater recognition that speech codes are a poor way to deal with campus fracases," Stratman said.
Students protest ‘offensive’ joke

NEW JERSEY — According to some students of Rowan College, a satirical ad advocating “starting your own hate group” is no “modest proposal.”

Students at the Glassboro, N.J., college apparently did not find the joke ad that ran in the college’s satire magazine, The Venue, on par with the wit of Jonathan Swift. Instead, many readers were offended, and demanded that the editors apologize and that funding for the publication, taken from student activity fees, be revoked.

The ad, which invited students to order their own hate group start-up kit, wished them “good luck, and happy hating!” in their attempts to oppress the group or groups of their choice.

“You really have to stretch to think that anyone could possibly take this seriously,” Venue adviser and Communication Professor Steve Shapiro said.

However, many students at the time said they felt the ad was an attempt to incite racial hatred. The campus chapter of the NAACP, among others, demanded that the student government revoke the magazine’s funding, saying they did not think the mock ad was funny and therefore did not know that it was intended as satire.

Rowan’s president Herman James condemned the ad in a statement, saying that “responsible journalism requires sensitivity to the sensibilities of its readers.”

The students also said they did not want their student activity funds directed to a publication that they found offensive.

In response to these groups, the school’s Student Government Association allocated the Venue $11,500 — a little over half of its regular $21,000 annual funding. The rest of the money was to be held in reserve until further notice.

According to Shapiro, the student editors of the Venue received three death threats at the height of the controversy over the ad, and bricks were thrown at the walls of the magazine’s offices.

In response to intimidation and pressure, Shapiro said, the magazine’s editors decided without his input to break from their previous position of not apologizing for the ad, and to make a public declaration of apology.

The apology stated that “the article was a satire piece ridiculing the ignorance and stupidity of hate groups. The ad was not meant to show racism as funny. Racism is a very serious and sensitive issue.”

Following this apology in a public hearing, the groups retracted their complaint, and the magazine received $23,000 — $2,000 more than their usual annual funding.

“After the public hearing, the money was restored,” college spokesperson Stan Bernstein said. “Whatever grievances and upset students had were aired.”

(See ROWAN, page 23)

‘Ugly woman’ skit ruled constitutional

VIRGINIA — It may not have been “Saturday Night Live” caliber, but a federal appeals court ruled that an “ugly woman skit” staged by Sigma Chi fraternity members at George Mason University is still protected by the First Amendment.

“The low quality of entertainment does not necessarily weigh in the First Amendment inquiry,” Judge James M. Sprouse wrote, with a rather skeptical note, in early May.

The appellate court’s ruling was a victory for the fraternity, and upheld an earlier ruling in their favor at the district level that was being appealed by the university.

The skit, performed by Sigma Chi brothers at a fundraiser in 1991, featured the men dressed as women; one student stuffed his outfit with pillows to make large breasts and buttoks, painted his face black, and spoke in slang to parody blacks.

The skit’s intended humor, however, didn’t sit well with more than 200 students.

The students signed a petition condemning what they said were the skit’s “racist and sexist implications.”

The university followed by placing a two-year social activity sanction on the fraternity.

The sanctions were nullified by the ruling at the district level.
H.S. CENSORSHIP

Political Victims

High school free expression bills die due to conservative opposition, professor says

The "religious right" and "conservative politicians" victimize high school journalists, according to a longtime journalism educator and defender of press freedom.

Louis Inglehart, a professor emeritus of Ball State University and an author of books on press law and the First Amendment, said that recent state legislation that would guarantee freedom of expression for high school journalists has been defeated because of the reticence of some politicians to endorse "social legislation."

"I would say the very conservative politicians are trying to keep the bill from coming forward in many of those states," he said.

"If a particular party has the most people in the government, they have the right to stymie everything."

Over the summer free expression bills for students died in the state legislatures of Idaho, Illinois, Indiana and Connecticut. A third bill in Wisconsin is also expected to die in committee next session, according to a legislative aide. Bills in Michigan and New Jersey are sitting in committee. Other bills, including ones in Kentucky and Missouri, may be reintroduced next session.

The legislation stemmed from the 1988 Supreme Court decision in Hazelwood School District v.

Kuhlmeier that limited students' free press rights by giving school administrators more authority over school-sponsored student publications. Since then, four states — Colorado, Iowa, Kansas and Massachusetts — have passed laws guaranteeing student free speech in response to the ruling. California already had a student free expression law in place before the ruling.

Inglehart said that in his home state of Indiana, Republicans fought to kill the free expression bill.

"It's entirely controlled by the chairman of the [state] senate, and he's a Republican. They refuse to allow [the bill] to come to the floor or even to get assigned to committees."

Inglehart also said that the conservative lean of the U.S. Supreme Court has hurt students seeking the same protection as professional journalists.

"It really didn't make much sense to get [Hazelwood] to the Supreme Court when it was ruled by conservative elements," he said.

Inglehart also said that religious members of local communities have been mobilizing to keep students' voices controlled in the name of discipline.

"And who suffers? The high school kids do because the school puts all kinds of pressure on them to avoid these kinds of hot topics in the paper, like abortion and sex education."

But although Hazelwood was a blow to high school journalists, he said, some courts and schools have shown more acceptance of teenage expression.

"I'm always optimistic," he said.

"If the political climate changes just a little bit to get more laws passed, and the Supreme Court changes and becomes more sympathetic, the tide may turn."
Justice Marshall’s papers reveal details of Hazelwood decision

WASHINGTON, D.C. — The recently released papers of the late U.S. Supreme Court Justice Thurgood Marshall provide a rare behind-the-scenes look at how the Court reached its 1988 decision in Hazelwood School District v. Kuhlmeier, in which the Court upheld the right of a high school principal to censor stories that dealt with teenage pregnancy and the impact of parents’ divorce on students.

The Hazelwood decision, which significantly cut back on the First Amendment rights enjoyed by many high school student journalists, allows school officials to censor school-sponsored student expression that takes place outside a public forum as long as their actions are "reasonably related to legitimate pedagogical concerns."

Prior to Hazelwood, most courts followed the standard established in the Supreme Court’s 1969 case of Tinker v. Des Moines Independent Community School District. Before censoring a student newspaper article under the Tinker standard, a principal had to show that it would create a “material and substantial disruption of school activities” or would invade the rights of others. Unlike Hazelwood, the Tinker standard was generally difficult for school officials to meet.

While many legal experts and journalism educators were shocked by Hazelwood and surprised that the Court would cut back so drastically on the First Amendment rights afforded students, Marshall’s papers show that the outcome could have been much worse. The first draft of what would become the majority opinion in Hazelwood, written by Justice Byron White and circulated to the Court on Nov. 17, 1987, shows that he would have allowed school officials to censor school-sponsored student expression unless the reason for doing so was "wholly arbitrary."

