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Beginning with the Winter 1978-79 issue, the cataloging system for the SPLC Report will change to a volume and number system. Volume I will consist of the eight issues published since 1976. Volume II begins with this issue and will include the Spring 1979 and Fall 1979 issues. Each subsequent volume will contain the three issues published in a calendar year.

The Student Press Law Center also offers for sale the Manual for Student Expression: The First Amendment Rights of the High School Press for $1.00 (2-10 copies $0.75 each, more than 10 copies $0.50 each). The manual is presently being revised and the new edition should be available in 1979.

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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 press rights. The 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.
Advisers Fight Back

Echave Wins Reinstatement

"We're not going to ask anyone to become our adviser. We're still on strike, and we'll hold fast until we get our adviser back." So saying, Editor Melanie Peters and the staff of the Oracle refused an appeal by Principal Charles Hall to return to their posts and continued a protest to have their adviser, Kathy Echave, reinstated.

Weeks later, their efforts bore fruit as the Englewood (New Jersey) Board of Education unanimously approved Echave as faculty adviser to the Dwight Morrow High School Oracle. The move capped an uphill battle by students, community leaders, local newspapers and fellow teachers to have Echave reinstated after an administrative "oversight" had apparently deprived her of the job she had held for the previous seven years.

An Historical Antagonism

According to the student staff, Echave and the Oracle have had a history of disagreements with Principal Charles Hall over the content of the school paper. They charge that under Hall's administration, the newspaper budget has been cut steadily during the last five years. Recently, the staff was shocked to discover that galley proofs of the September issue of the Oracle sent to the printer were taken by a "middle-aged" man claiming permission from school authorities. Later, Principal Hall confirmed that he had the missing proofs in his possession, but did not explain why they were taken. They were returned to Editor Melanie Peters eleven days later.

In September, Hall unofficially replaced Echave, an experienced faculty adviser, with a nontenured, first-year English teacher. The principal said that a new adviser was appointed because Echave had failed to submit her application for the "extra-service" position by the June deadline. However, all other teachers who failed to reapply for "extra-service" positions were reappointed nevertheless.

The application deadline had been changed this year, moved up three months from the usual September date. However, through an administrative oversight, many Englewood High teachers, including Echave, were never individually informed of the change. Echave said she did apply on September 6 as soon as she found out.

School personnel records revealed that the teacher appointed to replace Echave had not applied for the job either.

"We [the Oracle staff] felt, and I think, that putting a nontenured teacher in this position would make her very

CONTINUED ON NEXT PAGE

Faith's Perseverance Pays Off

"Things are going pretty smoothly. I'm not anticipating any trouble," said Amy Faith, adviser to the Deer Lakes High School (Pennsylvania) Crusader.

For Amy Faith, the role of newspaper sponsor at Deer Lakes High as been like successive "Do Not Pass Go" turns on a monopoly board. After a two-and-a-half year struggle, Faith has regained her position as adviser.

In 1976 she was removed as newspaper sponsor and transferred to a junior high to teach eighth grade English after a disagreement with Principal Ralph Mastandrea over publication of three letters to the editor.

Faith filed a grievance with her union and a year and a half later was reinstated to her former teaching position. In the interim, the school newspaper was made an "independent activity" separate from the journalism class. The Pennsylvania Labor Relations Board subsequently upheld the school's refusal to reappoint Faith faculty adviser because the newspaper was no longer "an internal part of the journalism class."

However, last September, Joseph Williams, a visual communications instructor and the Crusader sponsor during Faith's absence, announced his resignation as adviser. Faith applied for the position and, as the sole applicant, was recommended by the new principal, Tom Norris.

Her job apparently secured, Faith began encountering a new problem. Williams, who normally printed the newspaper in the school shop announced he would no longer do so, Faith said. The principal, at first, denied permission for the Crusader staff to seek an out-of-school printer, but later changed his mind.

According to Faith, the administration has handled the problem of finding a printer on an "issue to issue" basis, with some issues being printed by the school and others by outside printers. Each issue is reviewed and "critiqued" by the principal before it goes to print.

So far this year there has been no censorship of the newspaper, Faith added.

Meanwhile, Faith said she is rewriting the course description to bring the newspaper back into the journalism curriculum, as was originally intended in the course description she wrote, and which the school adopted seven years ago. "I don't know what will become of it," she said.

"I'm treading on shaky ground right now. I'm not trying to look for trouble," Faith said. "I just hope we are able to produce a good, solid student publication."

Mary Driscoll

Mary Driscoll

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ADVISER FIRINGS

Advisers Fired – Sue for Positions

Two Tenafly, New Jersey teachers have filed suit in U.S. District Court charging that their dismissal as advisers constituted a violation of the First and Fourteenth Amendments.

The teachers, Dione Danis and Catherine Miggins, charge that administrators at Tenafly Middle School, a junior high school, failed to rehire them in “retaliation” for their refusal to submit newspaper copy for prior review by the principal. Named in the suit are the principal of the school, the superintendent of schools and the district board of education.

In October 1977, principal of Tenafly Middle School, Robert Smith, unilaterally ordered the advisers to submit all copy of the Tiger Tales student newspaper “for his approval” prior to publication. The advisers, after seeking counsel from the Student Press Law Center, told Superintendent Clyde Slocum that “such prior review, without proper and appropriate guidelines, was contrary to law” and refused to comply.

Smith temporarily suspended publication of the newspaper but later in the year allowed publication pending adoption of a set of publication guidelines.

However, last fall Smith selected two nontenured teachers to fill the faculty sponsors’ posts held by Miggins and Danis. The tenured advisers claim that their replacement was in “retaliation and retribution” for their opposition to the administration’s policy.

“Our decision to file suit against our principal, superintendent, and board of education was not easily made. We feel, however, that it was necessary to do so. Faculty advisers on student newspapers cannot be punished for protecting the First Amendment rights of their students,” Miggins said.

Last summer, the board of education did pass a set of guidelines allowing the principal to read copy but not to change content. Smith said that, so far, Tiger Tales has been publishing without any obstacles.

The case will be heard by a federal court in Newark.

Echave CONTINUED FROM PREVIOUS PAGE

vulnerable to pressure from the administration,” Peters said.

A statement released by the Oracle during the strike cited the administration’s “historical antagonism” toward the Oracle as the reason “no notice was given, no reason sought and no reasons were offered to the paper” concerning the changes in advisers.

A Ploy

Two days after she found out she had been replaced, Echave approached Assistant Principal Frank Sabach for an explanation.

“Sabach gave me no reason why,” Echave said. “But he said he assumed it was because I didn’t apply in time.” She added, “That’s a ploy. I’ve been replaced simply because of my attitude toward the newspaper. I let the students express their opinion and write the truth, but the administration wanted what it called more positive stories. They wanted a public relations tool.”

Students and faculty took their case to the Englewood Board of Education on September 18. The staff presented a petition signed by sixty faculty members calling for the reinstatement of Echave, while Peters charged Hall with infringing on the students’ First Amendment rights by trying to censor the Oracle and confiscating the proofs of the September edition.

Hall denied the charges. “I have never attempted to control or censor the paper. I never asked for proofs,” he said.

In ruling on these charges, the board found that the principal’s action in holding the proofs “represented more an error in judgment than a willful attempt to interfere with First Amendment freedoms.”

The board president conceded that the board might have been remiss in not notifying the teachers individually of the new application deadline. To correct the oversight, the board reopened the faculty adviser position by re-posting all extra-service contracts and setting a new October 3 application deadline.

Although the extra service positions were officially re-opened to all interested applicants, the Englewood Teachers Association asked that teachers previously appointed apply for their respective positions.

As the only applicant for the advisershhip, Echave was recommended by Hall and unanimously approved by the board of education in mid-October.

According to Echave, the dispute, though long and drawn out, has produced some benefits. “Everyone wants to be on the Oracle,” she said. “There has been a resurgence of interest in publications.”

COURTESY NORTH JERSEY SUBURBANITE

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Students Balk Under New Policy, Adviser

Fall 1978 brought a new adviser, a new editorial policy and more controversy to the Oracle student newspaper at Southridge Senior High School in Miami, Florida.

Just before the school year began, Fran Peterman said she was "shocked" to discover that she had been dropped as adviser to the Oracle, a position she had held for the previous two years. Replacing her was the school yearbook adviser, who Peterman said has had no previous journalism teaching experience.

Under Peterman's tenure the Oracle had won awards from both the Columbia Scholastic Press Association and the Florida Scholastic Press Association, and, in 1977, the staff had opposed Principal Joseph Tekerman's order to submit newspaper copy to administrative officials for prior review.

'Slap On the Hand'

"It got to be a financial thing," Tekerman said of the change in advisers. According to Tekerman, the Oracle was "losing money" last year until May when the curriculum and funding sources were reorganized. Under the new arrangement, funds for the yearbook and the newspaper now come from a common source, and finances for the two publications could best be handled by a single adviser for the newspaper and the yearbook.

"It's best to keep a single individual in this," Tekerman said. "That's not true," Peterman responded. According to the former adviser, other schools have financial arrangements similar to that of Southridge but still have separate newspaper and yearbook advisers.

"As far as I am concerned, it's a slap on the hand because I questioned his authority. It's not a 'management right' to proofread the paper; it's not a management right to abridge constitutional rights," Peterman said, referring to Tekerman's prior review order.

Tekerman said that the recent prior review controversy involved "a lot of miscommunication," but "had nothing to do with" his decision to remove Peterman.

However, a source at Southridge High reports that this year the principal has been reviewing newspaper articles prior to publication.

Peterman remains an English teacher at the high school and has said she will not appeal her removal as adviser. "I decided not to do anything," she said. "I just couldn't see continuing under the same conditions as the year before; I couldn't go through another year of harassment."

New Policies

This fall, several former Oracle staff members contacted the Student Press Law Center (SPLC), complaining about new policies in the newspaper class and a questionnaire handed to them at the beginning of the semester by the new adviser, Lynn Shenkman.

According to Shenkman, the questionnaire, entitled "Self-evaluation for suitability for Newspaper 78-79 staff," was designed to "make students aware what was considered necessary to be a good staff member." The adviser said that the questionnaire indicated a student's skill in journalism, the time he would devote to the newspaper, his dependability and his attitude.

However students objected to several items on the questionnaire which asked prospective staff members to respond with "yes or no" answers.

One item particularly troubled students and read: I can accept Mrs. Shenkman's decisions as final on all aspects of Newspaper. A second item read: I understand that the amount of advertising I sell will help determine the academic grade I receive.

According to Mary Parlato, formerly the Oracle entertainment editor, a "no" response on any item on the questionnaire lead to a personal discussion on classroom policy between the student and Shenkman. If a student objected further, he was sent to the school library to work on an independent journalism research paper for the rest of the semester rather than write for the Oracle.

"It's not a student publication, it's turned into an adviser publication. If you don't cooperate, you sit in the library," said Maureen McCarthy, an Oracle staff member.

According to Parlato, ten students have been sent to the library since classes began. Many have already transferred out while others are still waiting, she said.

"The questionnaire had nothing to do with whether you stayed on the staff. It had nothing to do with a grade," Shenkman said. She added that many of the students working in the library "did not want to write stories" while others had not met their deadlines.

"I don't determine what gets in the newspaper. That's the responsibility of the editorial board," Shenkman said. However she added, "Within the school, final authority probably rests with the principal because it is part of the curriculum. The principal is the publisher."

However, Mike Simpson, director of the SPLC, told Shenkman, "That's not true. The courts have ruled that even though a high school newspaper may be funded by a school and published by a journalism class, that does not mean that the principal or adviser has the power to dictate the content of the paper as a private publisher does."

"The First Amendment protects the rights of student journalists, and they are free to publish just about anything as long as it is not libelous, obscene or substantially disruptive of the school," Simpson concluded.

The students say they intend to discuss the situation with local lawyers.
Students Win Lawsuit, Lose Adviser

William Schultz, adviser to the Eastern Randolph (North Carolina) High School student newspaper, has been relieved of his duties as adviser less than two months after the staff of his paper sued the school administration and school board for censorship.

Eastern Randolph Principal Worth Hatley told the SPLC Report that the free press controversy and ensuing lawsuit "played no role" in his decision to remove Schultz. However, in papers filed with the court, Hatley and the school board claimed that Schultz engaged in "unlawful acts and a conspiracy" with the newspaper staff "to entrap defendant Hatley into directing that the article not be published...."

When questioned whether he had ever been displeased with Schultz's work as an adviser, Hatley said only that, "He worked extremely hard."

Schultz's students filed suit last June against Hatley, the superintendent of schools and the Board of Education of Randolph County Schools contesting Hatley's and the board's refusal to permit the publication of an article about birth control. In January 1979 the students won the suit when federal Judge Hiram H. Wood ordered the board to allow publication of the article and to pay $1500 in attorneys' fees. (See story, page 24.)

Hatley told Schultz in mid-August that he had been replaced as adviser of the Wildcat Prowl. The loss of the position deprived him of an additional $500 per year paid to the newspaper adviser.

Schultz had actively supported the decision of his students to publish the article about contraception.

He first met with Hatley to urge approval of the article's publication. When permission was denied, Schultz appeared at a school board meeting to plead the students' case. He quoted numerous publications (including the SPLC Manual for Student Expression) in trying to convince the board that the students were entitled to the protection of the First Amendment.

Schultz also sent a letter to the board's attorney bringing to his attention the recent case of Gambino v. Fairfax County School Board. The court in Gambino ruled that students who work on an official student newspaper have the constitutional right to publish birth control information. Gambino was decided by the U.S. Court of Appeals for the 4th Circuit and is binding on the courts in North Carolina.

Real Voice Speaks Out

Students at Elgin Community College (Illinois) started an underground newspaper after the school's regular newspaper had its funds reduced, its adviser dismissed, and its office dismantled.

Meanwhile, administrators at the college are trying to regroup the Elgin Community College Observer (ECCO), which, according to President Mark Hopkins, is "a student activity and a learning experience, not a newspaper." They are starting from scratch because last September, in protest, the entire staff of the ECCO quit.

The ECCO's problems began last February when it criticized the school's student senate for allocating $50,000 at a meeting where reportedly only eight student senators were present—less than the seventeen necessary for a quorum. The senate did not respond to the charges, but used its power to withdraw all funding from the paper.

