

student press law center

# report

no. 7 spring 1978

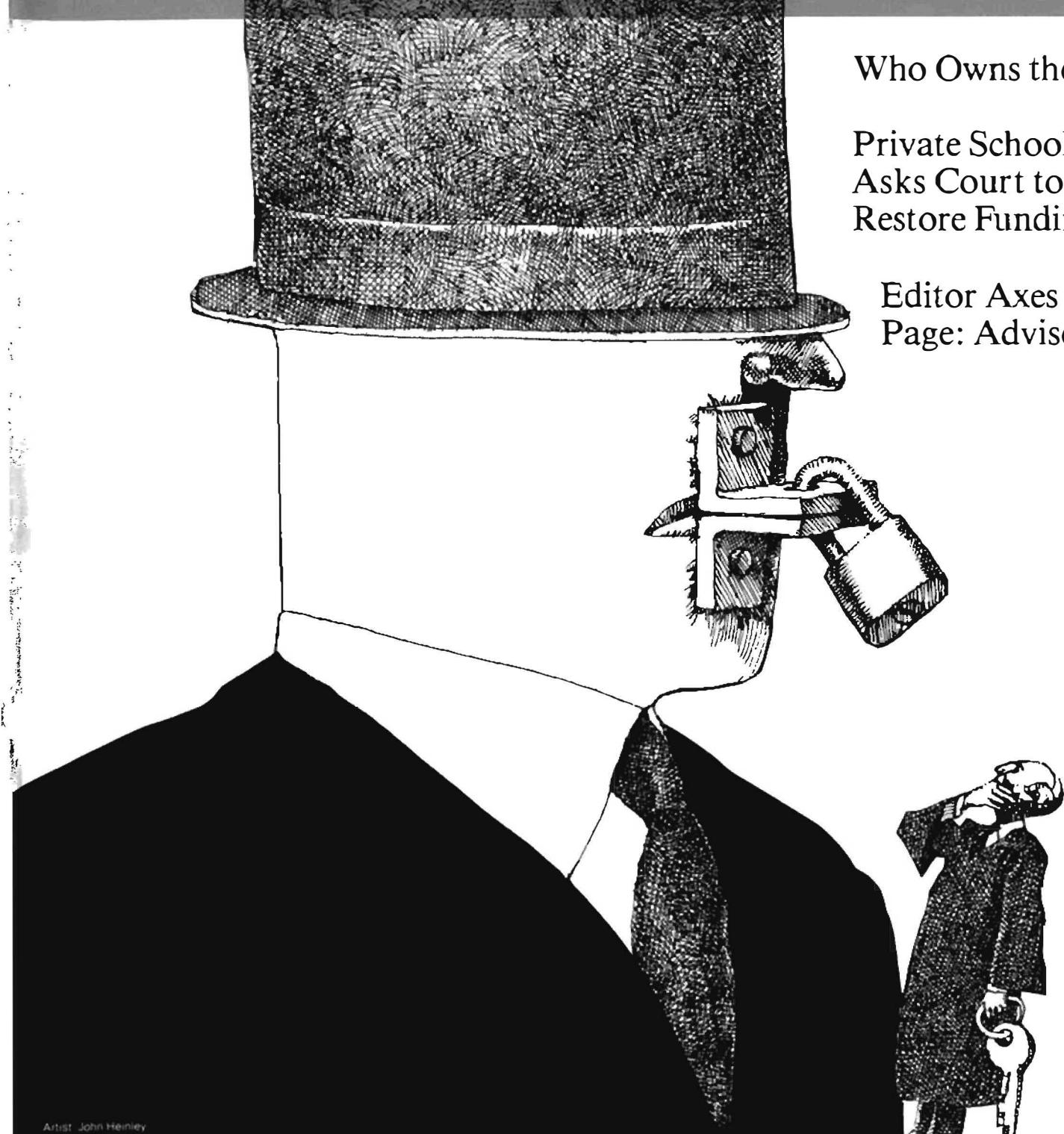
Newspapers Burned  
at Two High Schools

Obscenity Defined:  
Keeping It Clean  
On the School Paper

Who Owns the News?

Private School Paper  
Asks Court to  
Restore Funding

Editor Axes Sports  
Page: Adviser Fired



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# Contents

## High School ..... 3

- Papers burned to protect writers
- First Junior High battle
- Book banning ain't just in Boston
- Contraception article censored (again)
- Gay ad, abortion articles cause controversy

## Current Events ..... 8

## Copyright Update ..... 10

Guest columnist Jeffrey L. Squires examines the wire services' fight for rights to the news they cover.

## Resources ..... 10

## Recent Court Decisions ..... 12

A compendium of cases involving student rights and student journalism

## Obscenity Guide ..... 14

Legal Intern Rick Kaye defines and discusses obscenity and court definitions of it

- Obscenity vs. profanity
- The three-pronged test

## Supreme Court Brief ..... 21

## Teachers: Beware the Censor ..... 22

## College ..... 23

- *b u exposure* faces financial hardships
- Community college paper censored by students
- Adviser fired for refusing to censor
- *Campus Blurbs* makes its debut

## The Student Press Law Center

The Student Press Law Center is the only national organization devoted exclusively to protecting the First Amendment rights of high school and college journalists. The Center is a national legal aid agency providing legal assistance and information to student journalists and faculty advisers experiencing censorship and other legal problems.

## The SPLC Report

*SPLC Report*, published three times each year by the Student Press Law center, summarizes current controversies involving student rights. *SPLC Report* is researched, written and produced entirely by journalism and law student interns.

The SPLC seeks student-produced drawings or photographs to illustrate the *SPLC Report*. Please send copies of your materials to the SPLC office.

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The Student Press Law Center is pleased to announce the addition of a new co-director. Michael D. Simpson, who started in January, is a *cum laude* graduate of the University of Georgia School of Law, and an honors graduate of Davidson College. He served on the Senior Editorial Board of the *Georgia Journal of International and Comparative Law*. Before joining SPLC, Mike worked for legal services programs representing indigent persons in Georgia and recently in Washington, D.C. He is a member of the federal bar as well as the Georgia and District of Columbia bar associations.

## JUNIOR HIGH

*Middle School Fights Prior Review*

### Guidelines Protested by 11- to 14-Year-Olds

The Tenafly (New Jersey) School Board has "delayed indefinitely" plans to enact publication guidelines proposed last October which would have severely restricted student press rights at Tenafly High School and Tenafly Middle School.

Immediately after the proposed guidelines were announced in October Principal Robert Smith of the Middle School notified *Tiger Tales* advisers Dione Danis and Catherine Miggins that all copy would be submitted to him prior to publication.

The *Tiger Tales* staff, who at 11 to 14 are one of the youngest staffs to face this dilemma, decided to cease publication rather than submit the copy for approval. The staff did not publish a newspaper for three months.

With the help of a local attorney, the ACLU, the local teacher's association, and the Student Press Law Center, Miggins and Danis were finally able to persuade Principal Smith to permit uncensored publication of the paper until the guidelines were approved or amended by Tenafly's school board.



Photo by Linda Schwartz

*Will Captive Voices have to be rewritten when Junior High School students join the battle for First Amendment rights?*

Action on the proposed guidelines was not as swift or resolute, however. Advisers and editors at Tenafly High School submitted a statement on December 14 to the Board of Education expressing their dismay at the new guidelines. Mentioned in this letter was legal research in progress at the Student Press Law Center and the American Civil Liberties Union regarding the guidelines.

A legal opinion letter written by SPLC attorney Mike Simpson which stated that many of the proposed guidelines were unconstitutional was circulated to school officials.

Since then the SPLC has been in contact with school board member Marjorie Osborn and has learned that action on "Proposed Guidelines for Student Publications" has been removed entirely from the board's agenda. Ms. Osborn says of the guidelines, "I think [the issue] just may die a normal death."

For the last three months the *Tiger Tales* has been published without prior approval by the school principal. □

### Principal Censors to 'Protect' Students

Last December one thousand copies of the Dunedin (Florida) High School student newspaper, *The Pioneer*, were destroyed by Principal Francis Freeman because he feared two "guest editorials" would cause more problems with a student group that calls itself "The Movement."

The paper had been printed and was ready for distribution when Freeman ordered the copies destroyed and the paper reprinted with a blank space where the editorials would have appeared, under a headline which

said "Voice of the Students."

Principal Freeman feared that the articles might anger members of "The Movement". "We've had some incidents, mostly off campus, that have been kind of frightening. In my opinion, the [articles] just added fuel to the fire."

The articles in question were written by two of nine students whose names appear on a "showdown" list issued by "The Movement". The nine have been targets of harassing phone calls and threatening notes

under the veil of "The Movement".

Michael Szymanski, one of the writers, was nearly hit by a truck at a neighborhood shopping mall soon after the articles were written. He told police that he believed the incident to be directly related to threatening notes and vandalism directed at students on the "showdown" list.

Szymanski's article defended allowing several students to take pictures for the yearbook in costumes

see page 4

## Principal Censors

continued from page 3

from a homecoming skit called "The Coneheads". "The Movement" has indicated in its correspondence with various students that the actors in the skit were receiving too many special privileges.

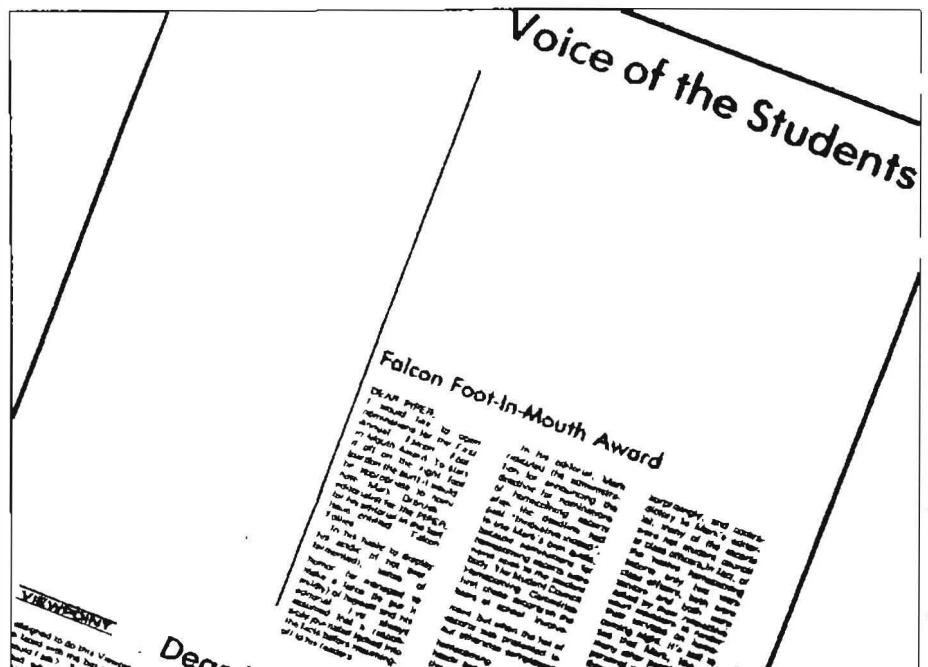
Szymanski said the articles should have been run because local newspapers have carried accounts of "The Movement" while the school paper has not mentioned the incidents.

Tim McBride, the other writer involved, said, "Some people have told us that because we're underage we have no rights. It just seems wrong that he can censor something like that."

Editors Mary Rosina and Liane Anderson said Freeman notified them that he was burning the paper, and they convinced him to have it reprinted. Freeman said the \$108 printing cost would come from a school fund or "my own pocket if necessary."

Rosina and Anderson (whose name had appeared on the list) said they received a note saying "something would happen" if any articles by or about students on the "showdown" list appeared in *The Piper*.

Rosina criticized the principal's action, saying dropping the articles is



Courtesy St. Petersburg Times

*The Piper* appeared with white space under the headline: "Voice of the Students."

insinuating that "The Movement or whoever they are have power."

Sondra Cain, *The Piper*'s adviser, took the articles to County School Superintendent Gus Sakkis, who concluded that "neither would help" stop students from being harassed and upheld the principal's decision. "We don't have censorship in Pinellas County," Sakkis said. "There are

times in the judgment of people that things are better left unsaid. This is one of those times."

The editors, who had been in disagreement on whether to print the articles, decided not to press the matter when Freeman vetoed the articles. The Christmas edition of *The Piper* was reprinted and distributed as planned. □

## Book Ban Effort Fails in Md.

"For quite awhile after reading *Grendel*, by John Gardner, Betty Nichols of Frederick County, Md., could not stomach ketchup, . . ." began a March article in *The Washington Star* detailing Middletown (Maryland) High School's book banning controversy which was initiated in January.

The article continued with Mrs. Nichols' statement that she "wondered why" she could not eat her former favorite condiment but then realized that it reminded her "of all those bloody battle scenes in *Grendel*."

