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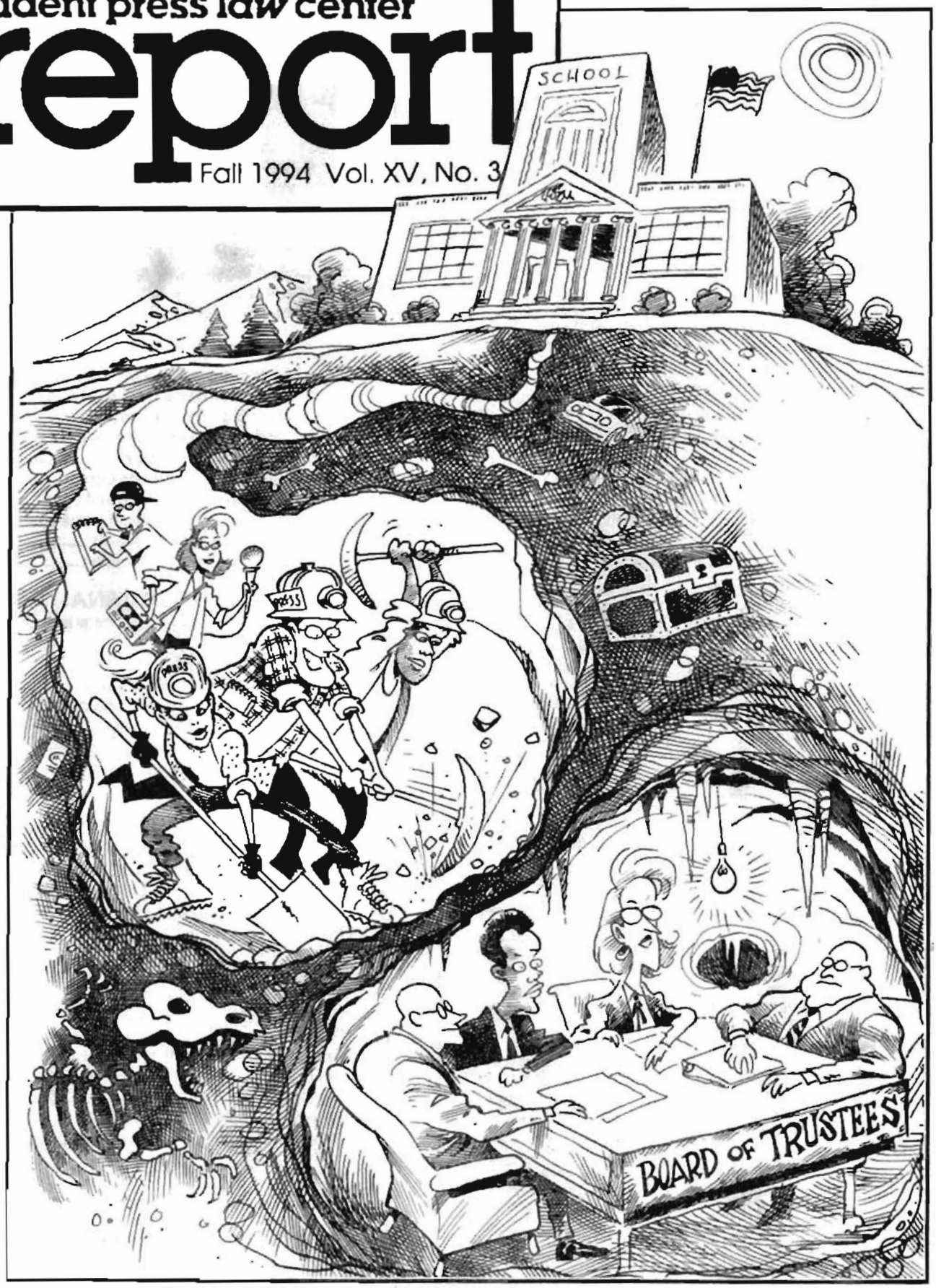


## *Mining for records*

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## Book focuses on high school press

The Freedom Forum, an international organization dedicated to "free press, free speech and free spirit," has published a study of high-school journalism.

The report, *Death by Cheeseburger: High-School Journalism in the 1990s and Beyond*, covers topics ranging from the role of diversity in newspaper staffs to the dollars-and-cents issues that can plague student publications. Two chapters of the 148-page report are devoted to student press rights and responsibilities, including a glimpse into the real-life drama behind important cases such as *Tinker v. Des Moines Independent School District* and the 1988 *Hazelwood School District v. Kuhlmeier* decision. Also included are case studies of school districts with both lenient and restrictive policies.

Copies of the report are available free of charge to high-school newspaper teachers, advisers and daily newspaper editors, and for $14.95 to others. Call (800) 830-3733 for more information.■

# Opening the search process and supporting the student press

This issue of the *Report* delves into an issue that courts around the country are now confronting: must the records and meetings relating to the search of public school administrators be open to the public?

In most states, the answer to that question is a qualified yes. (See *DIGGING*, page 17.) But the law is still developing on this topic. (See *COLORADO* and *JUDGE*, page 11, and *PAPER*, page 14).

For student journalists on public college and high school campuses, the issue is an important one. Few individuals have more impact on day-to-day life in the school community than a school superintendent or a university president. Knowing the identity of those who are being considered can give the public an opportunity to offer input before a hiring decision is made. It can also provide a useful mechanism for oversight of the decision-making body.

We expect that more courts will agree with these arguments and make the search process open.

***

With all of the bad news about increasing efforts to censor the student press, its a pleasure to report that some schools have "seen the light." Both the Dade County, Fla., School Board and the Frederick, Md., school superintendent have recently affirmed their position that they do not want to be in the business of censoring the student media. (See *NEW*, page 5, and *SUPERINTENDENT*, page 27.)

Even more dramatic, a Massachusetts high school has gone to court to defend the right of student newspaper and yearbook editors to choose the advertisements they want to publish. (See *THIS SPACE*, page 25.)

Each of these schools has accepted a fact that we hope more administrators will consider: it makes good sense educationally to support student press freedom. The best student publications and the most responsible student journalists are inevitably those who have been given the most editorial independence.■

## The *Report* staff

**Melanie Lynn Jones** is an August 1994 graduate of Jacksonville State University in Alabama (the friendliest campus in the South!) where she studied political science and communication. While in college, she served as editor of the campus newspaper, *The Chanticleer*, and president of the school's award-winning Society of Professional Journalists chapter.

**MaryAnn McKibben** is a May 1994 graduate of Rice University, where she was involved with her college newspaper and countless other diversions. She plans to return to Houston to pursue a writing career, and sometime, somehow, to get published in *Texas Monthly*.

**Rick J. Peltz** is a second-year law student at Duke University. He is president of the Barney Fan Club and claims that Thurgood Marshall speaks to him through popular music. Oh, and he wants the moon.■

# New justice has mixed record

**WASHINGTON, D.C.** — Judge Stephen Breyer from the U.S. Court of Appeals for the First Circuit was confirmed in July as the newest Supreme Court justice. He replaces retiring Justice Harry Blackmun. A report compiled by the Reporters Committee for Freedom of the Press gives an overview of Breyer's stand on media issues.

Jane Kirtley, executive director of the Reporters Committee, said that while Breyer's opinions are "strong and good" in the area of libel, his positions on freedom of information issues are "a disaster." Although he has participated in cases ranging from reporter's privilege to obscenity, he has written relatively few opinions on media law issues, and has not decided any cases directly involving the student press.

However, Breyer did join the unanimous opinion involving rejecting a college student's request that his disciplinary hearing be open to the media. In the 1988 decision *Gorman v. University of Rhode Island*, 837 F.2d 7 (1st Cir. 1988), the court decided that the school's decision to keep the proceedings closed did not deny the student due process rights, even though the hearing "did not mirror common law trials."

Breyer also participated in a 1985 case involving a teacher's free expression claim. The teacher had written a controversial letter to the editor of a local paper and was fired eight months later. The court of appeals upheld the jury's finding that the firing was in retaliation for the teacher's expression.

Justice Blackmun was the last sitting justice who dissented in the Supreme Court's 1988 *Hazelwood School District v. Kuhlmeier* decision, that gave school officials greater authority to censor school-sponsored student publications.■

# The *Tiger* Uncaged

## A group of high school students are determined to print the truth — if not in the school-sponsored newspaper, then in their own publication

ARKANSAS — A group of high-school newspaper students, frustrated by an increase in censorship of their paper, have fought back with their own underground publication.

The new paper, *Clandestine Nation*, is intended as a "relief valve for all censored works and an upholding voice of the truth," wrote Ronald Hanks in the first issue, published May 13.

The "truth" that the *Nation* wishes to expose includes several incidents of violence at or near Central High School in Little Rock. The censorship began when principal Rudolph Howard ordered an apology from the staff of the *Tiger*, the official student newspaper, after it ran a story about the shooting death of a student.

Then Howard demanded to see all editorials and commentaries before they went to print, many of which he found unacceptable and forced the newspaper to cut. The staff was told by administrators that the newspaper is meant as a public relations tool for parents, a "glad rag for the district," wrote Zac Taylor in *Clandestine Nation*.

The *Tiger* retaliated by printing a gray box where the editorial on violence had been placed, and changing the staff box to read that the *Tiger* was produced at school. Before, it had read that the paper was produced and edited by students, but the staff did not feel the statement was accurate after the censorship.

The first issue of *Clandestine Nation* was peppered with sharp criticism of Howard's censorship of the *Tiger*. "Rudolph Howard is certainly not God, but don't tell him that," Hanks wrote. The paper also lambasted the general unwillingness of the administration to accept the problems at Central High.

"There is a big difference between exploitation and awareness. Awareness can lead to the motivation needed to change situations," Taylor wrote.

The *Nation* was produced by a staff of five students in the offices of the *Arkansas Times*. The four-page paper has the look and feel of a professional newsletter.

Howard found out about the underground newspaper, and went so far as to call parents of the students and warn them that the students would be suspended if they attempted to distribute on school grounds.

So the students kept their distance, passing out copies of the *Nation* to passing cars on a nearby street. Because all activities took place away

*(See ARKANSAS, page 6)*

# New Dade County policy adopted

*Prior review prohibited; next step is educating administrators*

**FLORIDA** — For more than 10 years, Dade County students have enjoyed a "hands-off" policy regarding administrative involvement with student publications — until a high school principal demanded to see advance copies of the newspaper at his school. Now the students have all their rights in writing, thanks to a revised policy adopted unanimously by the school board in May.

"We're very happy with it," said Maureen Lonsdale, adviser for Miami Norland Senior High School's student paper, *THOR*.

Although Dade County, the nation's fourth largest school district, already had one of the strongest student media policies in the country, it did not contain the magic words, "no prior review." The revised guidelines include this language and remove other vague terms.

Under the new policy, students have control over content and are responsible for not publishing obscene or defamatory material, or anything that would "cause a substantial disruption of school activities."

"All other content is appropriate and shall not be censored," the policy states.

The new policy defines both libel and slander, where before the policy only covered libel. According to Brenda Feldman, an adviser in Dade County and a member of the task force that drafted the policy, this change was intended to apply to student-produced television programs at schools in the district.

The controversy erupted when *THOR* ran an article about a student shot to death at a nearby restaurant. The story prompted Principal Fred Damianos to demand prior review of *THOR* and later to require the students to run a "counterpoint editorial" for all editorials.

The task now, according to Feldman, is to make sure everyone understands the policy, especially since the county lost some experienced advisers this year. "We are trying to educate the administrators, and it's also imperative that we educate our current advisers and our new advisers," she said.

Plans are now underway to put together a series of training sessions to get the word out.■

## Dade adviser receives discipline threat for 'obscene' caption

*Principal wants adviser to review yearbook*

**FLORIDA** — The newly adopted Dade County student publications policy received a true test of its strength last spring, when a newspaper adviser was called to a disciplinary hearing and three students were suspended for a caption in the school yearbook.

The caption in question ran under a wrestling photo of two students and read, "Deep in penetration, [one of the students in the picture] shows the proper way to overcome his opponent." According to Mary Ruth Fowler, adviser to Miami Coral Park High School's *Arieon*, the student editors agreed the caption could have an unintended sexual connotation and planned to rewrite it. However, the original caption slipped through the page revisions and was printed.

Fowler said Principal William Machado called Fowler into his office soon after the yearbooks were distributed and asked for an explanation for the caption. Fowler

*(See FOWLER, page 7)*

# Principal snips drawing, photos from yearbook

**WASHINGTON** — A Tacoma principal ordered the faculty section of the yearbook cut last spring after some students claimed a portrait drawing of her was disrespectful.

Lakes High School Principal Brenda Bias, who is black, said she received complaints from black students claiming the student drawing offended them. Yearbook staffers asserted that they meant for the drawing to be flattering.

Bias cut the entire faculty section because the drawing of her appeared on the other side of some faculty photos, and in order to be fair the entire five-page section was removed.

But Bias offered a compromise to students. Students holding yearbooks with the missing photos could either receive a replacement book this fall or receive a supplement with all the photos and the drawing, available right away.

John Litten, a spokesman for the district, said taxpayer money would not be used for the extra expense of the corrections, but did not specify exactly who would pay. He also said Bias' problem with the drawing was not race-related— she had a problem with the fact that hers was the first drawing of a principal, rather than a photo, in 27 years.

Although the smoke has cleared regarding the yearbooks, yearbook adviser John Tylczak's contract as adviser was not automatically renewed. His job as a graphic-arts teacher was never in jeopardy, said Litten, but due to the incident with the drawing, he will have to re-apply for the yearbook position.■

# Independent 'zine' takes school to court

## *Present policy is vague, undefined and slow, student editors claim*

**NORTH CAROLINA** — Unless the administration of a Raleigh high school tightens up its student publications policy, students risk suspension for passing around a fortune cookie.

That is the claim of student editors of the *Vanguard*, an independent literary

magazine distributed at Enloe High School. They have filed a motion for a preliminary injunction against members of the administration to protest a policy they say is vaguely defined and arbitrarily enforced.

The principal began demanding review of the *Vanguard* after a controversy over posters and flyers circulated through the school. In February, a series of anti-gay posters appeared, entitled "A Call to Arms" and reading in part, "Heterosexual students should ban [sic] together to stop these sexually immoral people."

In retaliation, a group of six Enloe students distributed "An Armed Response," a three-page flyer. "Intelligent students — gay and straight — should band together to stop these prejudiced people," the flyer said.

Principal Bobby Allen suspended the so-called "Enloe Six," claiming they had violated board policies against "distribution of a publication" and "disruption of school process." The suspensions were later reversed by the school board.

Allen hit the *Vanguard* next, demanding a meeting with editor Christine Kistler, in which he told her and other members of the staff that he would be reviewing issues of the magazine from now on. He cited a series of "your mama" jokes the magazine had published, which had been submitted by the African-American Cultures Club and accompanied an article about reverse discrimination. He claimed that the magazine violates the school board policy, which prohibits material that is "vulgar, indecent, obscene, libelous [or] abusive."

According to the legal brief filed by the *Vanguard*'s attorney Jon Sasser, none of the several other "underground" publications distributed at the school were asked to submit to prior review. Another publication, *Spare R.I.B.S*, was untouched by the crackdown.

Allen and the students reached an agreement, or so it seemed. A review committee composed of Allen, Assistant Principal James Rose and two English teachers would review the *Vanguard*, and would take up to two days to return it. But Allen failed to tell the *Vanguard* staff that the officially proscribed turnaround time for review is set in the board policy at five school days.

The policy also states that if students want to appeal a principal's decision, they have to wait five more days for a ruling. If they continue to appeal, the process could take twenty-five days.

It is this leisurely time frame that Allen used, not the one he pledged to follow in his meeting with the magazine staff, the students claim. The *Vanguard* staff delivered an issue to the review board one Friday in March and did not receive it back until late the following Tuesday, delaying distribution until the next day. The review for the next issue took even longer — more than five days.

The final issue sat in Assistant Principal Michael Albritton's hands for more than seven days before he told the magazine staff he did not have time to review

*(See ENLOE, page 8)*

## *Arkansas*

*(Continued from page 4)*

from school, the students were immune from disciplinary action.

"My problem with this is, they never came and discussed this in conference," Howard told the Arkansas *Democrat-Gazette*. "They arbitrarily decided to publish *Clandestine Nation*."

The censorship of the *Tiger* has caused an awakening for its staff, which had started publishing more articles of substance, thanks to a new adviser, Marck Beggs. Beggs was unaware that the students were producing an underground newspaper.

The second issue of the *Nation* was devoted to the need for state legislation protecting the free-press rights of students. Bill Downs, executive director of the Arkansas High School Press Association, heard the students' pleas and has assembled a committee to address the issue.

