Discovering Hidden Treasures
STUDENT PRESS LAW CENTER REPORT

Student Press Law Center Report (ISSN 1164-3813), published three times each year by the Student Press Law Center, summarizes current cases and controversies involving the rights of student press. The SPLC Report is researched, written and produced by journalism and law students intern.

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WASHINGTON, D.C. — The Louisiana student newspaper staff that has actively pursued criminal charges against a student accused of taking 75 percent of the paper's press run has been named the recipient of the 1993 Scholastic Press Freedom Award.

The staff of The Lion's Roar at Southeastern Louisiana University in Hammond received the award at the Associated College Press/College Media Advisers National convention in Dallas, Tex., on Oct. 30.

The award, sponsored by the Student Press Law Center and the National Scholastic Press Association/Associated Collegiate Press, is given each year to the high school or college student journalist or student news medium that has demonstrated outstanding support for the free press rights of students.

The Lion's Roar's battle for press freedom began in March 1993 when the student newspaper published a story describing the frustration felt by students on campus about waiting months for the school's student government to distribute over $2.5 million for campus improvements. Approximately 2,000 copies of the issue in which the story appeared were confiscated from distribution points around the campus. Within days, the student government president had been arrested relating to the theft. He currently awaits trial on charges of criminal mischief over the incident. (See GOOD ENOUGH TO STEAL, Fall 1993 SPLIC Report, page 4.)

The Lion's Roar, under the leadership of 1992-93 editor Dori Colona, urged the campus police and local prosecutor to pursue criminal charges against the thieves and asked the school to discipline the students for their actions. In editorials, the newspaper condemned the theft as an affront to their readers as well as the First Amendment.

"To steal newspapers so as to deny others the opportunity to see what is in them is the crassest, lowest form of censorship," Colona wrote in a column. "These are the tactics of an Adolph Hitler, a Mussolini or a Joseph Stalin."

"Not only did these thieves censor the paper, they cheated the campus community," she wrote.

In presenting the Scholastic Press Freedom Award to The Lion's Roar, Student Press Law Center Executive Director Mark Goodman cited the newspaper's uncompromising response to the growing problem of newspaper theft. (See A CRIME WAVE, page 28.)

"At a time when theft of student publications has reached epidemic proportions on college campuses, I'm proud to present the award to a college publication that is leading the fight against it," said Goodman. "Until school administrators and law enforcement officials put a stop to newspaper theft, no college publication can feel safe in exposing its readers to controversial viewpoints or unpleasant facts."

Nominees for the Scholastic Press Freedom Award should be sent to the Student Press Law Center and are accepted until Aug. 1 of each year.

The Report Staff

Miranda Doyle is a senior at Stanford University who aspires to be her high school newspaper adviser, Harvey Wehner. An oivine aficionado, she has spent most of her college career at The Stanford Daily editing stories on giant cysts and napping in the lounge.

Kevin Talbot is a May 1993 graduate of the University of Wisconsin at Madison where he was a reporter for the Badger Herald. He plans to attend law school in the fall of 1994 after attending the Rose Bowl in Pasadena.

SPLIC now connected to Internet

The Student Press Law Center is now connected to the much talked about Information Highway. Recently, the SPLIC gained access to the Internet, a worldwide computer network that links thousands of sub-networks, private sector firms, nonprofit institutions, schools and government agencies. You can contact the SPLIC with an electronic mail message addressed to splc@cap.gwu.edu. If you need quick information or advice, please call us.

Several topical discussion lists of special interest to the student media now exist on the Internet. They include college publication topics (cma-l@vm.cc.latech.edu) high school media topics (hsjournu@vm.cc.latech.edu) and college broadcasting topics (nacb@gwuvm.gwu.edu).

For more information on the college and high school media lists, contact Edite Blick at Louisiana Tech University at (318)257-4427.
If campus records have been viewed as a lost treasure buried somewhere at the bottom of the sea, then it looks as though the public need not learn to swim to get access to them anymore.

In the past, universities have hidden certain materials that should have been open to the public in a Bermuda Triangle of files — lost forever.

But the public has found a way to break away from this obstacle and affirm its rights.