*Grendel*, a modernization of the English classic *Beowulf*, was the brunt of criticism at Middletown as Concerned Citizens, a group of 40 or 160 local parents (the school's estimate of the group's strength was quite different from their own) filed complaints with the school board in an unsuccessful attempt to have *Grendel* and another book they considered offensive banned from the school.

Jean Silvius, one of the parents, said that *Grendel*, written from the monster's point of view, is "anti-Christian, antimoral, full of vulgarity," including references to "dead-stick gods" and "base descriptive passages" about the monster's sexual habits and bodily functions.

Concerned Citizens' protest was slowed, but not stopped, by a school board ruling in support of the school superintendent's decision to keep the books in the curriculum but offer an "alternative" book for students who do not wish to read *Grendel*. They say they will appeal to the State Board of Education as soon as possible.

Concerned Citizens is now examining the entire school curriculum for offensive materials. They criticize the school's use of too many books with "negative attitudes," such as John Steinbeck's *The Pearl*. "Our children are being brainwashed," said spokeswoman Betty Nichols, "You are what you read. A child's mind is malleable. If these negative books have not warped their minds, they have at least confused them." □

# High School

Publication Left to Students' Discretion

## Principal Allows Contraception Article

Students at Ardsley High School (New York) are involved in a censorship battle with their adviser and school administrators over an article and editorial about contraception.

This struggle is part of an ongoing contest with the administration for editorial control of the paper. Thomas Levine and Steven Mendelson, editors of Ardsley's *Panther*, discovered what they termed an "alarming trend in the publication policy of the administration" who appeared to be "vying for complete editorial control of the *Panther*."

The editors met with Principal Figlia and Vice Principal Gordon in December 1977 to discuss publication policies for the remainder of the school year. They were told that they could write about certain school problems as long as they did not "create waves".

When the editors decided to publish a factual article and editorial on the problems of deficient sex education, ignorance about contraception, and teenage pregnancy, the adviser refused to allow printing of the article. The administration forbade the printing of either the article or the editorial. They suggested that the paper talk about abstinence as a birth control method rather than contraception.

A student-faculty review board was created to determine whether or not the articles would be published.

Editors Levine and Mendelson contacted the Student Press Law Center at this time and were referred to Mary Ann Grenier, a youth advocate with the Westchester N.Y. Civil Liberties Union. Ms. Grenier advised them that a review board like the one set up at Ardsley was illegal and clearly violated the First Amendment rights of the students.

Levine and Mendelson advised the board that the *Panther* could not accept a decision from them because of their questionable legality. The board

met nevertheless, concluding after all that they did not have power to deny publication of the article, because of ambiguities in Ardsley's current publication policy.

Principal Figlia then wrote a letter to the editors which stated, "Publication of the article that was in dispute is now left to your discretion as *Pan-*

*ther editors.*" The articles in question were printed alongside an editorial on the controversy in the March 1978 issue of the *Panther*.

Ms. Grenier and the editors are planning a meeting with the School Board to debate the still nebulous and "unacceptable" publications policy. □

### Students Get Publicity

## Gay Ad Stopped in Va.

Last December a faculty adviser blocked Fairfax County Va. high school students from printing an advertisement submitted by a bookstore for homosexuals that invited "gay teens and friends" to visit the store.

"I think it is inappropriate for high school-age kids," Ms. Hud Clark, adviser of the *Saxon Scope* (Langley High School's student newspaper) stated.

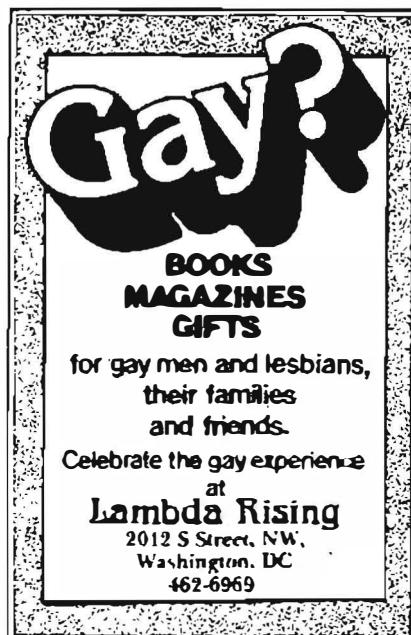
Lauren Simon, editor of the *Scope*, felt differently: "The censorship of information from others depends on a moral decision, unique to every person, and it is wrong for Ms. Clark to expose in the school newspaper only that information which she feels is appropriate," Simon wrote in an editorial for the paper. She added, "The issue is not the gay bookstore anymore—the issue now is freedom of the press and censorship."

Simon said that the majority of twenty-eight students on the newspaper's staff favored printing the advertisement. Nevertheless, when Lauren Simon appealed the decision to principal Thomas J. Cabelius, Jr. and Division Superintendent S. John Davis they supported the adviser's decision.

After receiving major newspaper publicity, the students decided not to take the case to court because of the time and money involved. They thought that the publicity they re-

ceived would prevent any future censorship.

However, the students are still being harassed by the administration. Recently students were prohibited



This ad was censored by the paper's adviser

from reporting on an incident of cookie-baking with illicit drugs, including marijuana, in the school's home economics course and the subsequent hospitalization of the teacher involved. □

*Illegitimate Births High*

## Clinic Ad Refused by Florida Papers

An abortion referral and counseling service was refused advertising space in two Brevard County (Florida) high school newspapers in December. Parent calls to school officials at one school and a staff decision not to run the ad at another prevented the Aware Woman Clinic, Inc. from placing advertising in the papers.

The clinic had sought to place the following ad in Cocoa Beach High School's *Potpourri* and Meritt Island High's newspaper: "Learn about your body. We offer health care, information, counseling and referral. Evening clinics available to meet your needs. All information is strictly confidential. Call 783-4220 to talk to someone who cares. Aware Woman Clinic, Inc., 82 N. Orlando Ave., Cocoa Beach."

Meritt Island High School Principal Robert Bruton decided to stop the newspaper from running the ad because he had received "numbers of calls" from parents. "The schools have enough problems without getting a lot of calls from parents," Bruton said. "Our newspaper is not supposed to create controversy."

Among those who called the school was Ted Gauvin, local advertising executive and member of the group "Right to Life," who later said of the ad, "... there is nothing in the First Amendment when it comes to killing babies. We believe that by working in our cause we are preventing people from killing other people and that has nothing to do with Constitutional rights."

Parent Sandra Allington also called, saying that if the school paper ran the ad it would be "tantamount to endorsing the clinic." A local newspaper later pointed out that 167 illegitimate babies were born to teenage mothers in Brevard County during the first ten months of 1977. Forty-five of those mothers were between the ages of 13 and 15.

The staff of Cocoa Beach High's *Potpourri* had voted not to run the ad but to run a pro-and-con section on abortion. One article was to be writ-



Mike Lane in the Baltimore Evening Sun

ten by the Aware Woman Clinic and the other by members of the anti-abortion group "Right to Life." The anti-abortionists, however, later refused to submit an article.

Group member Gretchen Craig said of the controversy, "The abortionists are so emotional and they have no facts on their side." The staff decided that rather than find another anti-abortion writer they would drop the article idea entirely.

The Aware Woman Clinic declined to bring suit against either high school because of the cost and time that would be involved. Director Patricia Windle said that the parents' pressure was simply another attempt by a handful of citizens to drive her out of business, and that the abortion opponents had been "trying to deny our right to provide a service by every means possible," alluding to tough city regulations. □

## Principal Reprimanded

# Papers Burned to Suppress Editorial

On January 25, 1978, the Linden (New Jersey) Board of Education reprimanded high school principal Herman Mopsick. Mopsick had ordered the October issue of Linden High's *Chronicle* burned because of an editorial he had not approved.

Jackie Goldberg and Lauren Pancurak, editors of the newspaper, had filed a complaint with the school board that Principal Mopsick violated their First Amendment rights by ordering the papers burned.

After students appeared before the board, the school district's attorney began an investigation into Mopsick's action. The investigation revealed that the principal had ordered a janitor to destroy 750 copies of the Linden High *Chronicle* and later claimed that students were involved in the decision to destroy the papers.

In the course of the burning Mr. Koltun, the janitor involved, suffered burns on his lower leg from an incinerator flashback and was hospitalized briefly.

Mopsick prevented distribution of the paper because of an editorial he called "libelous," according to editors Goldberg and Pancurak. The editorial dealt with a takeover of the high school football stadium's refreshment stand by the Police Athletic League after the school's Booster Club failed to show sufficient interest. According to Mopsick, the issue had already been resolved and to release the editorial would have been "in bad faith." He also directed Goldberg to not get involved in "community affairs."

In an open letter to the *Chronicle*, Mopsick alleged that it was the combined decision of the editorial board, the adviser and himself to destroy the papers. However, both Goldberg and Pancurak contend that they were not consulted and were not aware of the burning of the papers until ten days after the burning occurred on October 21. The papers had been taken to Mopsick's office for storage at his re-

quest, Pancurak said, and when she went to the office to discuss placing an insert in the issue, she was informed that the papers had "already been destroyed." Mopsick then threatened to take away Pancurak's editorship and called her a "radical."

Mopsick has been quoted as saying that the board is using the issue as "a set-up to embarrass me," and claimed he did not order the papers burned but had simply told the janitor to destroy them.

In a formal resolution adopted by the Linden School Board, it was found that the paper was destroyed at Mopsick's order and of his own accord, contrary to his prior allegations of student assent. In its resolution the Board stated that this type of illegal

interference with the First Amendment rights of students would not be tolerated, and that "Mere possibility of difficulty or the start of an argument is not enough to overcome the right to freedom of expression . . . . The principal's decision to destroy the papers was completely unjustified and without any redeeming merit whatsoever."

In reference to Mopsick the board said, "The principal of Linden High School, Herman E. Mopsick, is hereby reprimanded for his abuse of discretion in interfering with the dissemination of the *Chronicle*, by which act the board believes he interfered with the constitutional rights of the entire student body of Linden High School." □

# Student Newspaper Seized At Wisconsin High School

Administrators at Loyal (Wisconsin) High School confiscated the November issue of the student newspaper *Hound Happenings* in an effort to censor a report on the school board's recent meeting.

The controversial article concerned approval by the Loyal Board of Education of hiring an aide to assist the school's secretaries with office duties. Following a conversation with one board member who did not think the aide was needed because "a number of people had told her that the two secretaries spend much of their time filing their nails and carrying on personal telephone conversations," Editor Tom Lindner wrote a report on the meeting and its implications.

Administrator Ralph R. Schober confiscated the paper prior to distribution and informed Lindner that one sentence in his article would not be printed. The sentence was, "Board

member Lois Aumann questioned the need for an office aide because of many complaints she had received about the secretaries using their time for personal activities."

The newspaper was retyped courtesy the administration but was five hours behind schedule and typed unsatisfactorily. When Lindner told Schober that typing would have to be done correctly because of the paper's wide distribution, Schober said, "Then you better not send it out this month."

As a result of this incident the newspaper staff threatened the administration with legal action, but dropped plans to litigate when new publication guidelines were accepted. Under the new proposal the censored article would have been printed. The guidelines specify that the degree of control the administration has over the paper is limited. □



A new section of the *SPLC Report* designed to keep student journalists abreast of developments affecting them and their fellow students.

## Who's That New Kid?

Fairfax County (Virginia) police and school officials announced in March that undercover policemen are being enrolled in area high schools where the authorities determine that conventional drug enforcement techniques are failing to stop drug traffic.

The officers, whom police said look young enough to pass for students, are enrolled as a "last resort," according to an announcement made jointly by the school system and police.

In recent years there has been no drastic increase in drug use among students; survey results show that drug overdose deaths are down 39 percent from 1976. The Fairfax County Unified Schools, however, are using undercover agents as part of a new "drug prevention" program which will teach students the pitfalls of drug use in class while imposing strict penalties for possession or distribution of drugs on school property.

Police guidelines for the program indicate that the agents "will not be used for the surveillance of individual students or student activities" other than those the police consider to be "drug related."

Northern Virginia Civil Liberties Union chairwoman Lauren Selden said, "The greatest effect it will have is that it will turn off students to the law. It will teach them the government can use young people to keep watch on other young people." The ACLU also called the action "appalling" and "outrageous".

Colonel Richard A. King, County Police Chief, stated that the undercover agents cannot stop drug abuse single-handedly and that police must depend on students who do not use drugs to turn in those who do. He said there was nothing dishonorable about students who act as informants to help police arrest drug users: "If we didn't spy occasionally, we might not have the democracy we have today," King said.