At press time, the committee was drafting a proposal for state legislation and attempting to find a sponsor to propose it in the state legislature.

"We hope to put something together that will be acceptable to advisers and students," Downs said.

Permeating the *Nation*'s articles was the desire to be treated as adults, with rights and responsibilities, and not to be censored.

Wrote Ben Brainard in *Clandestine Nation*, "When someone says, 'Don't bite the hand that feeds you,' implying that I am taking advantage of the Constitution, I simply answer, 'Don't hush the mouth that will lead you' — the youth's mouth."■

# *Students appealing 'Low-Spots' decision*

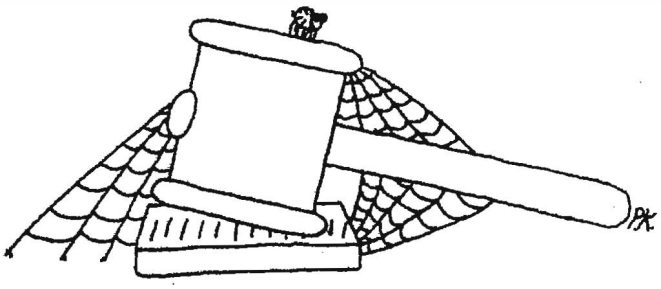
## Judge rules case should have been dismissed when students graduated

**OREGON** — The wheels of justice are turning slowly — and in circles — for student journalists in Oregon after an appeals court ruled in April that their censorship case against school officials should have been dismissed once they had graduated.

The case, *Barcik v. Kubiaczyk*, 873 P.2d 456 (Or. Ct. App. 1994), was filed by student journalists at Tigard High School after editors of an unofficial newspaper, *Low-Spots*, were suspended and an editorial supporting underground newspapers was censored from the official student newspaper, *Hi-Spots*, in January 1992. Editors of another unofficial student newspaper, *The Spots on My Dog*, were suspended but did not participate in the lawsuit.

A lower court ruled in September 1993 that Tigard-Tualatin School District, the principal and several other administrators had violated the students' First Amendment rights. However, the court also said that a student publications policy enacted after the controversy arose did not violate the First Amendment.

The court did not address whether the policy violated the Oregon Constitution's free speech provision, as the students claimed. The new policy gave school officials significant power to regulate the content of school-sponsored publications. It also said that the administration could review an underground newspaper before it was distributed. Both sides appealed the lower court decision.



Rather than addressing the substantive questions in the case, however, the appellate court said that the lower court judge should not have decided the case because the students lacked legal "standing" to sue, having graduated about four months prior to the decision. The court said that because the students no longer attended the high school they would never be subject to the new policy, making it pointless for a court to address the issue.

The court also said the students did not have the right to sue on behalf of other students who remained at the school.

The Oregon court's decision on the "standing" issue is unusual. Most other courts, recognizing that students spend a relatively short period of time at any one school, have allowed lawsuits by student journalists to continue after their graduation. The Oregon Supreme Court agreed in June to hear an appeal on the standing issue.■

# *Fowler*

*(Continued from page 5)*

explained the mistake as a product of human error. She then arranged for stickers with replacement captions from the yearbook's publisher to cover the caption in question.

Machado, unconvinced, responded quickly and forcefully by suspending the two student editors and the caption writer for five days, and calling Fowler to a disciplinary hearing.

The Dade County policy protects the rights of students to make their own editorial decisions, with three exceptions to what they can print. One exception is obscene materials, defined as material which "the average person, applying contemporary community standards, would find... appeals to a minor's prurient interest in sex."

In addition, the material must also "depict or describe, in a patently offensive way, sexual conduct...."

The caption in question does not meet the standard for obscenity in the policy, says Fowler. She met with the principal, armed with a letter from the Student Press Law Center explaining that the caption was not obscene by Dade County or any other legal standards, and that disciplinary action was unjustified.

The students at the school responded to the controversy. Posters appeared around school protesting the students' suspensions, saying "Free the Student Editors." Rumors circulated that graduating seniors were vowing not to shake the principal's hand after receiving their diploma.

The editors' suspensions were lifted after one day, but the caption writer was forced to serve the entire five days.

Meanwhile, Fowler's troubles continued. The principal agreed to clear her record, which has been unblemished for 30 years of teaching, if she would sign a document guaranteeing that Fowler would read, sign and take responsibility for every page of *Arieon* from now on.

Fowler believes this treads perilously close to prior review, which is strictly prohibited in Dade County's newly revised policy.

She and the principal are attempting to reach a compromise that would be agreeable to everyone and not compromise the integrity of the policy.

According to the policy, no administrator may exercise prior review of student publications or broadcasts. Advisers review material only to check for defamatory, obscene or disruptive material.■

# *Paper pulls officials' names from story*

ILLINOIS — Never let it be said that journalists do not take care of their own.

When a Naperville high school principal told the student newspaper not to run the names of administrators who had attended conferences on taxpayer money, the newspaper complied.

But the editors took the story to three local professional presses, including the *Chicago Tribune*, all of which ran a story of the censorship — and included the names of the administrators.

"It really backfired on the principal," said Linda Kane, adviser to Naperville Central High's newspaper, *Central Times*. "There was no educational justification for why he wanted to pull those names. He did it to protect his fellow administrators."

But in the process of trying to protect them, he called more attention to the story, which sprang from a series of budget cuts proposed by the school board to counteract a $1.7 million deficit in the district.

A student investigative team researched the article carefully, using travel expense reports from the central administration building. The team also attempted to reach the administrators for comment, but were largely unsuccessful.

The story gave dollar amounts spent by school administrators who had attended educational conferences across the country, including trip totals and a breakdown of charges for hotel accommodations and meals.

Christine Rauscher, an assistant superintendent, traveled to New York and spent $1,462 on her trip. Junior High School Principal Paul Schmidt spent $1,260 for his trip to New Orleans, and Elementary School Principal Beebe Smith spent $1,400 on her trip to Phoenix.

Steeple Run Principal Steve Ligman attended a short conference in San Francisco and charged the district more than $1,600, including $666 for hotel accommodations alone. According to the travel vouchers, Ligman was in San Francisco from July 21-23, 1993, a two-night stay.

The story was accompanied by a short opinion piece written by a parent of a handicapped child enrolled in Naperville schools. Martin Kyle expressed his outrage that administrators were spending taxpayer money on trips when his daughter's classroom was poorly equipped.

Kane said she usually informs Principal Tom Paulsen of potentially controversial stories before they go to print. Normally he is very supportive, and according to Paulsen, he has never seen the need for a strict, written policy of prior review.

But this time, he wanted the names removed, with the reasoning that the inclusion of the names might make it appear that the administrators had done something wrong.

"I thought the article was well-written," said Paulsen. "But I was concerned. It doesn't take away from the substance of the article [to have the names removed]."

After hearing Paulsen's request, Kane went to the newspaper staff with three options. First, they could print the story intact, but Kane feared she could be cited or fired for insubordination. Second, they could remove the names and comply with Paulsen's request. Or third, they could run the story in an underground, independent publication.

The staff chose the second option but added the following editor's note: "Names of administrators have been omitted due to censorship from Central's administration." The voucher numbers used as a source for the story were also listed, so that interested parties could look up the names themselves. The administrators were identified in the article using titles such as "an elementary school principal."

The students then took the story to the local media, resulting in articles in the *Naperville Sun*, the *Daily Herald* and the *Chicago Tribune*.

"[The students] made their point, but it didn't blow up into a big hairy deal," Kane said.

After the incident, Paulsen visited the journalism class to explain his rationale to the newspaper staff. When students asked him why he made demands on

*(See TRAVEL, page 10)*

# *Enloe*

*(Continued from page 6)*

it. The staff decided to distribute the magazine anyway.

The students filed their lawsuit to protest the time frame for administrative review, and many vague or undefined terms in the policy, including the word "publication."

"Under the rules currently in effect in Wake County, a student cannot hand a classmate a valentine, *The Grapes of Wrath*, or a baseball card without first submitting these papers to the principal for his blessing," Sasser wrote in the complaint.

Courts in the federal Fourth Circuit, where North Carolina cases are heard, have ruled on numerous cases involving prior administrative review of non-school-sponsored publications, but many of the opinions are almost 20 years old.

The general opinion of the Fourth Circuit courts is that prior review is acceptable, provided the governing policy is constitutionally sufficient. But no policy evaluated by a court has been found sufficient so far. Not only that, but the five-day review time is longer than some courts have deemed constitutionally permissible.

And a more recent decision by another federal appeals court has said administrative prior review of underground publications is inherently unconstitutional.

The students are attempting to settle the issue with the school, but if a settlement is not reached, they have "no compunctions whatsoever" about taking their battle into the courtroom, Sasser said.■

# Newspaper allowed to publish sex poll

**CALIFORNIA** — For at least one high school this past spring, the main controversy surrounding the newspaper's sex poll was not the results, but whether the survey should be allowed to circulate at all.

The principal at Redwood High School halted the poll of students' sexual habits, but was later voted down in a publications board meeting. Results of the poll were published in a June issue of the Redwood *Bark*.

*Bark* adviser Donal Brown said the newspaper has been polling students since the early 1970s, before he was adviser at the school. The poll was "very explicit," he said, asking frank questions about students' sexual preferences and experiences.

Leo Nistor

*Bark* co-editor in chief JoAnne Levinson was one of the authors of the poll. Her father, the district superintendent, had learned from county health officials that chlamydia rates had risen dramatically in recent years among young people. Levinson postulated that the rates for AIDS might be rising among her age group as well, and thought a poll might raise important issues for the students to be aware of.

Principal Greg Duffey halted the poll after half the senior class had taken it, ordering no further polling and no publishing of the results. Although he claimed to support the poll, he cited section 60650 of the state education code, which prohibits school sex surveys without written permission from the student's parents.

The two sides attempted to compromise. The editors asked Duffey to allow polling of 18-year-old students only, but he refused under advice of the district's attorney. Then Duffey asked the editors to poll outside of class, but the editors did not find this solution practical as the results would not be statistically valid.

The issue then went to a hearing of a publications board, consisting of two parents, the *Bark* adviser, one student, one teacher representative and the *Bark* editors. Each board member had one vote with the exception of the editors, who shared a vote. Principal Duffey was named to cast the deciding vote in the case of a tie.

Newspaper editors Levinson and Zack Miller argued strongly at the meeting, emphasizing the "life and death importance" of the issues in the poll, said Brown. They stressed the voluntary, anonymous nature of the poll, and agreed to take extra precautions to ensure privacy, such as giving students blank paper to cover their answers.

They also spoke out against certain aspects of the education code that Duffey used in his defense. "Section 60650 also prohibited questions about family life, morality and religion and if taken literally would eliminate much of the social studies and English curricula," said Brown. The argument had a strong impact on the board, which voted 5 to 1 for allowing the poll to continue.

Brown credited the legal assistance of James Proctor, a Redwood parent, for much of the students' success in their fight against censorship. "Without him, we wouldn't have had a leg to stand on," he said.

In an editorial written for a local paper to commemorate Independence Day, Brown addressed the difficulties the student press faces when fighting censorship.

"Why does the School Board provide a lawyer for the administration when the students have nothing?" he asked.

The editors plan to follow the administration's advice that they include a release form with parents' preschool registration materials allowing their students to be polled.

Meanwhile, educators are watching section 60650 of the education code carefully — it is due to expire in January, with no indication of whether it will be replaced, or by what.■

## Student found not guilty of trespassing at senior ceremony

**ILLINOIS** — The battle is over. Now, it's time to prepare for the war.

Cynthia Hanifin of Hubbard High School in Chicago was found not guilty of criminal trespass for her appearance in June 1993 at a senior awards ceremony after principal Charles Vietzen suspended her for writing an editorial about wearing shorts in school. Her $1 million civil lawsuit is still pending.

Hanifin, who has since graduated, was suspended for four days for writing and running an editorial criticizing Vietzen for not adopting a policy regarding when students would be allowed to wear shorts as the spring months grew warmer.

"When asked if he had any intention of reviewing the anti-shorts rule, Dr. Vietzen answered no. 'We must be patient,' he said. But it must be easier for him to be patient while sitting in his air-conditioned office than for the students

*(See SHORTS, page 10)*

# *More state free-expression bills die in '94*

As the year's state legislative sessions draw to a close, the outlook for high-school free-expression bills remains bleak. Each of the eight proposed bills this session either fizzled and died or were killed in committees or votes on the floor.

New Jersey's bill is a recent casualty, according to an aide for Rep. Anthony Impreveduto, the Democrat from Secaucus who sponsored the bill. The representative is not anxious to reintroduce next session, and is considering waiting until the bill is "fresh" again. The bill has been considered in every legislative session since 1988.

Missouri's HB 1105 also failed, according to an aide for Joan Bray (D-University City). The bill made it out of committee, only to die on the floor of the House. Bray intends to reintroduce the bill next session.

Legislative Bill 1166 in Nebraska did not even make it out of the education committee. According to John Bender, an assistant professor at the University of Nebraska at Lincoln, one committee member favored the bill, another opposed it, and the other members were not interested in it either way.

The bill will likely be reintroduced in January.

Leo Nielsen

*Of the 27 states that have considered bills to protect student press rights, only five have passed laws.*

Michigan's freedom of expression bill is dead as well. According to Margot Smith, aide to Rep. Lynn Jondahl (D-Okemos), Jondahl does not want the bill to go anywhere for fear that it will prompt opponents to pass a law guaranteeing the right of school officials to exercise prior review. Smith was unsure whether the bill would be introduced next session, as Jondahl will not seek another term. Legislation also died in Oklahoma, Arizona, Wisconsin and Idaho in the spring.

But there is a ray of hope in Arkansas. Bill Downs of the state's high school press association is trying to drum up legislative support for student free-press legislation motivated by an incident of censorship at a Little Rock high school. (See *THE TIGER*, page 4.)

Five states have passed legislation protecting student press freedoms — Massachusetts, Iowa, Kansas, Colorado and California.■

## *Shorts*

*(Continued from page 9)*

who are sitting in broiling classrooms," Hanifin wrote.

Vietzen claims Hanifin was suspended because she printed the editorial without obtaining proper permission. But Hanifin claims she had not been forbidden to print it.

Hanifin was arrested for trespassing when she and her mother attended a senior awards ceremony at the school during the time of her suspension. Vietzen attempted to remove Hanifin himself, asking her to leave several times. When she refused, he had her arrested.

Hanifin is claiming in her civil suit that Vietzen violated her First Amendment rights and that her suspension caused her "humiliation, insult and mental anguish."

Vietzen says he is justified by the 1988 Supreme Court ruling in *Hazelwood School District v. Kuhlmeier*, which gave school officials greater control over what is published in school-sponsored student publications.■

## *Travel*

*(Continued from page 8)*

what they could print knowing it would result in even more publicity and newspaper coverage than it had before, Kane said he responded that even though he could not control what the professional presses printed, he could control what appeared in his school's paper.

Kane responded by telling Paulsen, "If you want a bunch of fluff you're not going to get it from this group."

Paulsen claims that it was fine with him that the students took their story to the media.

He has been in touch with only one of the administrators since the incident, who was "appreciative" that his name was not used in the *Central Times* story.

While Kane said the students could have taken further action against the censorship, they chose not to.

"I work with a great group of kids," she said. "They are very sensitive to the future."■

# Colorado opens executive search records

**COLORADO** — Colorado has adopted a law that may make it easier for journalists to obtain information on searches for top administrators at public high schools and colleges.

The law came about as a compromise between media representatives and legislators following a presidential search at Metropolitan State University.

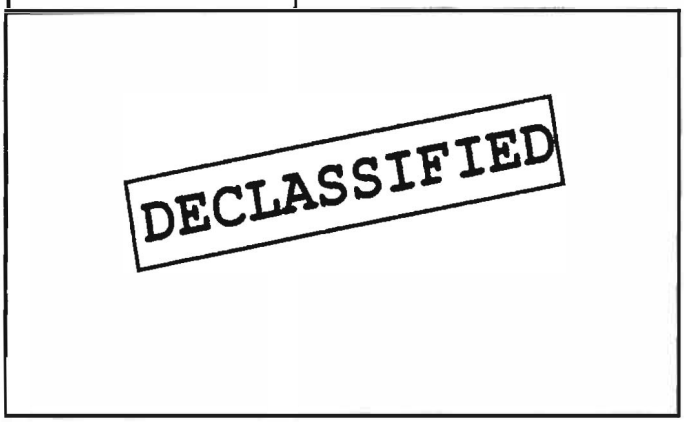
Journalists wanted access to information concerning all of the applicants and university officials did not know how much they had to release or when they had to release it.

To develop answers to these questions, Colorado Sen. Tilmon Bishop (D-Grand Junction) sponsored House Bill 1234 to make the records of finalists open. The governor signed the law into effect in April.