This fall, the highest courts in three states decided that an educational institution in their state, supported by taxpayer dollars, had not complied with the public’s right to know.

In New York, the Court of Appeals said that Nassau Community College violated the state Freedom of Information Law when it did not honor a man’s request to see films used in a sex-education class. (See RUSSO, page 6.)

In Michigan, the state Supreme Court said the University of Michigan did not comply with the state Open Meetings Act and Freedom of Information Act when selecting a new president of the university. (See BOOTH, page 7.)

In Georgia, the student newspaper at the University of Georgia won a two-year battle with the university when the state Supreme Court decided that the school could not withhold the records of a student’s disciplinary hearing. (See RED & BLACK, page 5.)

One would think that these cases would settle the issue of access to college campuses. But they have not.

At Michigan State University, the local media has filed a lawsuit because the school did not open its presidential search to the public. Nor has the Georgia case helped other student newspapers. Students at Georgia State University, Louisiana State University at Shreveport, the University of Alabama and the University of Arkansas at Fayetteville have reported being denied records of judicial hearings.

Proponents of open access argue that victories in the judicial system should send a message to schools that withholding information from the public will not be tolerated.

Carolyn Carlson, chair of a task force formed to open campus courts to the public (see TASK FORCE, page 9), said the November Georgia decision will be a valuable tool for lawyers and students who are trying to get access to student disciplinary records.

"In Georgia, five different schools said they would wait for the ruling [in this case],” Carlson said. “This information ought to be public. In a democratic society, that is what happens."

Carlson said that the task force will make sure that word of the Georgia case gets out so it will be useful for the rest of the country.

An attorney who represented the Red & Black in a separate case that opened campus judicial hearing records (See ACCESS, page 12)
Court opens disciplinary records
Results of hate crime hearing not private, Georgia court says

GEORGIA — The Georgia Supreme Court has affirmed a lower court decision that said the disciplinary records of individual students are subject to disclosure under the Georgia Open Records Act.

In John Doe v. The Red & Black Publishing Co., Inc., No. 93A1674 (Ga., Nov. 8, 1993), an unnamed student had filed a lawsuit to stop the University of Georgia from disclosing records to the student newspaper relating to his hearing before a university court that hears cases against individual students.

In November, the state supreme court focused its decision on whether the proper procedures were followed by the trial court, which dissolved a temporary restraining order that prevented The Red & Black from obtaining the records.

In finding, without statement, that proper procedures were followed, the state's highest court affirmed the trial court decision.

Doe was accused of setting fire to a dormitory door of a gay student at the University of Georgia at Athens in 1990.

When The Red & Black attempted to get access to the records in the disciplinary hearing, it was slapped with a temporary restraining order until a trial could be held.

Doe claimed that disclosing these records would have violated his right to privacy and that they were exempt from public inspection under the Federal Family Educational Rights and Privacy Act (FERPA) because they were "education records."

Otherwise known as the Buckley Amendment, FERPA allows the federal government to withhold funding to schools that release education records without written permission from the student.

Many schools have used the Buckley Amendment to classify disciplinary records relating to criminal behavior as education records, thus justifying their decision to withhold them from the public.

After inspecting the records in question, the trial court said they were not exempt from the state open records act, nor were they education records.

"The Court finds that the facts involved in this case as reflected in the records of the Main Court of the Student Judiciary are a matter of legitimate public interest and inquiry," the trial court said in May.

In March, the Georgia Supreme Court upheld the right of the paper to have access to the records proceedings of a student court that considered charges against organizations on campus.

The editor in chief for The Red & Black said the case set a great precedent in the state that will help other schools having difficulty getting access to disciplinary records.

"You can't have a fair and equitable justice system if you don't know what's going on," Johnathon Burns said.

Carolyn Gorwitz, attorney for The Red & Black, said the paper should be able to write about incidents on campus.

Records of a judicial proceedings should not be kept from the public just because the act happened on campus, she said.

But the attorney for Doe said there is a privacy right that outweighs the public right to know, and so the records should be exempt from the open records act.

Mark Wiggins said that since Doe was told in the disciplinary hearing that all information and anything he said would be kept from public disclosure, the university should keep its promise.