Student protest of the action brought in coverage by the Chicago Tribune and the Chicago Sun Times, and under pressure from the college president, the student senate restored funding to the newspaper. However, in May, the senate cut the ECCO's 1978-79 allocation from its usual $8,000 to $3,500. In executive session, senate officers also voted to shut down the newspaper office and move all equipment and files into storage.

In a related development, the ECCO's faculty adviser, Beth Pool, learned during the summer that she would not be reassigned as adviser and that a new part-time adviser had been appointed.

"The newspaper was publishing, while I was adviser, things that the administration didn't like," Pool said. "I was removed without cause to suppress the paper." She added that she was consulting the American Civil Liberties Union about a possible suit to gain her reinstatement.

Facing these obstacles last fall, the entire staff of the ECCO, including the new adviser, resigned after putting out two issues. Students instituted an underground newspaper at the college articulating their claims of censorship by administrators:

"This Real Voice is a last ditch plea to the students, staff and trustees of Elgin Community College to rise up and join in protecting the freedom of the press at the college," said a Voice editorial. Another Voice article charged that "... reporters are being assigned to their stories by the adviser to the student senate."
"What Are You Afraid of, Mr. Jarvis and Mr. Gann?"

California legislators, Howard Jarvis and Paul Gann, have dropped a $800,000 legal claim for libel against the student newspaper of Granite Hills High School in El Cajon, California.

Jarvis and Gann, coauthors of the controversial tax initiative, Proposition 13, claimed that the March 10, 1978 issue of The Clarion libeled them by falsely reporting that both men were "prominent real estate owners in California," and that "passage of the bill would save them several million dollars."

As later admitted by The Clarion, neither Jarvis nor Gann owned any real estate in California other than their own homes, and they would not have benefited from the measure's passage any more than the average homeowner.

Sixteen-year-old Brad Teaby wrote the article, entitled "Proposition 13 Explained," giving an analysis of the measure and its effects on California residents. Teaby gathered most of his information from local news media reports and said that from these sources he was led to believe that Jarvis and Gann were, in fact, owners of an extensive amount of real estate.

In a unanimous decision the Arizona Court of Appeals has dismissed a suit for libel and slander filed by an Arizona public school teacher against the parents of six of his pupils.

In ruling against high school chemistry teacher Albert Sewell, the court declared, "As far as the law of defamation is concerned, teachers are 'public officials.'"

Under recent U.S. Supreme Court decisions, if one who sues for libel is a "public official," he must prove that the false and defamatory statement was published "with actual malice," that is, with knowledge that the statement was false or with a reckless disregard for the truth.

The court ruled that Sewell failed to prove actual malice.

With this decision Arizona joins at least three other states, Kansas, Oklahoma and Illinois, in classifying public school teachers as "public officials" for purposes of libel suits.

In justifying its decision the Arizona high court stated, "We cannot . . . allow school officials to shield the incompetent teacher and thus defeat the legitimate interest of the parents in their children and the school system."

The controversy began when a number of Sewell's chemistry students complained to their parents about Sewell's teaching. The 12 parents, among them a lawyer, a teacher, a chemist and a school board member, met and drew up a list of grievances. The list included charges that Sewell discouraged questions, embarrassed students, did not discuss the subject matter sufficiently, covered material too quickly, and failed to instruct students properly in safety procedures.

Sewell denied all of the allegations.

The parent group presented the list of grievances to the high school principal, the superintendent of schools and later to the school board. At a meeting of the school board, the parents requested that an alternate chemistry teacher be provided for the next semester. Before the issue was resolved, Sewell filed his lawsuit.

No Proof of Malice

The trial court dismissed the suit prior to trial on the ground that Sewell failed to put forth sufficient facts to show actual malice by the parents. On appeal the teacher claimed that malice was shown by the fact that the parents did not present their list of grievances to him first, but instead, took it to his principal. Further, despite the fact that Mr. Sewell answered the complaints and the principal told the parents that he thought Mr. Sewell was a good teacher, they persisted by going to the superintendent and to the school board with the complaints.

The court of appeals ruled that those allegations were not enough to show "actual malice." Just because Sewell denied the charges does not mean that they were false or that the parents knew they were false, the court said.

"If we were to hold otherwise," the court said, "then once the teacher denies any allegation of incompetency even though the adequacy of his answers are still in question, the matter is ended. We cannot condone such a result. . . ." Sewell v. Brookbank, 4 MED. L. REP. 1475 (Az. Ct. App. 1978).
LIBEL

Student Leader Loses Libel Suit

A Charlottesville circuit court has dismissed a $300,000 libel suit filed against Edward Willcox III for forging a disparaging psychiatric report about the former student government president at the University of Virginia.

Kendrick M. Easley, the school’s first black student president, sued Willcox, a white sophomore at Virginia, claiming the report alleging his mentally unstable condition “ruined his life.” However, the court dismissed the case because Easley had not proved sufficient evidence of libel.

Easley may still appeal the decision.

The bogus letter, written on university hospital stationery and bearing a university psychiatrist’s signature, described Easley as suffering from “hyperactive anxiety,” characterized by “perspiration around the hairline” and “irregular eye movement.” After writing the letter, Willcox placed it under a park bench in front of his fraternity and called the campus newspaper, the Cavalier Daily, telling them where the report was located.

Willcox said the intent of the prank was to expose the Cavalier Daily’s gullibility and not to injure Easley.

The Daily’s managing editor at that time, Virginia Munsch, said that the editors “could not determine the report’s authenticity,” and turned it over to the Charlottesville police. According to Munsch, the Daily made reference to the report in news stories only after Willcox had been charged in the incident.

Easley testified that, despite the caution exercised by the Cavalier Daily in not printing the letter, word still spread throughout the campus. Students began to gather outside his window at night calling him “psycho,” his once high grades plummeted, and he scored below the national average in his law school entrance exam.

“I seldom went to class, and couldn’t concentrate on studies. I was just present on the ground. I was obsessed with who forged this letter,” said Easley.

Willcox, who had already paid a $250 fine for “forgery for publication,” admitted in court to writing the phony report. However, the judge dismissed the case because Easley could not prove an actual monetary loss arising from the letter; nor could he prove that statements in the letter inherently damaged his professional position or trade, as is required under Virginia state libel laws.

Coach 0 – Newspaper Won

A New York court has ruled that a sports column which criticized the conduct of a high school football coach in a dispute with game officials is not libelous.

Ossining (New York) High School coach Winter sued the publisher of The Yorktowner because of statements contained in a sports column about the Yorktown-Ossining High School football game.

Winter claimed the following excerpt was false and defamatory: “What followed, however, was a disgrace to the coaching profession and to the sport. Coach Wint [sic] verbally assaulted the officials with profanity and even threatened them with bodily harm. It even got to the point when his own players, who showed more professionalism and class then [sic] he did, had to restrain him.”

The article went on to urge league officials to “crack down on abusive behavior of coaches, such as those by Coach Wint [sic].”

In dismissing the suit, the court relied on two alternative grounds. First, the court noted that the quoted section should not be read alone but must be read in the context of the entire article. Viewed in this manner the column merely advocates that league officials should take action to prevent coaches from engaging in heated arguments with officials on the field and is therefore not libelous.

Second, although the coach was a “private individual” he became a public figure when he injected himself into the forefront of a football game and would have had to prove actual malice for recovery. The coach failed to prove that the items were published “with knowledge of their falsity or in reckless disregard of the truth.” Winter v. Northern Tier Publishing, 4 Med. L. Rep. 1348 (1978).

Aspirin Story Causes Headache

All aspirin is not alike. At least not in how they are priced in Champaign, Illinois, where the Daily Illini sets out to defend itself in a libel suit stemming from an article it ran on discrepancies in local drugstore pricing policies.

The Discount Den, an Illinois drugstore chain, is suing the University of Illinois Daily Illini for an article which alleged the store was illegally keeping manufacturer’s discounts from reaching consumers who bought products in the Den’s Champaign store. The Den seeks $100,000 in total damages for lost business from Gordon Wangersheim, the student author, and Richard Sublette, the Illini’s publisher.

Sublette said, “We stand on the facts as printed.”

In his column, Wangersheim charged the store with “handily pocketing” the difference between the price marked on the product and the price the item should have sold for with the manufacturer’s discount.

In their complaint, representatives of the Discount Den said the article was published “maliciously, wrongfully and with reckless disregard for the truth,” and that it had injured both the store’s reputation and business.

The case is pending in Champaign County Circuit Court.

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Million Dollar Libel Verdict Overturned

The United States Supreme Court has refused to review the Florida Court of Appeals' decision reversing a one million dollar libel judgment awarded to a Palm Beach, Florida school superintendent.

Superintendent Lloyd F. Early had sued The Palm Beach Post and The Palm Beach Times in 1970 for several hundred news articles, editorials and cartoons highly critical of his administration.

The court of appeals described most of the articles as "slanted, mean, vicious, and substantially below the level of objectivity that one would expect of responsible journalism...." The harshest articles claimed Early was unfit to hold office because he was inept, incompetent, and indecisive. He was also accused of nepotism.

In 1974 a jury awarded Early $1 million, finding that statements made in the articles were false and malicious.

In April 1976, the Florida Court of Appeals unanimously reversed that judgment. The court observed, "Most of the articles and cartoons would fall into the category of what the courts have chosen to call 'rhetorical hyperbole' or, the conventional give and take in our economic and political controversies."

After noting that the superintendent was a public official, the court ruled against him because he failed to prove that "'a single one of the articles was a false statement of fact made with actual malice as defined in the New York Times case.'"

In his petition to the U.S. Supreme Court Early claimed that the Florida courts have "granted an absolute protection to libelous news commentary, no matter how vilifying or false, which can arguably fit within the category of editorial opinion rather than reportorial fact."


A Question of Libel...

Fearing a libel suit against the school, an administrative assistant at Marquette University censored an August 2 editorial in the Marquette Tribune over the objections of the student editors.

Edward Pegan, administrative assistant to the dean of the College of Journalism, changed the wording in an editorial which described a local tax revolt leader, Walter Heiden, as "slimy." Pegan, acting on the advice of Dr. Lucas Staudacher, a mass communications authority at the school, made the alteration over the objections of editors Jim Higgins and Shawn Sensiba.

"I feel we [the editors] were cheated. We didn't have a dean or a proper legal counsel, just Staudacher telling Pegan that he wouldn't print it if he had anything to do with it," Higgins said.

Three days later, Pegan voiced objections to an article which referred to a local lawyer as having a "less than saintly reputation." Higgins agreed to change the reference to read, "a well known criminal attorney," after consulting with the Tribune's faculty adviser.

John Vivian, the Tribune's adviser, said that Pegan "honestly felt that Marquette was in jeopardy. He sought opinions on the matter from others and did what he had to do." However, John Salek, current editor of the Tribune, said he believed the decision to rewrite the statements was really one of taste, particularly where tax reformer Heiden was a "public figure" open to criticism. Reportedly, Heiden did consult his attorneys about a possible suit against the university but decided against legal action.

As a private college, Marquette is not bound by First Amendment protections. Yet until this incident there had been no censorship for years, Salek said.

And Yet...

The issue is not whether Higgins libeled Heiden by referring to him negatively. The problem is determining just who should be the final arbiter on what words go into print. Because of the current legal status of student newspapers at private universities, the Tribune editors do not have complete control.

This is so because students in private institutions such as Marquette sacrifice certain rights that are not given up at state colleges.

Still any form of censorship other than a newspaper editor's self-control is dangerous. Cliched or not, the potential for a domino effect is readily seen in a little censorship here and there.

Our response to this is to ask how any student can be treated as a juvenile for four years then, upon graduation, be expected to magically transform into a responsible adult capable of making such value judgments as whether a certain story is important enough to chance a libel suit.

—Marquette Tribune Editorial
SUNSHINE LAWS / FOIA

Lantern Sheds Light on CIA

The American Civil Liberties Union, on behalf of staff members of the Ohio State Lantern, has filed a lawsuit against the Central Intelligence Agency (CIA) in order to obtain all records of CIA activities at Ohio State University.

Two former reporters for the Lantern and the newspaper’s faculty adviser brought the suit when they felt the CIA had failed to adequately answer two separate requests for information. In responding to the requests made under provisions of the Freedom of Information Act, the agency withheld certain documents in their entirety, released certain documents with deletions, and refused to confirm or deny the existence of other documents.

“Mere logic would dictate that at the largest single college campus in America, there was more going on between the CIA and the university than would be indicated by what we had received,” said John Oller, a former Lantern reporter and a plaintiff in the suit.

Rich Ritter, an attorney for the students, said, “The CIA refused to confirm or deny that other documents exist. That’s the hurdle that exists.”

To get around that hurdle, the students and Lantern adviser filed a suit in October seeking “full and uncensored disclosure” of any CIA activities on the Ohio State campus. Also filed was a motion that would require the agency to offer a detailed justification for each document it refuses to reveal.

Innocuous Documents

Oller first filed a Freedom of Information Request with the CIA in a letter dated March 31, 1977. “I basically asked for everything they had,” Oller said. “I wanted any information relating to CIA contacts with Ohio State, including any and all contracts, arrangements and personal relationships, whether overt or covert.”

According to Oller, the agency had promised to send the materials as soon as was “feasible.” However, during the following year there was no further response. On March 4, 1978, reporter Michael Kapsa and Tom Wilson, faculty adviser, filed a second Lantern FOIA request.

According to Oller, when the agency finally responded to the requests, it sent a packet of twenty-six documents.

“Most of them were rather innocuous,” Oller said. They included correspondence between the CIA and campus placement offices. There were documents concerning overt recruiting on campus. Several documents were agency requests for transcripts and research information from the Mershon Center for National Security Studies at Ohio State. Most of the documents sent by the CIA were heavily deleted, Oller said.

Certain provisions of the Freedom of Information Act allow agencies like the CIA to withhold information concerning names and number of employed personnel and its intelligence sources and methods of operation.

They may also retain documents that would constitute “an unwarranted invasion of the personal privacy of other individuals.”

The students and adviser appealed through the agency in March 1978 to obtain the deleted portions and withheld documents, but received no response. They contacted their lawyers in late spring.