Bishop said officials worried that opening search records would discourage people from applying for jobs, especially if their current employers did not know they were looking for a move.

"We sought a way to give some confidentiality to those people," he said.

Presidential Searches




The new law provides some information, but still protects most applicants.

It opens files of applicants for executive government positions, including university president, once they become finalists. The law defines finalist as anyone who is "chosen for an interview or who is still being considered for the position 21 days prior to making the appointment, whichever comes first." If six or fewer people apply, all applicants are finalists.

Some records will remain closed. Reference letters and medical, psychological and sociological data are among the records that are still not available to the public.

Under the law, these guidelines apply even if a college or university uses a private firm to conduct presidential searches.

Several other states provide similar disclosure guidelines. Colorado's law is similar to those in Texas and Georgia; both apply the law only to finalists.

Journalists and advisers interested in obtaining a copy of the law can call the Colorado Legislative Information Center at (303)866-3055 and request a copy of HB 1234.■

# Judge approves university's secret search policy

*Court rules Michigan State's presidential search committee is not a public body*

**MICHIGAN** — A state circuit court ruled in July that public college and university presidential search proceedings must be open to the public, but media representatives say the decision contradicts an earlier state supreme court ruling on the same issue.

*The Lansing State Journal* and *The Detroit News* filed suit against Michigan State University in 1993 for violation of the state's open meetings act and the freedom of information act.

The papers claim the presidential search committee of the university was a public body with decision-making powers, but the board of trustees, four of whom served on the committee, said its job was simply to research and make recommendations.

The debate stems from the fact that the search committee examined the original list of more than 150 possible candidates shortened it first to 65, then to the 13 they chose to interview.

> *"They used language to make it seem they were narrowing [the list] without really narrowing."*
>
> *Tony Scotta*
> *reporter*

The board members said the committee never eliminated candidates, and if they chose, they could place someone back on the recommendation list at any time until the board made its final decision.

"They used language to make it seem they were narrowing [the list] without really narrowing," Tony Scotta, the campus reporter for the *Lansing State Journal*, said.

The judge ruled that the board complied with the open meetings law by holding a formal vote on the board's choice for president in August 1993.

He reasoned that the presidential

*See SEARCHES, page 12*

ACCESS

# Judge orders UCLA to release records

*Reporters discover $1 million in secret harassment and assault settlements*

CALIFORNIA — *The Daily Bruin*, the student newspaper of University of California at Los Angeles, uncovered more than $1 million in sexual harassment and assault settlements from the university after a court ordered the school to release the records.

Josh Romonek, then editor of the paper, originally sought the records in November 1992 when an administrator mentioned settlements in a news setting but refused to give details.

In April 1993, the students sent a letter requesting all records relating to settlement of lawsuits or claims against the university from 1989 to the present.

The administration initially denied the request, claiming it was too burdensome and would set precedent for a minimum amount the university could use in a settlement.

The paper then revised its request and sent a new letter requesting information on settlements of more than $25,000 from 1989 to present.

Patricia Jasper, university counsel, responded by sending a letter and a general list of types of claims settled for amounts exceeding $25,000.

Romonek spotted two harassment claims in that list and requested more information on any cases involving allegations of sexual harassment, sexual assault or battery, rape, and/or gender-based discrimination claims against the university which resulted in settlements of more than $100,000.

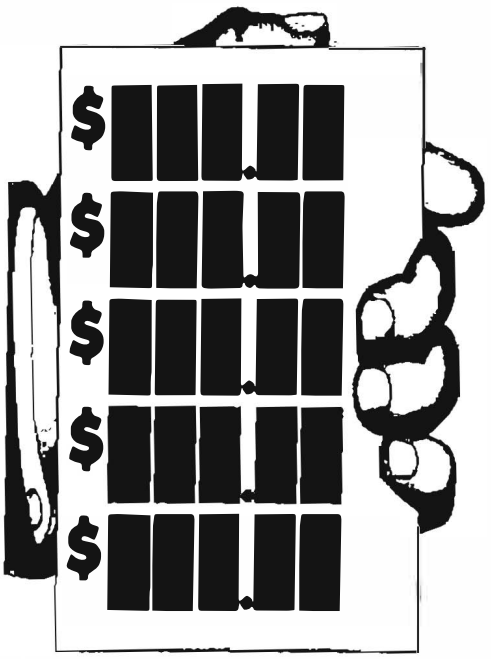
Jasper indicated she would be willing to release revised versions of the two cases Romonek specified but said she would have to contact the people involved first. She did not mention other cases.

She eventually released some of the information on one case without names when all of the parties involved agreed.

Romonek and the paper filed a lawsuit to force the university to release all of the requested records in September 1993, and when the case went to the California Superior Court in May, the judge decided in favor of the students after only 20 minutes of debate.

The court order stated that only the names and identifying information of claimants could be removed and said the school must release the documents by a certain time regardless of when the judge actually signed it.

"That day sort of came and went," Romonek said, and the university had not released anything.



Leo Nistor

The paper contacted the university's attorney when there were only three issues left because they were afraid they would not get to publish the information before the end of the school year.

The students agreed to accept the records with all identifying information deleted because that is what the attorney

*See UCLA, page 16*

## *Searches*

*(Continued from page 11)*

search committee was not a public body since it could not take binding action.

He ruled that the only public body involved was the board of trustees, and it complied with the law by taking a final, public vote.

Scotta said the papers plan to appeal the decision based on a 1993 Michigan Supreme Court case in which the court ruled that the University of Michigan's board of trustees violated the state open meetings law by conducting a presidential search in private.

Scotta said the judge ruled that the cases were not really similar, but did not specify why.

In both the Michigan State University and the University of Michigan case, the search committees conducted interviews, discussed and evaluated candidates and used forms such as resumes to choose a final candidate.

The main difference in the two cases is that in the University of Michigan case, the entire board of regents served as the search committee rather than forming a separate body.

In their lawsuit, the papers charged that the presidential search committee did constitute a public body under the state open records and open meetings laws.

They asked that all decisions made in violation of the those laws be declared null and that the university use an open search procedure in the future.

The board's choice for president took office last fall, despite this case and other controversies surrounding his appointment.

After all of the debate over the presidential search committee, the committee's first choice withdrew his name, and the board could not agree on any of the other finalists. Instead, the board chose a bank president and university alumnus from California who had initially withdrawn from consideration at the beginning of the process.■

# SPJ battles police in court

**HAWAII** — Student journalists at the University of Hawaii at Manoa are one step closer to gaining access to records of disciplined police officers.

The university's student chapter of the Society of Professional Journalists requested the records in August 1993 based on a law that went into effect two months earlier.

The students thought their efforts would pay off in February 1994 when the police chief said he would release the records, but the police union asked for and received a restraining order against the chief before the planned release.

The restraining order was a precursor of a suit against the city of Honolulu, the Honolulu Police Department and the police chief to permanently prevent the release of the names.

The student journalists filed a suit against the same parties, but their case is to force the release of the names.

The students, several members of the local media and the director of the state office of information practices asked to intervene on behalf of the city in the police union's case.

The students and the SPJ adviser, Gerald Kato, said the police have tried to intimidate them by requesting personal information such as financial aid status and academic histories of newspaper staff members and by sending 500 officers to the hearing to extend the restraining order.

Despite the strong police presence at the hearing, the lower court judge denied the motion to extend the stay saying the public had a right to such information.

"I think the public's right to know is a fundamental interest in our society. It is institutionalized, it is constitutionalized, it is an interest of the first priority," said Circuit Judge John Lim in his opinion.

Kato was pleased with that decision, but frustrated with what

*See MANOA, page 15*

# Hawaii erupts with open records issues

**HAWAII** — Student journalists in Hawaii have had a busy year. While the Society of Professional Journalists student chapter in Manoa has been fighting its widely-publicized battle, student newspapers in Honolulu and Hilo have won victories of their own.

The student editor of the *UH Observer*, the student newspaper of the University of Hawaii at Honolulu, requested the names and titles of all university employees suspended or discharged for employment-related misconduct from 1983 to present.

> *"It is our opinion that the University of Hawaii should provide the* UH Observer *with the information it has requested."*
>
> *Hawaii Office of Information Practices*

The request stemmed from a June 1993 law providing exemptions to the state's privacy laws.

When an employee has been suspended or discharged for misconduct and has exhausted all methods of appeal, the law permits the release of the employees name, the type of misconduct, a summary of the alleged misconduct, findings of fact and conclusions of law, the disciplinary action against the employee.

Student editor Jahan Byrne requested the information and quoted the law in a letter to the university president, Kenneth Mortimer, in August 1993. Mortimer sent a letter to the state attorney general for his opinion on the matter.

In his response to Mortimer, Attorney General Robert Marks said the university was required by law to release the information. He went on to explain the decisions in the University of Hawaii at Manoa case and explore their impact on the freedom of information law.

"The temporary restraining order issued by the court, by its terms, applies only to the Hawaii Police Department and not other agencies," he said. "It is our opinion that the University of Hawaii should provide the *UH Observer* with the information it has requested, unless and until a court of competent jurisdiction declares Act 191 to be invalid."

The attorney general's response to the student newspaper at the University of Hawaii at Hilo also opened new doors for the student re-

*See HAWAII, page 16*

# *Minnesota newspaper gains access to sex video*

**MINNESOTA** — A district court judge has granted *The Minnesota Daily*, the student newspaper at the University of Minnesota, access to a "sexually explicit" videotape that led to the dismissal of two gymnastics coaches.

The coaches, Gabor and Katalin Deli, had distributed copies of a videotape to team members in the spring of 1992.

The majority of the tape contained scenes of the team performing and was intended to be used as a training tool. Portions of the tape, however, contained scenes of the married couple involved in sexual activity.

When the university officials heard of the matter, they began an investigation of the coaches.

The university officials dismissed head coach Katalin Deli for breach of contract and violation of university policy. They acknowledged that the distribution of the video was included in that breach.

Gabor Deli received a letter shortly after his wife's dismissal informing him that his contract had been terminated because he used university equipment to make a videotape of himself and his wife in an intimate situation and distributed it with a training tape.

The two filed a grievance contesting the action, and an advisory committee reviewed the case.

The committee upheld Gabor's dismissal, but reversed his wife's.

When Eldon A. Kuderer, a member of the board of regents, made the final decision, he upheld both dismissals.

He never viewed the videotape.

"The videotape was the triggering mechanism that compelled [Women's Athletic] Director Voelz to conduct an investigation into Katalin Deli's coaching activities," Kuderer said.

During the controversy surrounding the coaches' dismissals, the student paper requested a copy of the tape. The university refused to release it.

The paper sought an advisory opinion from the state Commissioner of the Department of Administration.

In her opinion, she agreed with the paper on the fact that the university was incorrect in its claim that the videotape was not public because it was not the issue for which the coaches were fired.

She said that although it was not the final reason they were dismissed, it was the videotape that prompted the investigation.

Although she ruled that the tape met the qualifications for coverage by the open records law, she said it was not public.

She ruled that "in ascertaining the intention of the legislature, courts may presume that the legislature does not intend that a statute cause an absurd or unreasonable result."

She decided the release of the videotape would be absurd.

The paper was not satisfied with the commissioner's decision, so the editors and their attorney filed for a summary judgment from the court.

In a judgment issued in June, Judge Lucy A. Wieland ordered the university to release the tape to the paper.

"If the commissioner is correct that the legislature would not want videotapes like this made public, then it is the function of the legislature, not this court, to add a provision to the Act providing an exception for 'sensitive material such as this,'" Wieland said.

Wieland said that the purpose of the law was to protect the public's interest in knowing how and why government agencies discipline their employees.

She said releasing the tape is how the university can allow the public to examine the "why" in this case.

"The purpose of the litigation wasn't necessarily to be able to view this tape," Marshall Tanick, attorney for the paper, told the Minneapolis *Star Tribune*.

"The purpose ... was to establish the principle that when public employees are terminated, the documentation surrounding the termination should be accessible to the media and public."

Tanick said the university has complied with the court order.■

# Paper sues local school board

*Board selected superintendent with private 'straw poll' vote*

**SOUTH CAROLINA** — The publishers of *The State* newspaper claim the local school board broke the South Carolina Freedom of Information law during its search for a new superintendent.

The paper's attorney said the board violated the law by holding private meetings during its search for a new superintendent. Now the paper has filed a lawsuit to force the school board to comply with the law in this issue and in all further actions.

The newspaper has accused the Richland District 2 School Board of taking a "strawpoll vote" in a private meeting.

They agreed to hire the district's current associate superintendent for instruction as the next superintendent on the basis of that "informal vote."

The board's attorney said members had planned to confirm the vote in an open forum.

The newspaper filed suit in May, asking the court to declare the board's actions to be in violation of the FOI law.

The paper is also seeking a restraining order against the board to force it to comply with the open records law and prevent it from taking votes or formal action while in executive session.

The board had previously refused to release the names and records of candidates for the office, but it did release the names of three finalists shortly before making the closed-door decision.■

# Pennsylvania crime bill passes senate

**PENNSYLVANIA** — A bill that would require Pennsylvania colleges and universities to make campus crime records open to the public has passed the state senate for the second time in two years. Unlike the earlier bill, this one has met with early success in the house of representatives.

The 1992 bill died in the House Education Committee, but the new bill received committee approval in June. However, the bill's supporters were not optimistic when it left the senate.

"It's still pretty much the same cast of characters over there [in the house]...so I'm not very confident," said Greg Jordan, an aide for the Senate Appropriations Committee.

Jordan and other supporters of the bill worried that it would fall victim of politics since the Bill's sponsor, Sen. Richard Tilghman (Bryn Mawr) is a Republican and the majority members of both houses of the legislature are Democrats.

The bill would require campus police and security officers to maintain a public daily log of all valid complaints to the office as well as all reports of criminal activity and the university's response to each.

Jordan said the bill will not affect policies concerning the identity of victims. Their names and addresses are not required to be on the public record.

The bill does require a listing of names and addresses of people who are arrested, as well as the crimes they are charged with.

If passed, the bill may settle problems at several state colleges and universities, such as Community College of Philadelphia, where police and security records are not made public. (*See ADVISER, page 31.*)

Jordan attributes the bill's success in the senate to the dedication of Connie and Howard Cleary of Security on Campus. The Clearys began their fight to open campus crime records after their daughter was murdered on a college campus they believed to be safe.

Jordan said the Clearys did "a very fine job" of working with the senators and convincing them to support the bill.

"If they take the same measures in the house as they did in the senate, I think we can be successful," Jordan said.■

# Threatening letters released

**OHIO** — The Ohio Supreme Court ruled in December that Kent State University wrongly withheld certain crime records from the *Akron Beacon Journal*.

The court ordered the release of all documents from a 1991 investigation involving threats against a Kent State admissions officer but agreed the school could edit the documents to protect the names of the victim, the informants and all uncharged subjects.

The admissions officer received several anonymous letters from someone threatening to kill him during the winter of 1991 and 1992.

After two unsolved shooting deaths on campus that winter, police told the admissions officer he should stay away from campus in early February, but police officials now say those deaths were not related to the threats.

Police identified a suspect in the death threats, but the admissions officer refused to press charges.

Shortly after that, the university brought misconduct allegations against the director of admissions.

Police eventually ended both the investigation of the letters and the misconduct allegations.

There were no formal charges, but the director resigned.

*Akron Beacon Journal* reporter Thrity Umrigar requested access to the records involved with the investigations, but university officials claimed the records were confidential and refused to release them.

The paper sued for access to the records that spring, and the following year the court of appeals ruled in favor of the university.

The paper appealed and asked for at least the four threatening letters establishing the crime.

In its December decision, the state supreme court ordered the release of nearly all documents relating to the incident, including copies of the actual letters, but agreed the police could edit them to prevent the release of identifying information.■

# *Manoa*

*(Continued from page 13)*

followed.

"There began a long, drawn out process that has not ended yet," he said.

The police union immediately appealed the decision, and in June the Supreme Court denied the appeal, but said the names could not be released until the court made a decision on the journalists case to force the city to release the names.

"On every major motion we've had in court we've won," Kato said, but so far those victories have had no effect.

"As long as we don't get the names, they think they win," he said.

Kato said he believes the police hope to have the law changed to prevent the release of such information and are delaying the case until the state legislature convenes.

"It's just a matter of clearing this hurdle and it's turning out more difficult than we thought," he said.

"We can only hope that in the end we will prevail."■

# *Hawaii*

*(Continued from page 13)*

porters.

The Hilo campus uses security guards, and although they do not have the authority to make arrests, they do respond to and keep reports on disturbances, vandalism and suspicious activities.

They also keep reports on unlocked buildings and offices and other general safety issues.