Wiggins argued to the Georgia Supreme Court that he had no chance to

(See DOE, page 8)
NEW YORK — A Long Island man was granted access to a sexually explicit film and other course material from a sex-education class after New York’s highest court ruled that such materials were subject to the state freedom of information law.

Frank Russo, who heads a group called Citizens for a More Informed America, was granted access in October to materials for a Nassau Community College class titled "Family Life and Human Sexuality."

"We established a critical right for the public, taxpayers, parents and the media," Russo said. "They [college officials] were taking the First Amendment and literally turning it on its head."


The president of Nassau Community College, Sean Fanelli, had denied requests for the materials because he said it would violate the school’s academic freedom rights.

The Appellate Division agreed with this assertion, but the Court of Appeals reversed, saying that the business of public colleges must be open.

"The breadth of the statutory language, in conjunction with the purpose of the Freedom of Information Law, compels us to hold that the items [Russo] seeks to inspect—a film and filmstrips from a college-level course taught in a public college and provided by the college undoubtedly fall within [the law]. To hold otherwise would frustrate the goal of liberal disclosure under FOIL," wrote the court.

Anna Marie Mascolo, attorney for the college, said that the school never stopped Russo from viewing anything in the classroom if he registered as a student. The college only objected to showing the materials directly to him.

"The college never denied it was subject to freedom of information laws," Mascolo said. "Our position was that government agencies stop at the classroom door."

The college also argued that even if the court decided that the materials were "records" under the state Freedom of Information Law, they were "intra- or inter-agency materials" and exempt from public disclosure under the law.

The college said that the film and other materials are used in the classroom for discussion and are not final policy decisions.

The court said, however, that since NCC has used the films for several years, there was no reason not to consider them final policy decisions.

Mascolo said she is concerned that the decision could put a "chilling effect" on colleges. She said that people could use access to the materials to criticize and perhaps censor their use.

According to Newsday, Russo criticized the human sexuality course after he learned that the sexually explicit film was used the classroom.

"The court copped out," said Joseph Dundero, chairman of the health and physical education department, objecting to the lack of guidance the court gave as to how to comply with requests for audiovisual materials.

According to Russo, a brief written by the Student Press Law Center and the Reporter’s Committee for Freedom of the Press played a critical role in winning the case.

The SPLC brief distinguished the school’s records from personal material of individual faculty members and said the public colleges must be treated like other government agencies.

Russo said he never wanted to challenge the academic freedom of the college, only their academic arrogance.

"They [college officials] acted like gods on Mt. Olympus," Russo said. "We learned from Watergate that when the government says, 'Trust us with your money,' you can rest assured that there is trouble down the road."

Nassau Community College will not appeal the decision to the U.S. Supreme Court, according to Mascolo.
Presidential search violated state laws
Court rules University of Michigan illegally closed interviews, records

MICHIGAN — The University of Michigan Board of Regents violated the state's Open Meetings Act and Freedom of Information Act when it conducted its presidential search, the Michigan Supreme Court decided in September.

The Ann Arbor News, followed by the Detroit Free Press, filed suit in 1988 alleging that the election of James J. Duderstadt to the UM presidency was illegal because the regents made closed-door decisions, held private interviews, met in small groups that did not make up the required quorum and withheld travel expense records.

The court affirmed in part and reversed in part the Court of Appeals decision which said the selection process only violated the OMA.

"Presidential searches at the state's public universities must be conducted with due regard to the OMA's requirement of open meetings for all public body deliberations, decisions, and interviews," Justice Conrad L. Mallett Jr. wrote for the majority. "Travel expense records connected with these searches are not exempt from an FOIA request."

Jon Rowe, attorney for Booth Newspapers, said the people of Michigan scored a victory for their rights.

"It is a great day for open government in Michigan," Rowe said. "The decision was one of the strongest decisions the Michigan Supreme Court has put out on First Amendment rights and the people's right to know."

The selection process began in 1987 with the formation of a presidential selection committee by the UM Board of Regents, headed by Regent Paul Brown.

Three advisory groups were also formed, consisting of a student committee, a faculty committee and an alumni committee.

After compiling a list of 250 potential candidates, the committee made a series of cuts to narrow the list to one.