Dr. J. E. Manning, a principal in the county, said that he had spotted a trend among students to use drugs on school property. "My impression is that they think nothing will happen to them. They seem to smoke marijuana or hashish like kids 20 years ago used to smoke a cigarette." □

## Today's Teens Not As Smart As You'd Think

Today's teenager, supposedly the best educated and best informed in American history, was recently found to be sadly lacking in political knowledge.

Most teenagers can name the U.S. President, but after that their knowledge and understanding of their government falls off drastically.

Fewer than half can name one of their senators or their representative in the House. About a third do not know that a senator is elected.

More distressingly, over a third do not believe a newspaper should be allowed to publish criticism of elected officials. A fourth do not know that the Senate is a part of Congress. A third do not know that the Constitution guarantees their civil rights.

These and other findings were reported on February 1, 1978 by the federal government's National Assessment of Education Progress, a nationwide testing project.

NAEP officials said that the latest testing of 145,000 teenagers shows a decline from six years

ago—even in an era of seemingly heightened American political perceptions.

"Political knowledge and attitudes are not acquired solely through the academic process," said Marie Eldridge, administrator of the National Center for Education Statistics. "The media, the community and the family can certainly be credited with substantial influence."

The NAEP conducts annual surveys nationwide to test student performance in basic academic areas and to measure change over time.

Results announced on February 1 were the product of tests carried out in 1976 and 1977 among selected 17- and 13-year-old students.

Roy E. Forbes, NAEP director, saw "a few bright spots" in the test. For example, student support for constitutional rights stayed at about the same level. Improved scores were evident on questions reflecting concern for others' rights, especially those of minorities. □

# Current Events

## Enrollment Increase

### Journalism Schools Getting Crowded

Journalism student enrollment in United States colleges and universities reached a record high of 65,962 this school year, according to a report appearing in *Journalism Educator*, quarterly journal of the Association for Education in Journalism.

This represents a 2.26% increase over the 1976-77 school year, which was described as a "leveling off" year in journalism enrollment. However, the present figure is a 170% increase over 10 years ago when 24,445 students claimed journalism as their college major.

According to the report written by Professor Paul V. Peterson of Ohio State University, a journalism student is one who is enrolled in a recognized four-year college or university offering a formal journalism major program. Depending upon the school's program, a student could be concentrating in news-editorial journalism, advertising, broadcast journalism, public relations, magazine journalism or other areas of emphasis.

The report tends to support earlier predictions that journalism will continue to attract college student interest, despite reports that job opportunities in journalism and its related fields have increased at a slower pace.

Professor William J. Roepke, editor of *Journalism Educator*, believes that the high interest in journalism education reflects a shift of interest among college students from liberal arts studies toward career-oriented fields such as journalism.

Other factors cited by Roepke included the increased interest in mass media studies in the nation's high schools and the general public's heightened awareness of the mass media's role in exposing government ineptitude, an awareness that reached its peak during the Watergate years.

Peterson believes that enrollments probably would have been much higher this year if a number of schools had not limited student admissions last fall because of

classroom overloads and limited facilities.

In individual school enrollments, the leading schools and departments are the University of Texas at Austin with 2,681 journalism majors, Syracuse University with 2,002, and Boston University with 1,550. □

### Students Regain Washington Policy Voice

David Patterson, a recent graduate of University of California at Los Angeles, became the first person to fill the newly created position of "Student Liaison" to the Office of Education. Appointed by the U.S. Commissioner of Education Ernest L. Boyer, Mr. Patterson began his duties in September 1977.

The position of Student Liaison was created to bridge the gap between students and the OE, with a major thrust toward student financial assistance.

The liaison's major link to students is through various state student associations.

Every six months the position is to be refilled by a different student to provide for the circulation of new ideas. On March 13 of this year, Howard McGee took over the position.

The office of Youth and Student Affairs used to exist in the OE, but was abolished in 1970. The Student Liaison position was formed as a replacement of this office.

The objective of the Student Liaison Office is to provide a means by which students can have input into policy decisions at the formative stage. □

### 'Press' Four-Letter Word in Illinois

According to James Nyka, journalism teacher at Proviso East High School, high school students in Illinois still have limited amounts of journalistic freedom. This is true despite court decisions supporting student press rights.

Nyka, who recently surveyed 121 Illinois high schools with student populations of more than 1,000 said, "Many newspaper advisers and administrators appear either unaware of students' constitutionally protected rights, or have simply chosen to ignore them, hoping that the legal pendulum will swing the other way."

Forty percent of the respondents said material considered "controversial" does not escape the attention of administrators.

Fifty percent said "yes" and 37

percent "no" to the question: "Do you believe that First Amendment rights to freedom of expression are the same under the law for high school and professional journalists?"

Concerning "controversial" topics, the administrators and advisers indicated their strongest objections to students covering such topics as gay liberation, criticism of the principal and administration, birth control and abortion, and faculty unions.

Forty-one percent said "yes" when asked, "Do you feel that the special circumstances of public high schools make it necessary for principals to restrict distribution of material which focuses on matters that may be sensitive in the community?" □

# Who Owns The News?

by Jeffrey L. Squires



Sixty years ago the United States Supreme Court was asked to decide whether the Associate Press had an exclusive right in the current news it gathered and made available to its member newspapers. A majority of the Court said it had such a right; the right of one in business to prevent competitors from appropriating commercially valuable material, without payment or permission, could be asserted to prevent a competitor from copying current news.

The case of *International News Service v. Associated Press* has since been the foundation for recognition of a limited protection against the misappropriation of valuable commercial property, even property as ephemeral as the content of the daily news.

Dissenting from the decision in *International News Service*, Justice Brandeis concluded that, although "the propriety of some remedy" for the misappropriation and competing distribution of news gathered at considerable expense "appears to be clear," this was one of a group of wrongs that judges ought not right.

He found no existing legal principle arising from either legislative enactment or past judicial decisions that barred the "piracy" of published news, and argued that the courts should not assume responsibility, without guidance from the legislature, to regulate an area so suffused with considerations of the public interest as the gathering and distribution of the news.

The majority decision in *International News Service* has received mixed reviews. The idea that anyone could assert ownership of a commercial interest in the unfolding pages of history reported by the journalists and broadcasters of the day has not been warmly greeted by lawmakers and judges. The force of Justice Brandeis' warning has been persuasive to many courts asked to forbid misappropriation of valuable information where no other legal right was violated. As a result, questions concerning ownership of the news are still unanswered.

Copyright is a protection for the authors' creative contribution of style and expression impressed upon a presentation of ideas. Paradoxically, it is Congress' recent revision of the law of copyright—which both the majority

RESOURCES

## Youth News to be Recorded

A new publication, *Youth News & Record*, a newspaper written and published for junior high school age students, was started in February 1978 and is available as a supplement to Sunday newspapers.

In addition to international, national, and local news, the periodical contains special features, some written by young people themselves, competitions, personality profiles, a quiz corner and a space serial. There is also a section for younger children.

The list of advisers includes astronaut Michael Collins; Director

of the Folger Shakespeare Library, O. B. Hardison, Jr.; former assistant Secretary of H.E.W., the Hon. Shana Gordon; and Paul Hume, music critic.

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and dissenting judges in *International News Service* agreed could provide no basis for asserting exclusive rights in the factual content news—that has again addressed the issue of whether anyone could claim exclusive rights to the news and may have redefined the nature of those rights. It seems a good time—with the great importance attached to any actual or threatened control of the news, in a society more and more dependent on a rapid flow of information to define its political, social and economic relationships—to review when and whether we should treat the news as someone's private property.

The new copyright law draws attention to the constitutional limitation on any sway copyright might hold over the factual content of the news. Section 102(b) of that law provides that "In no case does copyright extend to any idea, procedure, process, system . . .", etc., and it is well understood that this means copyright yields no rights in the facts making up the news. As Justice Brandeis put it in *International News Service*, "The general rule of law is, that the noblest of human productions—knowledge, truths ascertained, conceptions, and ideas—become, after voluntary communication to others, free as the air to common use." The exceptions to this rule reflect policy judgments of the Congress intended to encourage creative and inventive activities, by grants of copyright and patent. Neither patent nor copyright, however, is a source of exclusive rights in the facts that make up the daily record of events.

The new law also considers the relationship of federal copyright and state laws, such as the law of misappropriation relied upon by the majority in *International News Service*. A major shift in the new copyright law is effected by a provision "preempting" the use of state law to protect works potentially protected by copyright: owners of works of any nature eligible for copyright can no longer claim the protection of state law to prevent the copying of their works. To encourage a uniform application of law, only the protection afforded under federal copyright law will be available to those who publish and distribute written information in tangible copies.

A puzzle remains. The legislative history of the new law says that states can continue to grant relief for the piracy of news gathered in the cause of commercial activities in

factual situations like that presented in *International News Service*. Final amendments to the bill, however, after the legislative history had been written, deleted references to "misappropriation" as a right states can continue to enforce irrespective of the copyright law. What does that mean in terms of legal rights to the news? Newspapers and broadcasters, as well as major news agencies like the Associated Press, invest considerable sums of money in finding and reporting the news. Will they continue to claim rights to that news, and prevent their competitors from taking a free ride on their efforts? And what distinctions will be made between the content of the news and the form in which it is expressed, when published in newspapers or broadcast by radio or television?

No one knows for sure the answers. But a guess is that, while courts may continue to recognize the right of a news agency or commercial publisher to prevent competitors from copying news "hot off the wire" for competitive commercial exploitation, no further possessory interest in the news would be allowed. Much news appears contained in articles or taped broadcasts, the outright piratical duplication of which may subject the unauthorized copyist to penalties under the law of copyright. Those who produce the published forms and programming formats in which the news appears will likely be forced to rely on copyright as the source of any rights they may have in their presentation of the news. As a practical matter, resort to state laws protecting private interests in the news may be rare.

The overriding interest in free access to knowledge of the events of the day, at the heart of our system of government and embedded securely in the First Amendment, would seem to demand that any claim to ownership of the facts making up the news be very carefully limited; and those whose commercial existence depends upon exploiting the news might not be eager to rely on a manner of legal protection that places them on a possible collision course with freedom of the press. □

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*Leibner v. Sharbaugh*, 429 F. Supp. 744 (E.D. Va. 1977). A federal District Court has ruled unconstitutional the suspension of a public high school student for distribution of an underground newspaper which attacked certain racial minorities. The student had been suspended because he distributed the paper in violation of the principal's order not to, because he failed to identify the writers of the paper and because "the newspaper was of questionable taste, decency, and journalistic standards."

The Court ruled that regulations under which the student was suspended were too vague because no terms were defined. The provisions concerning prior review were also defective because the appeals process would take too long (2 weeks) and no provision was made assuring the right of the student to present his or her side of the issue.

*Hernandez v. Hanson*, C.A. No. 75-0-14, D. Neb. April 25, 1977. A Nebraska Federal District Court has declared unconstitutional an Omaha public school rule which required prior review of content of non-school literature to be distributed to students and prohibited entirely distribution of material which is "commercial in nature".

The Court stated, "the outright prohibition of commercial literature is inconsistent with the First Amendment." However, the Court upheld a ban on the distribution of religious literature.

*McCall v. Florida*, 46 U.S.L.W. 2408 (1978). Florida Supreme Court has struck down a Florida statute making it a misdemeanor to "upbraid, abuse, or insult" any member of an "instructional staff on school property or in [the] presence of pupils at school activity." In reversing the conviction of a parent who had verbally attacked a teacher in front of 50 students for striking her daughter, the Court said the statute violates the First Amendment right of freedom of speech. The Court noted that the statute could be used to punish harmless expression.

# Recent Court Decisions

## Involving High School Students

*East Hartford Education Assn. v. Board of Education*, 46 U.S.L.W. 2135 (1977). The Second Circuit Court of Appeals has ruled that a public school teacher does not have the First Amendment right to refuse to wear a necktie in violation of a school board dress code. The Court rejected the claim that the teacher's refusal to wear a necktie is "symbolic speech" protected by the First Amendment. The Court reasoned that the school board's interest in promoting respect for authority, traditional values and discipline outweighed the teacher's claim of free expression.

*Johnson v. Huntington Beach Union High School District*, 137 Cal. Rptr. 43 (Ct. App., 1977). A California appellate court has ruled that high school officials may constitutionally deny official recognition to a Bible study group. The Court held that the school can deny the religious group the use of bulletin boards and similar facilities for the posting of club activities, the use of school classrooms for club meetings and access to the school newspaper for purposes of publicizing club events. The Court reasoned that to permit the Bible study club to operate on campus would constitute impermissible government support of religion.

*Malnak v. Yogi*, 46 U.S.L.W. 2244 (1977). A Federal District Court in New Jersey has ruled that the First Amendment prohibits the



teaching of Transcendental Meditation in public schools. The Court held that since TM is a form of religion, it may not be taught in a state-supported school.