When Shannon Olson, the crime reporter for the *Ke Kalahea*, the school's student newspaper, requested access to those daily activity reports, the school responded by issuing bi-weekly summaries.

Olson said the summaries were better than nothing, but they were not enough.

"In order to ensure accurate reporting of incidents to protect the safety of students and their property on this campus, *Ke Kalahea* needs copies of all campus incident reports, no matter how trivial, provided on a weekly basis without being summarized or abridged in any matter except to protect the innocent," Olson said in a memo to the school's auxiliary services.

"In short, I want everything every week with only names of suspects and victims (and similar information from which a person's identity can be deduced) withheld."

The director of auxiliary services, Kolin Kettleson, wrote to Olson and said he agreed the students had a right to be informed, but said the summaries provided everything they needed to know for an accurate representation of what was occurring on campus.

"The summaries eliminate possible selected editing of statements out of context, which even though is technically accurate, can give an inaccurate representation of the big picture," he said.

Olson turned to the attorney general for an advisory opinion, and the attorney general's office forwarded her request to the state's Office of Information Practices.

The office agreed with Olson's arguments under state law and cited several past state court decisions which held that government agencies must provide copies of the actual requested records and not separately created summaries.

> *"In short, I want everything every week with only the names of suspects and victims [and identifying information] withheld."*
>
> ***Shannon Olson***
> ***reporter***

The office said the university must release the records minus information identifying individuals as Olson requested unless release of the information would hinder an ongoing investigation.

Hawaii freedom of information laws have broad privacy exceptions. Olson chose not to seek names of suspects, victims or witnesses in her request.

She explained in her letter to the attorney general that she understood that information identifying individuals may be covered by Hawaii's exception for "clearly unwarranted invasion of privacy."

With successes in Hilo and Honolulu and the pending issues in Manoa, the current eruption of access issues may turn Hawaii into journalists' paradise.■

# Station seeks access to bus tape

**FLORIDA** — A state court upheld a school board decision to deny access to a videotape of a 14-year-old boy threatening other students with a gun on a public school bus in March.

During the course of its coverage of the action against the students involved, WFLA-TV in Tampa requested a copy of the videotape of the incident taken by a surveillance camera on the school bus. School officials denied the request even after the station offered to alter the faces of students on the tape.

According to Greg Thomas, WFLA's attorney, the station filed a lawsuit against the Hillsborough school district to demand a copy of the tape, but the judge decided in favor of the school.

The judge ruled that the tape was part of the student's disciplinary record and was therefore protected by Florida's law protecting educational records.

"Florida has its own little Buckley," Thomas said, referring to the Buckley Amendment, the federal law protecting student education records that now exempts law enforcement records.

In 1987, a Florida circuit court ruled that records relating to criminal activity were not considered part of a student's educational records.

Thomas said the station is in the process of appealing the decision on the grounds that the right to privacy does not include records revealing criminal conduct.■

# *UCLA*

*(Continued from page 12)*

had available. Romonek said they did not give up the right to take the school back to court for the rest of the requested information. The paper's staff was able to decipher the material enough to identify the parties involved, but had problems contacting people for a statement.

"Even though I knew who people were, I chose not to run [the names]," Romonek said.

University representatives claim they kept the settlements confidential to protect the people involved, but one victim's attorney told the *Los Angeles Times* that the school insisted the settlement be kept quiet, not her client.■

# Digging for the Truth

*State freedom of information laws can give the student press access to records and meetings regarding searches for public school executives and administrators*

As student and professional journalists have become more adept at using open records and open meetings laws to gain access to public school affairs, courts have been pressed to determine how much access the law permits. The media has been testing the limits of their access rights in demanding open meetings and records on public school searches for new executives: college-system chancellors, college presidents and administrators and school system superintendents.

The general public, as well as the student body, has a stake in what goes on behind those closed doors. School executives are influential leaders in any community. They may ultimately be responsible for the disposal of millions of tax dollars.

While courts have been reluctant to grant full access to searches under even the most expansive readings of state freedom of information laws, a growing number of courts and legislatures have defined at least a limited range of access to these traditionally closed-door processes. The Supreme Court of Arizona opened the records of finalists for the presidency of Arizona State University.[1] The Florida Supreme Court opened the meetings of a search committee seeking a new dean for a state law school.[2] The legislatures in Georgia and Texas opened the records of candidates for university presidencies still in the running two and three weeks before the appointment was scheduled.[3] Just in May, the company that publishes *The State* in Columbia, S.C., sued a local school board for access to a superintendent search.[4]

Every news organization that has gone to court has presented a different combination of legal arguments as to why searches should be open. Court decisions have usually hinged on the wording of the state open meetings and open records laws. Since these laws are different in every state, courts have reached different conclusions as to what should be open. But there are common threads running through the existing court decisions.

A two-part analysis can help you determine how much access to the search process your state law is likely to permit you in covering your school system. The first part relies on the specific language of the law in your state. The second part raises other arguments a court is likely to accept or reject. In some states, courts have already considered the issue of access to executive searches. For the latest developments in your state, contact the Student Press Law Center.

**What *exactly* do the state laws say?**

A court's job is to interpret the law, not write it anew (although sometimes they do), so the first place a court turns to determine what the

legislature intended is to the text of the open meetings or open records law. This text is often accompanied by a legislatures' official comment to the law, and a court might also consider the legislative debate that took place in passing the law. In addition, a court might consider the interpretation of a law provided by another agency of government, such as the opinion of the attorney general or the decisions of other courts in cases involving similar issues. The language of a law can often be construed more than one way, but it is helpful to consider the possibilities so that you can find justification in the text for your position. Answer the following questions about your access laws.

**Is there a part of the open meetings law or the open records law that specifically applies to the governing body of the school you are covering?**

Most courts that have had to decide whether a statute applies to a school board or board of regents or trustees, when the law does not explicitly mention them, have decided that the statute does apply.[5]

Where the law does specifically cover the school or college system you are covering, it might do so in the open meetings or open records law, or in a separate section of the state code that covers education. Note whether the school or college system is given any special treatment as compared to other parts of the government. For example, Florida law specifically addresses the ability of universities to exempt some personnel records, such as evaluations, from the state open records law.[6]

If schools are treated as any other agency of government, then your argument for access is stronger. You can rely on cases in which access to other government agencies was allowed. If the school system is given special treatment, consider how. The legislature might have given discretion to the school system in releasing its own records, but it might have laid down some overriding restrictions. Under the Florida law, even personnel information a university declares confidential is subject to a statutory, open records test to verify that the government has a legitimate concern, such as an individual's privacy, at stake in maintaining the confidentiality.[7]

**Is there a "standard of review" for public disclosure of information?**

Many states have adopted language similar to that of the federal Freedom of Information Act, which allows the government to refuse to disclose information if disclosure would result in a "clearly unwarranted invasion of personal privacy."[8] If that standard is the only bar to release of the information you want, it can be a high threshold for the government to meet. Sometimes, though, the state will modify the federal standard, perhaps lowering the threshold to mere "invasion of personal privacy." Delaware uses such a standard.[9]

*Public officials carry not only public trust, but public dollars. The public has an interest in ensuring that its money is spent properly by the school system.*

**Does the open records or open meetings law limit its own application?**

The Iowa open records law orients its application toward material produced by the government, so applications submitted by executive candidates are less likely to be subject to disclosure.[10] An open records law might also limit its application to material of a certain content, such as non-evaluative material. The school system might then be compelled to produce only parts of a file that are not evaluative, such as a candidate's identity and qualifications.

In Tennessee, for example, the government may keep a confidential personnel file, separate from the public file, only for information concerning an employee's problems with drugs, family, health or the law.[11] That exemption could be extended to files on applicants for public employment, even though the bulk of their applications might be open.[12]

**Is there a general statement expressing the legislature's commitment to open government?**

Many open records or open meetings laws are preceded by such a statement, and if yours is, then it strengthens your case. A court interpreting an open records or open meetings law with such a clear statement of intent will likely favor openness on an issue that is unclear under the law. The Supreme Court of Kentucky, for example, extended the state open meetings law to a presidential search committee, finding that the legislature evinced a clear commitment to openness.[13]

**Does the public interest in access outweigh competing public, individual and government interests in secrecy?**

Courts usually address the competing concerns at stake in deciding whether to allow access to meetings and records. In this balancing test, journalist plaintiffs and school system defendants have presented an array of arguments with mixed success.

**Arguments Against Access**

The primary argument school and college administrations use to keep executive searches closed is that there is a public interest in maintaining the individual privacy of each applicant. This argument usually gives way to a balance of the individual's privacy against the public interest in freedom of information. For example, the Supreme Court of Michigan held in *Booth Newspapers, Inc. v. Board of Regents of the University of Michigan* that candidates for the presidency of the University of Michigan had a legitimate interest in the confidentiality of their applications.[14] But the court said that disclosure of records that might have identified candidates was nonetheless required, because threats to candidates' privacy would have to be "'more palpable than mere possibilities.'"[15]

In a Florida Supreme Court case, local media filed a complaint against the University of Florida for access to the

university's search for a new dean of the law school.[16] That court rejected a claim by the University of Florida that the search process should be closed because the importance of academic freedom outweighed the public interest in open government. The court recognized the importance of academic freedom, but said such freedom cannot be a "shield ... used to mask abuses of the rights of others."[17]

Officials at the University of Kentucky argued against an open presidential search by claiming that the government interest in efficiency outweighed the public interest in open government, and openness in the search process would be inefficient.[18] The Supreme Court of Kentucky rejected that contention, finding that the language of the state open meetings act evinced a clear legislative commitment to open government regardless of efficiency.[19]

In a search for a new basketball coach at Eastern New Mexico University, the court recognized the legitimacy of a series of arguments university officials made against openness: candidates apply for the job with the expectation that their applications will be confidential; fewer and less qualified candidates will seek public office in an open search process, for fear of jeopardizing their current positions; and as a result of the

smaller and less qualified applicant pool, public schools will be at a disadvantage relative to private schools.[20] The New Mexico district court accepted those arguments, but said they do "not continue indefinitely."[21] Though the public's right to know must be balanced against individual privacy, the court said that the right to know is the rule rather than the exception, and an applicant's record must be opened upon the university's beginning to verify the applicant's credentials.[22] Moreover, the court said the university "should be pleased" to receive information from the public about the candidates' qualifications.[23]

The New Mexico court also rejected a series of arguments by Eastern New Mexico University officials: information in the applications is of a sensitive and personal nature; giving the public only the applications could mislead the public and cause it to misjudge a candidate's qualifications; and federal laws might not allow the disclosure of information the applications contain, such as age, race and gender.[24] The court found that the state legislature had taken the first two arguments into consideration before passing the open records law, and the court found that the university had provided no evidence to support the contention that federal law might prohibit the release of any applicant data.[25]

The Georgia Supreme Court said state law compelled an open presidential search despite the court's acquiescence to the argument that the quality of the applicant pool might be hurt by openness in the search process.[26] The Georgia Board of Regents also argued that an open search would politicize the search process.[27] The court did not address that issue.

Some schools have tried to circumvent open search processes by hiring private, outside organizations to conduct the search and claiming that those organizations are not subject to the open meetings and open records laws.

But if a private organization is performing the function of a state institution, courts tend not to let the private organization off the hook for purposes of freedom of information. An Ohio court (not in a schools-related case) applied a three-part test. A private search firm was subject to open-records laws if the firm was producing records to carry out the responsibilities of public officials who would be subject to the sunshine laws, the public office was able to monitor the performance of the private firm and the public office had access to the private records so as to monitor the private firm's performance.[28] An Iowa court held that search records held by private entities were subject to the same test for release as the same records held by public entities, as long as the government paid to maintain the records.[29] Statutes in Georgia and Colorado expressly reach public records in the hands of a private search firm.[30]

**Arguments For Access**

**Open government is in the public interest.**

This is the primary argument in favor of access. The public, often through the media, is a watchdog on government, responsible to ensure that public officials conduct themselves in accord with the public will. Public officials carry not only public trust, but public dollars. The public has an interest in ensuring that its money is spent properly by the school system, from the process of interviewing executives to the efficient administration of the schools.

The Arizona Supreme Court recognized the public interest in making sure the selection of a president for Arizona State University "was not rigged nor discriminatory ...."[31] The Arizona court also noted that the public might have information about the fitness of executive candidates that would not be brought to light in a closed selection process.[32]

**Applicants voluntarily seek public, executive positions.**

Individuals who put themselves in the public light surrender some of their privacy. This argument is not as strong when candidates for executive positions have been nominated and might not know about the nominations, but there comes a time when candidates must expect to be exposed to public scrutiny.

In New Mexico, *The Albuquerque Tribune* and the regents of the University of New Mexico settled on a policy in 1991 under which a candidate's application for the university presidency is publicly disclosed when the candidate interviews for the job.[33] Applicants are given

an opportunity to withdraw from the running before the interview if they do not want their applications disclosed.[34] This system serves the purpose of open government while also ensuring that candidates knowingly and voluntarily surrender their right to privacy.

**Public bodies should not be allowed to circumvent access laws by delegating authority to closed-door committees.**

Open meetings and open records laws are not always clear as to whether they reach subcommittees or advisory boards below explicitly covered parent bodies.

*Individuals who put themselves in the public light surrender some of their privacy. There comes a time when candidates must expect to be exposed to public scrutiny.*

One way to distinguish what entities are subject to the laws is to draw a line between fact-finding and decision-making functions. An Alabama court, for example, distinguished a fact-finding advisory committee from the decision-making Board of Trustees in the search for a president of the University of Alabama.[35]

The court found that the advisory committee, which only made recommendations to the chancellor, who made a recommendation to the board, was not subject to the state freedom of information laws.[36]

But a fine line separates fact-finding and decision-making; under which classification is an "advisory" committee that narrows the list of candidates from 100 to 10? The Alabama court emphasized that the advisory committee in that case did not have the power to make "reduction decisions" — decisions that reduce the size of the pool of candidates; the advisory committee merely commented on all the candidates for the chancellor's review.[37] A committee empowered to make reduction decisions would have decision-making authority and would not be permitted to operate out of the public eye.[38] Also, the Alabama decision indicates that the use of an "advisory" body to allow officials to publicly "rubber stamp" a closed-session selection process would be an impermissible circumvention of the open meetings law.[39]

Closed executive searches invite abuse of the public's trust. Superintendents and college presidents have the power to affect the tens or hundreds of thousands of lives in the communities they lead by directing and implementing policies on academic and social life. As these executives often serve indefinite terms, hiring a new executive gives a school or college board a rare opportunity to shape institutions and community life for decades to come. This raises a responsibility on the part of the public to ensure that their public representatives on the school or college board make policy decisions in line with the community's best interests. That is only possible when executive searches are subject to public scrutiny. The media have an important role in asserting the public's right to hold its representatives accountable.■

***If you would like more information about court rulings on this subject, send $2 to the SPLC for our packet "Access to Educational Administrator Searches."***

[1] *Ariz. Bd. of Regents v. Phoenix Newspapers*, 806 P.2d 348 (Ariz. 1991).

[2] *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).

[3] GA. CODE ANN. § 50-18-72(a)(7) (Supp. 1993); TEX. GOV'T CODE ANN. § 552.123 (West 1994).

[4] See *PAPER*, page 14.

[5] *See, e.g., Wood*, 442 So. 2d 934; *Booth Newspapers, Inc. v. Bd. of Regents of the Univ. of Mich.*, 507 N.W.2d 422 (Mich. 1993).

[6] FLA. STAT. ANN. § 240.253 (West 1989 and Supp. 1994).

[7] FLA. STAT. ANN. § 119.14.

[8] 5 U.S.C. § 552(b)(6).

[9] DEL. CODE ANN. tit. 29, § 10002(d)(1) (Supp. 1992); *see also, e.g.*, CONN. GEN. STAT. ANN. § 1-19 (1991).

[10] *See* IOWA CODE ANN. § 22.7 (West 1989 & Supp. 1994).

[11] TENN. CODE ANN. § 10-7-504(d) (Supp. 1993).

[12] *See Bd. of Educ. v. Memphis Publishing Co.*, 585 S.W.2d 629 (Tenn. Ct. App. 1979) (applications for superintendent of schools were opened).

[13] *Lexington Herald-Leader v. Univ. of Ky.*, 732 S.W.2d 884 (Ky. 1987).

[14] *Booth*, 507 N.W.2d at 431.

[15] *Id.* at 432 (quoting *Dep't Air Force v. Rose*, 425 U.S. 352, 380 (1976)).

[16] *Wood*, 442 So.2d at 941.

[17] *Id.*

[18] *Lexington Herald-Leader*, 732 S.W.2d at 886.