Under this standard, White indicated that the only time a school official’s censorship would violate a student’s First Amendment rights was "when school officials gave no reason whatsoever for refusing to disseminate facially permissible student speech...."

In a Nov. 20, 1987, letter to White, Justice John Paul Stevens wrote that although he was in “substantial agreement” with White’s opinion, he was "troubled by the ‘wholly arbitrary’ standard...[and found] the use of that term in a First Amendment case...somewhat jarring.” He asked that White substitute “something like ‘appears to be wholly unrelated to pedagogical concerns’ or perhaps, ‘appears to have no valid educational purpose” for the “wholly arbitrary” standard.

Stevens also asked that White change a portion of the draft in which White referred to the newspaper’s statement of policy as only an “expression of... stu-

(See MARSHALL, page 26)
Student sues principal after arrest

ILLINOIS — A Chicago high school journalist filed a $2 million lawsuit in July against her principal for having her arrest. Her arrest stemmed from a dispute over an editorial she had written about him.

Cynthia Hanifan, 17, was arrested at Hubbard High School in June at a pre-graduation awards ceremony where she was to receive several honors. Principal Charles R. Vietzen had her charged with trespassing because he had previously suspended her from school for four days.

Vietzen said he suspended Hanifan because she did not obtain the proper permission from the high school paper’s adviser before printing an editorial that criticized Vietzen for his no-shorts policy during hot weather.

But Hanifan said she had shown the article to the adviser of the Cavalier and had not been forbidden to print it. She said she was suspended because Vietzen was stung by what she had written.

The column read in part: “Adding to student outrage over the anti-shorts rule is Dr. Vietzen’s apparent hypocrisy on the issue. When asked if he had any intention of reviewing the anti-shorts rule, Dr. Vietzen answered no. ‘We must all be patient,’ he said. But it must be easier for Dr. Vietzen to be patient while sitting in his air-conditioned office than for students who are sweltering in boiling classrooms.”

“She’s trying to make it a free-press issue, and it’s not,” Vietzen told the Chicago Sun-Times. “High school papers don’t have that protection. The Supreme Court ruled that four years ago.”

Vietzen was referring to (See CHICAGO, page 23)

Youth magazine censored by L.A. Times

CALIFORNIA — For the past five years, Los Angeles teenagers have been learning the ropes of big-city journalism — reporting on drugs, sex and gangs while working with professional editors to produce LA Youth, a magazine by and for teenagers.

But in May the students learned about yet another aspect of the profession when their printer, the Los Angeles Times, forced the students to delete a paragraph in a story about AIDS prevention and oral sex.

The lines cut came from a commentary by a writer who had attended a party advocating safe sex and described both the events and her reactions to them.

The Times deleted these quotes from a student who attended the party: “They actually showed some guy putting a condom on his erect penis. Gross! They showed people having sex.”

The Times also deleted a descriptive paragraph about a film that was shown at the party. The paragraph included phrases that had been flashed up on the screen, including “Silencio = Muerte,” “Men who don’t use condoms beat it,” “Use a dental dam for eating her out,” “Cut a condom in half to use as a dental dam” and “Wash sex toys thoroughly in between sharing them.” Another line that referred to a rap song with the words “Fuck the police” also was deleted.

But Donna Myrow, executive director of the youth magazine, said that she has worked out an agreement with the (See LA YOUTH, page 23)
Editor resigns due to censorship
Principal's scrutiny brings 'chilling effect,' student says

FLORIDA — Censorship or editing? A violation of rights or a matter of good taste?

A principal and a student newspaper editor at one West Palm Beach high school could not agree on who should have final control over editorial content, and the conflict led to the editor's resignation.

Matt Steinhoff, former editor of The Talon, the student newspaper at Forest Hill High School, disagreed with Principal Carlos Rosello's decision to edit a letter to the editor on racism in February.

The ensuing controversy over a student's First Amendment rights was debated at Forest Hill throughout last semester.

In February, Steinhoff received a student's letter to the editor that dealt with the writer's perceptions of race relations at the school. The letter said, in part, that "I am so sick of hearing how persecuted black(s), sorry, 'African Americans,' are."

During Principal Carlos Rosello's usual pre-publication review of the paper, Steinhoff said Rosello told him that the letter was too "inciteful" to be run.

Rosello asked the student to write a new letter which read in part, "Civil rights means that everyone has the right to live their lives as they choose so don't judge me because of my color and I won't judge you."

Steinhoff said he confronted Rosello several times about running the original letter, or running the revised letter with an editor's note explaining that Rosello had objected to the original letter. Rosello insisted that the revised letter run without an editor's note.

Steinhoff said he had to resign at that point because, "I had no control over the paper after that. If he's going to be the editor, he doesn't need me."

Censorship or safety?

But Rosello insisted that he understands and deplores the damage censorship can do. He said that he objected to the letter because it might have "incited students" to "riot."

"When I came in to the job in January, we had already had a lot of problems with fights and rioting, which had been in the press," he said. "We had a lot of discipline problems, and some of them were racially motivated."

When he saw the letter, Rosello said, "I don't think anybody gets to print whatever they want."

But Steinhoff stated, "I need the freedom to do what I know is right."

Dispute over censorship continues

Steinhoff said the paper's troubles did not end there, despite controversy that arose and the coverage in the local media.

In one of the last issues of The Talon, a paid advertising section called "Senior Wills" was cut after extensive editing by the paper's adviser, Elizabeth Dennis.

The section usually involves seniors leaving joke gifts to underclassmen said Steinhoff, who still works at The Talon as a photographer.

But this year, the adviser wanted to cut about 40 lines, so the staff decided to cut the section altogether.

"I know the new editor got a lot of pressure over the Senior Wills," he said.

Dennis said some of the wills were offensive to the "high standards for our community."

Steinhoff said Rosello's previous actions have led to a "chilling effect" on the staff and the adviser.

Dennis said,
School appeals court decision that allows distribution of religious paper

ILLINOIS — A school district is appealing a federal court decision that would allow a student to distribute a religious publication on campus.

The Wauconda Community Unit School District has been trying to prevent student Megan Hedges from handing out a religious leaflet, Issues and Answers, at her junior high school since 1990. The publication is not affiliated with the school or published by its students.

In the earlier court decision, Judge Paul E. Plunkett ruled that the school's policy of prohibiting distribution was "unreasonable," but affirmed the idea that the school is a "closed forum," subject to regulation by the administration.