Oracle Reveals All

While the Oracle student newspaper is basking in the Florida “sunshine,” the administration at the University of South Florida claims it’s getting burned.

The USF Oracle, taking advantage of the Florida sunshine law that makes certain records accessible to the public, decided to print the names of applicants for a high administrative position at the university. The article, entitled “400 apply for VP position,” appeared in the July 19 issue.

Keith Scott, vice president for administration, had given the names to the paper but had advised against printing them, saying that publicity might prove embarrassing to candidates still holding top positions elsewhere.

The Oracle didn’t see things that way. Patty Ryan, Oracle editor, said, “We realized that inherently there would be disagreement from the administration. We selected those [names] we felt newsworthy.”

Ryan pointed out that advertisements for the position warned applicants that the search was being conducted under the provisions of the sunshine law. The newspaper staff printed the names of seven applicants holding important positions in the Tampa Bay area.

In a letter to Ryan, Scott called the article a “disservice to the University of South Florida” and said, “I have always tried to be open and responsive to the Oracle staff. You will understand my difficulty in maintaining this posture in the future after this experience.”

According to Ryan, “No administrative inconvenience justifies stifling laws that allow taxpayers even a glimpse of the enormous decisions formerly made by educators behind closed doors. If the university and applicants were inconvenienced by having their actions publicly scrutinized, their beef is with the sunshine statutes, not with the Oracle.”

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No Penalty for Illegal Huddle

Even though the Iowa Supreme Court has taken the sting out of Scott Monserud's suit against his school's athletic council, the former Iowa Daily sports editor feels the heart of his case is still strong.

Early this fall the Iowa Supreme Court struck down the criminal provisions of the state's Open Meetings law and, with it, the sanctions behind Monserud's case against the Iowa State University Athletic Council. In the suit, Monserud had charged sixteen members of the Council with holding a closed meeting last year in violation of the state law which requires that group to hold open meetings. The court decision voids the penalty clause in the Iowa law.

However, Monserud said he was not disappointed.

"If anything good came out of the suit, it was more public awareness and awareness by governing bodies of the open meetings issue, and hopefully a better law," he said.

Also accepting that view was Iowa governor, Robert D. Ray, who has ordered all state boards to comply with the spirit of the law even though the criminal penalties cannot be enforced.

Civil action may still be brought against violators under the present law.

Monserud began the lawsuit when the athletic council went into closed session during a May 1977 meeting to discuss the Iowa-Iowa State football series and "personal and future contracts." Grounds for the action were established two months earlier when the supreme court of that state ruled that the ISU Athletic Council was subject to the Iowa Open Meetings statute. A revised version of that law goes into effect this year.

Courts Order Board Meetings Open to Public

Student reporters ought to be attending regular meetings of their boards of education. Very often, however, these meetings are held in "executive session"—behind closed doors.

In many states such closed meetings are against the law.

An Arizona superior court has ruled that the decision by a local board of education to expel a student must be made at an open meeting. The court nullified the expulsion of a high school senior by the Miami Area Unified School District because the decision was made in executive session in violation of the Arizona open meeting law, Ariz. Rev. Stat. sec. 38-431.01. The student had been charged with becoming intoxicated on school grounds. Meta v. Miami Area Unified School District (Gila County Sup. Ct. 1978).

A New York supreme court has ruled that notes taken by the Secretary to the New York State Board of Regents are "public records" which must be disclosed to the public under New York's Public Officers Law. The Regents had refused a request by a church group to produce Secretary William J. Carr's notes on grounds that such notes were the "personal memoranda of the Secretary."

In its September 1978 ruling, the court rejected the claim that Carr had merely made "personal notes" as a "private person." The court stated, "It is clear that in his attendance at the board meeting, Mr. Carr serves in his official capacity." Warder v. Board of Regents, 4 Med. L. REP. 1558 (N.Y. Sup. Ct. 1978).

A district court judge in North Dakota has ordered that the North Dakota Board of Higher Education must interview in public candidates for the job of higher education commissioner. Board members did not challenge the order, but several members expressed the fear that some candidates for the position would withdraw. (Fol Digest, Vol. 20, No. 4).
Reporters Get Bum Wrap In TP Stunt

"I feel that I have been treated illegally and unethically by these school officials." So saying, student photographer Richard Lee served a three day suspension slapped on him by school officials when he tried to take pictures of an annual Homecoming stunt put on by students at West Aurora High School (Illinois).

As had been the tradition at West Aurora High, every year students participate in TPing, an outside activity celebrating Homecoming where students decorate the school grounds with toilet paper. In recent years the event has been accompanied by vandalism and minor violence among the students. This year school administrators warned students not to participate. However, according to Lee, some three hundred students ignored the warning and converged on school property on the evening of September 28.

Despite a warning from the faculty adviser of the Red and Blue to all staff members not to attend the TPing, Richard Lee began taking pictures of the event at about 10 p.m. when he was taken into custody by two men who suddenly drove their car up onto the high school lawn.

According to Lee, the men in the car, Police Officer Karl Mesmer and Assistant Principal Robert Norden- gren, held him in the school office until his father could be summoned. Then, with his father's consent, the assistant principal insisted the student remove the film from his camera.

"I gave in, opened my camera (ruining the film), and handed it over to Mr. Norden- gren," Richard Lee said.

West Aurora High School officials suspended Lee for three days for trespassing and refusing to show his student ID to the assistant principal when required.

Lee admitted that the charges were true, but added that he did eventually show his student ID in the school office and that many participants in the TPing had trespassed but were not suspended.

"I was not participating in the activities. They [the officer and Nordengren] singled me out because I had the camera," Lee said. "In my opinion, they didn't like someone covering an event which wasn't supposed to have happened. It was embarrassing for them."

When contacted by the Student Press Law Center, Assistant Principal Nordengren said he considered the case closed and would not comment.

Black and White and Red All Over

A high school paper in Ohio took on the local city paper when it published a photograph of a white homecoming queen and a black homecoming king—a photo the city paper rejected because of alleged "photo reproduction" problems.

Students and faculty at Findlay High School were outraged last fall when The Courier, a local paper with a circulation of 25,000, ran the photo of Beth Nesler, the high school's white homecoming queen, but not that of Dave Smith, the black homecoming king. The paper had been submitted two photos, one of Nesler alone, and another of Nesler and Smith together shortly after the two were elected homecoming representatives by the high school student body.

In publishing only the photo of Nesler in its October 14 edition The Courier claimed that because of its poor photo reproduction facilities, Smith would have appeared unrecognizable beside Nesler had the paper attempted to publish the second photo. Three days later, The Courier ran a separate photo of Smith taken in lighter background.

"The Courier is presently printed on a letter-press using plastic printing plates and we have trouble with photo reproduction," said Bob Hesse, executive editor of The Courier. "The decision was based on our photo reproduction, not on any racial consideration."

The staff of the Findlay High School Blue and Gold thought otherwise. In its October 20 edition, the Blue and Gold ran the picture The Courier had rejected along with the caption, "Not suitable for reproduction?" Also in the paper was an editorial by student Scott Switzer blasting The Courier's "poor editorial decision."

"All indications point to one fabrication after another. They [The Courier] put their integrity on the line by saying that they were without a suitable photograph, which we found to be absurd," Switzer commented.
Student Reporter Is Teacher for a Day

A seventeen-year old student reporter, working for the Santa Rita (Arizona) Talon newspaper, posed as a substitute teacher in order to investigate the hiring procedures in her school district. Much to her amazement, she was hired.

Jean Grady, a senior at Santa Rita High School, said she applied for the job at the district school office, telling officials that she was nineteen and had had one year of college in business education. She had no proof of college attendance. However, the officials did not request any documentation, but sent her to teach a fourth grade class that same day.

"I was really amazed at the people they were taking. I had absolutely no credentials. I could have been anybody," Grady said. She added that her dissatisfaction with the substitute teachers at her high school during a Tuscon teachers' strike prompted her to investigate the hiring procedures for substitute teachers.

According to Grady, she spent the day at school doing "anything any babysitter couldn't do." Later, school officials instructed her to apply for state certification so she could continue to substitute teach.

One district council member reprimanded Grady for misrepresenting her age and educational qualifications, calling it "irresponsible journalism." Although no further disciplinary action was taken against Grady, parents have filed a suit against the school board charging it with hiring unqualified substitute teachers.

Close Call

Upon returning to classes this fall, editors of the John Marshall High School (Wisconsin) newspaper were surprised to find notices from the principal saying that their publication had been suspended. The reason? An apparent debt of $4000. As Principal Clifford George put it, "The well had run dry."

However, the staff of the Gavel wasted no time in attacking the problem. In a meeting between the principal, the newspaper adviser, and the editors an agreement was reached on a budget and fiscal policy for the newspaper during the coming year.

According to Rachael Knoblock, Gavel editor, the suspension was only temporary.

"He [Principal George] just didn't want the school to go into debt," Knoblock said. "He did really show a lot of concern."

Daily Rejects $30,000, Gains Independence

The Cavalier Daily, newspaper of the University of Virginia at Charlottesville, has taken a major step towards independence by requesting no university funding for the 1978-79 school year.

However newspaper staff and school administrators are in disagreement over how much control the university will have over the Daily.

According to the staff of the Daily, refusing its customary $30,000 university allocation will allow it to continue paying salaries to its staff. Recent changes in university rules prohibit salaries to be paid using student-contributed funds.

"Salaries are our biggest incentive for cutting costs and operating without an allocation. The Managing Board believes that salaries are essential if we wish to improve the newspaper's quality and content," Michael Vitez, editor-in-chief of the Daily, explained.

He added that the staff felt that by becoming financially independent from the school, the Daily could now charge for printing notices and advertising by campus organizations and faculty.

So far, the university has been paying for its notices in the newspaper.

However, university officials contend that The Cavalier Daily is a university affiliated organization, subject to university control over its financial and business operation because the paper continues to use space, equipment, payroll system, utilities, tax exemption benefits and maintenance provided free by the university.

Recently, the Media Board of Directors, the student supervisory organization, has asked that the Daily reinstate a staff member released by the paper. The Daily has ignored the request.

Ernest H. Ernst, vice president for student affairs said, "So long as the paper is part of the university as a university affiliated organization, students should have the right to participate on the paper." He added that if the Daily did not act on the media board's request, the issue would be taken up with the Board of Visitors, a trustee organization for the university.
The Ohio State University Athletic director has apologized to a female photographer from The Lantern saying that a "mistake in internal communication" caused her to be refused permission to travel on the team plane to the Minnesota-Ohio State football game.

"It's an unfortunate thing. I apologize. It was a mistake," Athletic Director Hugh Hindman said.

He added, "There has never been a policy against anyone traveling on any team travels."

According to Vicki Basham, the Lantern photographer involved in the incident, two seats are normally reserved on the plane for staff members of the school paper. However, the athletic department would not confirm her reservation for the flight to the September 23 game when she called. The following day Basham learned from Sports Editor Jim McKeever that she would be denied a seat. A male photographer was sent instead.

"At first, I just wanted to laugh because I couldn't believe that this kind of thing was still going on," Basham said. "Then I got steadily more disgusted. There was no reason."

A Lantern editorial said that its sources attributed the decision to "the old man", whom one athletic department official identified as former Buckeye coach, Woody Hayes.

Since the apology, Basham has travelled on the team plane twice with no complications.

Student Reporter's Second Effort Gains Presidential Press Pass

Persistence paid off for one student editor who, after being denied a White House press pass, succeeded months later in getting a pass and covering one of President Carter's campaign stops in Oregon.

Tami Miller, a high school senior and editor of the Yamhill (Oregon) Y-C Expression, was treated "like one of the gang" by other news reporters when she covered Carter's stop at Gresham, Oregon, part of a stump campaign for the reelection of Oregon Governor Bob Straub. However, the road to obtaining a White House press pass was not an easy one for the high school reporter.

Miller first applied for a press pass to cover Carter's May 4 visit to Portland. However, officials at the White House press office in Portland told her there was some "discrepancy" about her position as a "high school" newspaper editor. Miller explained that the Y-C Expression was also the community newspaper for Yamhill, Carlton, and Gaston, with a circulation of nearly 3,000. The press office replied that because she was not paid for her work, there was little chance the student editor would be issued a press pass.

Miller enlisted the aid of a state representative, the Yamhill county commissioner, and the Student Press Law Center in Washington in order to obtain the coveted press pass. However, the efforts of these parties turned up nothing. By May 4, Miller still had no press pass and had to miss the president's spring visit.

Days later, in response to a letter of complaint addressed to White House Press Secretary Jody Powell, Associated Press Secretary Patricia Y. Bario told Miller that a press conference involving the president is, by its nature, a "crowded event."

Bario wrote, "We find it virtually impossible to accommodate all the students who would like to attend and therefore have adopted the rather arbitrary posture that we can accommodate none."

Yet only six months later, Miller was able to obtain a press pass for Carter's November 3 conference at Mt. Hood Community College.

According to Miller, White House press personnel told her they had "made an exception" in her particular case because of the Y-C Expression's role as a community newspaper. Nevertheless, officials advised Miller, "Don't tell anyone you're a student," when she claimed her pass the afternoon before the conference.
Paper Exposes Administrator’s Unaccredited Degrees

Student investigative reporting at Montgomery County (Maryland) College into the academic background of the school’s chancellor produced one major campus controversy and left a second one in its wake.

The Excalibur, the student newspaper for the college’s Takoma Park campus, reported in its October 26 edition that Jefferson Ware, the school’s first black chancellor, had not received a graduate level degree from an accredited institution. The article, by News Editor Melissa Draxler, said that Ware’s upper level degrees came from schools in California which had either been refused accreditation or were no longer in operation.

The report touched off expressions of support and criticism of Ware among students, faculty, and the administrative staff at Montgomery County College. Ware had been selected chancellor by a campus selection committee last January.

Ware reportedly responded to the claims by saying that black students at the time he attended law school were having difficulty simply getting into college.

Members of the Excalibur staff said they decided to investigate Ware’s academic qualifications based on the way he “treated students.”

“This is our job to inform the public,” said Editor-in-Chief Larry Graves. “I’ve learned when you suspect something—to follow your nose.”

Earlier in the year, Ware had thrown the black student editor out of a faculty meeting charging that Graves had been “brainwashed” by newspaper adviser Dr. Peggy Simonds into asking certain questions.