[19] *Id.*

[20] *Stinnett v. Bd. of Regents*, No. 88-CV-42, slip op. at 2, 5 (N.M. 9 Dist. Ct. April 4, 1988) (on file with the SPLC).

[21] *Id.* at 6.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 2, 5.

[25] *Id.* at 5.

[26] *Bd. of Regents of the Univ. Sys. of Ga. v. Atlanta Journal*, 378 S.E.2d 305, 307 (Ga. 1989) (invalidated in part by GA. CODE ANN., *supra* note 3).

[27] *Regents Must Release Applicants' Names*, THE NEWS MEDIA & THE LAW, Summer 1989, at 34.

[28] *Mazzaro v. Ferguson*, 500 N.E.2d 469 (Ohio 1990).

[29] *Des Moines Register & Tribune Co. v. State Bd. of Regents*, No. 88-52163, slip op. at 12-14 (Iowa Dist. Ct. Polk County, Feb. 19, 1992) (on file with the SPLC).

[30] GA. CODE ANN., *supra* note 3; Colo. H.B. 1234 (signed into law April 1994 as COLO. REV. STAT. § 24-72-204(3)(a)(XI); copy on file with the SPLC).

[31] *Arizona Bd. of Regents*, 806 P.2d at 354.

[32] *Id.*

[33] *Gallagher v. May*, No. CV-90-03387, and *Walz v. Bd. of Regents of the Univ. of N.M.*, No. CV-90-03600, slip op. at 2 (N.M. 2 Dist. Ct. Bernalillo County, April 15, 1991) (consolidated, consent decree; on file with the SPLC).

[34] *Id.*

[35] *The Birmingham News Co. v. Bartlett*, No. CV 88 504 403 MC, slip op. at 13 (Ala. 10 Dist. Cir. Ct. Eq. Nov. 15, 1988) (on file with the SPLC).

[36] *Id.*

[37] *Id.* at 10-11.

[38] *Id.* at 10 (citing *Wood*, 442 So. 2d at 941).

[39] *Id.* at 10 (quoting *Wood*, 442 So. 2d at 942).

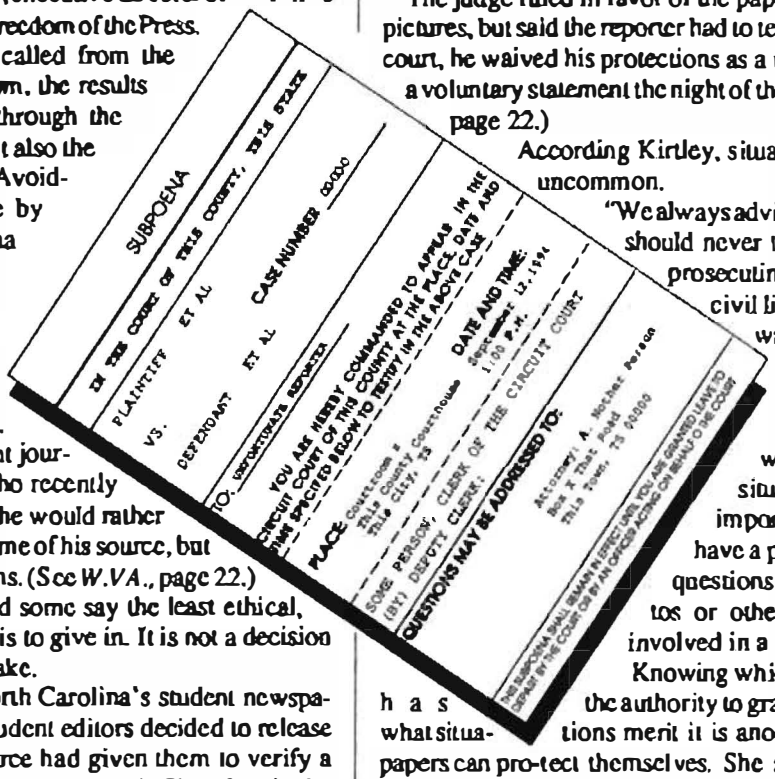
# Order of the Court

*Student journalists can save time and money by planning ahead for subpoenas*

The term "eye-witness news" is taking on a whole new meaning as journalists are consistently called to testify and provide evidence police and attorneys did not gather on their own.

"A lot of lawyers like to use journalists as cheap investigators," said Jane Kirtley, executive director of the Reporters Committee for Freedom of the Press.

When a journalist is called from the newsroom to the courtroom, the results can be costly, not only through the expense of an attorney, but also the loss of time and morale. Avoiding some of the expense by submitting to the subpoena comes with its own price. By providing the courts with information, reporters may lose sources because they view them as an advocate.


SUBPOENA
IN THE COURT OF THIS COUNTY, THIS STATE
PLAINTIFF ET AL
VS.
DEFENDANT ET AL
CASE NUMBER 00000
TO: REPORTER'S REPORTER
YOU ARE HEREBY COMMANDED TO APPEAR IN THE CIRCUIT COURT OF THIS COUNTY AT THE PLACE, DATE AND TIME SPECIFIED BELOW TO TESTIFY IN THE ABOVE CASE
PLACE: COURTROOM # This County Courthouse This City, TS
DATE AND TIME: September 12, 1994 1:00 P.M.
SOME PERSON, CLERK OF THE CIRCUIT COURT
(BY) DEPUTY CLERK:
QUESTIONS MAY BE ADDRESSED TO:
Attorney A. Mother Person
Box X Main Road
This Town, TS 00000
THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED LEAVE TO DEPART BY THE COURT OR BY AN OFFICER ACTING ON BEHALF OF THE COURT

Ross Allen III, a student journalist in West Virginia who recently received a subpoena, said he would rather go to jail than reveal the name of his source, but luckily, he had other options. (See *W.VA.*, page 22.)

The least expensive, and some say the least ethical, way of resolving the case is to give in. It is not a decision most journalists like to make.

At the University of North Carolina's student newspaper, *The Daily Tarheel*, student editors decided to release a phone number their source had given them to verify a story rather than risk being subpoenaed. They fought for more than a month, but said it was already common knowledge and the fight was not worth the expense.

Allen chose not to release the information, but he did not have to go to jail. He filed a "motion to quash," which is a a request that the court withdraw the subpoena. The judge said he would not rule on the motion unless Allen was called as a witness. The attorney who requested the subpoena never took that risk.

The *Minnesota Daily* at the University of Minnesota had partial success in a motion to quash. In their case a student journalist and photographer both witnessed an alleged crime. The prosecuting attorney subpoenaed the paper for all published and unpublished photographs and subpoenaed the reporter to testify as a witness.

The judge ruled in favor of the paper on the matter of the pictures, but said the reporter had to testify. In the eyes of the court, he waived his protections as a reporter when he gave a voluntary statement the night of the crime. (See *JUDGE*, page 22.)

According Kirtley, situations like that are not uncommon.

"We always advise journalists that they should never talk to police officers, prosecuting attorneys and even civil litigants they think may want to subpoena them," she said.

Kirtley said planning ahead is the best way to avoid a difficult situation. She said it is important for newspapers to have a policy for dealing with questions and requests for photos or other items from people involved in a legal battle.

Knowing which member of the staff has the authority to grant confidentiality and what situations merit it is another way Kirtley said papers can pro-tect themselves. She advised journalists to answer several questions about the situation before agreeing to use an unnamed source.

"Are you prepared to go to the mat to fight [a subpoena] all the way through the system? Are you willing to go to jail? Are you willing to be fined? If you are not prepared to do that, you should not be granting confidentiality in my opinion," she said.

Some courts have recognized privileges that protect journalists from subpoenas and 29 states and the District of

*See SUBPOENA, page 24*

# Judge upholds privilege for unpublished photos

*The* Minnesota Daily *editors will not have to turn over pictures of campus assault*

**MINNESOTA** — A state district court has ruled that the *Minnesota Daily* at the University of Minnesota should not be required to supply unpublished photos for evidence in an assault trial, but a reporter will be required to testify.

Judge John M. Stanoch found freedom of the press outweighed the state's interest in access to the information in this case.

"The Constitutional rights embodied in the First Amendment and parallel provision in our State Constitution are among the most precious rights that distinguish our democracy from totalitarian regimes," he said. "This Court concludes that press freedoms must be given broad protection unless and until overriding and compelling reasons are established to compel a journalist to provide unpublished materials."

> *"This court concludes that press freedoms must be given broad protection unless and until overriding and compelling reasons are established to compel a journalist to provide unpublished materials."*
>
> ***Judge John M. Stanoch***

In October, the paper sent a reporter and a photographer to cover a rally of the Progressive Students Organization to counter a rally of Nazis that night. There was a confrontation between rally participants and alleged Nazis, and one student was arrested and charged with two counts of felony assault for allegedly striking a purported Nazi. The reporter and photographer were present during the confrontation.

The *Daily* editor, Pamela Louwagie, received a subpoena in May requesting all unpublished photographs from the rally. The reporter, Jesse Rosen, also received a subpoena to testify in the case.

Both Louwagie and Rosen filed a motion to quash, citing the Minnesota Free Flow of Information Act, which serves as a "shield law" to protect reporters from subpoenas. They also cited protection by the U.S. and Minnesota Constitutions.

They also argued that if they were forced to testify and

*See MINNESOTA, page 24*

# West Virginia student journalist protects sources

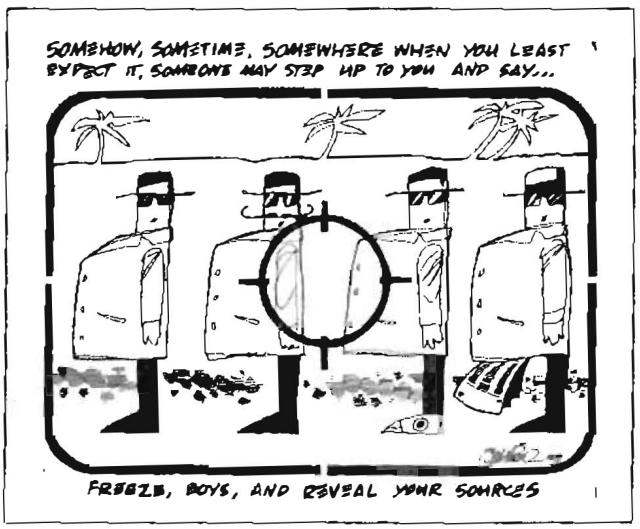
**WEST VIRGINIA** — A West Virginia student journalist, the Student Press Law Center, a Washington D.C. attorney and a rookie real estate lawyer worked together in June to keep the press off of the witness stand.

E. Ross Allen III, the city desk editor of *The Daily Athenaeum* at West Virginia University, received a subpoena on June 21, calling him to court the next day to testify in a case involving student election fraud.

After the student government elections, a ballot counter expressed concern over discrepancies in the way the ballots were marked.

When all of the ballots were examined, election officials considered 13 questionable.

After one student, Brian Bigelow, was called the winner, the group who was supposed to certify the election said there was evidence of voter fraud and declared the election invalid and called for a new election.




Bigelow, his running mate and several other winners sought an injunction to prevent the second election, but the judge did not grant it.

The other major candidate, Clark Parker, won the second election.

Bigelow and other students who one the first election but lost in the second took the case back to court to have the second election declared void.

Allen had closely observed the elections and spoke to several people involved in them.

He reported seeing poll stations unattended and two poll workers who appeared to be, and later admitted to being, drunk during the elections. He also promised confidentiality to two sources in exchange for some information.

*See ALLEN, page 24*

# *Board orders principal to return photograph*

TEXAS — A school board in Victoria has ordered a high school principal to relinquish a photo taken by a student photographer.

Victoria High School Principal Melissa Porche confiscated Brad Allerton's camera in September 1993, claiming a photo he had taken violated another student's privacy. The photo pictured Porche using a metal detector on the student, whom she had detained in the hallway after fights believed to be gang-motivated broke out.

According to Barclay Burrow, adviser to *The Victorian* newsmagazine, Porche developed the film and returned the camera and pictures to Allerton, but she kept the photo in question.

Burrow followed up with a letter to Porche, asking that she return the photo. Porche refused, claiming she did not have to relinquish the photo since she was protecting the student's right to privacy.

The refusal led Burrow to file a grievance with the American Federation of Teachers in November. However, the person to hear these grievances was the principal herself. Again, Porche refused to return the photo.

The next step was an appeal, submitted to Superintendent Robert Brezina in December. He, too, refused to do anything about the situation.

*See PICTURE, page 24*

# Judge rules picture is part of student's record

TENNESSEE — A circuit court judge imposed a permanent injunction on a Sevierville newspaper in March to prevent it from running a photo of a high school student who was one of a group disciplined for drinking alcohol on a class trip to Cancun, Mexico. The paper intends to appeal the decision.

"It's a matter of principle," Bob Childress, publisher of *The Mountain Press* whose photographer took the photo, said.

"We never intended to run the picture. We never do plan to run the picture."

The picture in question is of the back of a student's head seen through the windows of double doors.

The subject of the photo was one of the 23 disciplined students attending an alternative class as a result of the Cancun incident.

The principal called the superintendent of the board of education to tell him about the photographer's visit according to Childress.

"He [the superintendent] called me and asked me not to run the picture," he said.

Childress told him he could not say what he planned to do because he had not seen the picture. The photograph had not been developed at that time.

When he did not get a satisfactory response from Childress, the superintendent sought and received a temporary injunction on behalf of the board of education, which Judge William R. Holt Jr. has since made permanent.

Holt acknowledged the importance of freedom of the press throughout his decision.

"I don't question the fact that we're dealing with a sacred, constitutional right that we see chipped away at every day," Holt said in his opinion.

As he continued, he made it clear that he planned chip away some of that freedom himself.

"You've got the constitutional right involved here of freedom of expression, freedom of the press, which is protected by the First Amendment," he said. "We've got the rules of law, the case decisions, the reasonings behind those that there is not anything that is absolute; everything is subject to some reasonable regulation."

In this case, Holt decided "reasonable regulation" constituted prior restraint in the form of an injunction.

Courts traditionally have rejected prior restraint on publications, even in cases when invasion of privacy is being claimed.

Holt said disciplinary records are protected by Tennessee law, which says schools may not release the records of students without their parent's permission.

He went on to reason that a picture of a student in a disciplinary setting should also be confidential because it is a "record that is in the process of being made."

Although the paper does not plan to publish the photo, Childress said he will continue to fight the injunction.■

# *Allen*

*(Continued from page 22)*

On June 20, a friend told Allen he had spotted his name on a list of people to be subpoenaed. He immediately contacted the SPLC for advice. He said he would not reveal the names of his sources, but he was worried that if he did not testify he would be jailed or fined for contempt of court.

In 1989 the West Virginia supreme court recognized the right of reporters to withhold the names of confidential sources and non-confidential information during a trial.

Allen received the subpoena the next day, asking him to appear in court to testify the following afternoon.

"I obviously was not comfortable with that," he said.

He spent much of the remainder of the day on the phone with SPLC hoping to find an attorney who would take his case for free.

Kurt Wimmer of the Washington, D.C., law firm Covington and Burling wrote a motion to quash on Allen's behalf, but he could not travel to Morgantown, W. Va., to present it himself. Rather than face the judge alone, Allen hired his landlord, a rookie real estate attorney, to go to court with him.

When his day in court arrived, the judge said he would not rule on the motion to quash unless the attorney called him to testify.

The attorney never called him to the stand.

Allen said he was relieved the case resolved itself as it did, but he said he had given a good deal of thought to what he would do if the judge ordered him to testify.

"I would have packed my toothbrush I'm afraid," he said. "I would have given out my new address as county courthouse, cell 19 or whatever. I wasn't prepared to reveal the names or any confidential information."

The judge ordered the first election valid and the second election invalid, so the case is now in the appeals process.

Allen said he believes he is in the clear now, but said he is prepared if he ever receives a subpoena again.

"It was a short-term stressor in my life. It certainly made me look at who I give a pledge of confidentiality."■

# *Minnesota*

*(Continued from page 22)*

provide evidence, they may be viewed as advocates in the case.

The judge took a three-step approach when considering whether or not the journalists should be compelled to provide information for the trial.

First, he questioned if the subpoenaed information was relevant to the case. Louwagie and Rosen admitted the first condition had been met.

Secondly, the judge considered if there was a "compelling and overriding interest" in the information. The journalists in this case argued that the state's interest was not so compelling that it justified invasion of press freedoms.

Louwagie and Rosen were most successful in arguing on the last point, which questioned if the information was available through "alternative means." They said there were many eyewitnesses who could provide the same information.

Stanoch refused to consider the conditions as they applied to Rosen. He said Rosen voluntarily surrendered his protection as a journalist by giving a statement to police on the night of the incident.