In their appeal, the school district has argued that prohibiting distribution of outside publications is appropriate because certain organizations may use students to further their agenda on school grounds. The district also argued that students might wrongly think those publications are sanctioned by the school.

But in a friend-of-the-court brief, the Student Press Law Center argued that the school is an open, public forum for the students and that regulating student expression is unconstitutional prior restraint.

Since the publication would not create a substantial disruption of school activities or an invasion of the rights of others, its distribution should be unfettered, the SPLC brief said.

The case may hinge on the court's ruling on the school's forum status.

If the court decides the school is a closed forum for student expression, school administrators will have more power to limit independent student publications.

Hedges first brought the case as a 13-year-old. She has since left the school.

Students stop principal’s censorship

FLORIDA — Student journalists at Tarpon Springs High School found an unlikely ally against censorship — the county school superintendent.

Staff members of The Serif, the student newspaper, had their first encounter with censorship in April when their principal, John Nicely, told them not to print an article about a petition that was circulating among a teacher.

Student Meredith Brown, who was then the editor, looked at the school's code of conduct and saw that the principal only had the authority to censor the paper in case of obscene material, libel or writing that would cause "a substantial disruption of school activities."

She did not believe the article fell under any of those categories, and wrote Nicely a letter asking that he inform her of his reasons for wanting to cut the story. According to Ken Henderson, the paper's adviser, Nicely did not reply for about three weeks.

Instead, Nicely said he wanted to see the story, Henderson said. After he read the article, he told the students he did not want it to run because it would "belittle or degrade" the student and teacher involved.

At that point, Henderson said, "We could either let it go or choose to fight it."

They chose to fight. Brown wrote a memo about why she wanted it to run and sent it to Nicely, and then he delivered a written letter about why she could not run the story. She then filed an official appeal and sent a copy to the area superintendent, Henderson said.

"Within two days the superintendent called the office and told her she could publish it," he said.

Henderson said the superintendent was concerned that the school code be followed, even though he sympathized with the principal's position of trying to protect the reputation of the school and its teachers.

"It was a major victory for [the students]," Henderson said. "It was the first time [Nicely] had come in..." (See TARPON, page 23)
LA Youth
(Continued from page 20)

Times so that the situation won’t be repeated.

The students were “extremely upset,” she said. “We represent a forum [for views] they can’t express in school.”

In its five years of distribution to area high schools, Myrow said she has never received a complaint about offensive content, so she could not really understand the Times’ concern.

“I don’t know how one of the largest newspapers in the world can stand up and defend itself on this,” Myrow said.

The Times did not return phone calls for comment.

After meeting with members of the Times editorial staff, Myrow said, “We’re confident now that it will never happen again.” She said she has reached an informal oral agreement with the Times that they will continue to print the magazine for free and maintain a “hands-off” editorial policy towards it.

Chicago
(Continued from page 20)

the 1988 Supreme Court decision in Hazelwood School District v. Kuhlmeier that limited students’ free press rights.

However, even the Hazelwood decision said school officials must present some reasonable educational justification before they can censor a school-sponsored student publication. The courts have also said that a school’s censorship under Hazelwood must be “viewpoint neutral.”

Hanifan replied, “I felt I should stand up for my own rights and the right to free speech.”

The principal also sharply criticized Hanifan in the Illinois press, saying she “just deliberately tries to provoke things.”

“This is a non-issue,” he told the Chicago Tribune. “It’s so silly. Cynthia likes to create issues over nothing. She’s a crusader.”

Hanifan countered that she felt her rights as a student journalist were an issue of importance. “No matter what the consequences, I’m happy that I’m standing up for what I believe in.”

NEA establishes network to help threatened advisers

WASHINGTON, D.C. — The National Education Association has established a support network run by and for teachers who have faced censorship.

NEA spokesman Paul Putnam said teachers are experiencing more threats to their First Amendment rights than ever before.

“With all the attacks schools receive now, we thought teachers should have someone to offer support and encouragement,” he said. “We’ve had all kinds of calls about attacks on sex education and book censorship.”

Putnam said that “right-wing, fundamentalist Christians” are attempting to control local school boards, and are increasing the frequency of attacks on academic freedom.

The NEA network, open to all NEA members, offers counseling in attacks on curriculum, books, sex education, AIDS education and other subjects. Putnam also recommends that teachers they insist that boards deal with such controversies through established procedures.

Ultimately, he said, “the outcome will be determined by whether the radical right loses the war or just the battle. We have to focus on teachers so that [the controversies] don’t cause them to practice self-censorship.”

For more information on the network, call Putnam at (202) 822-7727.

Tarpon
(Continued from page 22)

and told the kids they absolutely couldn’t do something.”

The adviser said Nicely does not see his decision as censorship.

“He calls it ‘good judgment,’” Henderson said. “But we felt we had to make a statement that we weren’t going to be censored.”

Henderson said that the issue had never come up before, even though The Serif had run stories in the past on subjects like condom usage and interracial dating.

“If students follow the code of conduct and avoid material that could be libelous, obscene or cause a substantial disruption, I think we should get support from our administration here,” he said.

“But I think they handled the situation well in running the articles.”

The controversy sparked a debate in the pages of The Serif about whether the student newspaper should be a public relations vehicle for the school or an objective source of news.

After several comments from teachers and students with differing opinions on the subject, Henderson was quoted as saying, “The function of a high school newspaper is to print the news, not treat it like a public relations vehicle. The student journalists have to cover the bad as well as the good.”

Rowan
(Continued from page 17)

While Bernstein said that meetings with concerned students would continue during the fall semester, Shapiro said he was disturbed by the reasoning exercised by the student government in the face of the issue of political correctness.

“The saddest thing was the logic —

we were offended, so take away the money,” Shapiro said of those who wanted to revoke the Venue’s funding and those who, albeit temporarily, complied with the activists’ demands.

“There’s nothing to prevent anyone from taking away money from any organization, if that’s the standard.”

“You have to tolerate everybody,” Shapiro said.
A New Weapon

State constitutions may provide greater protection for student expression

High school students whose free press rights have been restricted in the wake of the U.S. Supreme Court's 1988 decision in Hazelwood School District v. Kuhlmeier are beginning to discover an important and often forgotten source of legal protection — state constitutions.

In the five years since Hazelwood was decided, four states have passed laws that explicitly provide students with greater free speech protection. Twenty-one others have considered similar legislation, and California has had such a law since before Hazelwood was decided. Now, in addition to the successes in several state legislatures, student plaintiffs are discovering that their state constitutions may provide another channel through which to reclaim some of the liberties they lost as a result of Hazelwood.

Under the First Amendment standards established in Hazelwood, school officials are free to control the content of many school-sponsored publications as long as they have a legitimate educational purpose for doing so. This weak standard provides high school journalists with little defense against censorship.