In a related development Excalibur adviser Dr. Peggy Simonds said she may file a libel suit against the Montgomery College student government president—author of an editorial charging her with making “unwarranted verbal attacks” at a student publications board meeting.

The editorial was printed as a letter-to-the-editor in the Spur, the student newspaper for the college’s Rockville, Maryland campus. An editor’s note preceding the letter reported that the letter was being printed in the Spur because it had been “censored” from the Excalibur. It added that “the newspaper adviser [Simonds] apparently wields final editorial control over the paper as opposed to Excalibur editor Larry Graves.”

The letter, written by Scott Morrison, accused Simonds of “shouting,” “banging the table,” and calling the publications board a “communist organization” during the board’s meeting. Morrison had supported Chancellor Ware in the recent controversy over his academic qualifications.

Both Simonds and Graves denied Morrison’s charges. Two weeks after the letter was published, the Spur ran a rebuttal by Graves who called Morrison’s statements “libelous.”

“Morrison wasn’t telling the whole truth. He didn’t explain the full details,” Graves said. He added that Simonds had used the word, “communist,” to describe the methods used by the publications board, not as a description of the organization itself. Graves pointed out that a majority of the Excalibur staff voted not to print Morrison’s letter because they felt it contained potentially libelous statements.

“She [Simonds] is my adviser, and when I need advice, I go to her. She has a say, but I have the final say,” the editor said.

Principal Kills Underground Paper

FYBIL Zeitgeist lived briefly and died suddenly of unnatural causes last spring at his school in Hood River, Oregon.

Zeitgeist, an underground newspaper created by three high school students eager to find an “alternative to the cut and dried” fare presented in the regular school newspaper, was banned by Hood River Valley High School officials when students began distributing the paper in between classes.

School administrators ordered students to stop distribution because of alleged misrepresentations to advertisers. The vice principal in charge of discipline, Mr. Willy, charged that the editors had not told advertisers that Zeitgeist was not an official school newspaper when soliciting advertisements.

Mark Petteys, one of the editors, denied the allegation and said that each advertiser knew that Zeitgeist was an underground paper. “We told our advertisers that we were students from the high school and were putting out an underground newspaper. I have no doubt that they understood this.”

According to the students, they began distributing their four-page newspaper during class break, but were summoned by the vice principal who ordered that distributed copies of the paper be recollected. The administrator told students that they were in “quite a bit of legal trouble” but did not specify what kind of trouble.

“We thought they were dead serious and assumed they were probably right. We were worried that we were going to be expelled,” Petteys said. He added that the students destroyed recollected papers along with copies not yet distributed.

The following day in a meeting between the three students and Mr. Fowler, another vice-principal, students were told that they were free to do an underground newspaper provided they sought school approval for distribution. They were also encouraged to seek positions on the regular school newspaper staff, Petteys said.

However, the creators of Zeitgeist feel the paper will not be resurrected. “I don’t think I’d do this again because I don’t want the notoriety. It’s too much of a hassle,” Petteys said.
Students Protest ‘Barbie Doll’ Paper

The Tulsa (Oklahoma) Junior College board of regents recently turned the school newspaper into an “informational bulletin” by passing guidelines eliminating a letters-to-the-editor section and prohibiting “any articles that would reflect undue criticism of public officials.”

The board passed the guidelines following a disagreement last year between Dr. A. M. Phillips, president of the college, and James Tidwell, the former faculty adviser to the Horizon, over publication of a controversial letter.

“. . . As now structured, the Horizon resembles a real newspaper in about the same way a Barbie doll resembles a human being,” Tidwell commented. “Students not allowed to control the editorial content of their own publication nor to express their opinions editorially will have little preparation for the real world of journalism.”

According to Chris Rapp, the new adviser to the Horizon, the newspaper is part of the “academic parallel program” at the two year college. Instruction in journalistic and newswriting principles given students in class is complemented by the “laboratory exercise” of putting out a publication, Rapp said.

According to Rapp, there is no editorial page in the Horizon because editorial writing is not taught in the journalism curriculum. “I think it’s stretching the point to teach editorial writing to freshmen and sophomores,” she added.

Students and members of the TJC faculty have charged that turning the school newspaper into an “informational bulletin” does not provide a true “laboratory” experience for journalism students as the school claims but rather discourages freedom of expression.

“I believe the Horizon is functioning as a newspaper and is a forum for student expression. It is far more than a mere ‘laboratory exercise.’ It is irrelevant how the publication is officially labelled,” commented Tidwell, now a faculty member at Indiana University.

According to one faculty member at Tulsa Junior College, under the current arrangement, the Horizon adviser has full discretion over content and assigns articles to the staff.

“The Horizon has been under absolute censorship for nearly six months—since the resignation of the old adviser,” said Bret Sprangel, a student at the college and former student activities committee representative.

The Oklahoma State Board of Regents has agreed to a request by Sigma Delta Chi, the society of professional journalists, to study and then draft a set of student publication guidelines for all Oklahoma state colleges, according to Dr. John Kamp, president of the eastern Oklahoma chapter of Sigma Delta Chi.

The new guidelines, to be drafted in four or five months will be the official state policy for state colleges and universities Kamp said. The basic premise underlying the guidelines will be that “students should have control over content of their newspaper.”

According to Kamp, an official state publication policy could not be “forced” upon a state school like TJC, but would be persuasive in a legal battle if a student chose to file suit against the school. The Oklahoma State Board of Regents can also suspend state funds to schools not complying with the policy.

Student Poll Axed

A county newspaper in South Dakota took matters into its own hands when it ran a student article on its front page after a school superintendent censored it from the school section of the paper.

According to Tom Frost and Larry Larson, reporters for the Hamlin High Charger Chatter, last fall Superintendent of Schools Gene Carr censored a student opinion poll concerning the site of a new high school. The county paper, the Herald Enterprise, ran a blank space marked “censored” in place of the poll results in a section it reserves for the Charger Chatter. However, the Enterprise felt the poll results were “newsworthy” and did run the article on its front page, Larson said.

Superintendent Carr denied censoring the article.

“I’ve never restricted students from printing articles in the paper,” Carr said. He added that he had told the students that one section of the opinion poll which divided student reaction according to high schools might “perpetuate division among the students.” He said he had suggested that it be left out.

The poll asked students from four high schools whether they approved of a proposed site for the new county high school. The county plans to consolidate the four existing schools into one.

According to Frost, the student staff responsible for filling the school pages of the Herald Enterprise voted, 23 to zero, to include the poll results. Frost said that the superintendent heard of the plans and, after a “heated” discussion with the students’ adviser, told the staff “he’d stop it.”

The student said the staff later brought up the question at a board of education meeting where they were reportedly told that Carr did not have the board’s permission to forbid publication and that “it wouldn’t happen again.”

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Would You Publish This Photo?

A centerfold-style photo of the high school football coach may have set the backfield in motion, but no penalty was called against editors of the Brookville (Virginia) High Beeline.

For their September issue the editorial board of the Beeline decided to run the photo of football coach, Bill Cogbill, posing "semi-nude" on the couch in the teachers' lounge holding a football in a "fig leaf" position. The photo accompanied a story about Cogbill's return to coaching at the high school.

"The picture was intended to be a takeoff on the Cosmopolitan centerfolds ... but a lot of people didn't see it that way," said Lillie Spain, faculty sponsor of the newspaper.

One person who saw things differently was school superintendent Arnold Oates Jr., who described the photo as being in "very poor taste." "They were trying to do something with flair to sell newspapers," he added.

The Beeline, in fact, quickly sold all 700 copies of the September 22 edition. Principal Paul Brewer backed the model as a popular classroom teacher and coach, and noted that Cogbill had worn gym shorts in the photo. According to Brewer, parents in the southern Virginia community were still "very upset" over the photo.

"We've sweated it out, but it hadn't been too bad," Brewer said.

The school superintendent and principal agreed that, legally, publication of the picture could not have been prevented anyway. "We couldn't stop it because of freedom of the press," Oates said.

Article 'Watered Down'

Police Threaten Arrest Over Burglary Story

Editors of the Georgetown University Voice decided to run a story about a campus burglary despite one police officer's contention that information revealed in the article might "ruin" the investigation. District of Columbia policeman Matthew Baumgartner had threatened the editors with an arrest warrant if the paper printed what it knew of the September burglary.

"I can't believe a policeman would threaten us like that," said Mark Wade, assistant news editor and author of the story. "He was clearly taking advantage of us, especially since no one knew our legal rights."

The story involved the arrest of a burglary suspect who may have posed as a maintenance man in order to get into Georgetown University dormitories.

According to Wade, Officer Baumgartner went to the newspaper office on September 24, seeking information that might help his investigation. When Editor-in-Chief Greg Walker and Wade refused to reveal what they had learned, the officer told them an arrest warrant would be issued if they printed a story containing any information not on official police records.

In weighing Baumgartner's threat, the editors consulted various local attorneys but could find no definitive consensus of opinion before the paper's copy deadline that afternoon. According to Wade, the story reported in the September 26 edition of the Voice was a "watered down" version of the original story. Testimony of witnesses in the case and information about how and where the suspect had been apprehended were deleted.

John Kramer, Assistant Dean of the Georgetown Law School, told the paper later that the officer had "absolutely no authority" to threaten a warrant of arrest. "He could not arrest you under any grounds, and had no business threatening the editors."

When the newspaper phoned the District of Columbia police department one week later, an officer acknowledged that Baumgartner's threat was "out of line." He added that the policeman was only trying to save the "integrity of the case" and was not trying to restrict the paper's right to print.
THE UNIVERSITY OF HOUSTON STUDENT PUBLICATIONS COMMITTEE REPRIMANDED, but did not remove, the editor of the Daily Cougar for publishing a photo of a man exposing himself in a recent issue.

The reprimand ended three weeks of speculation that Editor Linda Korleski might be removed and the Cougar's "no-prior restraints" policy revoked because of the controversial photo.

"There would have been complaints if I had been fired and complaints if nothing had been done," Korleski said after the decision. However, the editor said the committee's statement was "vague" and avoided the real issue of an editor's rights.

The statement by the publications committee called the decision to print the photo in the October 24 edition of the paper "bad editorial judgment" and directed the editor to "improve . . . [her] sensitivity to Cougar readership in order to avoid similar problems," according to Wayne Scott, manager of University of Houston student publications.

The reprimand will not appear on Korleski's permanent record.

It was Scott who brought the issue up with the committee, requesting that Korleski explain why she should not be removed.

"We gave the editor freedom, but freedom carries with it responsibility. She ignored responsibility and showed a lack of common sense," Scott said. He added that he thought publishing the photo violated the canons of journalism.

"It was a bad choice," Korleski acknowledged, but added that she saw nothing indecent about the picture.

"Apparently campus community standards are stricter than I thought," she said.

In a related development, the Dallas Times-Herald told Korleski they would not hire her after graduation. However, a spokesman for the Times-Herald denied the photo incident was a factor in the decision.

Korleski had had a standing offer from the paper for a permanent job, after interning with that newspaper during the summer.

TABLES TURNED

NO REPLAY FOR DRINKING DISC JOCKEYS

Two student disc jockeys for the University of Notre Dame radio station, WSND-FM, were recently fired for drinking and allegedly making "vulgar" sexual references while on the "air" during a late-night broadcast.

According to Douglas Van Tornhout, the station's news director, the on-air comments were of "questionable nature" and included "references to sex, drugs, and alcohol."

"In the opinion of the station management they [the comments] did not conform to Federal Communications Commission (FCC) guidelines, and most certainly did not measure up to station standards," Tornhout said.

The students, Ted Twardzik and Sean Coughlin, violated the station's own programming code prohibiting alcohol when they brought beer into the studio. According to the station management, they may also have violated FCC rules governing on-the-air speech and sign-offs.

However, the FCC is not expected to impose a penalty on the student-run station because the incident represented only a single occasion, and, according to one FCC official, "The station manager acted immediately to correct the situation."

Tony Wesley, director of FM programming, said the two disc jockeys were given three phone warnings, which they ignored, before power to the station was cut off in the middle of their late-night jazz broadcast.

MARY DRISCOLL
Paper Banned Over Names of Gay Students

Baltimore school administrators, fearing a lawsuit by parents, refused to distribute a non-school sponsored student newspaper which ran the names of several under-18-year-old homosexual students. However, the Association of Black Media Workers (ABMW) in Baltimore, who sponsored the Scoop as a workshop project, elected to distribute the newspaper through a local community center.

The controversy arose when the Scoop printed a story entitled, "Student Gays Find Peers Frightened," explaining the problems faced by homosexual high school students. The article identified several gay students and quoted their fears of being "beat up" and "laughed at" by fellow students.

Normally distributed through Baltimore area high schools, the Scoop was sent to the office of the Baltimore school district superintendent where distribution was stopped. Assistant Superintendent Dr. Rebecca Carroll said she did not know who was responsible for the decision.

"We'll have to check out the legality of this," Carroll said, referring to the names of minors printed in the Scoop article without parental authorization.

But as late as October, Carroll had still not obtained a "direct legal opinion."

After a five month delay, the ABMW decided to distribute the newspaper through a community "multipurpose center" to avoid a "tug of war" with the Baltimore school system.

Clarice Scriber, a spokeswoman for the ABMW, said, "We decided that the student [reporter] had indicated to our satisfaction that she had been responsible in the interview, that she had identified herself as a reporter, and that their [the gay students] names would be used in the article."

"We did not seek legal counsel," Scriber said. "We do not think there is a serious threat here as far as the legal question is concerned." She added that the ABMW had tried unsuccessfully to contact parents of the gay students to obtain their permission to print the names of the students.

 Strike One, You're Out!

Written permission from a student allowing his name to be printed helped a high school newspaper staff resolve a two-week ethical debate over whether to run a controversial story.

Editors of the Talon in Severna Park (Maryland) decided to run the story and print the name of a student allegedly struck by a teacher during an industrial arts class at Severna Park High School over the objections of certain staff members and the student's parents.

Talon editor Tina Saarlas said that it was necessary to print the student's name in order to clarify his identity.