Stanoch did agree that the unpublished photographs should be protected. He said the state could not force the paper to surrender the photos because there were eyewitnesses who could "testify as to what they saw *and* heard." He said the state failed to produce "overriding and compelling" reasons the photos should be subpoenaed.

"While this court can contemplate situations where unpublished photos should be produced to avoid injustice, that situation does not produce itself here," he said.■

# *Subpoena*

*(Continued from page 21)*

Columbia have passed shield laws for the same purpose. The laws vary, so it is important for journalists to be aware of the situation in their states in order to use the law for protection.

There are some situations where journalists may be willing to release information, such as materials that have been published, but Kirtley suggests journalists not give in unless they are subpoenaed so they will not be viewed as a willing source.

"As a journalist, you are not an agent or an investigator for either side," she said. "You are an independent entity."

When journalists receive subpoenas, Kirtley recommends they consult a lawyer immediately.

Even unsuccessful subpoenas are a waste of time and money for newspapers, but journalists who plan ahead can minimize the damage.■

# *Picture*

*(Continued from page 23)*

Burrow's final appeal, this time to the school board in January, paid off. After a 90-minute closed meeting two months later, the board voted unanimously to order Porche to return the photo.

The trustees asked Burrow to make sure that if the photo ran in *The Victorian* that the student not be recognizable.

Burrow said the photo did not run because the commercial developing had hurt its quality.

The flap over the photo is only one of the problems the monthly newsmagazine has encountered with Porche during her first year as principal of the school.

In almost 20 years of teaching at Victoria, Burrow said this is the first year the publication has had to submit copies of *The Victorian* to be reviewed by the principal.

The process has been "awkward and tedious," said Burrow.

Porche has often been late or unavailable to look at the paper, said Burrow. The last issue was canceled because he and the newspaper staff were "tired of all the fights." Currently there is no policy governing the specifics of Porche's review of *The Victorian*, but this incident has motivated Burrow to seek a more specific policy.■

# This Space Not for Rent

## A high school newspaper and yearbook are battling in court for the right to refuse to print an advertisement

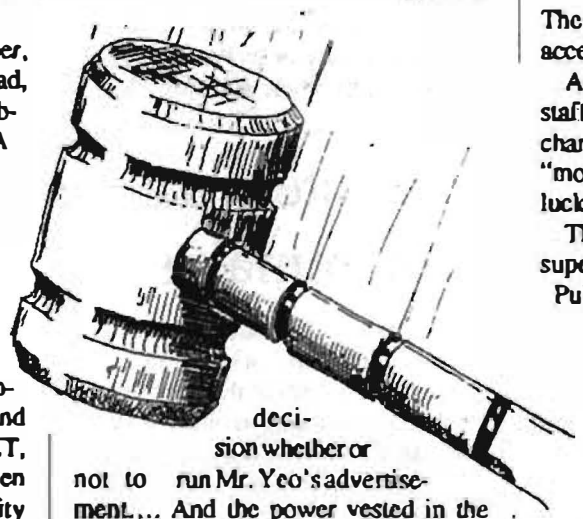
MASSACHUSETTS — A Massachusetts judge has twice denied a community group's attempt to force Lexington High School's student newspaper to print an advertisement encouraging sexual abstinence. The group is now appealing the decisions.

Editors of the student newspaper, the *Musket*, decided not to run the ad, which contains the message, "Abstinence: The Healthy Choice." A panel of six members of the yearbook staff also rejected it unanimously.

Douglas Yeo, chairperson of the Lexington Parents Information Network or LEXNET, fought back with a request for a preliminary injunction to halt publication until both the *Yearbook* and the *Musket* print the ad. LEXNET, according to Yeo, aims to "strengthen public education in our community by informing parents and enabling them to become more involved in their children's education."

The students maintain they have control over what appears in their publications, and are backed up by a 1991 state law that states, "The right of students to freedom of expression in the public schools of (Massachusetts) shall not be abridged."

Judge Richard Stearns sided with the students at the hearing in late April. In an oral decision, Stearns said, "I can only conclude that the student editors had the final decision whether or not to run Mr. Yeo's advertisement.... And the power vested in the student editors in this regard is appropriate, especially when I consider the effect and force" of the Massachusetts law — General Laws Chapter 71, Section 82.



Yeo and LEXNET quickly followed up with a motion for reconsideration. Judge Stearns refused, and LEXNET filed for an appeal that will be heard in December.

The controversy began last November, when LEXNET submitted the ad to the *Yearbook*. Co-editor Dow Chi felt right away that the ad was inappropriate. "It just didn't fit the nature of the yearbook. It contained a political message," Chi said. The yearbook traditionally had never accepted such messages.

According to Chi, the yearbook staff offered Yeo the opportunity to change the ad or put in a new one, "more of a congratulatory or good-luck message," but Yeo refused.

The staff met with Jeff Young, the superintendent of the Lexington Public School system, and Karen Mechem, the *Yearbook*'s adviser. Both played the devil's advocate, said Chi.

"They told us what we would be facing if we rejected the ad, and what we would be facing if we accepted it," he said.

The *Yearbook* staff resolved not to print the ad, but it was able to sidestep the legal battle because its pages had already gone to the printer by the time Yeo and LEXNET filed for the injunction.

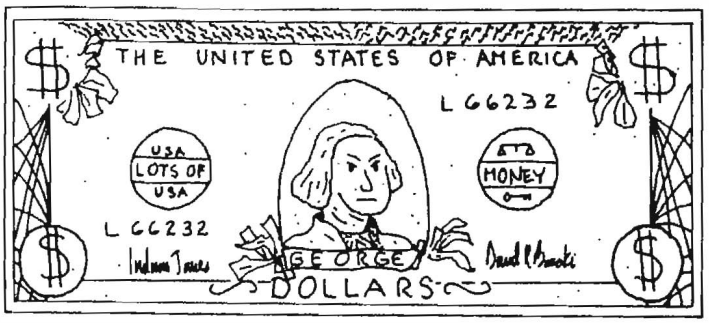
*(See LEXINGTON, page 28)*

# Newspaper runs ad questioning Holocaust

## *Donor threatens to pull $2 million, president calls for stricter policy*

**FLORIDA** — Although the University of Miami will probably not pay a monetary price for the *Miami Hurricane*'s decision to run an advertisement questioning the Holocaust, the decision might prove costly for the newspaper in the form of a new policy governing advertising.

The ad, entitled "A Revisionist Challenge to the U.S. Holocaust Memorial Museum," ran in the April 12 issue of the student-run newspaper. In response,




protesters tore up hundreds of copies of the paper, both the president's office and the newspaper office received angry phone calls, and Sanford Ziff, a wealthy benefactor, told the *Miami Herald* he would withdraw a $2 million donation to an art gallery and cancer center at the school.

According to *Hurricane* General Manager Julio Fernandez, who met with University President Edward T. Foote II during the thick of the controversy, the president's office had not received word of Ziff's threat. Foote knew of it only from the *Herald* article, Fernandez said.

The ad argues that the Holocaust Museum provides no proof of the existence of gas chambers used in the German concentration camps. The *Hurricane* staff took extra precautions with the newspaper, ordering 2,000 extra issues and using different distribution routes.

The decision to run the ad has drawn sharp criticism from some, including Arthur Teitelbaum of the Anti-Defamation League, who wrote in a column for the *Miami Herald*, "If Hurricane editors feel that it is important for their readers to know of [the ad's] ideas, they could easily have addressed that issue without publishing the advertisement, thereby serving as a billboard for bigotry."

But newspaper editor Lynette Malinger sees things differently. "We got one [phone call] from a student saying he's withdrawing from school and not sending his tuition," she told the *Miami Herald*.

"I feel real bad, but that's not the real issue. The issue is they are ignoring the opportunity for education."

Teitelbaum's column ran alongside a counterpoint opinion entitled "Freedom of thought is paramount," written by President Foote. In the column Foote said that while he deplored the ad's message, he supported the students' right to make their own editorial decisions.

"At a university of all places, we should err, if at all, on the side of freedom of thought," he said.

Now, however, the board of trustees is working on a new policy governing advertising. Although the specifics are still being negotiated, the intent is to prohibit ads that are "hateful or misleading." Foote said since the private university is the legal publisher of the paper, such regulation of advertising is appropriate.

"I have no problem with establishing limits at some point to what should be permitted under the auspices of a university publication," he said.

But many members of the staff do have a problem — four top editors resigned in May to protest board intervention.

Although some later reconsidered their resignation, even Foote acknowledges that the students are "concerned" about the implications of a new policy.

The $288 fee for the ad was donated to the Holocaust Museum.■

# Protesters paint anti-abortion ads; case remains unsolved by police

**FLORIDA** — In a bizarre twist on the now-familiar theme of newspaper theft, a group of students at the University of Miami destroyed approximately 10,000 anti-abortion inserts for distribution in the Miami *Hurricane*.

According to former General Manager Julio Fernandez, the vandals used red paint as their method of censorship, destroying every single insert. "They took them out of the boxes in layers," Fernandez said. "Everything was covered in paint."

They also left messages for the staff, "saying they weren't going to let [the inserts] be distributed," Fernandez said.

Since the inserts were being stored in the University Center one week before their scheduled run, the *Hurricane* was able to get a second set of copies, paid for by the newspaper. The inserts were included in a late spring issue of the daily, without much student reaction or protest.

Fernandez said that he notified the Coral Gables Police Department of the destruction. "It has a case number and somebody did a report on it," he said, but nothing has been done about it. Fernandez said he has been in touch with the police numerous times since the incident.■

# Student athlete appears in 'Man Wanted' ad, could result in stiffer policy for student newspaper

**WISCONSIN** — A high school student athlete was stripped of her amateur status when she appeared in a newspaper advertisement for an ice cream chain. The controversy could cause a tighter advertising policy for the student newspaper.

The ad, published in a May issue of Wassau West High School's paper, the *Warrior's Word*, featured a picture of senior Katrina Harvey with the caption "Man Wanted." The ad was placed by Briq's Soft Serve, where Katrina worked part-time.

"Katrina was so busy working for Briq's and playing volleyball and soccer that she never had time for a boyfriend," the ad said. "So Briq's is putting this ad in the *Warrior's Word* for Katrina."

West activities director Mike Laliberte spotted the ad and submitted it to the Wisconsin Interscholastic Athletic Association for its interpretation. The WIAA objected to the reference to sports and took away Katrina's amateur status for two soccer games. The ruling was reversed, according to *Warrior's Word* adviser David Wiegand, thanks to a letter to the WIAA from principal Karen Goetz in which she pledged to "put some mechanism into place" to ensure that the newspaper would not accept such ads again, Wiegand said. Harvey was allowed to play the last soccer game of the season.

The Official Handbook of the WIAA states that an athlete can be removed from amateur status if he or she "permits, with or without actual endorsement, the use of name, picture and/or personal appearance as an athlete in the promotion of a commercial or profitmaking event, item, plan or service."

The policy also suggests a guideline for schools to decide what is acceptable. "When attempting to determine what is appropriate, ... ask yourself, 'Why does this person, group, business, etc., want to use this athlete's picture or name?'

"If the answer is that they wish to

*(See ATHLETE, page 28)*

## *Superintendent reconsiders threat of prior review policy*

**MARYLAND** — The superintendent for the Frederick School District has decided it will be "business as usual" for newspapers in his district after threatening last spring to stiffen policies governing advertising.

Superintendent Daniel Gadra had proposed assembling a review committee composed of students, parents and teachers after parents complained about ads placed by Planned Parenthood and Birthright in Walkersville High School's student newspaper, *The Lion's Roar*. School principals would have been given the discretion to decide when to refer matters to this committee.

Gadra reached his decision after weighing the opinions of students, faculty and parents.

"My discussions with principals, students and others have convinced me [the students] understand the responsibilities which parallel the privilege of providing student publications," Gadra told the *Frederick News-Post*.■

## Iowa waffles over sex in shared-housing ads

**IOWA** — The Iowa Civil Rights Commission decided at the beginning of 1993 that advertising for a roommate of a specific gender was against the law.

The Commission reversed its decision a year later thanks to numerous calls from university students, a letter-writing campaign and an investigation by a state legislator.

The flap began without warning, when the commission announced in early 1993 that gender-specific classifieds violated the state's fair-housing laws. The ruling affected Iowa State University's *Iowa State Daily*, which received numerous complaints about the policy. Students were concerned that if they did not find a suitable roommate for the summer, they would be caught paying double rent.

Janette Antisdel, general manager of the *Iowa State Daily*, received word of the ruling and immediately instructed classified managers not to publish housing ads with the words "male" and "female" in them. She also called a neighboring paper, the Ames *Daily Tribune*, to warn them about the policy.

On the other hand, the Iowa Press Association did not know there had been a ruling until the commission reversed

*(See IOWA, page 28)*

# *Iowa*

*(Continued from page 27)*

it. The University of Iowa's *Daily Iowan* was also not notified until a year later, reported *Editor & Publisher*.

Confusion over the ruling prompted a series of seminars throughout the state given by Jan Alderton, fair housing specialist for the Civil Rights Commission. Prompted by these seminars, the *Cedar Rapids Gazette* rejected a classified ad from real estate agent Eugene Vislisel.

Vislisel launched a personal campaign to prove the commission was wrong. He researched the federal civil rights laws, which have been interpreted to mean that gender-specific classified advertising is acceptable as long as the roommates would be sharing a common living space.

At the same time, William Casey of the *Daily Iowan* contacted legislator Minette Doeder about the ruling. Doeder began her investigation at the same time Vislisel reached the commission with his findings. The commission reversed its ruling soon after.

Although the battle is over for now, some newspaper classifieds managers worry that the commission will attack ads targeting graduate students.

According to Antisdel, some leases will only allow tenants to sublet their apartments to professional or graduate students, and if this stipulation is ever ruled illegal, then newspapers could be sued for running the ads.

Antisdel has been in touch with Alderton of the Civil Rights Commission to attempt to secure a guarantee that newspapers cannot be held liable for printing such ads, but has not had much success.

"It's frustrating, because the only test [of the ads' legality] is to have the issue heard in court," Antisdel said.■

# *Lexington*

*(Continued from page 25)*

The newspaper was not so lucky. Yeo submitted the ad to the *Musket* in early February, and the staff eventually voted it unanimously. In a letter to Yeo, newspaper adviser Samuel Kafrissen suggested he write a letter to the editor promoting abstinence.

Yeo refused this compromise as well, and in a long letter to Kafrissen said, "Your offer of a 'compromise' is no offer at all. Had I wished to write a letter to the *Musket*, I would have done so long ago.... I may wish to write a letter in the future, but now is not the time."

Yeo closed his letter with the ominous declaration, "Abstinence *is* the healthy choice. You don't have to agree with it. You don't even have to like it. You just have to print it."

But according to the Massachusetts law, they do not, the students say. Kafrissen has discussed the issue with former state Rep. Nicholas Paleologos, who co-sponsored the legislation protecting Massachusetts students' free-expression rights, and was assured that the intent of the legislation is to allow students to decide what not to print as much as what to print.

While the newspaper editors were still considering whether or not to run the ad, a group of students submitted their own version of the ad, similarly styled but containing the words, "Safe Sex: The Healthy Choice."

In the end, the newspaper editors rejected both ads, and the lawsuit followed almost immediately.

Meanwhile, new editors of the *Yearbook* and the *Musket* are beginning their senior year under a cloud of litigation. Neither publication had written guidelines about advertisements before the lawsuit, but they had a tacit policy against advocacy messages. Now both the *Musket* and *Yearbook* have written policies that say they will reject so-called "advocacy ads." Although last year's editors graduated, the new editors are determined to hold their ground, and have met with the attorneys.

John Welsh, one of the attorneys representing the town of Lexington and a host of other defendants, said, "What's weird about this case is although we're representing the school and town, we're really fighting to vindicate the student's free press rights."■

# *Athlete*

*(Continued from page 27)*

enhance their image by association with a high school athlete, then it's likely this would result in a violation of amateur status."

But according to a sports column in the *Wausau Daily Herald*, Harvey did not know the ad would mention her sports activity. She did not receive compensation for the advertisement, but she did sign signed a release form allowing the ad to run.

And as a sports reporter in the *Wausau Daily Herald* put it, "Why would [Briq's Ice Cream] wish to 'enhance its image' with an ad that says, 'Man Wanted'?"

Image enhancement aside, the dispute could prove costly for the student newspaper. Wiegand and Goetz are negotiating with the WIAA to try to convince them that "maybe they need to interpret the rule less stringently," Wiegand said.

> *"Why would [Briq's Ice Cream] wish to 'enhance its image' with an ad that says, 'Man Wanted'?"*
>
> ***Wausau Daily Herald***

If they are unable to convince the WIAA to relax its interpretation of the guidelines, Goetz has pledged to the WIAA that the school would solve the problem itself.