Several state courts have interpreted their state constitutions as providing greater protection for expression than the First Amendment. To this point, however, only one case has been decided — Desilets v. Clearview Board of Education — in which a state court has explicitly declared that its state constitution provides greater protection for student expression.

In Desilets, upheld recently by the New Jersey Court of Appeals, the trial court held that a junior high school principal violated the state constitution when he censored two movie reviews written by student Brien Desilets for the school paper. Desilets, who was 13 at the time, was told by the principal that the movie reviews were inappropriate because they involved two R-rated films — "Mississippi Burning" and "Rain Man."

The trial court in Desilets held that while the censoring of the movie reviews would have been permissible under the First Amendment, the principal's actions violated the New Jersey constitution. (See Fall 1991 SPLC Report, p. 5.) Article I, Section 6 of the New Jersey Constitution establishes an affirmative right of every person to (See CONSTITUTIONS, page 25)
Constitutions
(Continued from page 24)
"freely speak, write and publish his sentiments on all subjects."

The trial court held that the language and purpose of this clause were not the same as those of the First Amendment and that the New Jersey Constitution should be interpreted to provide stronger protection for student expression. Other students are making similar state constitutional claims in two cases currently before courts in Oregon and Washington state. (See Winter 1992-93 SPLC Report, p. 4; Fall 1992 SPLC Report, p. 9.)

While the trial court in Desilets based its decision on the narrow facts of the case and did not announce a broad standard for censorship of student expression, the decision could still mark a turning point in the battle to undo the effects of Hazelwood. The Court of Appeals' decision in Desilets did not address the state constitutional issue.

While the trial court decision in Desilets is the only one to explicitly hold that a state constitution provides students with greater protection than does the First Amendment, it is not the first time a court has interpreted state constitutional provisions more broadly than their counterparts in the U.S. Constitution.

In the context of free expression, the U.S. Supreme Court has twice invited states to interpret their own constitutions to provide greater protection than the First Amendment. In Gertz v. Robert Welch, Inc., the Court adopted a negligence standard for libel suits arising under the First Amendment, but it said states could adopt standards more protective of free expression. Some states have done so.

Also, in Pruneyard Shopping Center v. Robins, the U.S. Supreme Court let stand a California Supreme Court decision stating that the California Constitution protects "speech and petitioning, reasonably exercised, in [private] shopping centers," even though such speech may not be protected by the First Amendment. Since Pruneyard, courts in other states, including Wisconsin, Pennsylvania and New Jersey have interpreted their state constitutions to provide greater protection for speech on private property.

In order to be successful, students who want to use their state constitutions to fight censorship must somehow distinguish the U.S. Supreme Court's First Amendment decisions. While those decisions are not binding on interpretations of state constitutional free expression provisions, they are often persuasive to state court judges. Most likely, a student would have to show that the language used in the state constitution is so different from the First Amendment's language that the two should be interpreted differently. If that fails, the student could try to show that the legislature that drafted the state constitution intended to provide greater protection for speech than did the drafters of the First Amendment.

With respect to the language used, the free expression provisions of most states' constitutions are different from the speech and press clauses of the First Amendment. The First Amendment is worded in the negative and states what the government cannot do ("Congress shall make no law ... abridging the freedom of speech, or of the press"). Most state constitutions, however, contain at least some positive language that affirmatively establishes a right to freedom of expression ("Every person may freely speak, write and publish his sentiments on all subjects..."). Some courts have held that because of these differences, the state constitutional provisions should be interpreted more broadly than the First Amendment. It may not always be the case that these differences in language will lead a court to apply a different interpretation, but it can be an important factor.

In addition to the language used in the free expression provisions of state constitutions, the legislative history behind those provisions may also be persuasive. Most state supreme courts have not examined the precise intentions of those who drafted their state's constitutional provisions. Still, students bringing a claim based on the state constitution should search for any evidence that the constitution's drafters intended to provide greater protection for expression than that provided by the First Amendment.

States whose courts are most likely to support a student free expression claim arising under their own constitutions include Alaska, California, Colorado, Indiana, Massachusetts, New Jersey, Oregon and Wisconsin. These are states whose courts have said that their constitutions provide greater free expression protection than the First Amendment and where there is at least some indication that a claim by a student journalist might be successful.

Note that California, Colorado and Massachusetts (as well as Kansas and Iowa) have all passed student free expression laws, which probably provide students as much protection as they
Constitutions
(Continued from page 26)

would receive under their state constitu-
tions anyway. Therefore, state constitu-
tional claims by students are much less
likely to be brought in those states.

Several other state supreme courts, 
including those in Arizona, Hawai i, 
Mississippi, Pennsylvania and Wy-
oming, have also interpreted their state
constitutions more broadly than the First
Amendment, although none of these has
given any indication how much protec-
tion is afforded student expression.

In other states, either the courts have
not addressed the scope of their consti-
tutional free speech provisions — which
is the case with most of them — or their
constitutions have been interpreted as
providing no more protection than the
First Amendment.

Because so few state supreme courts
have clearly defined the scope of the free
expression language of their own consti-
tutions, it is difficult to predict the
likely success of any state constitutional
claim. But if current trends continue,
state courts may soon become an essen-
tial venue for students seeking vindica-
tion of their rights to free expression.

1 Barcik v. Kubiaczyk, No. A77165 (Or.
 2 Desilets v. Clearview Regional Board of
  3 Barcik v. Kubiaczyk, No. A77165 (Or.
  4 Kearney v. Evergreen High School, No.
  92-2-12257-0 (Was. Sup. Ct. filed May 28,
  6 447 U.S. 74 (1980).

Marshall
(Continued from page 19)

Stevens’ opinion concerning their First
Amendment rights” with which the
faculty and administration disagreed.

Stevens asked that
White alter his opinion
to recognize the
policy statement’s
valid role in ensur-
ing “that the admin-
istration will not in-
terefere with the stu-
dents’ exercise of
those First Amend-
ment rights that at-
tend the publication of
a school-spon-
sored newspaper.”

The final version of Hazelwood
indicates that the decision does not
apply to a student publication that
has become a “public forum” either
by “policy or practice.” White’s ini-
cial characterization of the
newspaper’s policy as “a mere ex-
pression of student opinion” would
have made it difficult for any high
school student publication to protect
itself by establishing its own written
publication policy.

“If you make these changes, or
ones that will achieve a similar re-
result, you will garner my vote.”