The United States Supreme Court has decided not to review the case *Trachtman v. Anker*, in which the Second Circuit Court of Appeals held that high school officials may lawfully prohibit a student from conducting a poll of the sexual attitudes of fellow students. (See SPLC Report 6)

The students had requested the high court to review the Second Circuit's decision. The denial of certiorari does not mean that the Supreme Court agrees with or affirms the *Trachtman* decision. Rather, the holding is limited to the states within the Second Circuit: New York, Connecticut and Vermont.

*Schulze v. Coykendall*, 545 P.2d 392, 218 Kan. 653 (S. Ct., Kan., 1976). The Kansas Supreme Court has ruled that in order for an elementary school principal to win a libel suit, he must prove that the allegedly libelous statement was false and made with malice. The principal had sued a citizen who had complained to the Board of Education. The Court said that because of the public interest in school matters, a complaint about the qualifications of a public school teacher enjoys a conditional privilege. □

# Court Decisions / College

*Maryland Public Interest Research Group v. Elkins*, 46 U.S.L.W. 2285 (1977). The Fourth Circuit Court of Appeals has ruled that the First Amendment does not invalidate a Maryland statute prohibiting the use of student activity funds for litigation expenses. The Court rejected the argument of Maryland PIRG that such a prohibition violated the group's freedom of expression. The Court agreed with the University that the statute does not deny PIRG the right to sue; PIRG could still use other funds from other sources to finance its litigation.

*State v. Ybarra*, 550 P.2d 763 (Ore. App., 1976). An Oregon appellate court has upheld the convictions for criminal trespass of several Portland State University students who had protested the use of non-union lettuce in the student cafeteria. The students had set up tents on the library lawn, passed out leaflets, talked to passers-by and collected signatures on petitions. The Court held that the activities of handing out leaflets, speaking to passers-by and collecting signatures was "speech" protected by the First Amendment. However, the First Amendment did not authorize the erection of a tent on the library lawn.

*Aumiller v. University of Delaware*, 46 U.S.L.W. 2018 (1977). A Federal District Court in Delaware has declared unconstitutional the decision of a state university not to renew the contract of a teacher because of his statements on homosexuality appearing in three newspaper articles. The articles identified him as a faculty member and adviser to a campus homosexual organization. The Court held that to refuse to rehire the teacher because of the statements would infringe his constitutional right to freedom of expression. The Court stated: "The decision not to renew his contract because of the public statements contravenes the most basic teach-

ings of the First Amendment and cannot be tolerated."

*Student Bar Association v. Byrd*, 232 S.E.2d 855 (Ct. of Appeals, N.C. 1977). The North Carolina Court of Appeals has ruled that the official meetings of the Faculty of

the School of Law at the University of North Carolina must be open to the public. The Court based its decision on a North Carolina sunshine law which required "all official meetings of . . . governmental bodies of the State" to be open to the public. □



Drawing by Harry Sehring

UPI Photo



Nelson Rockefeller gestures to student demonstrators. This gesture and its implied meaning are not obscene. See story below.

*The United States Supreme Court has frequently stated that the First Amendment does not give citizens the absolute right to say or write anything they wish. The government has the power to prohibit certain types of speech.*

*Obscenity is the category of speech which local governments most often seek to suppress. The result has been countless court cases struggling to precisely define what is obscene.*

*This area of the law is important to student journalists because obscenity is one type of speech which may be lawfully censored from student publications by school officials. More importantly, the courts have held that before material can be censored as obscene, the school official must show that objectionable material meets the Supreme Court definition of obscenity, rather than the official's own conclusion that the material is "offensive" or in "bad taste".*

*What follows is an analysis of the Supreme Court's struggle to define obscenity and a brief discussion of the application of that definition to the student press. The analysis is not intended to be exhaustive, and students experiencing obscenity problems should contact a lawyer or the Student Press Law Center.*

In 1968, Paul R. Cohen was arrested for walking through a county courthouse wearing a jacket embroidered with the words, "F--- the Draft". He was subsequently charged with "disturbing the peace" and convicted in the Superior Court of Los Angeles County. However, his conviction was reversed by a 5-4 majority of the United States

Supreme Court. Justice Harlan, writing for the majority, pointed to the political nature of Cohen's expression and emphasized that the government cannot "forbid particular words without also running a substantial risk of suppressing ideas in the process." Harlan also said, "Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us . . . while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric." *Cohen v. California*, 403 U.S. 15, 25 (1971) (emphasis supplied).

The *Cohen* decision is illustrative of the Supreme Court's struggle to reconcile First Amendment guarantees of free speech and press with the conflicting right of communities to excise that speech which is without social value and which may pose a potential danger to the community.

## Obscenity: A Practical Guide For the Student Journalist

by Richard Kaye

### Obscenity Unprotected by the First Amendment

Obscenity has long been recognized as a category of speech without worth and therefore unprotected by First Amendment guarantees. The Supreme Court's obscenity decisions, as in the *Cohen* case, have attempted to separate that which is merely distasteful from speech without any social worth—a goal which many feel the Court has yet to successfully achieve.

In the early twentieth century, a number of the lower courts in the United States adhered to the so-called "Hick-

lin rule" (enunciated by Lord Chief Justice Cockburn of England in 1868) in deciding what reading matter was appropriate for general consumption. This test permitted a judge to consider the possible deleterious effects of isolated passages of a work on the young and the most susceptible persons in the community.

However, the first landmark Supreme Court decision in the field of obscenity, *Roth v. U.S.*, 354 U.S. 476 (1957), discarded the Hicklin test while, at the same time, explicitly affirming the right of the states to regulate obscenity. According to the Court, "it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance . . . The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people . . . All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guarantees, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance."

Rather than forcing all to read only what is fit for the "most susceptible" members of society, the *Roth* Court suggested the following test for obscenity: "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." Thus, not only was a work to be judged by its effect on the average member of the community, but isolated passages were not to justify a ban on an entire work. Consideration was to be made of the work as a whole and only "prurient" material, defined as material "having a tendency to excite lustful thoughts," was to be considered obscene.

Significantly, the Court in the *Roth* case failed to define the community (national, state, or local) whose standards were to be applied. Neither did the Court adequately stress the notion that First Amendment values (e.g. literary, artistic, political, scientific worth, etc.) would sometimes avert a finding of obscenity in spite of a work's appeal to prurient interest.

### Utterly Without Redeeming Social Value

The ambiguity of the *Roth* decision led to a repeated modification and clarification in subsequent cases. A key case in this constitutional development was *John Cleland's "Memoirs of a Woman of Pleasure" v. Massachusetts*, 383 U.S. 413 (1966), a prosecution for the sale of an "erotic classic", the book popularly known as *Fanny Hill*. In this case, the Court added two new factors to the *Roth* design. Not only did a finding have to be made that a) the dominant theme of the material taken as a whole appeals

to prurient interest in sex, the Court said, but it must also be found that "b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and c) the material is utterly without redeeming social value." The Court required independent satisfaction of each criterion of the three-pronged test: "the social value of the book can neither be weighed against nor canceled by its prurient appeal or patent offensiveness."

The additions to the *Roth* standard were significant for two reasons. First, the new test attempted to narrow the ranks of the unprotected to those works which were both "prurient" and "patently offensive" (a term as ambiguous as "prurient", to be sure, but still somewhat more limiting). More important (and controversial) however, was the third part of the new test—requiring obscenity to be that which is "utterly without redeeming social value". This "social value" factor saved the book at issue in the case, *Fanny Hill*, as well as many other works candidly dealing with sexual matters which were brought before the Court in later cases.

Between 1967 and 1973 the Supreme Court reversed every obscenity conviction it reviewed involving distribution of sexual materials to adults except those which involved certain hard-core pornography and pictorial depictions of explicit sexual activity. The "social value" factor was credited by many for this result—nearly every work could be found to have some social value.

On the same day as the *Memoirs* decision, the Court announced that the lower courts could consider the circumstances of production, sale, and publicity for a work as relevant to the determination

of obscenity. Thus, if the accused had "pandered" to his audience—that is, he deliberately represented in his advertising that his materials were sexually arousing—this evidence could be used to support the determination that the material was obscene "even though in other contexts the material would escape such condemnation." This was so, said the Court, because pandering "would tend to force public confrontation with the potentially offensive aspects of the work; the brazenness of such an appeal heightens the offensiveness of the publications to those who are offended by the material." *Ginsburg v. U.S.*, 383 U.S. 463 (1966). The Court seemed particularly concerned with preventing the invasion of privacy created by unsolicited mailings of such materials.

Despite the new standard announced in the *Memoirs* case, there was still confusion in the courts, as well as in the literary world, about what was and what was not considered obscenity. Though the Supreme Court gave little additional guidance until 1973, the confusion did provoke one of the Justices into the oft-repeated explanation, "I

*continued on page 16*

*continued from page 15*

shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description ("hard-core pornography", the only kind the Justice believed could constitutionally be suppressed); and perhaps I could never succeed in intelligibly doing so. *But I know it when I see it*, and the motion picture involved in this case is not that." *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, Jr., concurring) (emphasis supplied).

As noted, few obscenity convictions were sustained by the Supreme Court in the wake of acceptance of the "utterly without redeeming social value" test. However, with the increasing availability of pornography, many began to feel that something needed to be done to "halt the rising tide of smut." Politicians began to speak out against the moral pollution created by the "smut peddlers". A Presidential Commission on Obscenity was formed to determine the effects of pornography on its "consumers". (See box, p. 19) The number of cases in the federal courts began to swell as prosecutors became more diligent in their efforts to convict pornographers.

### Local Community Standards

The Supreme Court entered the fray once more in 1973 in an effort to, once and for all, solve what Mr. Justice Harlan called "the intractable obscenity problem".

The Court's decision in *Miller v. California*, 413 U.S. 15 (1973) appeased those who took a hard line on obscenity by significantly easing the path of local prosecutors—for no longer was the Supreme Court to remain the ultimate arbiter of taste for the nation. Instead, the Court ruled that the States should apply a new obscenity test according to *their own standards*, rather than national ones. Mr. Chief Justice Burger spoke for the Court: "These are essentially questions of fact, and our nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 states in a single formulation, even assuming the prerequisite consensus exists . . . To require a State to structure obscenity proceedings around evidence of a *national* "community standard" would be an exercise in futility."

The new test to be applied by the States was a slightly altered version of the three-part *Memoirs* test:

"a) whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to prurient interest,

"b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and

"c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."

The first part of the test was virtually identical with *Roth* and subsequent rulings. The second part was altered to require the States to *define* in their obscenity statutes what conduct could not be portrayed in print or on the screen, so as to give notice to those who contemplated distributing or creating "borderline" works in the future. Some examples provided in the opinion indicated that the Court was concerned with banning only *hard-core pornography*—the first time that a majority of the Court acknowledged this limitation.

The third part of the new test was the one that particularly disturbed those concerned with preventing suppression of legitimate expression. The Court discarded the "utterly

without redeeming social value" test, which had made previous prosecutions so difficult, and substituted the somewhat more lenient standard requiring a work to contain "serious literary, artistic, political, or scientific value", an extremely subjective judgment.

The definition of obscenity announced in *Miller* is now the law of the land. That definition must be used in all pornography prosecutions in state and federal courts.

The *Miller* decision was predictably popular with local prosecutors seeking to eliminate the smut trade in their communities, but it just as predictably caused great confusion. With the application of local community standards, nationally distributed materials could be found obscene in certain States and non-obscene elsewhere. Even widely acclaimed works could be attacked in the more unsophisticated communities. Despite the examples of hard-core pornography cited by the Court in the *Miller* opinion, what might be considered "patently offensive" in Albany, Georgia would not be likely to conform with the determination of the citizens of New York City.

In *Jenkins v. Georgia*, 418 U.S. 153 (1974), the Supreme

### Banned in Finland

## IS THIS DUCK O

A Helsinki, Finland youth committee recently decided that Donald Duck comic books, the cartoon creation of Walt Disney, are inappropriate for viewing by the nation's youth.

The committee cited Donald's fifty-year engagement to Daisy Duck, the questionable parentage of his three nephews Huey, Dewey, and Louie and the brief sailor suit that Donald wears—which leaves his feathery bottom exposed for all to see—as reasons for banning the comic.

The committee has convinced the Helsinki city council to cancel subscriptions to the comic in the city's youth club libraries.

These actions by the youth committee have touched off a strong protest from members of the Donald Duck Club, a Hamburg, West Germany association of 100 members, headed by Hans Von Storch, a 28-year-old mathematician. The club was formed by Von Storch after he read a magazine put out by a group of Donald Duck scholars in Norway.

The two clubs claim that studying Donald Duck is like studying mathematics or physics because the comic book world of Duckburg is an "artificial system" in which an infinite number of questions may be asked and evidence for answers gathered from the comic books themselves, which have been published since the 1930's.