At the extreme, said Wiegand, the paper may have to reject all ads that contain students just to be on the safe side, a form a self-censorship he would rather avoid.

"The principal has agreed so far that there will be no prior review [by her]," Wiegand said.■

# The Co$t of Censorship

## *New York journalist receives $20,000 in First Amendment court settlement*

**NEW YORK** — A freelance journalist in New York ended his law suit against a state university with his principles, publicity and $20,000.

Eric Coppolino, founder of a state-wide college news service, reached a settlement with State University of New York at New Paltz in early May, nearly a year after he was barred from campus while reporting on a polychlorinated biphenyl (PCB) spill at the school.

The controversy in New Paltz began in December of 1991 when a car hit a power pole near the campus. The accident resulted in a power surge that caused an explosion in one of the school's transformers insulated with PCB, a known carcinogen. Costly clean-up efforts are still in progress.

Coppolino was persistent in his coverage of the situation, and he said administrators wanted him out of the way.

On May 6, 1993, Coppolino went too far in the eyes of the administration. He and a cameraman followed university president Alice Chandler across campus, questioning her without response.

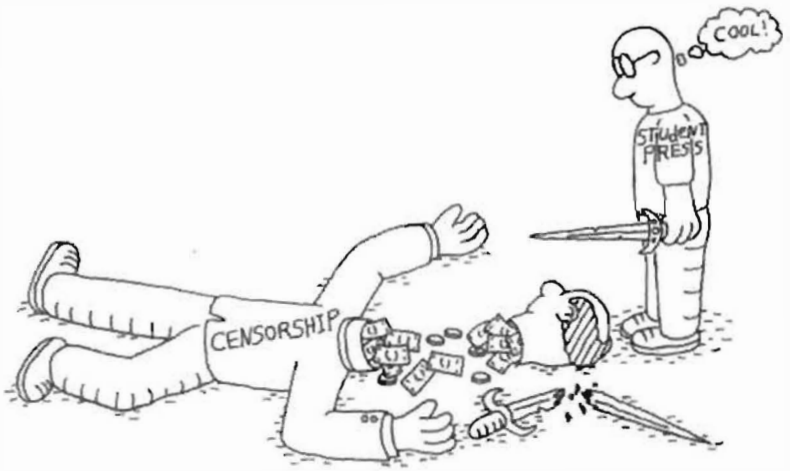
Chandler met with other administrators and declared his behavior "inappropriate" and had him barred from the campus.

"They claimed I was a health and safety violation,"

*See COPPOLINO, page 31*

## *University pays former yearbook editor $10,000 for unlawful dismissal*

**LOUISIANA** — The University of Southwestern Louisiana paid $10,000 in April to settle the First Amendment lawsuit of a yearbook editor who was not reappointed after he ran a picture of a topless woman feeding spaghetti to a scantily clad man in bed.




Jeff Gremillion, the editor of the 1991 *L'Acadien*, published the photo to illustrate a story on sex, dating and the college student. Other controversial pieces in the book produced under his editorship included a photo of a bulldog, the school's mascot, sitting on an American flag to accompany a piece on students and the Gulf War.

Several members of the university community expressed their concern about the pictures, calling the pasta picture obscene and the flag photo anti-American.

When the university began the search for the editor for the following year, the search committee said Gremillion was their first choice. He started work for the following year, but several months later, during which he worked for no pay, he was told the university had chosen another editor.

Gremillion turned to the American Civil Liberties Union and the Student Press Law Center for advice, and armed

*See GREMILLION, page 33*

# Alternative publication allowed on campus

**CALIFORNIA** — The publisher of an independent magazine now has permission to distribute on campus at Mt. San Antonio College, and his presence is stronger than ever.

Mark Cromer of *low* magazine first attempted to distribute at the college in September of 1993. He placed one distribution bin filled with papers on campus, and administrators seized both the bin and the papers the same day.

A few weeks later, Cromer decided to try again. This time he chose to distribute at two campus locations. Again, college administrators "confiscated" the bins and papers.

"We never went to Mt. SAC looking for a fight with the administration," Cromer said.

Mary Dowell, the attorney for the college, said the school was not looking for a fight either.

"If he had gone through the process in the first place, he could have distributed when he wanted," she said, referring to the college's policy of requiring off-campus publications to have sponsorship from a campus organization.

Cromer's magazine is not the type of publication to escape notice. The cover of the issue in question featured a bikini-clad woman with a beer bottle between her legs and a cigarette in her hand. Articles in recent issues have included personal profiles of pornography stars and one man's opinion of Lorena Bobbit. Bars and "exotic tobacco" shops are among the advertisers.

Cromer said the college based the decision to confiscate the magazine on its content.

Dowell said the content had nothing to do with the college's action, "no matter what people who were personally offended by *low* might have said during the heat of original debate."

> *"Apparently they have been true to their word and the papers have not been molested.'"*
>
> ***Mark Cromer***
> ***publisher***

Dowell admitted there were concerns about the advertising because Mt. San Antonio College is a drug, smoke and alcohol-free environment, so the ads are not "consistent with community mores," but she said that had nothing to do with the decision to confiscate the papers.

"An entity like a college has the right to reasonably regulate the time, place and manner of distribution," Dowell said.

They told Cromer if he would comply with the rules, they would let him distribute.

"We said we would never give up," Cromer said.

Cromer hired an attorney and for several months attorneys fought what Cromer called "a war of letters."

By April, the war grew old for both parties, and the student government agreed to intervene.

*See LOW, page 34*

# New York college paper resumes publication

**NEW YORK** — The LaGuardia Community College student newspaper has resumed publication after a nine-month administration-imposed shut down.

In October the paper printed a column intended to defend then New York City Mayor David Dinkins, who eventually lost his bid for reelection in November.

The column contained such statements as, "Jews don't own the United States but yet some act as if they do. Jews immigrated here after over 4.5 million were killed in Hitler's concentration camps. If it wasn't for the presence of an all-black army unit many more Jews would have died."

Many people associated with the college and the local community were outraged. The city council called for more university control of the paper, and local Jewish leaders chastised the university president for allowing the publication of "hate speech."

LaGuardia President Raymond Bowen apologized to the community and promised to exercise more editorial control over the paper in the form of a full-time adviser and editorial board. The newspaper's part-time adjunct adviser resigned amid all the controversy, and college administrators told student editors they could not publish until the college hired a new adviser.

The school hired a new adviser in the spring but did not allow the paper to begin publishing until the end of May.

According to Joseph Smith, editor in chief of *The Bridge*, the college's student affairs committee conducted several investigations of the paper and its staff, telling staff members they could not publish until the committee completed the investigations.

Smith said the committee first examined the paper's student activity charter to see if the column was a violation and found it was not.

The committee then investigated the possibility of "illegal practices" in the October 1993 editor election. Again, the committee found no evidence of wrongdoing.

Now the investigations are complete, the paper has a new adviser and the presses are rolling again.

Despite renewed publication, student editors are frustrated. Smith said the college is subtly fighting the paper. The student government pays for the publication of the paper, but the paper had to force payment for the first issue.

"They keep using delaying tactics like that," Smith said.

The staff is now taking a wait-and-see stance before taking action against college administrators.■

# Adviser dismissed for 'spelling errors'

**PENNSYLVANIA** — The student newspaper at the Community College of Philadelphia lost a major ally when the administration fired its adviser in June.

The paper has been fighting for access to campus crime records for years. Student editors took their case to court last year, and although a judge initially denied access, the students have filed an appeal.

Because the school is a two-year college, several student editors have come and gone since the paper began its battle for access. If the case gets caught up in appeals, there will be even more changes before it is all over, so the only consistent advocate for the paper has been its adviser, Donald Weinberg.

The lawsuit against the college is not the only area of controversy for the paper. This year it has written articles on a fight between ethnic groups on campus and arguments within the faculty, which staff members claim angered other instructors and administrators.

Weinberg and his students said they believe his dismissal as adviser is a direct response to the paper's aggressive reporting efforts.

"It's censorship," Weinberg told the *Philadelphia Inquirer*. "You remove a professor who stands between the students and the administration, and you hope the students will cave in to the party line."

Noelia Rivera-Matos, dean of student life, said content had nothing to do with her decision to dismiss Weinberg. She said she based her decision on problems with typos, poor spelling and grammatical and factual errors in the paper and called the paper "an embarrassment to the students."

Professional journalists do not agree with her assessment of the paper.

"It is my belief that the level of spelling, grammar and factual errors of this student newspaper is no worse than that of any newspaper published by college freshmen and sophomores," Walter M. Brasch, president of the Keystone State Professional Chapter of the Society of Professional Journalists, told Rivera-Matos in a letter following the dismissal. "The newspaper distinguishes itself by representing student interests and covering numerous issues that some college publications would avoid for fear of administration retaliation."

Catherine Campbell, president of the Delaware Valley Collegiate Press Association, also had high praise for the paper. She said it was "the best" of the area community college papers "in terms of quality, content and dedication."

Bill Cunane, a former editor of the paper, said Weinberg has consulted an attorney and plans to pursue the issue.

Until then, Weinberg will continue to teach at the school and the school has placed the paper under the control of the English Department.■

# Board gives ultimatum

## *Editor told to choose job or editorship*

**ALABAMA** — The communications board at the University of South Alabama chose a new editor in May, but its offer came with a price. Board members wanted her to quit her job as a part-time newsroom clerk at the local newspaper.

After it conducted interviews for the job, the board adopted the new policy that prohibits student editors from working for other media organizations.

Members of the board said it is not censorship in any form; they just want to prevent a conflict of interest.

The student, Cassandra Butler, disagreed.

The paper she works for, the *Mobile Press Register*, has published several articles critical of the university president recently, and Butler said she believes the ultimatum is directly related to those articles.

She claimed the communication board chairman told her he was afraid she would not be able to work with the president if she kept her part-time job at the paper where her duties are mainly clerical, such as answering the phone and writing obituaries.

However, Butler says she has no proof of his statement, and the chairman denies he ever said it.

Without proof, she says she cannot support a censorship

*See ALABAMA, page 34*

# *Coppolino*

*(Continued from page 29)*

Coppolino said. "They said I was a crazed fanatic."

Coppolino continued to report on the situation, but he felt the university had violated his First Amendment rights. He sued the university president and the vice president for academic affairs for $125,000.

"It was an imposition and it was wrong of them to not let me near the story," he said.

The administration lifted the ban in September 1993, but Coppolino said he wanted to hear them say they were wrong.

He almost got his wish in the settlement. School officials admitted they "may have" violated Coppolino's civil rights. A university spokesperson declined to comment on the settlement.

Coppolino said he was not sure how he felt about the monetary settlement.

"It's hard to put a value on a civil rights violation, and in no case does money make up for the abridgment of those rights," he said. "The best thing is the publicity we are getting."

The *New York Times* and other nationally known papers have covered the case.

"They helped make it a world-class story," he said. "They have given me the opportunity to challenge them and win."

Beyond the publicity, Coppolino said the money represents the principle of the matter because it makes the issue clear to people who do not understand freedom of the press.

"The money says not only was I right — it was important," he said.■

# Maryland passes anti-theft legislation

*New law calls for $500 fine and/or jail term for people who steal free newspapers*

**MARYLAND** — Maryland Gov. William Donald Schaefer approved a bill in May that will make it a crime to steal newspapers that are distributed for free.

House Bill 198 says people commit a misdemeanor when they "willfully or knowingly obtain or exert unauthorized control over newspapers with the intent to prevent other individuals from reading the newspapers."

The maximum punishment is $500 and 60 days in jail.

The law was in response to a series of newspaper thefts in the state symptomatic of the nationwide epidemic on college campuses.

At least three campus newspapers in Maryland reported thefts this academic year; Johns Hopkins, University of Maryland-Baltimore County and University of Maryland-College Park. *The Washington Blade*, an independent gay weekly newspaper, also reported thefts.

The problem first gained media attention with the *Blade* thefts from a local library in the summer of 1993.

A representative of the paper took a photograph of someone taking the papers and police arrested the man in the photo. However, prosecutors decided not to pursue the case because they were not sure it was covered by the state's existing theft law.

The theft problems grew in September when someone took about 1,400 copies of the *News-Letter* at John Hopkins University.

No one was charged in the incident, but student editors believe it was a protest of a cartoon about racial separatism.

Last November, student editors of the *Diamondback* at the University of Maryland in College Park reported approximately 10,000 copies stolen. The thieves replaced the paper with fliers which read: "Due to its racist nature the *Diamondback* will not be available today — read a book!" Police investigated the matter, but said evidence did not warrant criminal prosecution. The university administration did discipline two students.

The thefts at the University of Maryland in Baltimore County also began in November. In the first incident there, students took more than 2,500 copies of an issue containing an article some people believed was anti-black.

Race relations remained tense, and in December about 1,000 copies of an issue were taken. This time, a photographer for the paper took a picture of someone removing bundles of papers from a distribution stand.

The police filed a report, but student editors said they refused to take further action, claiming "you can't steal a free newspaper."

The circulation manager of the *Blade* was the first to take his case to the legislature by contacting Del. Samuel Rosenberg, D-Baltimore, and Sen. Howard Denis, R-Montgomery County. Representatives of the other papers soon followed suit.

"Without hesitation, I was interested," Rosenberg said.

He said he has a "long-standing interest" in free press issues so this subject appealed to him.

"I feel strongly that all views should be heard on campus and elsewhere," he said.

Some people, including editorial writers at *The Washington Post*, claimed theft of a free newspaper is a form of expression that should be protected, but Rosenberg disagrees.

"It's conduct. It's not expression. And it prevents other people from exercising their First Amendment right to receive information," he said. "There are many other means available short of physically preventing other people from reading."

Student press advocates are pleased with the legislation, but say such measures should not be necessary.

They say it is the reluctance of prosecutors and not a problem with the existing theft laws that allows newspaper thefts to go unpunished.

Rosenberg said he hopes other states will soon follow Maryland's example. He suggested students approach their state legislators if they are having problems with newspaper thefts.

"You should do a little homework first and find out who would be a sympathetic and effective sponsor of the bill," he said. ■

# *Theft epidemic continues to grow*

Maryland may have taken steps to end newspaper thefts there, but the list of thefts throughout the nation continues to grow:

•University of Northern Colorado, Greeley, Colo. — Nearly the entire press run of 6,500 copies of *The Mirror* was taken from campus distribution bins on April 27. Later that day an organization comprised mainly of Chicano and Hispanic students at the school returned the papers wrapped in plastic with a note explaining their position and making several demands.

The group was angered by an editorial on April 25 criticizing a minority student who had recently been elected to the student government.

The general manager estimated damages due to lost advertising revenue at between $3,000 and $5,000.

University police have so far refused to investigate the matter as a theft

•State University of New York in Brockport — Approximately 2,000 copies of *The Stylus* were taken from a pre-distribution point in the school's student union building on May 3. No one has claimed responsibility for the theft, but university police are investigating the matter.

•Midland Lutheran College, Fremont, Neb. — On Feb. 11, about 1,000 copies of *The Midland* were taken from newsracks. Almost all of these copies were recovered from trash bins. Students have several suspects, but no one has claimed responsibility and there is no clear evidence linking the theft to any individual or group. Both the campus and city police have closed their investigations into the matter.

•Northwestern University, Chicago, Ill.— About 800 copies of the *Northwestern Chronicle*, an alternative conservative paper, were taken in May. The school administration condemned the theft, and police are investigating the matter. Some students believe the thefts were a reaction to a story in a previous issue that criticized South African President Nelson Mandela and described him as a communist.

•University of Alabama at Birmingham — Approximately 5,500 of the 8,000 copies printed of *Kaleidoscope* were stolen on the night of June 13 or morning of June 14. At least seven people called the newspaper to say they had witnessed Chinese students taking papers from the racks and throwing them in dumpsters, according to the newspaper's faculty adviser.

Tim Stevens, the editor, said a security guard saw a Chinese male take a bundle of papers from a dorm.

Stevens said he believes the papers were stolen to protest a front page article about a sexual harassment suit filed by three Chinese students against a professor who is also Chinese.

University police have promised to investigate the matter and drew a composite of at least one suspect.

The *Kaleidoscope* has offered a $500 reward for information leading to the arrest and conviction of the thieves.

•Los Medanos College, Pittsburg, Calif.– A male student trashed a bundle of 150 copies of *Experience*, a free newspaper, in March because he considered a front page illustration offensive to women.

Earlier, a counselor had removed several satirical posters from a women's center because she claimed they were degrading. The illustration that prompted the theft was a large photo of one of the remaining posters.

Student editors retrieved the papers and filed a complaint with the campus police department.

•California State University at Northridge — A group of students took more than 7,000 copies of the student newspaper in April, the *Daily Sundial*, from distribution bins and replaced them with flyers supporting their choice for student government president.