— Justice John Paul Stevens
in a memo to Justice Byron White during crucial
negotiations prior to the Hazelwood decision

Stevens vote appears to have been
the crucial one. Justice White’s opin-
ion was also joined, in order, by Jus-
tices Rehnquist, O’Connor and Scalia
providing White with the 5-3 major-
ity he needed. Justice Brennan wrote
a dissent joined by Jus-
tices Marshall and
Blackmun.

Curiously, a memo-
dum to Marshall written
by one of his clerks
indicates that Stevens
joined by Brennan and
Marshall) had originally
voted to deny the school’s
request to have the Su-
preme Court review the
case. Also surprising is
Blackmun’s vote (joined by
Rehnquist, White, O’Connor, Scalia
and Lewis Powell, who resigned from
the Court prior to hearing the case) to
grant appellate review. The Court of
Appeals had sided with the students.
INDIANA — There will be no appeal of an Indianapolis federal court’s ruling that said that Marilyn Athmann’s removal as high school yearbook adviser was not a violation of her First Amendment rights and that she could not sue on behalf of her students.

The case, dismissed in April, centered around Athmann’s contention that the administration attempted to pressure student editors to cede control of coverage of the state 1987 championship football game to the Ben Davis High School’s athletic department. Following this incident, Athmann was removed from her position as adviser.

Judge John Daniel Tinder cited the 1988 Supreme Court decision in Hazelwood School District v. Kuhlmeier in his dismissal, saying that the decision allowed administrators to exercise editorial control over student newspapers.

According to Richard Cardwell, Athmann’s attorney, the time has lapsed for any further action in the case.

LOUISIANA — A Louisiana high school newspaper adviser’s suit on behalf of her student’s rights is currently on appeal, and oral arguments were heard on August 2 before the Fifth Circuit Court.

The case, Moody v. Jefferson Parish, 803 F.Supp. 1158 (E.D.La.1992), had been dismissed by a district court judge, who said that she did not have “third-party standing” to sue on behalf of violations of her students’ rights.

Moody’s case on behalf of her students who were censored by the administration when they attempted a newspaper as a class project was being pleaded on the grounds of academic freedom.

Moody’s attorney, Ronald Wilson, said that he was confident about the outcome of the appeal.

“I think you can’t separate the two — academic freedom and freedom of speech are interrelated,” Wilson said.
Advise resigns paper in protest
Administration wants a public relations brochure

KANSAS — After petitions, paper theft and petulance, the latest protest at a Kansas college is resignation.

Mark Kyle, journalism professor and adviser to The Highlander newspaper of Highland Community College, resigned at the end of the 1992-1993 academic year, protesting the administration's attempts to revamp the paper from a newspaper to a "public relations brochure."

Kyle said he believes that the paper had become quite professional, as is indicative by the national recognition it has received, and that the school's decision to change the paper was not based on the quality of the publication.

"I was trying to make it more into an actual working press, and got kudos from everybody except the administration," Kyle said.

Kyle was reprimanded by the college's president, Eric Priest, after the paper printed a photograph of the wrecked car in which a student had had a fatal accident. The student's body was not in the car. Friends of the student had petitioned the paper in February, asking the staff not to run the photo and saying that it would make people remember the student in death rather than in life.

Priest would not comment on the situation for this article.

After the paper ran the photo on the front page, students stole more than 1,000 copies of The Highlander, dumping the copies in trash bins all over campus.

Kyle said that when he went to discuss the terms of his contract with the administration, administrators said that they "wanted to emphasize desktop publishing," and to publish a "public-relations brochure" once a month — a tremendous change from what had been a bimonthly newspaper.

"It wasn't what I was hired to do," Kyle said, adding that he resigned in May, "making them quite happy."

"A lot of people said that we were digging up dirt," Kyle said. "This is a kill-the-messenger syndrome."

However, Kyle indicated that his resignation is conspicuously lacking in feelings of resignation. Not only does Kyle expect the editors to fight for their right to publish, but he contends that their fight will be backed by the board of trustees' liberal publication policy that "gives all the power to the students."

"They will fight," he said confidently. "If need be, they'll probably go underground."
Yearbook awaits libel decision; publication named student ‘slut’

TEXAS — It keeps going, and going, and going.

A libel case over a high school yearbook that was filed in 1990 is “still going,” with both sides awaiting a ruling on summary judgment motions filed with the judge in the case.

The case, Duran v. McAllen School District, has had a summary judgment motion pending for at least a year. The libel suit was filed against the school district after the yearbook printed the word “slut” under a girl’s picture.

In the suit, the girl’s parents both contend that the characterization was deliberate and therefore libelous. Their initial suit sought $600,000 in damages for “shame, embarrassment, humiliation, ridicule, mental pain and anguish.”

Lynn Coleman, the attorney for the school district, said that a summary judgment could be handed down “tomorrow, or a few months from now. No one knows.”

Suit over letter may be dropped

PENNSYLVANIA — A libel suit against the Indiana University of Pennsylvania’s The Penn could be dropped virtually before it begins, according to The Penn’s attorney, Robert Dunham.

Professor Thomas Sedwick and his son, teaching assistant Thomas S. Sedwick, filed suit against the paper in early April, following the publication of a letter to the editor that the Sedwicks claim alleged nepotism.

The letter was printed with the signatures of the dean of the university’s graduate school and the university’s president, both of whom said that they did not write or sign the letter. The letter was also signed by “students concerned with retaining the respectability of careers in higher education.” These concerned students, however, were unidentified.

In mid-June, the judge dismissed the Sedwicks’ complaint on the ground that they had failed to plead their case in sufficient detail, Dunham said. The Sedwicks were told they could file a new complaint.

“The complaint has got to identify the specific defamatory statements that were made,” Dunham said.

After 30 days had lapsed without a new filing, Dunham asked the court to enter a judgment in favor of the newspaper, and said “it’s time to close the whole case out.”

Dunham said that he thought the case would soon end — even though it never really started.

“It looks good, but it’s not final,” he said.
MINNESOTA — A recent amendment to a state law guarantees Minnesota college students' access to campus crime reports.

The amendment, to the Data Practices Act, passed in May, states that university security forces must provide information from their crime reports. These security departments now are subject to the same disclosure requirements as campus police at public universities.

"Now it's assured that the instances of crime on campus will be handled the same as in the general community in terms of access to information about those crimes," said Don Gemberling, the director of Minnesota's Public Information Policy Analysis Division.

The amendment invalidates an April federal court ruling in Studelska v. Duly that found no right of access to campus crime reports in Minnesota. In that case, the court maintained that the First Amendment did not cover campus crime reports because "there is no historical tradition of access to ... incident and response reports generated by educational institutions."

Jana Studelska, a reporter for the Northern Student at Bemidji State University, filed the suit in May 1992 after she discovered that the information provided by the school's security department was not complete, and that some crimes were left off the logs entirely.