In a letter of protest written to the Finnish ambassador to West Germany, Von Storch called the committee's actions "ridiculous", while documenting the facts that Donald does not drink, smoke, take drugs or have sex with his girlfriend Daisy. According to Von Storch, "Donald is one of the most moral ducks in history." □

Court faced this problem in the context of the appeal of a theater manager convicted for showing the much-acclaimed film, "Carnal Knowledge", a movie cited by many critics as one of the best of the year and which also won Ann Margaret an Academy Award nomination as best supporting actress. The Court attempted to resolve the problem by referring to the examples it had cited in the *Miller* opinion as establishing "substantive constitutional limitations" on what a local jury might find to be "patently offensive". After viewing the film, the Court ruled, "Appellant's showing of the film 'Carnal Knowledge' is simply not the 'public portrayal of hard core sexual conduct for its own sake, and for ensuing commercial gain', which we said was punishable in *Miller*."

The Court's recognition in the *Jenkins* case of a constitutional (and thus national) limitation on what might be considered "patently offensive" has resulted in continuing federal involvement in obscenity cases. As long as the standards for determining obscenity remain subjective, the Supreme Court will remain what retired Justice William O. Douglas once called, the nation's "Board of Supreme Censors."

## OBSCENE?



Courtesy Walt Disney Productions

Donald strikes a rather angelic pose for SPLC Reports

### *Obscenity and Minors*

In 1968, the Supreme Court considered whether a statute containing "variable obscenity" standards, that is the recognition that certain materials may be obscene as to minors though non-obscene as to adults, was constitutional. *Ginsberg v. N.Y.*, 390 U.S. 629 (1968). At issue was a New York statute which prohibited the sale to persons under 17 years of age of material defined to be obscene on the basis of its appeal to minors, whether or not it would be obscene to adults.

Sam Ginsberg, owner of Sam's Stationery and Luncheonette in Bellmore, N.Y. was convicted of selling "girlie" magazines, clearly non-obscene as to adults, to a 16 year old boy. In obtaining the conviction, the trial court applied the *Memoirs* test to minors and found that the material involved in the case: 1) predominantly appealed to the prurient interest of minors; 2) was patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and 3) was utterly without redeeming social importance for minors.

In upholding the conviction the U.S. Supreme Court said: "[T]he parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society . . . The legislature could properly conclude that parents and others, teachers for example, who have this primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility . . . Moreover, the prohibition against sales to minors does not bar parents who so desire from purchasing the magazines for their children."

As a separate ground for approving the variable standard, the Court said, "The State also has an independent interest in the well-being of its youth . . . While the supervision of children's reading may best be left to their parents, the knowledge that parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them."

The vitality of the *Ginsberg* principle appears assured despite the decision in *Miller* to suppress only "hard-core" pornography from adults. The Court has recently stated, "It is well settled that a State or municipality can adopt more stringent controls on communicative materials available to youths than on those available to adults." *Erznoznik v. City of Jacksonville*, 95 S. Ct. 2268 (1975).

However, the Court has reaffirmed the notion that, even as to minors, material must be "in some significant way, erotic" in order to be proscribed. For example, the *Erznoznik* case held that all nudity may not be banned as obscene to minors.

Thus it has been established that material which is not obscene as to adults may be obscene as to minors. However, it is clear that in order for material to be obscene as to minors, it must still meet the three-pronged test announced in *Miller*.

Obscenity is probably the most frequently used justification for school administrators who seek to censor the student press. Almost always, however, the controversial material is not obscene at all, but rather merely profane.

The distinction between obscenity and profanity is vital to an understanding of the student press cases in this area. For material to be legally obscene, it must meet the *Miller*

continued on page 18

*continued from page 17*

three-pronged test discussed above. It is not sufficient that the material be merely offensive or in bad taste; it must be sexually stimulating. Simply stated profanity is the use of what are commonly called "four-letter words". Profanity is protected by the First Amendment; obscenity is not.

### Basic Student Press Rights

Any discussion of student press rights must begin with the landmark Supreme Court decision of *Tinker v. Des Moines*, 393 U.S. 530 (1969). In this 1969 decision the Supreme Court affirmed the right of a high school student to wear a black armband in public school to protest continuation of the Vietnam War. The Court, for the first time, explicitly recognized the applicability of First Amendment principles in the school environment. The Court also indicated that the traditional limitations on free speech (e.g. obscenity) were applicable. In addition, due to the special environment of the schools, the Court recognized an independent justification for interference with First Amendment rights—the threat of substantial or material disruption to order within the schools from certain types of expression.

There have been a number of federal court decisions dealing with censorship of the student press on the grounds

of obscenity. Most, if not all, of the cases dealt with publications which contained only profanity and not obscenity.

The Supreme Court has decided only one major case in this area, *Papish v. Board of Curators of Univ. of Mo.*, 410 U.S. 667 (1973), and since the Supreme Court is the highest court in the land, the decision is binding on all other courts. In *Papish* the Court ruled that the use of profanity in a university newspaper could not be prohibited as obscene or as speech posing a threat of disruption.

Although the Court did not specifically state that the rule announced in *Papish* is applicable to the high school press, every case since *Papish* involving a high school publication which was allegedly "obscene" has followed the *Papish* holding and refused to allow censorship on the basis of profanity.

It seems unlikely, as discussed earlier, that the use of profanity may be prohibited, even as to minors, on the basis of its being obscene. The argument in some of the cases that the profanity poses a threat of substantial or material disruption to order within the school seems nothing more than what the *Tinker* Court called an "undifferentiated fear or apprehension of disturbance [which] is not enough to overcome the right to freedom of expression."

Major student press cases involving obscenity are summarized on the following pages. □

## Obscenity and the Student Press

Summarized below is every major case in which a school administrator attempted to censor a student publication on the grounds of obscenity

### HIGH SCHOOL

*Jacobs v. Bd. of School Comm.*, 490 F.2d 601 (7th Cir. 1973), 420 U.S. 128 (1975) (dismissed as moot). Several high school students sued officials of the Indianapolis school system to prevent them from suppressing their unofficial student newspaper. The school officials attempted to justify the suppression by arguing that the newspaper was obscene because it contained "earthy words relating to bodily functions and sexual intercourse." The Seventh Circuit Court of Appeals ruled that the material was not obscene because it was not erotic, sexually explicit or did not appeal to the prurient interest. The Court noted that profanity is not the same as obscenity and may not be suppressed.

*Scoville v. Board of Education*, 425 F.2d 10 (7th Cir. 1970). Two high school students were expelled for distributing an unofficial newspaper which contained language deemed by the school officials to be "inappropriate and indecent". The Court ruled that the sentence

"Oral sex may prevent tooth decay" was not legally obscene and that the students were wrongfully expelled and must be reinstated.

*Erznoznik v. City of Jacksonville*, 95 S. Ct. 2268 (1975). The defendant was convicted of showing a film containing nudity at a drive-in theater visible from a public street. In reversing the conviction the U.S. Supreme Court held that nudity is not necessarily obscene; it must be sexually explicit nudity. Importantly, the Court noted that all nudity cannot be deemed obscene even as to minors. "It is clear, however, that under any test of obscenity as to minors not all nudity would be proscribed. Rather, to be obscene 'such expression must be, in some significant way, erotic'."

*Voight v. Van Buren Public Schools*, 306 F. Supp. 1388 (E.D. Mich 1969). A high school student was expelled for "possession of obscene literature"—a copy of *Argus* magazine which contained the word "f---". The evidence at trial showed that the school library possessed at least one book and one magazine which contained the same word. The Court ordered the student reinstated holding that this "rank inconsistency" was so unfair, ar-

bitrary and unreasonable as to constitute a denial of due process.

*Vail v. Board of Education of Portsmouth School District*, 354 F. Supp. 592 (D.N.H. 1973). The Portsmouth School Board had prohibited the distribution of an unofficial high school student newspaper because the paper had "no redeeming educational, social, or cultural value . . ." The school board had objected to the use of profanity in the publication. The Court ruled that the suppression of the paper was unconstitutional and stated: "The

sort of profanity and vulgarisms which appear in the November 11, 1971 issue of the *Strawberry Grenade*, however crude they may seem, do not compel a finding that the periodical is obscene. The words that appear in that issue are not used to appeal to prurient sexual interests . . . and fall without the legal definition of obscenity."

*Koppell v. Levine*, 347 F. Supp. 456 (E.D.N.Y. 1972). The principal of a New York City high school seized the

continued on page 20

## U.S. Commission on Obscenity

On October 3, 1967, the U.S. Congress created the Commission on Obscenity and Pornography because of increased public concern over the national traffic in such materials. The Commission was established in order to investigate the seriousness of the situation, to determine whether obscenity is harmful to the public, particularly to minors, and to decide whether more effective methods are needed to control distribution of the materials.

Among the members of the Commission appointed by the President in January 1968, were noted educators, psychiatrists, and theologians, as well as a judge and a sociologist. The Commission was chaired by William B. Lockhart, Dean and Professor of Law at the University of Minnesota Law School.

A thorough study was made of the existing information and studies in the field, and the Commission also initiated empirical studies of its own. In addition, public hearings were held at which various individuals and organizations, representing a broad spectrum of views, provided additional information. The Commission's report of its findings and recommendations was submitted to the President and Congress on September 30, 1970.

The Commission first made the following non-legislative recommendations. The Commission decried the tendency of the public to suppress discussion of sexual matters, arguing that "failure to talk openly and directly about sex . . . overemphasizes sex, gives it a magical, non-natural quality, making it more attractive and fascinating. It diverts the expression of sexual interest out of more legitimate channels, into less legitimate channels. Such failure makes teaching children and adolescents to become fully and adequately functioning sexual adults a more difficult task. And it clogs legitimate channels for transmitting sexual information and forces people to use clandestine and unreliable sources." As a result, the Commission recommended that a massive sex education effort be launched in the nation to promote a healthy attitude towards sex and the acceptance of sex as a normal and natural part of life. Such an effort should be a joint effort of several institutions in society: family, school, church, etc., said the

Commission.

The legislative recommendations made by the Commission were derived partly from their empirical investigations, which provided "no evidence that exposure to or use of explicit sexual materials play(s) a significant role in the causation of social or individual harms such as crime, delinquency, sexual or nonsexual deviancy or severe emotional disturbances."

Also of concern to the Commission was the failure of the law to successfully legislate suppression of obscenity. The Commission described the Supreme Court's (*pre-Miller*) pronouncements as "vague and highly subjective aesthetic, psychological, and moral tests [which] do not provide meaningful guidance for law enforcement officials, juries or courts." These and other reasons led a majority of the Commission to recommend the elimination of all penalties for the distribution of sexually explicit materials to consenting adults.

Although the available evidence with respect to the possible harm to children of exposure to pornography did not support any causal relationship, the Commission felt that insufficient research was available and that "parents should be free to make their own conclusions regarding the suitability of explicit sexual materials for their children." A majority of the Commission thus recommended the retention of penalties for distribution of such materials to children who do not have parental consent. The Commission published a proposed statute encompassing their recommendations.

Finally, recognizing that explicit materials are offensive to some, the Commission recommended legislation prohibiting *public displays* of sexually explicit pictorial materials and cited approval of existing federal legislation which prohibits mailing of unsolicited advertisements containing potentially offensive sexual material to those who do not wish to receive such advertisements.

The Commission's recommendations have not been widely adopted. Then-President Nixon openly condemned the findings of the Commission as did many other politicians. □

continued from page 19

official student literary magazine because it contained several "four-letter words" and a description of a movie scene where a couple fell into bed. The principal felt the magazine was obscene. The Court found the material not to be obscene and ruled the seizure unconstitutional. The Court stated, "The magazine contained no extended narrative tending to excite sexual desires or constituting a predominant appeal to prurient interest. The dialogue was the kind heard repeatedly by those who walk the streets of our cities, use public conveyances and deal with youth in an open manner . . . It was intended by the students involved to be a serious literary effort . . ."

*Sullivan v. Houston Independent School District*, 333 F. Supp. 1149 (S.D. Tex. 1971) (reversed on other grounds) 475 F.2d 1071 (5th Cir. 1973). The federal district court decided that the use of the phrase "High Skool is F--ked" did not render an unofficial high school paper obscene. The Court stated "intermittent employment of "f---" and its ilk cannot, without more, render a publication obscene."

*Baker v. Downey City Board of Education*, 307 F. Supp. 517 (C.D. Cal. 1969). A federal district court upheld the suspension of two high school students for the use of "profanity or vulgarity" in an off-campus newspaper. The *Baker* case is the only case in the country holding that the use of mere profanity or vulgarity in a student newspaper can justify disciplinary action. This case has been implicitly (if not explicitly) overruled by the *Papish* decision and the enactment of Senate Bill 357 (effective January 1, 1978) by the California legislature.