"A lot of students were really upset because people thought it was they who had been involved instead of the actual student," Saarlas said. "Only a few staff members express the view that the staff to seek the student's written permission before publishing his name. Saarlas said, "The response to the article was generally favorable among the teachers and even the administration; most were pleased that the facts had finally been explained in a fair manner. Student reaction was mostly of surprise that the news had not spread earlier."

mary driscoll
In recent years the courts have ruled that student expression is protected under the First Amendment unless it is obscene, defamatory, or materially disruptive of school activities. Previous issues of the SPLC Report have analyzed the law of libel (Report 5) and obscenity (Report 7).

This article discusses under what circumstances a school official can suppress student expression on the ground that it will cause a "substantial disruption of school activities."

This analysis of court decisions is not exhaustive. Students experiencing censorship because their publications will allegedly cause a substantial disruption of school activities should contact an attorney or the Student Press Law Center.

Substantial Disruption

The Tinker Standard Explained

by Mindy S. Mellits

Speech which disrupts the school is not protected by the First Amendment.

In Tinker v. Des Moines Independent Community School District, the Supreme Court clearly articulated the First Amendment rights of the student:

"First Amendment rights, applied in light of the special circumstances of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." These rights of the students exist not only in the classroom, but "in the cafeteria, on the playing field, and on the campus during authorized hours."

However, the court also recognized the duty and compelling interest of the state to advance and protect the public school system.

In balancing the First Amendment rights of students against the compelling interests of the school system, the court devised a material disruption standard. The court stated the standard as follows: "... conduct, by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of campus quiet...."
of the rights of others . . . ." Such conduct is not "immuni-
ized by the constitutional guarantee of freedom of speech."

In order to justify a prohibition of student speech based
on this standard, school authorities must demonstrate the
facts which might reasonably lead them to "forecast sub-
stantial disruption or material interference with school
activities."

In Tinker, the school authorities were unable
to show that wearing black armbands would disrupt the
school.

Meeting the Standard—Physically Disruptive Conduct

The theory underlying the Tinker standard is the speech-
conduct dichotomy. When speech results in disruptive
action, it is no longer "pure" speech entitled to maximum
protection; rather, it merges into conduct and, thus,
becomes subject to greater restrictions.

In Tinker, the court found that the wearing of the armbands
was "entirely divorced" from any actual or potential
disruptive conduct. In fact, no disruption had occurred.
Thus, the Tinkers' act was "akin to pure speech."

A prominent First Amendment scholar, Thomas I.
Emerson, has clarified the significance of the speech-
conduct distinction:

"The essence of a system of freedom of expression
lies in the distinction between expression and action.
The whole theory rests upon the general proposition
that the expression must be free and unrestrained,
that the state may not seek to achieve other social objectives
through control of expression, and that the attainment
of such objectives can and must be secured through
regulation of action."

The Importance of Environment

Whether the expression in a given circumstance can
reasonably be expected to flow into disruptive conduct
depends largely upon the surrounding environment. The age
and maturity of the audience addressed is a factor which
should be included in any such analysis.

Even before the Tinker decision, the courts recognized the
importance of the environment when considering whether a
particular example of student expression was materially
disruptive. In 1966, a federal Court of Appeals handed
down decisions in two almost identical student expression
cases involving Mississippi high schools, but with different
results.

In Burns v. Byars, a federal Court of Appeals held
that a school regulation prohibiting students from wearing
Student Non-Violent Coordinating Committee (SNCC)
freedom buttons violated the First Amendment rights of the
students. The buttons advocated equal rights for blacks. In
contrast, the same court in Blackwell v. Issaquena County
Bd. of Ed., found a similar prohibition on the wearing of
the SNCC buttons reasonable and upheld enforcement of
that regulation.

The essential difference between the two cases was the
atmosphere fostered by the buttons in the school. In the
Blackwell case, buttons were forced upon students and
thrown through windows, causing a general disruption of
classroom work. In Burns v. Byars, the buttons were peacefully
worn by students who did not disturb the school. Aside
from a "mild curiosity" and some discussion on the part of
some students, the atmosphere remained calm.

In one southern school having a history of racial tensions
and interracial confrontations, white students wore and
waved Confederate flags for the purpose of "irritating and
provoking black students." The flags, like the black armbands
in Tinker, were essentially forms of speech—the
expression of a student's views. However, the court in
Augustus v. School Bd. of Escambia County banned the
display of the flag because of a "substantial probability of
serious disruption and violence." The court emphasized that
the flag would cause a disruption because of the recent
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"Disruptive" Letter to the Editor Censored

A Milwaukee assistant superintendent of schools decided last June to
allow publication of a letter to the editor criticizing bilingual programs
at South Division High School (Wisconsin) when the staff of the school
newspaper appealed a principal's order censoring the letter.

Principal Jerome Kopecky had censored the letter in the South Division
Cardinal because he felt it criticized a group of students and might possibly
have sparked racial or ethnic tensions at the high school.

The letter, written by a "Concerned Student," said Latin students
would benefit more from school if they did not have the opportunity to
do their work in Spanish.

Students appealed the principal's decision to the central school admin-
istration according to provisions in the student code. To emphasize the
effect of Kopecky's decision, the Cardinal staff ran a large blank area
marked "censored!" in place of the letter and an editorial rebuttal in their
June 1 edition.

"Any student has a right to question any program the school offers,"
said Judith Risser, adviser to the Cardinal. "The letter did not reflect upon
the students enrolled."

In a letter to the central school administration and Kopecky, Wisconsin
Civil Liberties Union attorney, Raymond Dall'Osto cited rules from the
school's student code and urged administration officials to overturn
Kopecky's decision.

"I believe the act of censorship was made without any showing that the
relatively innocuous article would "materially and substantially" disrupt the
school," Dall'Osto wrote. He pointed out, "... A possibility of more tension is not enough to limit
students' First Amendment rights."

Risser noted that more bilingual students were enrolling in the journal-
ism class since the publication of the letter. The relationship between the administration and the paper contin-
ues to be "very good," she said.  

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history of racial confrontations at the school including numerous instances of interracial fighting, student walkouts, the closing of school on two occasions and the presence of the State Patrol for several days.

During the late sixties and early seventies, a period of unusual campus unrest, a number of student expression disputes were handled by the courts. Many of the decisions handed down at this time helped to shape the principle of material disruption.

In Norton v. Discipline Committee of East Tennessee State University, leaflets distributed on a Tennessee college campus in 1969 literally advocated a riot:

And how has the ... student body reacted: Have they precipitated a revolution like the French students? NO ... Have they seized buildings and raised havoc until they got what they were entitled to like other American students?—NO ... They have sat upon their rears and let the administration crap upon their heads.

Stand up and fight
Assault the bastions of administrative tyranny.

No violence actually occurred. However, the court agreed with school officials that such an open exhortation to violence in light of recent campus riots at Columbia, Harvard and Berkeley, could lead to an eruption or riot on the East Tennessee State campus. The court permitted school officials to stop distribution and discipline the students.

Aware of incidents of violence on other campuses in 1968, University of Mississippi authorities decided to confiscate leaflets falsely telling students that classes before final examinations had been cancelled. The court upheld the decision and, in doing so, set out a mode of analysis to determine whether the Tinker standard had been met. The court examined: 1. The language used. 2. The purpose of the expression. 3. The effect or potential effect on school functions or the rights of other students. The judges emphasized that distribution of the leaflets would "invade the rights of others" by making unsuspecting students miss class. Speake v. Grantham.

Reasonable Justification for Suppression

School authorities carry the burden of showing that they have a reasonable justification for suppressing the students' speech. What evidence must school officials present to justify their "reasonable forecast" of disruptive activity to meet the Tinker standard?

The easiest, though not always conclusive, answer is to present evidence that a disruption has already occurred. For example, a massive student walkout, evidence of fighting, or recognizable damage to school property would aid school officials in substantiating their forecast of a material disruption.

Yet, in most cases, the principal or dean will censor written expression or suspend a student prior to distribution and before a major disruptive incident can take place. It is important to note that, as a logical precaution, school officials are not constitutionally required to wait "until the school burns to the ground" before acting. They may impose a reasonable restraint upon potentially disruptive expression before the disruption occurs. But, school officials must ably justify any restraining action.

The Tinker standard does not require absolute certainty on the part of school officials that the disruption will, in fact, come about. The standard is flexible; the forecast need only be "reasonable." Neither a "mild curiosity" by students nor the belief that a particular expression "could" or "might" incite lawless action constitutes a reasonable forecast of a disruption. Vail v. Bd. of Ed. of the Portsmouth School District. The school authority's action cannot be a result of an "undifferentiated fear," Tinker, of some disruption, Channing Club v. Bd. of Regents of Texas Tech. Univ., or of an official's "intuition" Shanley v. Northeast Indep. School Dist., Bexar County, Texas.

An examination of the facts presented in two cases will illustrate what types of evidence will, and will not, suffice to justify an abridgement of First Amendment rights.

In one Arizona high school, several students planned a walkout at an athletic awards assembly to protest the non-renewal of a teacher's contract. Steven Karp, a student involved in the protest, notified the local news media of the planned walkout. However, when several athletes threatened to stop the walkout, school officials feared a possibly violent confrontation and cancelled the assembly.

Outside the school, television news cameras were set up to cover a proposed student demonstration organized in support of the teacher's cause. Many students left their classes as part of an in-school walkout. Some students tried to pull fire alarms which school officials had disconnected in order to prevent just such a disturbance. The commotion
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attracted junior high school students from a nearby school. In this tension-filled atmosphere, Karp attempted to distribute signs supporting the teacher. When school authorities ordered him to surrender them, the student complied.

Karp then sued the school officials claiming that the confiscation of the signs violated his First Amendment right of free speech. The court disagreed. Based on the facts, it ruled that school officials had reasonably forecast that the distribution of the signs could have disrupted the school. *Karp v. Becken.*

In another case school officials attempted to stop an underground newspaper produced and distributed by students off campus. In *The Awakening,* Mark Shanley and his friends published birth control information and an editorial advocating the review of marijuana laws. To justify their restraining action, the school officials presented as “objective” evidence the assistant principal’s feeling that the “attitude of the school had somehow changed.” However, distribution of the paper had been orderly and polite, and the court found that no disruption of school activities had occurred. Neither did the court find anything in *The Awakening* that could even “remotely” be considered obscene, libelous, or inflammatory. In ruling for Shanley, the court announced:

Ideas in their pure and pristine form, touching only the minds and hearts of school children, must be freed from despotic dispensation by all men, be they robed as academicians or judges or citizen members of a board of education. *Shanley v. Northeast Independent School District.*

When determining whether a threatened disruption is “substantial” or “material,” the courts have stressed that the level of disruption be examined. Whereas a classroom walkout would be considered a material disruption, sporadic interruptions in class by students wishing to discuss newspapers or leaflets would not. A teacher certainly has the right to control class discussion and may discipline students for discussing other topics. However, there is no justification for banning the distribution of a newspaper or leaflet merely because it stimulates heated discussion.

**Examples of Student Expression**

In considering the following examples of student expression taken from actual cases, it is important to remember that in all cases, the school authorities must justify their action by showing something more than a mere desire to avoid the discomfort that always accompanies an unpopular viewpoint.

Urging disobedience to school rules cannot be punished unless there is objective evidence that the urging will substantially disrupt the school. In *Scoville v. Bd. of Ed. of Joliet Twp. H.S. Dist.,* a student newspaper urged students to reject or destroy “propaganda” handed out by the school administration. The fact that the student publisher’s intent was to disrupt the school was not conclusive evidence that such a disruption would occur. None did.

The Supreme Court has ruled that although “four-letter” words contained in student publications are offensive to some, they are not legally “obscene” and not, in and of themselves, disruptive of school activities. *Papish v. Bd. of Curators, Univ. of Missouri.* The court in *Antonelli v. Hammond* expressed the principle in these terms, “[Profanity] in a campus newspaper is not the type of occurrence apt to be significantly disruptive of an orderly and disciplined educational process.”

**The Expression’s Effect on Others**

*Tinker* recognizes that expression may be restricted when it intrudes upon the rights of other students to express themselves, to obtain a proper education, or to use school facilities. However, this principle does not mean that a student has the right to suppress another’s expression simply because he disagrees with it.

Cases have held that school authorities cannot restrain or punish expression because a few, perhaps violent or vocal students possessing different opinions, might, or actually do cause a disruption. This principle was announced in *Terminiello v. Chicago,* in which the Supreme Court declared unconstitutional a breach-of-peace ordinance prohibiting speech which “stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance.”

Justice Douglas articulated the theory behind the decision, that applies equally to students:

A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest,

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A federal judge has ruled that, under the First Amendment, school officials of Eastern Randolph (North Carolina) High School cannot prevent the staff of the Wildcat Prowl from publishing an article describing various methods of birth control.

The January 1979 decision is the final chapter in an eleven-month struggle by students challenging an order by the high school principal and the board of education barring publication of the student article, "Birth Control: Which Way Is Best?"

"The First Amendment precludes defendants from interfering with the publication of the article in question," said Judge Hiram H. Ward.

In his final order, Judge Ward enjoined Eastern Randolph High School Principal Worth Hatley, the superintendent of schools, and the county board of education from "preventing the publication and distribution of the article in question by the present or future editorial board of the Wildcat Prowl." The judge also ordered the school officials to pay the students' lawyers $1500 in attorneys' fees.

The case began in February of last year when Hatley summoned the newspaper's student editorial board to his office after hearing reports of its plans to run an article on birth control methods.

According to papers filed in the case, Hatley told students he thought that such an article would be "libelous and obscene" and would prompt phone complaints from angry parents. The principal also told students they could not print the article until he had read and approved it. However, students refused to allow the principal to read the article because the school lacked written prior review guidelines.

Several days later, staff members and the faculty adviser, William Schultz, approached the school board and requested permission to publish the article. The board refused, and instead, adopted a new policy placing the principal "in complete charge" of the school newspaper.

In a letter to Hatley, the board said the "action was made necessary . . . by the apparent lack of adult responsibility in the supervision of the Wildcat Prowl." However, the board claimed that "this action was not taken to deny students any constitutional rights as far as freedom of the press is concerned . . . ."

The school board also agreed to have its attorney draft a set of prior review guidelines for the staff and principal. The board still had not adopted any guidelines three months later. Nevertheless, in May, the students agreed to let Hatley read the article.