When she pressed the security department to compile complete, accurate reports, the university denied her request, citing the state law that classified law enforcement records as confidential educational data. But under the new amendment, universities will no longer have that law as a shield.

She did not appeal the court's ruling because Sen. Jane Ranum, D-Minneapolis, had introduced the legislation that would change the law to make campus crime information public.

"I'm really happy about it and really proud of it, and I'm relieved that even though the courts couldn't find a way to do it, the legislature did," Studelska said. Gemberling said that the new law will

(See MINNESOTA, page 33)
Red & Black still denied access to discipline records

GEORGIA — Despite a landmark decision by the Georgia Supreme Court that opened university disciplinary hearings, the student newspaper at the University of Georgia still has been denied access to information about a hate crime on campus.

The Red & Black, the student paper that successfully sued the university for access to disciplinary records and hearings, first tested that ruling by asking for records about a student charged with burning the dorm-room door of a homosexual student. The accused student, along with the University of Georgia, obtained a temporary restraining order that forbids the university from releasing the student’s name and The Red & Black from publishing it until the court hears the case, John Doe v. The Red & Black Publishing Co., in the fall.

The university officials “are cooperating as little as they possibly can,” said Theresa Walsh, editor of The Red & Black. “We just don’t feel like we’re making any progress.”

New case stretches the limits of ruling

The issue is not whether The Red & Black has access to the records; rather, the case rests on the question of whether the paper should have access to an individual student’s real name.

Harry Montevideo, the general manager of The Red & Black, said that the paper had been, in essence, testing the scope and meaning of the ruling.

“It was the first time we had tried to use the ruling to try to get access to an individual’s files,” he said.

The Georgia Supreme Court had ruled that the paper had access to records and hearings of the student organizational court, which is responsible for holding hearings on charges against campus organizations. The records The Red & Black are seeking in the Doe case come from the main court, which considers disciplinary charges against individual students.

The student who was charged with the hate crime two years ago, identified in court documents as “John Doe,” maintains that the records should be released without his name. His attorney, Morton Wiggins III, argues that to release the student’s name would violate the Family Educational Rights and Privacy Act (FERPA), commonly referred to as the Buckley Amendment, which says that schools that release students’ educational records can lose federal funding.

But The Red & Black contends that the individual’s records, like the ones of organizations, are not educational; rather, the student’s name is part of the disciplinary records the Georgia Supreme Court ruled are not covered by FERPA.

The ruling that granted the paper access to those records and hearings was the first one in the country that forced university courts to abide by state open records and open meetings acts.

Historically, universities have maintained that FERPA prevents them from releasing information about campus disciplinary hearings under the threat of losing federal funding. Although the Georgia ruling has no authority in other

(See RED & BLACK, page 33)

Paper seeks information about NCAA violations

ALABAMA — A local newspaper is appealing a court ruling that denied access to information about alleged NCAA football violations at Auburn University.

The Birmingham News sued the college for access to documents concerning the NCAA’s allegations that Auburn’s football program had violated regulations concerning financial aid and gifts to players.

But in his May ruling, Circuit Court Judge Robert M. Harper ruled that the letter the paper was seeking as not a “public writing” under Alabama law, and that it is “not in the best interest of the public that the AU response be made public at this time.”

The court did state that as soon as the official NCAA inquiry was completed, the paper’s request could be reconsidered.

The News previously had sought access to a letter from the NCAA to Auburn that listed the alleged violations. A lower court ruled that letter could not be released until Auburn had investigated and formulated a response.

Now access to both the NCAA letter and Auburn’s response will not be considered until the NCAA determines a ruling in the investigation, the court stated.

The state Supreme Court had not scheduled arguments in the case at press time.
Papers want university to open search

MICHIGAN — Two newspapers are appealing a state court ruling that allowed the search for a college president for Michigan State University to be done in secret.

The Lansing State Journal and The Detroit News asked the state Supreme Court to overturn the lower court ruling handed down in May. The papers contend that the search committee should conduct its meetings openly as a public body under the Open Meetings Act.

"The problem is that public officials these days seem to try to do things privately instead of just doing it out in the open," said Zach Binkley, editor of The Lansing State Journal. "As an editor I guess that's okay — they'll make some private decision that'll lead to scandal and I'll sell newspapers."

The lower court ruled that the committee was an advisory panel, rather than a public body, and so could conduct its meetings in secret.

Also in Michigan, Booth Newspapers, Inc. has brought suit against the University of Michigan for conducting their search for a college president in secret. In January 1992 the Michigan Court of Appeals ruled that the process used by the university board of regents to select a new president in 1987-88 violated the state Open Meetings Act. The state Supreme Court has heard the case and a decision is expected some time in the fall.

SPLC works to open teaching materials

NEW YORK — The Student Press Law Center has joined a New York man's fight for access to a college's teaching materials on sex education.

Along with the Reporters Committee for Freedom of the Press, the SPLC filed a friend-of-the-court brief on behalf of Frank Russo, who has been trying to view the contents of a human sexuality course at Nassau Community College since 1990. The state's highest court was scheduled to hear the case August 31.

Russo said he wants to see the materials only to assess their value, but the college has maintained that allowing access would damage teachers' academic freedom.

"I'm paying taxes for this, and I'm not saying I have the right to dictate what teachers use, but I do have the right to question it," Russo said.

An appellate court ruled against Russo's request in September 1992, saying the materials, including a sexually explicit film, were not "agency records" subject to the state Freedom of Information Act.

But the SPLC argued in its brief that the appellate court was wrong in keeping the records secret, that the college is clearly a state agency and that its teaching materials are agency records under state law.

Russo said the fact that the appellate court ruled 4-0 against him makes him concerned about how his arguments will be received before the higher court.

"I was stunned by what those judges did," he said. "They didn't seem to ask good questions."

The court ruled that a public college is not necessarily a public agency under the FOI law and that its "academic arms" can be separated and not covered by that law. The court also said that since the materials are available from other sources, the college is not compelled to produce them.

The SPLC brief stated that the ruling set a dangerous precedent for other FOIL cases.

"The Appellate Division's brief opinion included several novel and disturbing interpretations of FOIL [Freedom of Information Law]," the SPLC wrote. "First the court said that a public college or university may not be an "agency" under FOIL, or that its "academic arms" can..."

(See Russo, page 33.)
Bill would open some records of state higher education system

PENNSYLVANIA — Hearings are planned in fall for a bill which, if passed, would include state-related universities, the State System of Higher Education, and community colleges among institutions in Pennsylvania that are required to open certain records to the public.