## COLLEGE

*Thonen v. Jenkins*, 491 F.2d 722 (4th Cir. 1973). A university student newspaper published a letter to the edi-

tor which ended with a "four-letter" vulgarity referring to the president of the university. The letter's author and the newspaper editor were expelled from school because of the letter's publication. In ruling that the expulsions were illegal, the Fourth Circuit Court of Appeals held that students may not be disciplined merely for using "vulgarity" or material "offensive to good taste" in an official student publication.

*Bazaar v. Fortune*, 476 F.2d 570 (5th Cir. 1973). University students sued to prevent school officials from interfering with the school-sponsored student literary magazine. The school administration had sought to suppress the magazine because of the use of "four-letter words, often colloquially referred to as 'obscenities' . . . [including] use of 'that four-letter word generally felt to be most offensive in polite conversation.'" The Fifth Circuit Court of Appeals held that the controversial language was not obscene and therefore could not be censored.

*Antonelli v. Hammond*, 308 F. Supp. 1329 (D. Mass. 1970). A university administration withdrew funds from an official student newspaper because of the proposed publication of an alleged obscene article. The article, "Black Moochie" by Eldridge Cleaver, contained numerous "four-letter words". The Court ruled that the suppression of the newspaper was unconstitutional.

*Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973). A student at the University of Missouri was expelled for distributing a student newspaper which

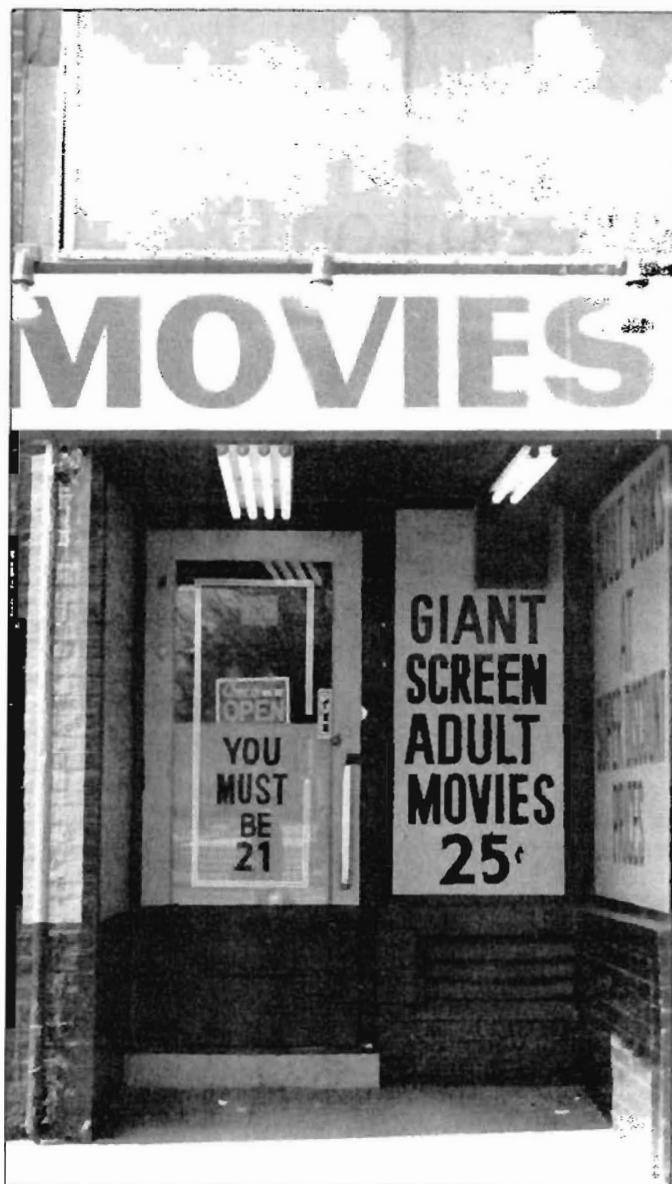


Photo by Linda Schwartz

Writer Nat Hentoff has suggested that a national referendum to wipe out smut could win in every state

school officials felt was obscene. The paper contained a political cartoon of policemen raping the Statue of Liberty and the Goddess of Justice and an article entitled "M----- F----- Acquitted." In ruling that the expulsion was unconstitutional the United States Supreme Court specifically held that neither the cartoon nor the article was legally obscene. The Court went on to say, "the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency'." □

# High Court Denies Due Process Damages

The U.S. Supreme Court ruled in March that students suspended from public schools without a hearing are entitled to nominal damages not exceeding one dollar if they are unable to show that actual harm resulted from the suspension.

The court's decision involved two students suspended from the Chicago public school system. Jarius Piphus, a freshman at Chicago Vocational High School, was suspended 20 days in 1974 for allegedly smoking marijuana on school property.

Silas Briscoe, a sixth-grader at Clara Barton Elementary, was suspended 20 days for wearing an earring to school.

In both instances the students were not given a proper hearing to determine whether they had actually violated the schools' rules.

Piphus and Briscoe sued the school officials for \$3,000 and \$5,000 respectively, alleging that they had been suspended without procedural due process. The trial court agreed that in failing to give the students a hearing prior to suspension the school officials violated their constitutional rights. However, the court refused to award money damages because the students had failed to prove that they suffered any actual injury.

The Seventh Circuit Court of Appeals reversed the decision of the trial court holding that the students would be entitled to recover substantial damages even without proof of individual injury.

In a unanimous decision, the Supreme Court reversed the decision, reasoning that the basic purpose of an award of money damages should be to compensate persons for injuries. Absent proof of actual injury, students who are wrongfully suspended may recover only one dollar from school officials.

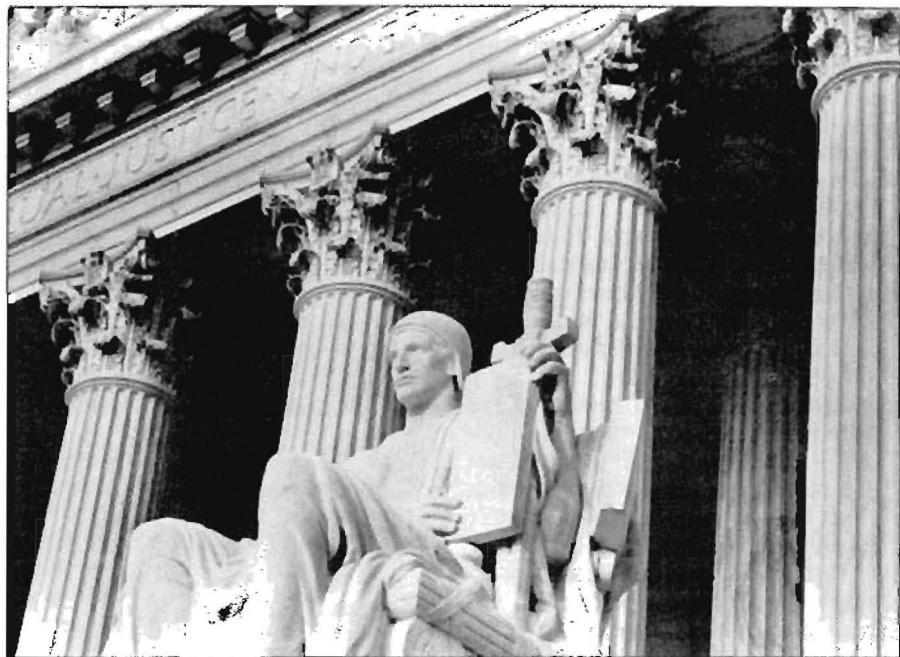
Although the Court's decision is limited to cases where students are suspended in violation of their rights to procedural due process, the decision has significance for student journalists who are unconstitutionally censored.

Under the reasoning of this deci-

sion, if a student who is illegally censored sues for violation of his constitutional rights, he must prove that he suffered actual injury before he can collect money damages.

Of course this decision does not af-

fect the power of a court to provide other types of relief, such as enjoining school officials from censoring student publications or reinstating a student who had been wrongfully suspended. □



## Supremes to Hear Profanity

The United States Supreme Court has agreed to decide whether the Federal Communications Commission may constitutionally ban the broadcast of certain allegedly "indecent" words during hours when children may be expected to be in the audience.

On February 22, 1975 the FCC issued an order banning seven "dirty" words in an effort to protect children from "indecent speech."

The contested order was issued as a result of the broadcast of a selection entitled "Filthy Words" from the George Carlin record album "Occupation: Foole" on WBAI, a New York noncommercial, educational FM station. The selection, which satirizes the public's attitude toward offensive words, was broadcast at 2:00 on a weekday afternoon in October, 1973 and resulted in a complaint

filed with the FCC by a listener who heard the broadcast with his young son.

The Pacifica Foundation (which owns WBAI) appealed the FCC's order claiming that it violates its First Amendment right to free expression. In a 2-1 decision the District of Columbia Circuit Court of Appeals reversed the FCC's ruling.

The Court characterized the FCC's action as "censorship" and condemned the sweeping nature of the order which forbade use of the words regardless of the context. The effect of the order, said the Court, was "to inhibit the free and robust exchange of ideas on a wide range of issues and subjects by means of radio."

The FCC appealed the Court's decision, and on January 9, 1978 the Supreme Court agreed to hear the appeal. □

# Was Hans Christian Andersen Censored?

"Censorship of school materials is definitely on the rise, and schools could be headed for one of the worst periods of censorship in American history." So warned Edward Jenkinson of Indiana U., chairman of the National Council of Teachers of English censorship committee, in a report to the membership at its annual meeting.

Unlike the stereotyped censors in periods before, he said, today's censors defy typing and come from all kinds of backgrounds. They are still concerned with erasing four-letter words and eradicating radical ideas, Jenkinson said, "but they are after far more than that and have begun to attack school materials with a vengeance."

Jenkinson blamed much of the censorship activity on social unrest—other levels of government are relatively inaccessible, he said, "but in a period of concern, people begin lashing out at the schools."

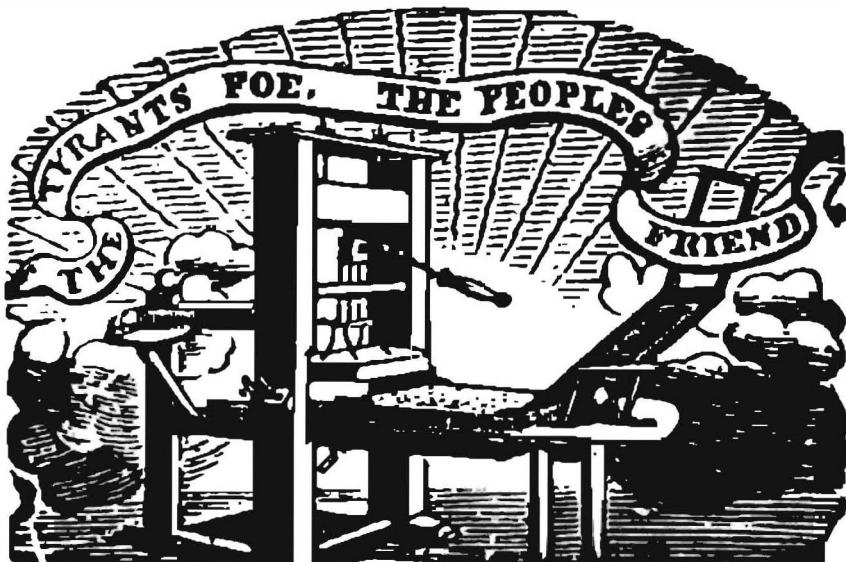
During his work with the censorship committee, Jenkinson has come across 40 state or national organizations whose major purpose is to censor school materials. Duplicate lists and petitions are appearing throughout the country. He listed 12 current targets:

**Novels for adolescents.** "Many parents don't want their children reading books about drugs, ghettos or conflicts with parents. They want to go back to those who write about more traditional times."

**Realistic Dialogue.** "The censors think that all characters in books should speak in standard, grammatically correct English."

**Works By "Questionable" Writers.** Authors labeled as subversive by the censors include Langston Hughes, Ogden Nash, Joan Baez and Malcolm X.

**Literature By Homosexuals.** Censorship lists include works by Emily Dickinson, Willa Cather, T. E. Lawrence, Virginia Wolfe, Gore Vidal and Hans Christian Andersen. Jenkinson said that Anita Bryant's



"Save Our Children" movement "has given the censors a rallying cry they have lacked since the McCarthy era of 'pinkos'." Save Our Children is linked with censorship groups all over the country, Jenkinson said.

**"Trash".** This includes "most contemporary books for adolescents," such as *Catcher in the Rye*, *Soul on Ice* and *Black Boy*.

**Ideas, Teaching Methods and Books That Are Examples of "Secular Humanism".** This charge is being made in every state and is directed against courses that include "values clarification," by whatever name.