Hatley again told students the article could not be run—this time, because it was "poorly written" and "devoted two-and-a-half pages to the methods of birth control but only six lines to the consequences." The school board refused to hear an appeal by the students and called the decision a "matter of curriculum."

The board made its decision despite a legal opinion letter from the Student Press Law Center (SPLC) citing case law in support of the students. In his letter on behalf of the students, SPLC Director Mike Simpson cited the 1977 decision of the 4th Circuit Court of Appeals, Gambino v. Fairfax County School Board, which held that students who work on the official, school-funded high school newspaper have the constitutional right to publish information about birth control. Gambino is legally binding on the courts in North Carolina and four other states.

Managing editor Susan Rickman, one of the plaintiffs in the suit, said she "couldn't understand why they [the principal and board of education] thought we couldn't publish the birth control article" in light of the Gambino decision. On June 13, 1978, the six-member student editorial board of the Wildcat Prowl filed suit in federal court.

Pyrhich Victory?

Ironically, Rickman and editor Jeff Loman will not be able to enjoy their hard-won victory—both have already graduated. They leave up to this year's staff the decision whether to publish the article.

Adviser William Schultz, who spoke on behalf of his students before the principal and the school board, is also wondering whether the victory was worth the struggle. Last fall Schultz was notified by Principal Hatley that he would no longer be the adviser to the Wildcat Prowl—he had been replaced by an untenured teacher with no journalism experience. (See page 6.) (Loman v. Davis)
Students to Appeal Decision

Judge Upholds Newspaper Seizure

A federal judge ruled last December that a high school principal did not violate the First Amendment when he confiscated 1800 copies of the student newspaper because it contained letters which he believed could cause a substantial disruption of the school and harm a student government officer.

Permission to appeal the decision has already been given by the students who brought the suit, Renee Frasca and Joan Falcetta, former editor-in-chief and present assistant editor of the Chieftain, official student newspaper of Sewanhaka High School in Floral Park, New York.

The two students went to court to challenge Principal Robert Andrews' destruction of the June 15, 1978, issue of the Chieftain. Andrews removed the papers from home room mail boxes before they were scheduled to be distributed on the last day of classes. Named as defendants in the suit were Andrews, District Principal W. Wallace Purdy, and the Board of Education of Sewanhaka Central High School District.

In papers filed with the court Andrews claimed that the seizure and subsequent destruction of the Chieftain was justified because of the presence of two letters to the editor, one from the lacrosse team threatening the sports editor, and the other from an anonymous group criticizing the vice president of the student government.

The lacrosse letter read as follows:

We, the lacrosse players of Sewanhaka would like to know why you do not have any sports articles in the Chieftain. We would like a formal apology in public or else we will kick your greasy ass.

Pissed Off,
S.H.S. Lacrosse Team.

The editor's response, printed immediately below, read:

We would like to reply by saying that the articles were stolen. We would also like to say that you hot-headed, egotistical, 'Pissed Off' jocks of the lacrosse team do not deserve an apology for anything. You should be giving one.

The Editors.

In his decision federal judge George C. Pratt ruled that the vulgar language contained in the letters was not legally "obscene." But the court upheld the newspaper's suppression on the ground that the antagonistic written exchange could have led to a physical confrontation between lacrosse team members and the newspaper staff.

"The court is satisfied that defendant Andrews had a rational basis grounded in fact for his conclusion that publication would create a substantial risk of disruption of school activities," wrote Pratt.

The court also held that the second letter concerning the student government officer provided a further justification for the paper's suppression. That letter from an anonymous "group" charged that the vice president of the student government had "been a total failure in performing his duties" and was a "total disgrace to the school," that he had been "suspended from school" and did "not maintain a high academic average," and that he changed "his report card grades by typing over the letters on the computer terminal."

By affidavit Andrews testified that he conducted an informal investigation of the charges and concluded that several of the statements were "false." Andrews feared that the letter was "libelous" and would have had a "devastating impact" on the student.

Editor Frasca swore by affidavit that she had spoken to several individuals who were eyewitneses to the alleged misconduct, and the plaintiffs offered to prove that the letter was true at a hearing.

Judge Pratt declined to decide whether the allegations contained in the letter were actually false. Rather, the judge declared that even if the statements were true, Andrews' actions would be upheld because at the time he seized the newspaper he had reasonable grounds to believe that the letter was false.

A decision on the appeal is not expected until next fall. (Frasca v. Andrews No. 78 CI484).

New Mexico Sunshine

The Supreme Court of New Mexico ruled in September 1977 that the state public records act entitles a student newspaper reporter to have access to information about the military discharges and arrest records of all non-academic staff personnel at the University of New Mexico.

UNM student reporter Thomas Ray Newsome Jr. filed suit seeking "all non-academic staff personnel records." However, the court agreed with Director of Personnel Phillip Aldrid that much of the information sought was specifically exempt from disclosure under the New Mexico law. The court declared that Newsome had no right to see personnel records which pertained to illness, injury, disability, inability to perform a job task, and sick leave.

The court further ruled that letters of reference, documents concerning infractions and disciplinary action, personnel evaluations, opinions as to whether a person would be re-hired or as to why an applicant was not hired, and other matters of opinion are also exempt from disclosure under the law.

Despite their rather restrictive reading of the statute, the judges emphasized the public interest to be served by insuring that public records are open to the people.

The court said, "We hold that a citizen has a fundamental right to have access to public records. The citizen's right to know is the rule and secrecy is the exception. Where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed." New Mexico ex rel. Newsome v. Aldrid, 3 Med. L. Rep. 1129 (1977).
**COURT DECISIONS**

**Supreme Court to Rule on Juvenile Names**

The United States Supreme Court agreed last November to decide whether a West Virginia law prohibiting the publication of the names of juveniles accused of crimes violates the First Amendment.

The high court will review a decision by the West Virginia Supreme Court of Appeals striking down a West Virginia law making it a "criminal offense" for a newspaper to print the name of an accused juvenile without judicial permission. The West Virginia court said the 1941 statute was "repugnant to the First Amendment to the Constitution of the United States because it creates an impermissible prior restraint on the freedom of the press."

The controversy arose when 14-year-old Stuart Perrock was accused of fatally shooting a classmate in the hallway of a St. Albans, West Virginia junior high school. Two local newspapers decided to defy the statute and print the youth's name because, as one paper put it, "a very strong case can be made that the existing restrictions...are unwise and possibly illegal."

A grand jury subsequently indicted the papers and five executives and reporters for violating the statute. The groups petitioned the West Virginia Supreme Court of Appeals to prohibit state officials from prosecuting.

In striking down the statute, the West Virginia court concluded that, "a robust, unfettered, and creative press is indispensable to government by free discussion and to the intelligent operation of a democratic society."

The court relied on a recent United States Supreme Court decision, *Oklahoma Publishing Co. v. District Court*, in reaching its conclusion. In that case an Oklahoma district court "restrained all members of the news media from publishing, broadcasting, or disseminating, in any manner" the name or photograph of a juvenile defendant. The U.S. Supreme Court subsequently held the order to be unconstitutional. *State ex rel. Daily Mail v. Smith, 4 Med. L. Rep. 1329 (1978).*

**From the Bench**

**PHOTO BY LINDA SCHWARTZ**

**Court Upholds Free Speech for Teachers**

The U.S. Supreme Court ruled unanimously in January that a public school teacher cannot be fired merely for complaining to a superior about racially discriminatory practices by the school system. The court ruled that such speech is protected under the First Amendment whether expressed in private or in public.

"We are unable to agree that private expression of one's views is beyond constitutional protection," Associate Justice William H. Requinst wrote for the court. "The First Amendment forbids abridgment of the 'freedom of speech.' Neither the Amendment itself nor our decisions indicate that this freedom is lost to the public employee who arranges to communicate privately with his employer rather than to spread his views before the public."

The court's ruling reverses a federal appeals court decision against Bessie B. Givhan, a junior high school English teacher in rural Mississippi who was fired by the Western Line Consolidated District at the end of the 1970-71 school year.

According to a July 1971 letter from the district superintendent, Givhan's contract was not renewed because of "a flat refusal to administer standardized national tests" and "an antagonistic and hostile attitude to the administration..." However, Givhan sued the school district claiming that the real reason her contract was not renewed was because she complained to her principal, James Leach, that certain of the school's employment practices were racially discriminatory. Givhan argued that the expression of her opinion was protected under the First Amendment.

U.S. District Judge Irma R. Smith agreed with Givhan, but the court of appeals reversed on the ground that the First Amendment did not protect complaints expressed privately. That court held that the Constitution confers no right to "press even 'good' ideas on an unwilling recipient."

The decision will afford no protection to private employees since the First Amendment prohibits the government, but not private parties, from abridging free speech.

The court's ruling will not insure Givhan's reinstatement, however. The case was sent back to the trial court for a determination of whether there were other valid reasons for the teacher's dismissal.
Newsletter Ban Enjoined

The Chelsea (Massachusetts) School Committee reversed its position last June and permitted a Chelsea High School student group to distribute its newsletter in the school after students had filed a court action against the committee for barring distribution.

The committee reversed its decision after Federal Judge A. David Mazzone told the committee at a June 2 hearing that unless they allowed distribution of the newsletter he would order it to do so. The newsletter, The Student Defender was distributed three days later.

The committee had voted, 6-1, to ban distribution of the Defender at its May 25 meeting, claiming the newsletter was “derogatory towards the school committee,” “unsigned,” and “not concerned with school matters.”

The Defender announced the formation of a new student organization, the Chelsea High School Student Rights Association, and welcomed new members. The publication also stated the main purposes of the association: “to uphold and defend the rights of the students and to inform students of their rights with regard to various issues . . .”

The Students Rights Association and four students filed suit against the school committee in late May claiming that the ban violated their First Amendment rights of free speech.

In reaching a decision to ban distribution of the Defender, the school committee first defeated by a 6-1 vote a motion to consult with the committee’s attorney to determine the legality of such a ban.

Board member Mark Levine candidly admitted, “I don’t want students to know their rights.”

The committee had received a memo from the high school’s headmaster, Vincent J. Franco, urging that distribution be allowed.

“My opinion is, in my opinion, a violation of students’ rights as guaranteed by the First Amendment . . .” Franco wrote. He further noted that the newsletter was not obscene, libelous or potentially disruptive and, “there appears to be no existing school committee or high school regulation that prohibits the distribution of such material.”

As a result of the court’s decision, the Chelsea School Committee has established new guidelines to govern the distribution of student publications. The students’ attorney, John Reinstein of the Massachusetts Civil Liberties Foundation, said that whether further action will be taken will depend upon how the new guidelines are implemented.

Militant Freed

Stating that, “Economic interest does not disqualify a party from protection under the First Amendment,” a federal judge prevented University of Florida officials from enforcing a rule that would require a student to sell his newspaper only from behind a desk at the student union or through vending machines.

James Howe, a member of the Young Socialist Alliance, had filed suit last May claiming that the university had infringed his First Amendment rights by restricting his efforts to sell the Militant—the socialist newspaper—on campus.

In entering a preliminary injunction against enforcement of the university regulation, Judge William Stafford ruled against university claims that the selling of the newspaper constituted a “commercial activity” governed by school laws. University of Florida officials had contended they were merely regulating a business transaction, and would have placed no restrictions on Howe if he had given the newspapers away for free.

Stafford ruled that Howe’s sale of the paper was not pure “commercial activity”, but was “intermingled with elements of free speech.”

“Speech is protected even though it may involve a solicitation to purchase,” Stafford wrote.

Teacher Wins Suit Over Illegal Search

Junior high school guidance counselor Francis Gillard, creator of a political cartoon ridiculing the local board of education, has successfully sued the school board member who secretly searched his desk looking for evidence linking Gillard to the cartoon.

The controversial cartoon signed by “Ed Udacio” appeared in the February 4, 1978 edition of a local paper, the Fair Lawn Shopper. The drawing depicted members of the Fair Lawn (New Jersey) Board of Education as poker players gambling away employees’ salaries and jobs. Outraged board member Harold Schmidt characterized the cartoon as a “total disgrace to the elected body,” and urged the board to find the artist and punish him. The board took no action.

Six days later, acting on a tip, Schmidt made an evening visit to Gillard’s school and ordered the janitor on duty to unlock the counselor’s office. Schmidt then searched Gillard’s desk and found several copies of the cartoon.

Gillard subsequently sued Schmidt claiming that the search was a violation of his Fourth Amendment right to be free from unreasonable government intrusion. After concluding that the search was part of a campaign by Schmidt to retaliate against Gillard for his unflattering cartoon, the lower court, nevertheless, dismissed the lawsuit.

On appeal, Schmidt argued that since the desk belonged to the school board and he was a school board member, he had the legal right to search the desk. However, in a decision handed down last July, the U.S. Court of Appeals for the Third Circuit dis­agreed.

In reversing the lower court ruling, the appeals court held that the teacher had a “reasonable expectation of privacy” in his locked office where confidential student files were kept. The court entered judgment in favor of Gillard and sent the case back to the district court for a determination of the amount of damages that Schmidt would be required to pay. Gillard v. Schmidt, 579 F.2d 825 (3rd Cir. 1978).
Bill Proposed to Limit Police Newsroom Searches

The Carter administration has outlined a legislative proposal that would protect reporters, scholars, and their sources from searches by federal and state law enforcement authorities.

Such a bill would, in effect, reverse a recent U.S. Supreme Court decision upholding a surprise search of the Stanford Daily newspaper offices by police officers armed with a search warrant. That decision prompted outcry from reporters and members of the broadcast media, fearing a trend towards unannounced police searches based on the Zurcher v. Stanford Daily precedent.

Attorney General Griffin B. Bell and Assistant Attorney General Philip B. Heymann announced at a press conference in December that the bill will prohibit searches for the "work product"—notes, photographs, tapes, interview files—of persons preparing materials for "dissemination to the public."

Search warrants would be issued only in cases where a person's life was in danger or the party being searched was a suspect in a crime.

"It's a First Amendment bill, not a press bill," Heymann said at the press conference.

"News is a national business, and maintaining its flow is a matter of national concern."

Under the proposal, coverage would extend to freelance writers, radio and television stations, and "whistleblowers" who turn over information for public disclosure. Heymann announced that the proposal would be drafted broadly enough to cover everyone from the "lonely scholar" to the small town newspaper to the college newspaper.