The Pennsylvania House of Representatives plans to extend the current Right-to-Know Act, which identifies several agencies required to make financial records open to the public. The effect of the proposed legislation, according to Deborah Schultz, research analyst to the bill’s sponsor Rep. Ron Cowell (D-Allegheny), would be to extend the current law’s provisions to include Pittsburgh State, Pennsylvania State, Temple and Lincoln Universities, as well as “non-state-related” colleges that receive state money.

The bill is currently in the Education Committee of the Pennsylvania legislature. It has come this far before, when it died in November 1992. It was reintroduced as House Bill 104 in January 1993. No dates were set for the hearings at press time.

Minnesota
(Continued from page 30)

"have a fairly significant impact."

"The old statute didn’t seem to make any sense," he said. "It was not consistent and rational that you could talk about crimes in the city but not in the five or six blocks that happen to be a part of campus.

"At the University of Minnesota, its police department has always disclosed the information because it’s a public agency so the new law won’t have a great effect there, but it may have a larger effect on other campuses. But it’s also going to depend on how aggressively the student and professional media go after the information."

Studeska said some of the professional media that covered her case were not very supportive.

"It was big news when I lost my case, but when the legislation passed, it was a non-event. It seems to me the university did a real good snow job."

Studeska also said the fight probably is not over for college journalists in Minnesota.

"I’m worried that other schools in the state are not going to use this to their advantage," she said. "I’m sure they’ll try not to comply and that we’ll need more legal help with this." She also said that she does not think that other college editors know about the new law.

Gemberling said, "From what I’ve heard, campuses are not overly happy, but at least [the new law] tells them what they can and can’t do."

For Studeska, the law is an affirmation of her commitment to the issue and an indictment of the college that would not cooperate with her efforts.

"What’s been hardest for me is facing administrators that refuse to recognize the rights of the student press while they’re supposed to be training us to be student journalists," she said. "But I’m very pleased with the way it’s come down now."

Red & Black
(Continued from page 31)

states, it may bolster students at other state colleges to challenge FERPA, according to Anthony DiResta, who was co-counsel for The Red & Black in their first case.

The court probably will rule on the Doe case this winter.

Organizational obstacles remain

In addition to the struggle for records in the main court, the paper has continued to hit roadblocks in their efforts to gain access to the organizational court, even though the court ruled that those hearings were open to the public.

According to Carolyn Carlson, an Associated Press reporter in Georgia who is a member of the paper’s board of directors, student editors and reporters have been thwarted several times by the university in attempts to see records and attend hearings.

"The Office of Legal Affairs has utilized every possible loophole and invented some new ones in what appears to me to be a deliberate attempt to stymie access and discourage coverage of the court’s activities," she wrote in a memo to the paper’s board in May.

She stated in the memo that the university is using red tape to stonewall the paper’s efforts to cover the court.

According to the memo, the university has insisted that all requests for records be submitted in writing; that no requests for records will be answered before the three business days specified as the maximum time allowed for a response under the open records act; and that no complaints will be released until a decision is reached and no announcement will be made when a complaint is filed or a decision is reached.

Walsh said, "They’re not giving us much information as to who is being charged with what, etc. They’re just telling us when there’s a hearing."
Law expands crime statistics

TENNESSEE — Around dusk one night less than a block from the University of Tennessee in Knoxville, LaDawn Wolfe became a statistic — one of the thousands of college students who become victims of crime every year.

A man approached her as she stood on the porch of a student apartment building. "Before I could do anything, he ran up behind me and asked me what my name was, did I have any money. He told me to turn around and drop my pants.

"I told him, 'Either shoot me or stab me, but I’ll be damned if I do that.’" Wolfe shoved the man, and he ran away; she said she was lucky that she was not hurt.

Now colleges must report all crimes involving students

But under a recently passed state law, such an incident is a university concern. Tennessee campuses now are required to include crimes involving students off campus that are reported to state or city police in their annual crime statistics report, as well as make up-to-date campus crime incident reports available to the public.

Wolfe and other students in Safe Campuses Now, a student-run, non-profit group founded at the University of Georgia, worked to get the Safe Campuses Reporting Act passed. Their concern about awareness of off-campus crime came about after several incidents like Wolfe’s.

Daniel Carter, president of the Safe Campuses Now chapter at the University of Tennessee, said that awareness is a key factor in making universities safer.

"Often out-of-state students have to move to this whole other community and the statistics for campus crime are unequal to the statistics for the whole community, and the students have no way of knowing that,” Carter said.

Before the act passed, the university only kept data on crimes that occurred on school property. But since about 75 percent of University of Tennessee at Knoxville students live off campus, according to Wolfe, most student-related crime happened in the surrounding areas.

"There are lots of crimes in the immediate vicinity, like LaDawn’s, that the students should be aware of,” Carter said. "And there were lots of differences between the number of crimes the university reported and the number our student newspaper compiled."

For example, the University of Tennessee officially reported that 44 burglaries occurred on campus in 1992, Carter said. But the Daily Beacon, the student newspaper at the school, reported that 508 burglaries occurred in the nine-month school year from fall 1991 to spring 1992 involving students in the area surrounding campus. Likewise, the university reported 38 felony assaults for 1992, while the Beacon reported 68 for the school year.

"There have also been several homicides on the city streets between strips of campus property that students and parents should know about,” Carter said.

He also said that in 1985, university officials had told the campus police to withhold information on dorm searches from the daily logs made available to the public. But under the new law, they would be required to include all information in the incident reports.

Sgt. Dale King, crime prevention coordinator at the University of Tennessee, said the university wanted the law to pass because "we have a duty to get the information out so people can do something."

"Personally, I hate that we had 170 vandalisms [last year], but it serves a lot of purposes when you get the information out,” he said.

King said that if students know crime is occurring in certain areas, they can avoid those areas and take better precautions.

"We need to attack crime from an enforcement standpoint and a prevention standpoint... Prevention and safety is 90 percent avoidance,”

But King also is concerned that complying with the new law will be difficult, since it requires his department to compile data about crimes against students that occur anywhere in the county.

"The venue is huge — I can’t see us getting all the information. And [the new data] may make our campus look less safe than it is.

(See TENNESSEE, page 35)
Editor drops fight for open crime reports

VIRGINIA — The former editor of the University of Richmond student newspaper will not appeal a February state court ruling that kept campus crime records secret, according to the editor's attorney.

Alice Lucan, attorney for Douglas Hanks III, said the Richmond graduate dropped his plans for an appeal because “we had exhausted our resources.” Lucan said that though they had drafted an appeal, Hanks did not have enough funds to continue with the case.

“It's very sad because I think we had a wonderful case,” she said.