According to the newspapers, the cuts were made in meetings of informal sub-quorum groups so that the regents would not have to hold public hearings required under the Open Meetings Act.

The first cut of candidates reduced the list to 70 and was made by Brown after several of these informal meetings and phone calls with regents.

A second cut, which reduced the list to 30, was done in the same manner. After that, Brown called the remaining candidates, 12 of whom wished to be considered.

In the spring of 1988, groups of two to four regents conducted private interviews in the candidates' home cities.

The interviews were conducted after the candidates signed letters, prepared by the regents, that requested their candidacies to remain confidential.

According to the regents, the letters justified the next set of closed meetings, in May, in which they cut the list to five and, later, to two.

After one of the candidates withdrew his name, a nominating committee recommended Duderstadt in a closed session.

In the first open meeting of the selection process, the regents interviewed Duderstadt, and then went into closed session to recommend him again.

In another open session, following the closed recommendation, the regents voted to name Duderstadt to UM president.

Booth Newspapers filed the lawsuit shortly after the vote to order the regents to make available the information regarding the persons considered for the presidency, correspondence between regents regarding the candidates, minutes and decisions of sub-quorum groups and the travel records of regents involving the search process.

The media also asked that future selection processes be conducted in the open.

The court, in Booth Newspapers Inc. v. The Board of Regents of the University of Michigan, 444 Mich. 211 (1993), said the selection committee violated the open meetings act because it was a public body that made closed session decisions, deliberations and interviews.

As long as the committee made decisions that affected the status of the selection process, it did not matter that the committee took no formal votes, the court said.

It also said that interviews should have

(See BOOTH, page 12)
LOUISIANA — Michelle Millhollon said her job is a watchdog for the students.

So when the student journalist at Louisiana State University at Shreveport was denied access to public records, she took action.

Millhollon, along with the Shreveport chapter of the Society of Professional Journalists, filed a lawsuit in October against LSU-Shreveport for access to a copy of the results of a disciplinary hearing involving two members of the Student Government Association.

The students were appointed as managers of the SGA Book Exchange and admitted to taking $1,700 from the exchange to pay for tuition, loans and personal expenses.

One of the students said that money had been taken from and returned to the book exchange fund for several years.

The book exchange is a service provided by the SGA to let students set prices on books they want to sell. If the book is sold, the SGA keeps a percentage of the money for supplies, the library and a student-loan fund.

Both students were brought before the Student Affairs Committee in May and disciplined, according to the student newspaper, the Almagest.

Millhollon, a reporter with the Almagest, wrote Vice Chancellor of Student Affairs Gloria Raines to request the results of the hearing, a copy of the SGA members' signed statements and a transcript of the taped recording of the hearing.

In a letter to Millhollon, Raines told her that while the documents were public records under the Louisiana Public Records Act, they could not be released because of a federal law.

Raines said the documents were "education records" protected from disclosure by the Family Educational Rights and Privacy Act of 1974, otherwise known as the Buckley Amendment.

"There was a theft," Millhollon said.

"That is criminal, not academic."

Millhollon wrote Raines again after enlisting the help of the Student Press Law Center, which advised her that the Buckley Amendment does not categorize campus crime reports as education records and that a Georgia Supreme Court supported this assertion in the context of campus judicial records. (See RED & BLACK, page 5.)

Nevertheless, Raines wrote back saying that the Georgia case was a different situation, and that the records were protected by law.

"This is not a freedom of the press issue," Raines said. "It's just a matter of following federal regulations. We're just doing what we were instructed to do by the law. To us it is a very clear issue."

However, according to the Society of Professional Journalists-Shreveport President Frank May, changes in 1992 that excluded campus crime reports from the Buckley Amendment should have opened campus disciplinary proceedings.

"In many instances it has nothing to do with academic performance," May said. "It has to do with possible criminal acts, it has to do with abuse of public funds, abuse of student funds or university funds."

May said he hopes this case will break ground in Louisiana for open records on college campuses.

"People and students want to know if there is some wrongdoing, even if it involves a student," May said. "If the university feels there is the possibility of disciplinary action involving the violation of policies, then it's something that is worth public attention."