*See THEFTS, page 34*

# *Gremillion*

*(Continued from page 29)*

with an ACLU attorney, he began negotiations with the university. He asked the school to pay him his lost salary and for the university to adopt an official selection policy for university publications editors so the incident would not be repeated.

The university did not give in, so in the spring of 1993, he took his case to court. In April 1994, a district judge signed a consent statement in which the university granted Gremillion $7,500 for lost salary, $2,500 for attorney's fees and agreed to publicize a publications policy that is the dream of many student journalists.

"The university will not interfere with any student publication because of the content of the publication," the statement read.

"The university will not exercise prior restraint because of the content or publication of any of the material in any student publication. Likewise, the university will not discriminate against, interfere with, discipline, terminate, or refuse to appoint any student from a position on a student publication because of the printing of any article, photograph or other matters protected by the First Amendment.

"In short, the Constitution mandates that we stand behind our students and their expressions, whether we agree with them or not."

The university had to do more than affirm its belief in freedom of the press. It must also adopt a new editor selection process to be published in the school newspaper.

It prohibits all levels of administrators from using their power to remove someone from the selection process because they do not agree with something published in the past.

Gremillion said he is pleased the university has recognized press freedoms, but is disappointed that the selection policy still allows the university president to have the final word when hiring student editors. ■

LIBEL

# Court declares police officer public official

**OHIO** — An appellate court has upheld a decision that a university policeman is a public official for the purpose of his libel case against a student publication at Cleveland State University.

In October of 1991, *The Vindicator*, Cleveland State's minority student publication, published an editorial accusing then Deputy Chief of Police Bill Waterson of being a bigot and said he had a reputation for using excessive force.

The editorial quoted several unnamed sources within the police department who made serious allegations about Waterson's conduct as a policeman.

Waterson requested a retraction, so the paper rewrote the editorial to make it less harsh and ran it again the following week.

Waterson was not satisfied.

He claimed the editorial damaged his character beyond repair. When the university did not hire him as chief of police, he said it was because the editorial had labeled him as a controversial figure. He later retired from the university police force because he considered himself to be a "branded individual."

In March of 1991 Waterson sued the university for libel, claiming it was responsible for what the university-sponsored paper published.

In the summer of 1993, a lower court judge dismissed the case after the university argued that Waterson was a public official and must prove actual malice in order to claim libel and that the school was not legally responsible for what the student paper published.

To demonstrate actual malice, he had to prove the paper either knew the information was false or did not take proper measures to verify it when it was published.

Waterson appealed the decision.

In March, the appellate court upheld the lower court's decision saying that Waterson was a public official and that he could not prove malice. Waterson did not appeal that ruling.■

## *Thefts*

*(Continued from page 33)*

The stolen papers contained an editorial endorsing another candidate. The editors reprinted the issue, but the new copies were also taken.

•California State University at Fullerton — Someone took more than 3,000 copies, half the press run of the student newspaper, the *Daily Titan*, during student government elections in April. Editors said they believe a lead article on the election prompted the theft.

The editor of the paper renounced the theft as childish censorship and urged people to express their opinions through letters to the editor.

While these thefts have gone unpunished so far, one school was able to identify and discipline students for stealing free papers.

•Pittsburg State University in Pittsburg, Kan., more than 2,000 copies of the *Collegio* were taken in February when the paper ran an article about an attempted sodomy at a fraternity house. Staff members and the adviser witnessed the thefts and reported them to the police.

Several students were disciplined for the thefts through the campus judiciary. The students were members of the same fraternity, but it was not considered a fraternity action.

The Student Press Law Center has recorded 38 campus newspaper thefts during the 1993-94 school year.■

## *Alabama*

*(Continued from page 31)*

claim.

"They didn't break any laws as far as I know," Butler said.

She refused to quit her job at the paper, so the board has withdrawn its offer of the editor position.

Rather than choosing one of Butler's competitors, they have opened a new search for editor.

Butler said she does intend to apply again.

"It's not over, but I just have so much to do I can't pursue it right now," she said.■

## *low*

*(Continued from page 30)*

"It had been eight months. We were still in a letter war with really no end in sight," Cromer said.

The student government took a vote, and Cromer was allowed to place four distribution bins on campus, but Cromer and Dowell have different ideas about the purpose of the vote. Cromer said it was to allow distribution without sponsorship. Dowell said the student government agreed to sponsor his publication.

Cromer said he does not believe the college is pleased with the decision, but he admitted the distribution of the latest issue of his quarterly publication went smoothly.

"Apparently they have been true to their word and the stands have not been molested," he said.

Although Cromer is pleased to be distributing, he is still angry about the college's actions and his subsequent loss of time and money.

"These people had nothing to lose because they fought their little holy wars on the taxpayers' dole," he said.

Dowell said the problems could have been avoided if Cromer had not been stubborn.

"The problems were directly attributable to Mr. Cromer's conviction that he could do whatever he wanted, whenever he wanted, wherever he wanted," she said.

For the first issue next fall, he plans to obtain and publish the full amount the college spent in legal fees fighting his distribution.

"I fully intend to rub their noses in it for the next year," he said.■

# California Dreamin'

## The state's unique Leonard Law guarantees students the right to say what they feel, but not without a fight

**CALIFORNIA** — The state statute prohibiting private schools from disciplining students based on speech has been getting plenty of exercise lately, as students and administrators battle out the specifics of the so-called "Leonard Law."

That California law, Education Code section 94367, is named for its sponsor Sen. Bill Leonard (R-San Bernardino County). The law enacted in 1992 makes it illegal for schools to punish individuals because of "speech or other communication" that would be protected by the First Amendment if engaged in outside the high school or college campus.

Sen. Leonard proposed the bill to give students more leverage when fighting restrictions placed on speech. "They needed a way to challenge speech codes more vigorously," he said.

California is the first state to give private school students protections similar to those in the First Amendment. Other states have attempted to pass legislation, and even the U.S. Congress gave it a try with a bill proposed in 1991 by Representative Henry Hyde (R-Ill.). Although the bill did not get far in Congress, there has been talk of introducing similar legislation again in the future.

"The California legislature is very sensitive to the First Amendment," Leonard said. He added that even amidst the noise created by groups on the far left and far right of the political spectrum, who want to restrict certain types of speech that offend them, the voice of what Leonard called the "First Amendment middle" rings clear.

"The system can tolerate students saying what they believe. The country won't fall on the basis of an epithet," he said.

But in the less than two years since the California law has been in effect, students have had to fight for their freedoms every step of the way.

For example, a group of Stanford students are suing the university to protest the school's speech code, which the students believe directly violates the Leonard Law. The case marks the first time a dispute over Leonard has been heard in the courtroom — all other cases have been settled out of court.

The nine students, led by recent Stanford Law School graduate Robert Corry, presented their case in early July, asking for an injunction to suspend the speech policy until the trial to determine its validity can take place. Judge Peter Stone had not decided the matter at press time.

The fight centers around a specific interpretation of the so-called "Fundamental Standard," which is the code of conduct for students at Stanford. It promotes "respect for order, morality, personal honor, and the rights of others."

The Fundamental Standard has been in effect since the early days of the university. But the new interpretation of the code, written by Law Professor Thomas Grey and adopted in 1990, takes the Fundamental Standard to the limits of political correctness. It prohibits speech that "is intended to insult or stigmatize an individual or group of individuals on the basis of their sex, race, color, handicap, religion, sexual orientation or national and ethnic origin."

According to Corry, the Grey Interpretation is constitutionally indefensible, citing its "chilling effect" on meaningful, honest communication. The students are concerned that such attempts to regulate speech will not eliminate hatred, but merely drive it underground.

"I'm motivated out of love for Stanford," Corry told the *Stanford Daily*.

Lawyers for the university say the Grey Interpretation is merely intended to protect students from discrimination. But the students claim it goes too far.

"I must hear the arguments of [my opponents], so that I may think about them, and dispose of them," wrote Aman Verjee, a senior and columnist for the *Stanford Review*, in the students' complaint. "Anything less than that diminishes my education; and I am so diminished."

Corry also takes issue with the arbitrary enforcement of the policy, claiming minority students often receive most of the protection from speech codes.

"I have been called a 'Nazi,' a 'Fascist,' an 'Aryan Youth' and 'White Trash' on certain occasions, but have enjoyed no protection from the speech code," he wrote in

*(See LEONARD, page 36)*

# Free-speech legislation dies in New Hampshire

**NEW HAMPSHIRE** — A bill in the state legislature that would prohibit speech codes on college campuses was killed this spring, but the senator who sponsored the bill intends to give it another try next session.

Senate Bill 623 aimed to prevent schools from disciplining students or employees on the basis of "conduct that is speech or other communication that is protected from governmental restriction by the United States and the New Hampshire Constitutions."

Senator Thomas Colantuano (R-Londonderry) proposed the bill after reading a story in the *National Review* about the so-called Leonard Law in California. The bill Colantuono proposed was almost identical to the Leonard Law, which applies to both public and private universities.

The bill was voted out of the public affairs committee, with the recommendation that an amendment be added removing private schools. The Senate voted 12-11 to table the bill, and then defeated it by a similar vote once it was taken off the table.

Colantuono intends to reintroduce the bill next session, pending his re-election to the Senate.■

# Faculty pull 'racist' quote from yearbook

**TENNESSEE** — Administrators at Bartlett High School in Memphis pulled a quote from Robert E. Lee from the school's yearbook for fear that some might view the quotation as racist.

Each year graduating seniors contribute a quote to the *Panther Parade* to appear under each student's picture. This year, Will W. Reid III submitted Robert E. Lee's words, "Had I known the terrible effects of subjugation of the Southern people, I would have rather died at Appomattox."

Yearbook staff and faculty were concerned that the tone of the quote might offend members of the school community.

Reid was offered the chance to choose another quote from Lee, but he refused. He also contacted a lawyer, who wrote a letter to the school demanding an apology, inclusion of the quote and First Amendment training for the school and staff.

The school responded by pulling all quotes from the yearbook. There had been about 20 other quotes that had been deemed unacceptable as well.

"The annual is not a free press. It is a public relations tool," assistant principal Jane McAlester told the Memphis *Commercial Appeal*.■

# *Leonard*

*(Continued from page 35)*

the complaint.

The Stanford case is unique in that Corry's group was not prompted by any disciplinary action taken against them — they themselves have never been punished for violating the Grey Interpretation and do not intend to be. "It's a matter of principle, not a desire to engage in hate speech," Corry said.

The Leonard Law will have another day in court this fall in a different case involving a student who was expelled from a Roman Catholic school after accusing his teachers of "feminazi tactics" in a student council campaign speech.

Michael Carter was expelled from Servite High School after he refused the school administration's orders to receive counseling, and is now suing the school for vindication of his Leonard Law rights. Last May a judge denied Carter's request to be reinstated to the school, claiming he had not suffered "irreparable harm" from the expulsion.

> *"I have been called a 'Nazi,' a 'Fascist,' an 'Aryan Youth' and 'White Trash,' but have enjoyed no protection from the speech code."*
>
> ***Robert Corry***

Father Gerald Horan, president of Servite, claims Carter was asked to obtain counseling because teachers found him disruptive in general, not because of the words of his speech.

Although the Leonard Law applies to private schools, there is an exception for religious-affiliated institutions — the law does not protect speech that contradicts religious doctrine. Carter's lawyers say they support this exception, but believe it does not apply to this case. The case will be heard in October.

Members of the Phi Kappa Sigma fraternity at the University of California at Riverside won a fight against a speech code that would have kept them off campus for three years in the now-infamous "T-shirt case."

The fraternity had been disciplined for printing shirts in fall 1993 that a Hispanic group considered offensive and culturally insensitive. The shirt featured a Mexican border town and caricature of a sombrero-wearing, beer-drinking Mexican.

Mario Martinez, a member of the group, told a local newspaper that the shirt constituted "fighting words" and could inspire violence from the Hispanic community.

Nonsense, the fraternity responded. For one thing, the shirt contains the lyric from a Bob Marley song, "It doesn't matter where you come from as long as you know where you are going." The song is one of acceptance and peace between

# Minnesota officials go back to school

## *Conservative groups allowed to distribute materials*

MINNESOTA — A dispute between the University of Minnesota and three student groups has ended with a settlement requiring school administrators to attend a lecture on the First Amendment. A policy was also drafted prohibiting censorship of student materials.

Each year the university has an "involvement fair" during which new students can receive information about many college organizations. In the fall of 1993, however, a freshman adviser wanted a little less involvement from the College Republicans, Students Against Fee Excess (SAFE) and the J. Danforth Quayle Brotherhood, three conservative groups on campus.

The groups were forbidden from distributing written materials, much of which was satirical and poked fun at President Bill Clinton. A "1040BS Tax Form" contained separate filing categories for homosexuals, transsexuals and environmentalists.

Vice President for Student Affairs Marvalene Hughes backed the adviser's decision, claiming the groups' materials were not "respectful of diversity."

"This is not a freedom of speech issue," she reportedly told the students.

Associate Vice President for Student Affairs Nick Barbatsis disagreed, but still did not admit any wrongdoing.

"We appreciate [that there was] the appearance of censorship, even if it's a well-intentioned effort to ensure that university-sponsored materials are welcoming and respectful to new students," he told the *Minnesota Daily*.

SAFE President Peter Swanson admitted the jokes were tasteless. But he took issue with the censorship, and appealed to University President Nils Hasselmo. In a letter dated Sept. 20, he threatened to sue if the censored materials were not distributed to new students.

The students had an attorney from the Minnesota Civil Liberties Union review the case, who said, "If you wanted to go out and violate the Bill of Rights, you couldn't improve on this."

President Hasselmo decried the censorship soon after the incident. But no changes were made in the policy, which Swanson maintains was vague in terms of how materials may be regulated.

The threat of a lawsuit appeared to motivate the school, however. The two sides reached a compromise last spring, including a new policy which "clarifies that there will be no review or censorship of materials," said Mark Rotenberg, general counsel for the university.

Administrators were also required to attend a lecture by an expert of the First Amendment.■

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people of all races, claimed the fraternity, which sports the motto, "Strength through diversity."

But even the fraternity's national headquarters came down against the Riverside chapter. A Phi Kappa Epsilon spokesman told the *Los Angeles Times* the national organization "felt that the chapter was frankly kind of stupid for not realizing people could be offended," and handed down a punishment including compulsory community service, attendance at two multicultural awareness seminars and a mandatory letter of apology to the Hispanic group and all other fraternities and sororities.

The university tacked on its own sanctions — the fraternity was ordered to destroy the shirts and was banned from intramural sports for one year. When the Hispanic group lobbied the administration for stiffer punishments, the university dissolved the chapter for three years.

The fraternity fought the punishment with a lawsuit against the school, claiming that their First Amendment rights had been violated. The school decided to settle out of court, reinstating the fraternity and granting amnesty to all members.

One reason the university settled out of court may have been monetary. Under the Leonard Law, courts can award attorney's fees to those who successfully sue their school.

This is an important aspect of the law, according to Sen. Leonard. "It gives students greater court access," he said.

During this particular settlement, however, John Howard, who represented the students, agreed to forfeit his attorney's fees. In return, university administrators agreed to attend First Amendment training.

Although the Leonard Law gives students more ammunition against speech codes and other threats to free and open communication, even Leonard predicts many more years of controversy.

"It's an up and down battle," Leonard said. "This law merely provides the rules of the fight. But the fight will continue — as it has for 200 years."■

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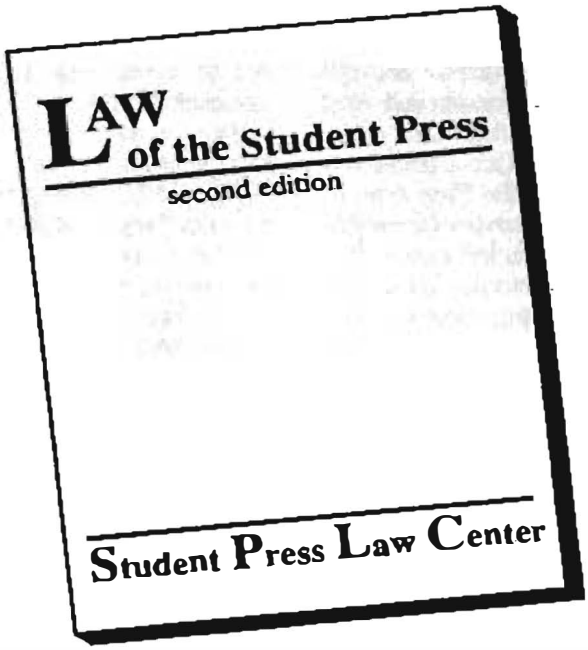


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