Hanks originally brought the suit against the college last year so that Richmond’s student paper, The Collegian, could gain access to arrest records and incident reports of campus crimes. But Judge T.J. Markow ruled in February that the campus police department is not a public agency, is not supported by public funds, and therefore is not required to follow the open records provision of the Virginia Freedom of Information Act.

Lucan and Hanks had argued that the University of Richmond, unlike smaller private schools, employed deputies of the Richmond police force as campus police rather than private security officers. Since that department is an official police agency, they argued the arrest records should be open just as city and state police records are.

In the February ruling, Judge Markow said that Hanks’ argument for the need for the information was valid, but to grant his request would mean changing the law rather than interpreting it.

In a statement, the university administration stated that “We do not believe it is consistent with the University’s relationship with its students to be a direct source for the release of the names of arrested students to the public.”

Delaware clarifies security law

DELAWARE—The Delaware State Senate reaffirmed an open records policy on campus crime this July by passing a revision to its College and University Security Information Act.

The legislation, sponsored by Senator David Sokofa and Representative Liane Sorenson, is much more thorough than its predecessor in delineating what ought to be reported by college and university police.

The bill (SB 187) requires that Delaware's participating institutions prepare reports of “the numbers and types of criminal offenses occurring on property owned or controlled by the institution,” specifying that off-campus areas that are contiguous with the school's property also will be included. The bill also states that buildings or property owned or controlled by student organizations recognized by the school fall under the report's jurisdiction.

Such reports, which are to be made at least on a monthly basis, are to be made available to anyone upon request.

In addition to these reports, crime statistics are required to be published "in a campus newspaper or other suitable ways prescribed by the institution's chief officer for the information of all students and employees." These statistics are to be made available annually.

The College and University Security Information Act insists upon disclosure of campus security policies as well. Any infractions will be dealt with by the state's Attorney General, the bill says.

The bill, which went into effect July 16, requires monthly reports of campus crime to be made available within 60 days of its enactment.

Tennessee

(Continued from page 34)

"I feel like we have a pretty safe campus," he said. "I'll stand our program up to anybody's. But you have to realize that no place in a major city is completely safe."

Similar law unlikely to pass in Pennsylvania

A similar bill has been reintroduced in the Pennsylvania state legislature, according to a state Senate staff member. The bill, which died in committee in November 1992, was reintroduced by Sen. Richard Tilghman, R-Bryn Mawr, and would require campuses in the state to keep detailed daily crime logs and open those logs to the public.

But the staff member said that the bill, PA 638, is unlikely to move out of the education committee due to "party politics."

Similar laws opening campus crime logs have passed in California and Massachusetts.
KANSAS — For a student at Pittsburgh State University, a photojournalism assignment became a fight for press freedom.

In September of last year, student Cyprian Sanchez was assigned to shoot a speech by President George Bush at nearby Joplin, Mo., for his journalism class. The shoot was his first assignment as a photojournalist.

When he arrived he saw a group of Bush hecklers being led away from the main rally and placed behind barriers by police, their anti-Bush signs confiscated.

Sanchez began to shoot pictures, but almost immediately police grabbed his camera and told him to leave.

"He refused to do so, which I thought was pretty courageous of him," said Ron Pruitt, Sanchez's journalism professor at Pittsburgh. "But he felt humiliated and badly treated by the police."

Sanchez was not the only one who felt that way. Three other rally attendants, two of them students at Missouri Southern State College, joined Sanchez in a lawsuit against five deputy sheriffs in Missouri. The plaintiffs charge the deputies with violating their right to freedom of expression.

William Fleishchaker, the plaintiffs' attorney, said the suit is based on principle.

"My clients feel it's important that this type of behavior not be allowed to be established as a precedent," he said. "The folks in authority have got to learn that it's the job of the public to know what's going on in their own communities."

(See PITTSBURGH, page 37)

CALIFORNIA — A photojournalism student at San Francisco State University has filed a complaint with the city against police for confiscating his film of a street arrest last winter.

Eric Rottenburg was shooting a demonstration at the United Nations Plaza in San Francisco when he saw police apprehending a suspect they suspected of robbing a clothing store.

Rottenburg started shooting the arrest, but police told him to stop and took his film. He has asked the city to admit that the officers violated his rights and to pay damages.

Jim Wagstaff, Rottenburg's attorney, said that if the city rejects Rottenburg's complaint, they will push forward with a lawsuit against the city.

"I would love to see it resolved in a way that the city acknowledges what it did and makes provisions so that it won't happen again," Wagstaff said. "We've got the legs to last it out."

Wagstaff has represented student journalists before, and he said that they are particularly vulnerable to this kind of infringement by authority.

"They don't have the badge of the official press, so to speak, and for every one of [these cases] that rises to this level, there are about 10 that no one ever knows about."

Rottenburg decided to pursue his case "because he thinks it's a significant issue," Wagstaff said. "He wants to show them they cannot just eschew the subpoena process and go for the self-help remedy."

The student claims that the police wanted the film be-
how to exert that authority reasonably.”

The speech was a public event, Fleischaker said, and so his clients had every right to peacefully protest Bush and his policies and to take pictures of the activities.

But Fleischaker and Pruitt said the police claim that Bush’s Secret Service agents ordered them to remove the protestors.

Fleischaker, however, said the Secret Service has denied ordering the police to sequester the protestors.

“Law enforcement people ought to not go around arresting people because someone standing there in sunglasses tells them to do it,” he said. “Does that mean in the future I could go out in a blue suit with sunglasses and a cellular phone in my pocket and have them arrest people I don’t like?”

The three other plaintiffs in the suit allege that the deputies took several hundred yards away from the speech area to an area marked with yellow police tape where Bush and his supporters could not see them.

They were kept there until Bush’s speech was completed and he left campus.

Pruitt said Joplin is a “conservative area... There’s a lack of familiarity with First Amendment rights.

“But I think they are aware that they were in the wrong,” he added.

Pruitt said the incident should serve as a warning to student journalists.

“Something like this can happen to you, anywhere at any time. Be prepared, and know your rights.”

San Francisco
(Continued from page 36)

cause of the brutality of the arrest.

Rottenburg said the officers wrestled the suspect to the ground.

Wagstaff said the police contend that Rottenburg willingly turned over his film as evidence. “Their position is that he consented,” Wagstaff said.

In the complaint, Wagstaff claims the police violated the student’s First and Fourth Amendment rights of freedom of the press and freedom from unreasonable search and seizure. He expected to hear a decision on the complaint from the city by the fall.

“It’s fair to say that I doubt they thought it would rise to this level of attention,” he said. “There are an awful lot of people who don’t want to spend the time it takes to follow something like this through.”
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