**Materials That Deal With Self-Understanding (including drug education and ethnic heritages).** A petition that has appeared in several states would prohibit schools from using materials on ethnic heritages, social and cultural aspects of family life, and self-understanding. Taken literally, "this would virtually rule out the teaching of English as we know it."

**Role-Playing.** Opposition has appeared in Minnesota to "psycho-drama," and an Indiana legislator almost pushed through a statute

forbidding role-playing in schools, Jenkinson said.

**Resources That Do Not Stress Grammer Rules.** Jenkinson specifically mentioned the efforts of Norma and Mel Gabler, who, he said, "practically wrote the state textbook adoption policy in Texas" and are now speaking up elsewhere.

**Materials That Make Negative Statements About Parents.** In Minnesota, for example, a school board was asked to remove materials that describe parents as "old-fashioned, or by any other negative."

**Phase Elective English Programs.** which use a variety of source materials.

**Sex Education.**

Teachers who want to be prepared to fight censorship should band together in professional organizations and learn as much as they can about the censors, Jenkinson suggested. Also, they should initiate the writing of policies at the building and district levels that cover selection of materials and dealing with complaints.

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## Crisis for Student Editors?

# Yearbook Staffs: Don't Look Now, But . . .

"Student-edited yearbooks are in a crisis situation because a number of instant yearbook companies are squeezing into the market," says Dr. William Lawbaugh, Director of the National Council of College Publication Advisers' yearbook division.

Lawbaugh believes that the "instant" yearbooks, photographed and edited by the yearbook company, do not give students a large enough part in the production of the yearbook.

These low-cost yearbooks are gaining in popularity. One firm, Institutional Services, Inc., advertises that it will publish a "Graduate Record" at no cost to the sponsoring institution. The sponsor is only required to provide working space and a person to answer telephones and circulate posters. No writing, photography, editing or paste-up by the students is necessary.

While Lawbaugh sees the instant yearbooks as a threat to student creativity, Stephen Berg, president of Institutional Services, says that this criticism of his company is unfounded. According to Berg, most of the fifty yearbooks the ISI publishes were floundering because of lack of money or student interest. He says that student yearbook staffs are welcome to design, edit and photograph the cover or front sections of the book. "We do not want to control the creative aspects of the yearbook; we want to professionalize the non-creative part," Berg says.

Lawbaugh, however, cites a recent letter from Berg to Catholic University's yearbook editor in Washington, D.C. promising that Institutional Services would do "99%" of the work.

John Kurdziel of Delma Studios Inc. in New York City, a company that offers the "Total Yearbook Package," assures schools that his company is not attempting to "replace school yearbooks," but that his services are for schools that are losing yearbook funding.

Delma's promotional material, however, boasts to school administrators: "Now you can have a yearbook free of cost and bother to your school . . . Cal Poly, Pomona, CSU Los Angeles, Western Michigan University, Herbert H. Lehman College, University of South Florida and many other leading universities and colleges throughout the nation are benefiting from Delma's hassle-free Total Yearbook Program.

"No longer are these schools concerned with lack of yearbook funds, excessive costs and deficits, recruiting, supervising, compensating and motivating a yearbook staff. No longer does the yearbook make excessive demands upon the time of school personnel. Delma attends to everything: the photography, preparation, publishing, sale and distribution of your yearbook."

Lawbaugh sees these companies as a threat to student creativity and is afraid that existing yearbook staffs and

...YES, VIRGINIA.



THERE IS  
A  
DEADLINE

REMEMBER TO RETURN YOUR PROOFS  
TO THE YEARBOOK PHOTOGRAPHER...

NOW

Courtesy Delma Studios

*This poster, sent to the SPLC by Delma Studios, is part of their promotional campaign for "the Total Yearbook Package"*

funds will be superseded by college administrators looking for ways to cut costs. He is urging a boycott of Delma Studios, Inc. by all NCCPA members. He says that Delma has made "millions" from student publications already.

"A good yearbook," says Lawbaugh, "is a threat to crooked administrators just like any newspaper, but a yearbook by the instant companies will be nothing but puff." □

*Private School May Lose Right to Censor*

## *b u exposure* Sues Boston University

The staff of the *b u exposure*, a monthly newspaper published by Boston University students, has sued the university president and board of trustees to force the University to release \$5,572.18 in student activity funds allocated to the newspaper for academic years 1976-77 and 1977-78.

The lawsuit alleges that the refusal of the university administration to release the funds was in retaliation for articles which appeared in the newspaper critical of school officials and that it violates the student's rights to "liberty of the press and to free speech."

If successful, the case would be a landmark decision for student journalists. It would mark perhaps the first instance in which students at a private school have successfully sued school officials for violation of First Amendment rights.

The current controversy actually began in November, 1976 with the publication of the first issue of the *b u exposure*. (See *SPLC Report 6*.) That issue contained articles critical of the University, particularly University President John Silber, one of the defendants named in the suit.

The first two issues prompted a letter dated December 23, 1976 from the Assistant to the Vice President for Academic Affairs stating that the administration was reconsidering the *exposure's* original budget of \$2,400.00. In January 1977 one-half of the original allocation was released, however, in March 1977 the staff was notified that the remaining \$1,200.00 would not be released. Because of a lack of funds, the *b u exposure* ceased publication that month.

When the staff solicited advertising to cover the costs of publishing during Fall 1977, they were informed by school officials that they could not use the name Boston University in their publication; they could not use any university facilities; and if they wanted to register as a student organization, the contents of each issue would have to be reviewed



Cartoon by Bob Staake

ahead of publication and edited by a representative of the University administration.

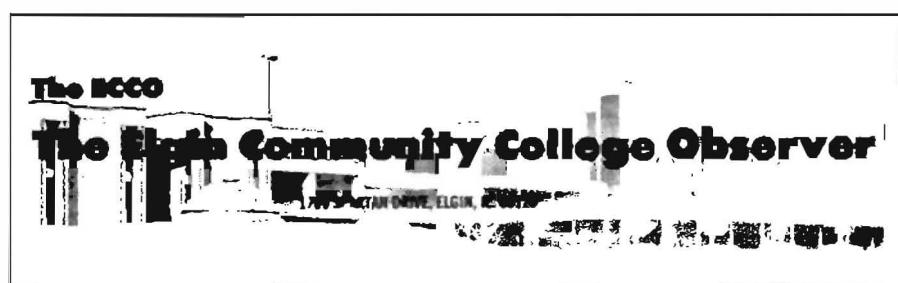
On November 1, 1977 the *b u exposure* was allocated \$4,372.18 by the Allocations Advisory Board, a student group constituted to make recommendations for expenditures of student activity funds. However, on December 21, 1977 the university administration refused to release the funds, ostensibly because the faculty adviser refused to agree to censor possibly libelous statements.

The student staff filed suit on January 30, 1978 in Suffolk County (Massachusetts) Superior Court seek-

ing release of the \$4,372.18 allocation and the \$1,200.00 withheld in 1977.

The lawsuit is of great significance because it marks one of the first cases in which students at a private school have sued the school administration for censorship of a student newspaper. Historically, the courts have refused to hear claims of alleged constitutional violations by private schools.

The students have proposed several theories for claiming violations of their press freedom rights. First, when the staff initially applied for recognition as a student group, they signed a form, which was also signed by a university official, which con-



Courtesy Beth Pool

tained the following language: "The University is concerned exclusively with the discharge of its educational obligation to facilitate free discussion of all points of view, to the extent guaranteed by the Constitution of the United States and of the State of Massachusetts."

Students argue that, in signing this form, the university entered into a binding contract in which it has agreed to allow students the freedom of expression guaranteed by the First Amendment to the Constitution. The students are seeking to enforce the contract.

The students also cite statements of university officials and language in the B.U. charter to the effect that Boston University respected the expression of divergent views which created a binding contract between the University and the students guaranteeing that student publications would be free from censorship. A hearing on the suit is scheduled for April 20, 1978.

Despite its financial difficulties, the *b u exposure* has continued to publish monthly since September 1977. Funds have been raised through donations, subscription sales, advertising, benefit dances and dinners and contributions by the staff itself.

Recently the newspaper received national attention by publishing the transcript of a committee meeting of the university's trustees in which University President Silber allegedly suggested granting admissions in exchange for donations to the university. The paper quoted Silber as saying, "I'm not ashamed to sell these indulgences."

Appearing on NBC's *Today* show March 29, Silber defended his statements saying that everyone knew he was "only joking" and claiming that the paper failed to quote his statement that no unqualified person would be admitted to B.U.'s medical or law school. The *exposure's* editor Steve Kohn says he may ask for equal time on the *Today* show to respond to Silber's allegations. □

## ECCO funds axed by Student Senate

### Now, It's Students Censoring Students

On Friday, March 17, the Elgin (Illinois) Community College Student Senate acted on its earlier threat to cut off funds for the college's student newspaper, *The Elgin Community College Observer*.

*The ECCO* received a letter from the Senate which said, "Effective March 17, *The ECCO* publication will no longer be funded by student service fees." The reason given in the letter for suspending funds was the refusal by proposed *ECCO* representative Brenda Webb to participate in the Sunday, March 12 meeting of the Senate.

Although Webb had been approved as *ECCO* representative to the Senate on February 24 at a Senate meeting, she refused to participate in the March 12 meeting because she had been approved without a quorum of representatives.

The meeting that had approved Webb had only 13 voting members present. A quorum would have been 17 members. The *ECCO* refused to acknowledge Webb's appointment as legitimate because of the alleged unconstitutionality of the Senate's action at the February 24 meeting. *ECCO*'s objection is part of its ongoing struggle against the Senate's apparent disregard for its own constitution.

The Senate's "cavalier" treatment of the constitution had begun earlier this year, according to *ECCO* adviser Beth Pool. The funding cut itself,

Ms. Pool said, was not approved by a quorum of Senators. Funding was restored for the *ECCO* at an April 2 meeting of the Senate, which, said Ms. Pool, was the first in recent weeks that has achieved a quorum. She believes that funding will last "until we say something bad about the Senate."

The District Board of Education has promised to approve alternate funding for the *ECCO* as soon as possible to bypass the Senate funds totally. Board member Lynn Schock termed the *ECCO* funding crisis "very sad", and talked about the possibility of direct funding from the Board, saying "I would think we can fund anything we want . . . That might insure your independence a little bit more."

Board member Frieda Simon said of the Senate action, "I find this dreadfully upsetting. I do not like censorship of the press in any form."

The Senate had earlier attempted to restrict *ECCO* editorial content through various public relations and liaison activities involving *ECCO* reporters. Its president allegedly stated, "They [the *ECCO*] had better stop biting the hand that feeds them" and threatened to cut off funds.

The *ECCO* staff has contacted the Illinois American Civil Liberties Union to investigate litigation possibilities in this unprecedented situation. □

# Adviser Fired After Sports Fight

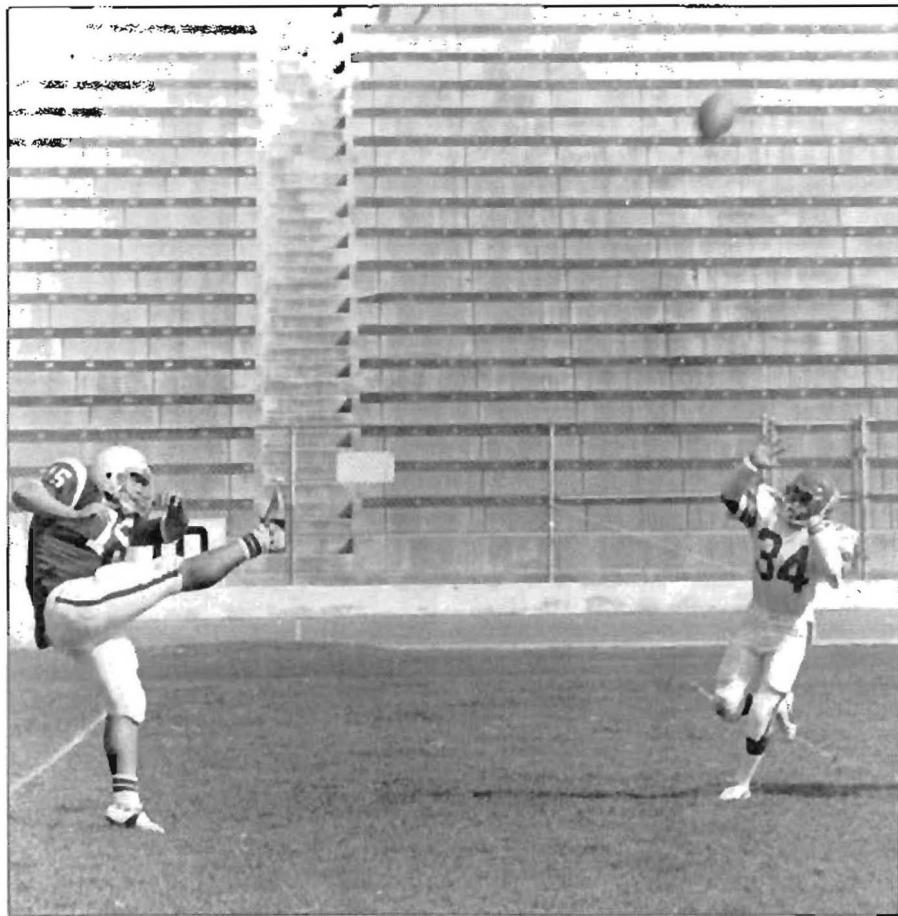


Photo by Benny Lackey

At an SDCC game: *Fortknightly* staff contends there was little interest in sports at the college

A California college student newspaper's faculty adviser has been fired because he refused to reinstate the paper's "Sports" page when told to do so by the school administration.