However, when asked by the Student Press Law Center if high school newspapers would be included, Heymann replied, "I don't know." He added that it was not the aim of the bill to cover "every kid with a mimeo machine."

According to a White House press release the bill would protect only persons having materials to be used in a newspaper, book, broadcast or other form of communication "in or affecting interstate or foreign commerce."

"If the legislation is drafted broadly enough to cover small town weekly publications, then clearly it would also protect high school student journalists who work on student newspapers," Mike Simpson, director of the Student Press Law Center, said after attending the press conference.

"To 'affect interstate commerce,' a publication need only carry national advertising or have some distribution outside the state. Ninety-nine per cent of the student publications with which we are familiar would meet these criteria," he added.

Under the legislative proposal, federal, state, and local authorities seeking documentary evidence would use a subpoena rather than a search warrant in most cases. A subpoenaed party receives advance notice of a request for information and the opportunity to argue the request in court. In the Stanford Daily case, local police entered the newspaper without advance notice, and, under the authority of a search warrant, rummaged unsuccessfully through newspaper files for photos of campus demonstrators. (See SPLC Report 8, page 12.)

In a related development, California has become the first state to legislatively overturn the Supreme Court's recent decision allowing unannounced police searches of newsrooms. The legislation, signed into law by Governor Jerry Brown in September, mandates that police who seek evidence of crimes in editorial files must obtain a subpoena rather than a general search warrant.

The new law was enacted in response to the high court's May 1978 decision, Zurcher v. Stanford Daily, that neither the First nor Fourth Amendment is a bar to the police obtaining a search warrant authorizing the search of newspaper offices. (See SPLC Report 8.)

Thirteen bills to reverse the Stanford Daily decision were introduced into the 95th Congress. The new Congress is expected to pass some form of legislation.
Basketball Players Ruled Public Figures

Diamondback Wins Privacy Suit

A circuit court judge has ruled that six University of Maryland basketball players are public figures and has dismissed their multi-million dollar invasion of privacy suit against The Washington Star.

"The court's findings reflect that the defendants' efforts to discover the plaintiffs' academic standing did not constitute an intrusion on seclusion," wrote 7th Circuit Judge George W. Bowling in a ten-page opinion handed down last December.

The basketball players say they will appeal the decision.

The suit was filed over a year ago by six members of the university basketball team against both the Star and the University of Maryland Diamondback after the papers reported on November 1, 1977 that the players were in academic difficulty. The players charged that the stories constituted an invasion of their privacy and caused them "mental distress." They asked for $72 million in damages. (See SPLC Report 7.)

However, last October Judge Bowling dropped the Diamondback as a defendant, citing a 93-year-old state law prohibiting suits against a non-profit, "charitable" organization. In releasing the school newspaper, the judge said that, under the state's doctrine of charitable immunity, the publication could not be sued even if the paper had intentionally invaded the privacy of the players.

Remaining as defendants were two Diamondback reporters, a Star reporter and The Washington Star.

The basketball players charged that the Star had "willfully, wickedly, wrongfully and maliciously" invaded the players' privacy by identifying two players who had been taken off academic probation that semester, and reporting that four others were in danger of failing.

"We believe the judge's decision is unfortunate," Kneale said. "Our position is never to reveal a confidential source. That's something we would never violate to protect a confidential source."

The court's ruling brought to a close an extended pre-trial period during which a variety of motions were filed. One motion requested a partial "gag" order on the Star and the Diamondback to prevent them from printing certain information in the case. A second motion would have required that the reporters involved reveal their confidential sources.

Editor Refuses

Judge Orders Paper to Reveal Sources

"The First Amendment provides the right to protect a source. That's something we would never violate to protect a lawsuit," said Dennis Kneale, editor of the Independent Florida Alligator.

The protection of a confidential source has nothing to do with First Amendment protections, and the name of the confidential source involved in a University of Florida court battle must be revealed according to Circuit Judge Wayne Carlisle.

Those two opinions meet head on in the pending lawsuit involving the theft of more than 17,000 student newspapers on the morning of a 1976 student runoff election on the University of Florida Gainesville campus.

Last fall, Judge Carlisle gave the Alligator ten days to reveal the name of a confidential source who has supplied evidence in the newspaper's suit against former student government officials involved in the theft. However, a request by the Alligator's attorney has postponed a hearing on the order until May.

"We believe the judge's decision is unfortunate," Kneale said. "Our position is never to reveal a confidential source."

The ruling on the defense motion means that the year-old suit brought by the paper against ten students, student government representatives and Florida Blue Key members may be dismissed if the paper does not comply with the Judge's order. The Alligator is seeking $60,000 in punitive damages, $6,000 in actual damages and attorneys fees in the lawsuit.

The newspaper filed suit in 1976, shortly after copies of an issue endorsing a student government presidential candidate were stolen from distribution sites on campus. A university investigation and hearing later found ten students guilty of violating the Student Conduct Code for their role in the theft. The students had planned the theft in order to aid opponents of the candidate endorsed by the paper.

According to Kneale, the confidential source is a former student who took part in the theft but is not named in the lawsuit. Kneale said that the source is "afraid" of possible "repercussions" if his name is revealed.

"And so we're not going to reveal the source," Kneale said. He added that if Judge Carlisle dismisses the case because of the confidential source question, the Alligator will appeal to a higher court. (See SPLC Report 8, page 29.)
Constitutional Standards for Student Publication Guidelines

by Michael D. Simpson

Responding to student demands for press freedom, many school administrators are attempting to define the rights and responsibilities of student journalists through student publication guidelines. So far, no court has actually approved a specific set of student publication guidelines. In fact, the courts have struck down as overbroad, vague, or too restrictive virtually every set of student guidelines submitted to them. However, in striking down the challenged regulations, the courts have explained what types of guidelines would pass constitutional muster.

The first section of this article collects the "suggestions" of judges from the leading student press cases. Taken together, these suggestions form almost a "do and don't" list that may aid school authorities when drafting rules governing student expression. Each statement of law is followed by the first name of the case(s) which announced that particular proposition. The full legal citation for each case can be found in the appendix at the end of the section.

One should note that since many of the cases cited were decided by lower courts, the principles announced are not legally binding on the courts of other jurisdictions. However, these principles should be persuasive for purposes of legal argument or debate. United States Supreme Court decisions are, of course, binding everywhere in the country.

Also, while most of the principles cited are taken from cases involving college and high school students, there is no reason why these principles should not also apply to 7th, 8th, and 9th grade students. At least two courts have already extended First Amendment rights to junior high school students. Riseman, Cintron.

The second section of this article presents a set of guidelines formulated by the Student Press Law Center (SPLC) based on the legal principles listed in the first section.

1. Tinker v. Des Moines

The basic principle which underlies all student press cases was first announced in the landmark Supreme Court decision of Tinker v. Des Moines: public school students have the constitutional right of free expression unless such expression causes a "substantial disruption of or material interference with school activities," or invades the rights of others. As indicated below, this constitutional standard has been refined and clarified by the lower federal courts during the past decade. (See legal analysis in this issue for a detailed discussion of disruption.)

One fundamental proposition must be established at the outset. The fact that a student newspaper is totally funded by the school, is printed with school facilities, and is written during school hours under the supervision of an adviser, does not mean that the school (or principal) is the "publisher" of the paper with the attendant power of editorial control. Gambino, Bazaar, Antionelli, Dickey, Joyner, Schiff, Trujillo, ACLU. Indeed, as one court has succinctly put it, "The state is not necessarily the unrestrained master of what it creates and fosters." Antionelli.

Even though the school board may fund a student publication, the courts have said that, within certain limits, the students have the final word as to what material is published. Ideally, student publication guidelines should clearly and specifically define what those limits are.

2. School officials may lawfully suppress "obscene" literature. Shanley, Jacobs. However, one should note that "obscenity" refers to the Supreme Court's definition, not just to literature that might be "offensive" or in "poor taste." Papish, Bazaar, Sullivan, Jacobs. The Supreme Court's definition of obscenity appears in the SPLC model publication guidelines in the next section.

3. School officials may lawfully suppress libel. Shanley, Fujishima. That a school system may be potentially liable for defamatory statements appearing in the official student newspaper offers a possible justification for censoring libel. This issue has not been decided by the courts. However, this reasoning would not apply to school officials who seek to ban an underground newspaper as no court has found a school system responsible for the content of an underground newspaper. (For a legal definition of libel, see the model publication guidelines.)

4. Because of the special circumstances in a school, the Supreme Court has carved out a fourth exception unique to student expression. The court has said that school officials may lawfully ban speech which causes a "substantial disruption of or material interference with school activities" or "inva

5. If school officials do act to suppress student expression on the ground that it is "unprotected speech," they, and not the students have the burden of justifying that suppression. Tinker, Eisner, Scoville, Shanley.

III. Protected Speech

Student publication guidelines cannot provide for the censorship of speech "protected" by the First Amendment. Those allowing such censorship are unconstitutional. However, the court has said that school officials can regulate the time, place, and manner of distribution. Fujishima.

Listed below are some of the leading student press cases in which the courts have upheld the right of students to publish or distribute material which school officials sought to suppress.

1. School officials cannot censor criticism or punish those...
critical of school officials, the government or state legislatures. 

Baughman, Dickey. Officials may not "under the guise of vague labels c Approaching the legal limits of school censorship and regulation.

1. "The mere dissemination of ideas—no matter how offensive to good taste—may not be shut off in the name alone of 'conventions of decency'." Baughman.

2. "School officials cannot prohibit the dissemination of birth control information (even in the official student newspaper). Gambino, Bayer, Shankly.

3. School officials cannot prohibit the dissemination of editorial material because it requires the construction of a paper which contains the following language: IF WE HAVE TO—WE'LL BURN THE BUILDINGS OF OUR SCHOOLS DOWN TO SHOW THESE PIGS THAT WE WANT AN EDUCATION THAT WON'T BRAINWASH US INTO BEING RACIST.

4. School officials cannot ban student publications which urge disobedience of school rules without proving that the publication will cause a substantial and material disruption of school activities. Scoville.

5. School officials cannot prohibit the use of vulgar or profane words. Bazaar, Sullivan, Fujishima, Jacobs, Kopell, Papish, Thonen.

6. School officials cannot ban literature because it advocates the reform of marijuana laws or advertises the services of the National Organization for the Reform of Marijuana Laws (NORML). Shankly.

7. School officials cannot ban literature because it was written by a nonstudent or a nonschool employee. Jacobs, Antonelli.

8. School officials cannot ban literature because it is not school-sponsored written material, e.g. underground newspapers. Vail.

9. School officials cannot ban the school paper from accepting "editorial" advertising—ads which advocate a particular point of view on an issue of public concern. Lee, Zucker.

10. School officials cannot ban literature because it contains advertising or because contributions are solicited in connection with the distribution. Neither may school officials impose an outright ban on the sale of literature. Jacobs, Peterson, Pilscou.

11. School officials cannot ban the distribution of anonymous literature; they cannot require that literature bear the name of the sponsoring organization or author. Talley, Jacobs.

12. Although school officials may prohibit speech which causes a substantial and material disruption of school activities, it is insufficient to show merely that "a few students made hostile remarks." Tinker. "[T]hose students who would reasonably exercise their freedom of expression should not be restrained or punishable at the threshold of their attempts at expression merely because a small, perhaps vocal or violent, group of students with differing views might or does create a disturbance." Shanley.

IV. Minimum Constitutional Requirements for Student Publication Guidelines

As noted earlier no reported court decision has ever approved a specific set of student publication guidelines. In distinguishing between legal limits and school censorship and regulation.

1. The term "substantial disruption of or material interference with school activities" must be defined. Nitzberg.

2. The guidelines must "detail the criteria by which an administrator might reasonably predict the occurrence of such a disruption." Nitzberg.

3. The term "libel" must be fully defined and the definition must take into account the rule announced in New York Times v. Sullivan and its progeny. Nitzberg. (The New York Times rule states that before a "public official" can recover in a suit for libel he must prove that the statement was false and published with "actual malice," i.e., with knowledge that the statement was false or with reckless disregard for the truth.)

4. The term "distribution" must be defined. Baughman.

5. The term "obscenity" must be defined. Baughman.

6. Any publication guidelines must be included in the official publications of the school or circulated to students in the same manner as other official material. Nitzberg.

V. Unconstitutional Prior Restraint Provisions

Many school officials have attempted to adopt publication policies incorporating systems of prior review or prior restraint whereby a school administrator is able to read and censor both official and nonschool-sponsored publications prior to distribution. Such systems have been justified as an effort to protect students from "unprotected" speech and to prevent a substantial disruption of school activities.

The courts have made a distinction between school rules which empower administrators to read copies prior to publication (prior review) or halt distribution (prior restraint), and rules which merely permit punishment of students after distribution has taken place. If publication guidelines only allow post-publication punishment for unprotected speech, then they need not be very specific. However, guidelines setting up a system of prior review or prior restraint must be specific and narrowly drawn with all important terms fully defined.

The rules in the case listed below appeared in systems of prior review or prior restraint and were declared unconstitutional by the courts.

1. The dictate that student publications must conform to the "journalistic standards of accuracy, taste, and decency maintained by the newspapers of general circulation in the city" is too vague. Leibner.