Glen Roberts, second year adviser to the San Diego Community College *Fortknightly*, was recommended for "non-reemployment" by Chancellor Garland Peed at SDCC's Board of Trustees' March 8, 1978 meeting. Two charges made against Roberts in the Chancellor's recommendation were that he "refused directives to discuss sports coverage" with his supervisor and that he failed to "read

the content of the *Fortknightly*" prior to publication, thereby exposing the College to liability for defamatory statements.

Roberts denies both charges and has requested a hearing on the matter before a State hearing officer. The hearing, mandated by California's Educational Code, is to be held in early May.

The *Fortknightly*'s "Sports" page was eliminated in May of 1977 to make way for a "Recreation" page. Student editors had decided to cover sporting events on this page, but to reduce coverage because of low stu-

dent interest. The scope of the page was widened to accommodate coverage of participatory sports, music, drama, and campus events. A poll of SDCC students later showed that a majority preferred the wider coverage instead of a strict competitive sports format.

Dean Charles Hampton immediately began a campaign, directed at Roberts, to revert the page title to "Sports". Roberts held that to force students to retitle the page would violate their First Amendment rights, and that he would refuse to participate in such an illegal act.

At SDCC Chancellor Peed's request, County Counsel Tim Garfield issued an opinion letter which stated that such an action would, in fact, constitute censorship and therefore would be illegal. The opinion letter did suggest that sports coverage could be required to meet the curriculum requirements of the journalism courses taught in conjunction with production of the newspaper.

The letter was interpreted by SDCC President Allen Repashy as permitting the regulation of the paper's general format under the guise of "academic control". Repashy then notified Roberts that sports must be covered in the *Fortknightly* (which it had been previously) because the Journalism laboratory's guidelines required instruction in "all areas" of news reporting.

A charge of insubordination against Roberts filed by Repashy had been dropped in the meantime, but Repashy continued to monitor sports coverage in the *Fortknightly*.

On November 14, 1977 American Civil Liberties Union attorney Robert H. Lynn filed suit in U.S. District Court, Southern California District, on behalf of Roberts and student editor Anthony Stevens. The complaint cited both infringement upon students' First Amendment rights and threats of disciplinary action against Roberts.

On December 5 Judge Gordon Thompson denied the request for an injunction, stating that "there is no dispute between the parties." The County Counsel had made the motion for dismissal, on the grounds that the students' rights had not been

violated and Roberts was not harmed.

This action by the College's attorney contradicted Chancellor Peed's claim that he wanted a clear judicial decision in the matter.

Dean Hampton informed Roberts that since the lawsuit had been dismissed, he must abide by the County Counsel's opinion letter, which had earlier been used to justify censorship attempts. A memo was issued to Hampton by Repashy on February 8, 1978, directing him to discuss future *Fortknightly* sports coverage with Roberts. Hampton never called a meeting with Roberts for such a discussion.

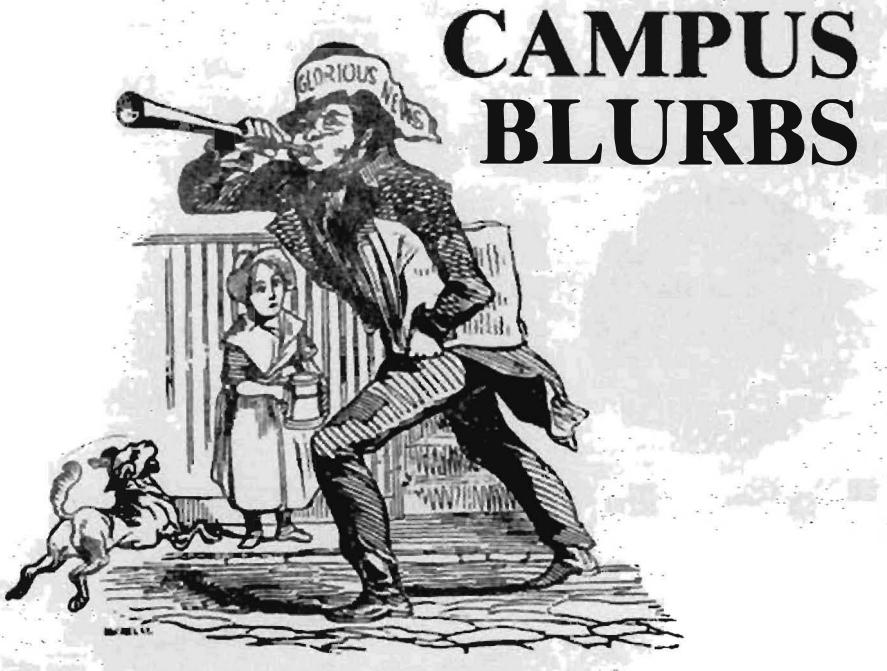
At the close of an earlier Board of Trustees meeting, one trustee remarked that the *Fortknightly* had had no problems before Roberts arrived, and another remarked that the college must be very sure to hire good advisers in the future, having learned how little control they have over the student press.

A reporter on the *Fortknightly* staff found an item on the Board of Trustees' agenda for the March 8, 1978 meeting that referred to the "non-reemployment of certain certificated employees." Roberts attended the board meeting after discovering his firing was one of the three recommended by Peed.

The Board approved without discussion the three dismissals. In answer to a trustee's question, Peed affirmed that the persons involved had been notified of their dismissal. Roberts contends that he was not notified.

Roberts says the charges on Peed's recommendation are "rather trumped up" and have no basis in the actual events of the period. He concedes that he did refuse to discuss sports coverage with Hampton on one occasion, that being while the case was pending District Court, but not "on several occasions." He contends that the charge of exposing the College to liability by not reading copy was never mentioned to him before his dismissal and has no basis in fact.

Meanwhile, the *Fortknightly* has continued to publish a "Recreation" page which has included coverage of SDCC sports events. □



## CAMPUS BLURBS

### Gays to be Included in Book

The communications department of the University of California at Los Angeles has announced its plans to include a photo of the Gay Student Union in its forthcoming yearbook despite objections from other campus groups.

Editors of the *Southern Campus* yearbook said they considered eliminating the photo when several

unnamed campus groups protested that their group's picture could eventually face the GSU photo in the yearbook.

*Southern Campus* also explained that the GSU had refused to pay for a group photo and had wanted prior approval of any candid shots used. □

### Northeastern Reporter Snubbed

A reporter for the Northeastern University (Massachusetts) News called an associate provost at the University for information on a story and was told, "It is forbidden for any News staffer to call on ad-

ministrators at home. I don't ever talk at home and don't intend to make an exception now." The quote was printed, in headline type with a box, and the paper's comment added: "Well excuse me!" □

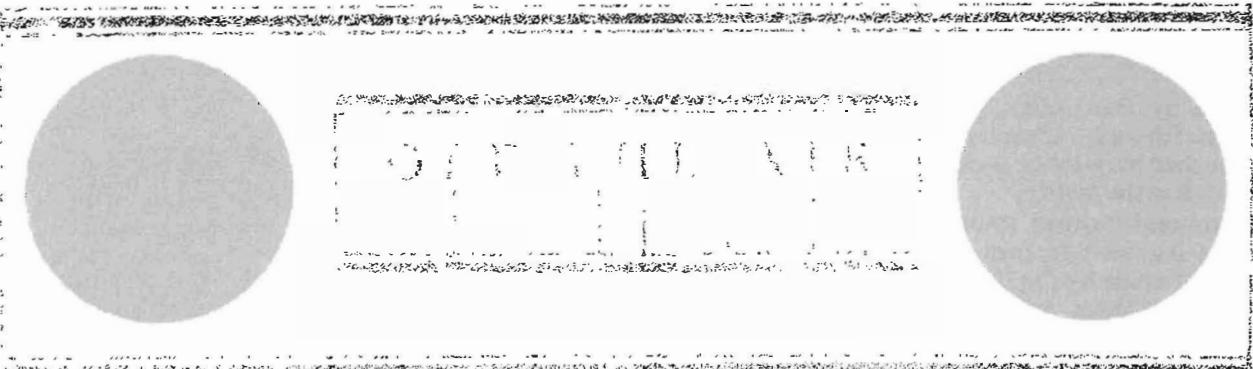
### UM Guarantees Free Speech

The University of Michigan has adopted a free speech policy to insure that the rights of the speaker, any potential protestors, and the audience are observed.

The policy states that "protestors must not interfere unduly," with a speaker when he or she is addressing an audience. It also prohibits the University from discouraging an invited speaker from appearing out of fear of a violent reaction.

The new speech policy was enacted as a reaction to disruptions during a 1975 visit to the Michigan campus by Israeli President Ephraim Katzir.

Under the policy, if there appears to be disruptive behavior, the university may "proceed with those measures necessary to reestablish order, which may include physical removal of the protestors." □



Graphic by James Presnell

OPTIONAL FORM NO. 10  
JULY 1973 EDITION  
GSA FPMR (41 CFR) 101-11.8

UNITED STATES GOVERNMENT

## Memorandum

TO :

FROM :

SUBJECT:

DATE:

# FCC Hears WXPN Arguments

On March 28, 1978 the Federal Communications Commission heard oral arguments by the University of Pennsylvania concerning the FCC's denial of renewal for the license of WXPN, Philadelphia.

In 1975, student radio station WXPN at the University of Pennsylvania in Philadelphia presented its weekly call-in program, "The Vegetable Report", which allegedly contained obscene material.

The FCC, acting on complaints about the broadcasts, began an investigation which led to a unanimous decision by the FCC to fine WXPN \$2,000. The FCC found that the station had violated the Communications Act and federal obscenity statutes by "broadcasting words depicting sexual and excretory functions in a patently offensive manner." (See *SPLC Report 4*.)

In a ruling on April 4, 1977, FCC Administrative Law Judge Walter C. Miller denied U. Penn's request to renew the license. Miller decided that the license should not be renewed because trustees had "failed to exercise adequate control and supervision over WXPN's operations in a manner consistent with a licensee's responsibilities and, therefore, did not possess the requisite qualifications to remain a Commission licensee." (See *SPLC Report 5*.)

In addition to the obscenity charge, WXPN was said to have operated without a properly licensed engineer, failed to make weekly transmitter readings and interfered with television reception in the area. Miller also said that station personnel had used hashish, marijuana and alcohol on the station's premises.

On April 27, 1976, the Philadelphia Civil Liberties Union sought to inter-

vene in the controversy claiming that the case raised important First Amendment issues. Miller denied the request on the basis that the ACLU "misinterpreted the thrust of the designated issues, and failed to demonstrate how it will help the FCC in the determination of issues."

In the March 28 hearing, however, testimony by Mrs. Happy Shipley, Chairperson of "Friends of WXPN," showed that the station now provides a valuable service to the community. "Friends of WXPN" is a group of 107 interested listeners formed to show support for the radio station. There was a question also of whether revoking the license would accomplish anything since the students in question have graduated and the station is now broadcasting satisfactorily.

A decision is not expected for several months. □



*Robert F. Kennedy  
(1925–1968)*

## Ten Years Later

Ten years ago this June 6th Robert F. Kennedy was struck down at the height of his career by an assassin's bullet. He had served his country magnificently as Attorney General during the first turbulent years of the civil rights movement and later as U.S. Senator.

But it is as the champion of young people that we wish to remember him: the man who recognized that America's greatest resource is its youth.

The Student Press Law Center was founded in 1974 as a project of the Robert F. Kennedy Memorial, and it is to the Memorial that we primarily owe our continued existence.

We hope that through our efforts to help student journalists, we are in some small way helping to make the visions of this great man a reality.

# SPLC Reports

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**student press law center  
report 5-fall 1977**

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

*Appeals Courts Weigh Potential Landmarks In Student Press Law*

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

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

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

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

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

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

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

*continued on page two*

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

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

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

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

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

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

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