2. A rule banning literature which is "alien to school purposes" was struck down in Cintron.

3. The court in Baughman declared unconstitutional a
prohibition on literature which "advocates illegal actions, or is grossly insulting to any group or individual."
4. A ban on literature which "incites students to disrupt the orderly operation of the school" is too vague and overbroad. Peterson.
5. The court in Jacobs struck down a rule banning distribution of literature "while classes are being conducted .." 6. This rule is vague and overbroad: "No student shall distribute in any school any literature that is . . . either by its content or by the manner of distribution itself, productive of, or likely to produce a significant disruption of the normal educational processes, functions or purposes in any of the Indianapolis schools or injury to others." Jacobs.
7. The court in Baughman invalidated a prohibition against "libelous" and "obscene" material noting that the terms "are not sufficiently precise and understandable by high school students and administrators untutored in the law to be acceptable criteria. Indeed, such terms are troublesome to lawyers and judges. None other than a justice of the Supreme Court has confessed that obscenity 'may be indefinable.'" As might be expected systems of prior review have been attacked by students who wish to publish free of censorship. Some courts ruling on the constitutionality of such systems have approved them; other courts have not. The federal courts for the 2nd, 4th and 5th circuits have ruled that, in theory at least, it is possible to construct a constitutional system of prior review. However, no specific set of guidelines has ever been approved. Baughman, Shanley, Eisner. These rulings are binding in the following states: Vermont, New York, West Virginia, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Louisiana, and Texas. The federal courts for the 7th circuit (Indiana, Illinois and Wisconsin), Massachusetts and California have ruled that any system of prior review violates the First Amendment rights of students. Fujishima, Antonelli, Poxon. The Student Press Law Center takes the position that student publication guidelines should not provide for prior review of literature by school officials. Such a system merely provides an excuse for illegal censorship by high school principals and stifles student expression. However, if a school system decides to institute prior review, the courts have offered a few gentle suggestions.
1. The U.S. Supreme Court has stated, "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Organization for a Better Austin.
2. For a system of prior review to pass constitutional muster, it must contain "narrow, objective, and reasonable standards by which the material will be judged [and] precise criteria sufficiently spelling out what is forbidden so that a reasonably intelligent student will know what he may write and what he may not write." Baughman, Nitzberg.
3. The system of prior review must:
   (a) Specify to whom the material is to be submitted for approval. Eisner.
   (b) Limit the time the official has to reach a decision on whether to approve or disapprove distribution. Baughman, Quarterman, Nitzberg, Eisner.
   (c) Provide for the contingency of a school official failing to issue a decision within the time specified. Baughman.
   (d) Afford students the right to appear before the decision-maker and argue why distribution should be allowed. Nitzberg, Leibner.
   (e) Provide an "adequate and prompt appeals procedure" if the school official decides to ban distribution. Eisner, Nitzberg. A review procedure which lasts "several weeks" is too lengthy. Leibner.

APPENDIX
Baughman v. Freienmuth, 478 F. 2d 1345 (4th Cir. 1973)
Bazaar v. Fortune, 476 F. 2d 507 (5th Cir. 1973)
Brooks v. Auburn University, 296 F. Supp. 188 (M. D. Ala. 1969)
Eisner v. Stamford Bd. of Ed., 440 F. 2d 803 (2nd Cir. 1971)
Fujishima v. Board of Education, 460 F. 2d 1355 (7th Cir. 1972)
Jolley v. Whiting, 477 F. 2d 456 (4th Cir. 1973)
Lee v. Board of Regents, 306 F. Supp. 1097 (W. D. Wis. 1969), aff'd 441 F. 2d 1257 (7th Cir. 1971)
Papish v. Bd. of Curators, 410 U. S. 667 (1973)
Quarterman v. Byrd, 453 F. 2d 54 (4th Cir. 1971)
Risman v. School Comm. of Quincy, 439 F. 2d 148 (1st Cir. 1971)
Schiff v. Williams, 519 F. 2d 257 (5th Cir. 1975)
Scoville v. Bd. of Ed., 425 F. 2d 10 (7th Cir. 1970)
Shanley v. Northeast Ind. Sch. Dist., 462 F. 2d 960 (5th Cir. 1972)
Sullivan v. Houston Ind. Sch. Dist. 475 F. 2d 1071 (5th Cir. 1973)
Talley v. California, 362 U. S. 60 (1960)
Thonen v. Jenkins, 517 F. 2d 3 (4th Cir. 1975)
SPLC Model Guidelines
For Student Publications

I. STATEMENT OF POLICY

It is undeniable that students are protected in their exercise of freedom of expression by the First Amendment to the Constitution of the United States. Accordingly, it is the responsibility of school officials to insure the maximum freedom of expression to all students.

It is the policy of the __________ Board of Education that ________ (newspaper), ________ (yearbook), and ________ (literary magazine), official, school-sponsored publications of __________ High School have been established as forums for student expression. As a forum, each publication should provide a full opportunity for students to inquire, question and exchange ideas. Content should reflect all areas of student interest, including topics about which there may be dissent or controversy.

It is the policy of the __________ Board of Education that student journalists shall have the ultimate and absolute right to determine the content of official student publications.

II. OFFICIAL SCHOOL PUBLICATIONS

A. Responsibilities of Student Journalists

Students who work on official student publications will:

1. Rewrite material, as required by the faculty advisers, to improve sentence structure, grammar, spelling and punctuation;
2. Check and verify all facts and verify the accuracy of all quotations;
3. In the case of editorials or letters to the editor concerning controversial issues, provide space for rebuttal comments and opinions;
4. Determine the content of the student publication.

B. Prohibited Material

1. Students cannot publish or distribute material which is "obscene as to minors". Obscene as to minors is defined as:

(a) the average person, applying contemporary community standards, would find that the publication, taken as a whole, appeals to a minor's prurient interest in sex; and
(b) the publication depicts or describes, in a patently offensive way, sexual conduct such as ultimate sexual acts (normal or perverted), masturbation, excretory functions, and lewd exhibition of the genitals; and
(c) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.
(d) "Minor" means any person under the age of eighteen.

2. Students cannot publish or distribute material which is "libelous", defined as a false and unprivileged statement about a specific individual which injures the individual's reputation in the community. If the allegedly libeled individual is a "public figure" or "public official" as defined below, then school officials must show that the false statement was published "with actual malice", i.e., that the student journalists knew that the statement was false, or that they published the statement with reckless disregard for the truth—without trying to verify the truthfulness of the statement.

(a) A public official is a person who holds an elected or appointed public office.
(b) A public figure is a person who either seeks the public's attention or is well known because of his achievements.
(c) School employees are to be considered public officials or public figures in articles concerning their school-related activities.
(d) When an allegedly libelous statement concerns a private individual, school officials must show that the false statement was published willfully or negligently, i.e., the student journalist has failed to exercise the care that a reasonably prudent person would exercise.
(e) Under the "fair comment rule" a student is free to express an opinion on matters of public interest. Specifically, a student enjoys a privilege to criticize the performance of teachers, administrators, school officials and other school employees.

3. Students cannot publish or distribute material which will cause "a material and substantial disruption of school activities."

(a) Disruption is defined as student rioting; unlawful seizures of property; destruction of property; widespread shouting or boisterous conduct; or substantial student participation in a school boycott, sit-in, stand-in, walk-out or other related form of activity. Material that stimulates heated discussion or debate does not constitute the type of disruption prohibited.
(b) In order for a student publication to be considered disruptive, there must exist specific facts upon which it would be reasonable to forecast that a clear and present likelihood of an immediate, substantial material disruption to normal school activity would occur if the material were distributed. Mere undifferentiated fear or apprehension of disturbance is not enough; school administrators must be able to affirmatively show substantial facts which reasonably support a forecast of likely disruption.
(c) In determining whether a student publication is disruptive, consideration must be given to the context of the distribution as well as the content of the material. In this regard, consideration should be given to past experience in the school with similar material, past experience in the school in dealing with and supervising the students in the subject school, current events influencing student attitudes and behavior, and whether or not there have been any instances of actual or threatened disruption prior to or contemporaneously with the dissemination of the student publication in question.
MODEL GUIDELINES

(d) School officials must act to protect the safety of advocates of unpopular viewpoints.

(e) “School activity”—means educational activity of students sponsored by the school and includes, by way of example and not by way of limitation, classroom work, library activities, physical education classes, individual decision time, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays, and scheduled in-school lunch periods.

C. Legal Advice

1. If, in the opinion of the student editor, student editorial staff or faculty adviser, material proposed for publication may be “obscene”, “libelous”, or “cause a substantial disruption of school activities”, the legal opinion of a practicing attorney should be sought. It is recommended that the services of the attorney for the local newspaper be used.

2. Legal fees charged in connection with this consultation will be paid by the board of education.

3. The final decision of whether the material is to be published will be left to the student editor or student editorial staff.

III. PROTECTED SPEECH

School officials cannot:

1. Ban the publication or distribution of birth control information in student publications;
2. Censor or punish the occasional use of vulgar or so-called “four-letter” words in student publications;
3. Prohibit criticism of school policies or practices;
4. Cut off funds to official student publications because of disagreement over editorial policy;
5. Ban speech which merely advocates illegal conduct without proving that such speech is directed toward and will actually cause imminent lawless action;
6. Ban the publication or distribution of material written by nonstudents;
7. Prohibit the school newspaper from accepting advertising.

IV. NONSCHOOL-SPONSORED PUBLICATIONS

School officials may not ban the distribution of non-school-sponsored publications on school grounds. However, students who violate any rule listed under II.B. may be disciplined after distribution.

1. School officials may regulate the time, place and manner of distribution.

(a) Nonschool-sponsored publications will have the same rights of distribution as official school publications.

(b) “Distribution”—means dissemination of a publication to students at a time and place of normal school activity, or immediately prior or subsequent thereto, by means of handing out free copies, selling or offering copies for sale, accepting donations for copies of the publication, or displaying the student publication in areas of the school which are generally frequented by students.

2. School officials cannot:

(a) Prohibit the distribution of anonymous literature or require that literature bear the name of the sponsoring organization or author;
(b) Ban the distribution of literature because it contains advertising;
(c) Ban the sale of literature.

V. ADVISOR JOB SECURITY

No teacher who advises a student publication will be fired, transferred or removed from the advisershhip for failure to exercise editorial control over the student publication or to otherwise suppress the rights of free expression of student journalists.

VI. PRIOR RERAINT

No student publication, whether nonschool-sponsored or official, will be reviewed by school administrators prior to distribution.

VII. CIRCULATION

These guidelines will be included in the handbook on student rights and responsibilities and circulated to all students in attendance.

SPLC Intern Opportunities

This SPLC Report was produced entirely by a team of student interns working out of offices in Washington, D.C.

Kent G. Sheng, 22, a senior at Cornell University, hopes for a career either in law or journalism. Majoring in English and government, Kent also writes for the Cornell Daily Sun. Last year, he interned with a Ralph Nader affiliated public interest group.

Mindy S. Meallitis, 23, is a second-year law student at the National Law Center of George Washington University. She graduated from Temple University where she received a degree in mass communications.

Lorraine M. McGlynn, 21, majors in political communications at Catholic University and hopes for a career in communications. Now a senior, Lorrie has worked as a newscaster with a local Washington, DC radio station and was a member of the university yearbook staff.

Mary E. Driscoll, 19, a contributing artist for this issue, is a sophomore at Cornell University. Describing herself in the words of French painter Toulouse-Lautrec, Mary says: "I have been a crayon all my life." Mary is majoring in biology and hopes to have a career in scientific illustration.

Interns research and produce the SPLC Report, handle requests for information on student press rights, assist the Director in litigation by providing paralegal support, and participate in the Center's fundraising activities.

Interested students are encouraged to apply to: The Student Press Law Center, Room 1112, 1750 Pennsylvania Ave. NW, Washington, DC 20006.
creates dissatisfaction with conditions the way they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconveniences, annoyance, or unrest. There is no room for a more restrictive view.

In fact, public authorities have been found to have a duty to protect those expressing their views from the dangers of a hostile audience. Such was the case at the University of Arizona when a man distributing handouts and wearing a sandwich board protesting the Vietnam War had his board ripped off by two students and was threatened with further harm if he continued to protest. The Court held that the local police had an obligation to give him the same protection that they would have provided any other innocent person threatened by a street gang. "A politically motivated assault is no less illegal than assaults inspired by primal vengeance or any other unlawful motive." Jacobs v. Bd. of Regents of Univ. of Arizona. 16

Current Trends—A Blow to the Psyche?

Until 1977, only physical disruptions were recognized under the Tinker standard. Yet, it now seems that there may be other types of disruption—psychological and emotional—which can justify the suppression of student speech.

Recently, a federal Court of Appeals held that school authorities had lawfully prohibited the distribution of a sex survey by the staff of an underground high school newspaper. The survey asked very intimate questions about a student's sex life, including inquiries about sexual experience, masturbation, and homosexual tendencies. The court based its holding on the affidavits of four expert psychologists and psychiatrists that the questionnaire could cause "significant emotional harm" to some students. One judge noted that to qualify as a "disruption" under Tinker the damage need not be physical. "While the passing out of the several questionnaires might not provoke a breach of the peace, a blow to the psyche may do more permanent damage than a blow to the chin." 17

However, it is important to note that the administrators' ban was upheld only because their forecast of disruption was substantiated by concrete evidence—the expert opinion of four qualified doctors. Trachman v. Anker. 18 The significance of Trachman is yet to be determined, although it has without doubt expanded the scope of the disruption standard.

School Regulations Incorporating the Tinker Standard

Many schools have formulated student publication guidelines which embody the disruption standard. In order for such a rule to be constitutionally valid it must contain two essential provisions. First, it must provide school authorities with objective and reasonable criteria to guide them in forecasting a substantial disruption or material interference. It is not sufficient to merely quote the language from Tinker; all terms such as "disruption" and "distribution" must be defined. Secondly, the rule must be written so that a student can understand it; it must be sufficiently specific so that a "reasonably intelligent student will know what he may write and what he may not write." Regulations lacking a precise definition of prohibited activity and proper judgment criteria have been struck down by the courts as being vague and overbroad. 19

The essential element of the Tinker standard is that school officials must show that they are acting to prevent some immediate and actual harm to students or to the educational process in order to justify the suppression of student expression. This harm cannot be speculative. School officials must prove facts on which they could reasonably predict harm. For example, they must show that similar speech in the past has disrupted the school.

It is difficult to imagine a student publication that would be disruptive, unless it advocated illegal student conduct and would likely produce such conduct. Mere criticism of school policy, dissemination of information or reporting the news could not produce the type of "substantial disruption" that the Tinker standard requires.

FOOTNOTES

3. 363 F.2d 744 (5th Cir. 1966).
4. 363 F.2d 749 (5th Cir. 1966).
6. 419 F.2d 195 (6th Cir. 1969).
10. 462 F.2d 960 (5th Cir. 1972).
11. 477 F.2d 171 (9th Cir. 1973).
12. 425 F.2d 10 (7th Cir. 1970).
15. 337 U.S. 1 (1949).
16. 436 F.2d 618 (9th Cir. 1970).
17. 563 F.2d 512 (2nd Cir. 1977).
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