Millhollon, who is the freedom of information chairwoman of LSU-Shreveport SPJ, said students on campus have supported her efforts to gain access to the records.

The purpose of the student newspaper, she said, is to inform students of what is happening on campus without interference from university officials.

"Students were coming up to me and saying, 'Michelle, we want this information,'" Millhollon said. "I feel the administration is wrong for denying me this information."

A trial in the case was scheduled for Dec. 22.

**Doe**

(Continued from page 5)

produce evidence of Doe's privacy interest because the trial court judge had inspected the records himself.

"The University of Georgia told [Doe] that [the records] would be confidential," Wiggins said. Now they are saying to him, 'Well, we were just kidding.'"

Burns said he requested the documents as a "litmus test" to see if the records would be available.

"It is my job as a journalist to decide what is in the public's interest," Burns said. "I don't see it as a judge's or a lawyer's decision. If it happened off campus, he would have no privacy rights. He would have been tried in criminal court."

The university has appealed the decision to the U.S. Supreme Court.
Ed Dept. reverses decision on theses

WASHINGTON, D.C. — College libraries breathed a collective sigh of relief when the Department of Education rescinded statements in September that said colleges needed written permission of students to put student theses in their libraries.

According to a spokesman, who wished to remain anonymous, the department now says as long as students are informed that their theses will appear in the library, no written permission is necessary.

The controversy began when Jackie Esposito, assistant archivist at Pennsylvania State University wrote LeRoy Rooker, a Department of Education official, to ask whether theses were private under the 1974 Family Educational Rights and Privacy Act (FERPA).

FERPA, also known as the Buckley Amendment, prohibits federal funding to schools that release education records without a student’s permission.

Rooker, in a letter to Esposito, wrote, "None of the exceptions would permit making students theses available to the public, such as in the University library, without first obtaining written consent from the student."

The letter, however, was quickly brought to the attention of librarians who then voiced their concerns with the interpretation of FERPA to Rooker, the director of the Family Policy Compliance Office.

According to the spokesman, Rooker then clarified the position of the Education Department after discussions with the Association of Research Libraries.

Although FERPA says that no funds should be given to any university that releases education records without written permission from the student, the spokesman said that the Department views theses differently than the usual exams or research papers.

Theses, the spokesman said, carry an “implied consent” of being accessible to their peers and the community at large.

Therefore, in a letter to Prue Adler, the Assistant Executive Director for Federal Relations of the library association, Rooker said the department recognized that a university can get permission from students to place theses in a library by notifying them through course or program requirements.

According to the spokesman, if notified on paper that their theses will go into the library, it is implied that the students have given their consent.

Examples of notification would be a course description or a bulletin board inside the classroom, and this would qualify instead of the required written permission, he said.

FERPA has been used in the past by universities to withhold campus crime reports and disciplinary records (See LSU at SHREVEPORT, page 8). But the Department has failed to apply the notion of “implied consent” to these records.

Despite the controversy, there have been no complaints about theses in libraries and none are expected, according to the spokesman.

SPJ launches task force to open campus courts

The Society of Professional Journalists announced in September that it had formed a task force to open campus judicial proceedings and disciplinary records to the public.

Carolyn Carlson, a reporter with the Associated Press in Atlanta, was chosen by SPJ to chair the task force that includes 13 professional press and academic organizations, including the Student Press Law Center.

"Police reports on campus are open records, but the public rarely is told what happens to the people charged with a crime," Carlson said. "For their own safety and security, members of the campus community should be aware of these cases and their disposition."

The task force will gather information about restrictions on campus access policies and will educate the public and campus residents about the problem.

The group will also study whether laws or court challenges will be necessary to open up campus courts.

Carlson worked with the Red & Black student newspaper at the University of Georgia in a successful Georgia Supreme Court decision to open campus judicial hearings and records.

She said the work of the task force is urgent because the U.S. Education Department has released proposed rules stating that records of disciplinary proceedings are considered “education records” under the Family Educational Rights and Privacy Act and are not open to the public.

"Campus officials often justify the secrecy of the proceedings on grounds that they are protecting the privacy of students," Carlson said. "College journalists just want to see that all are treated fairly and to assure the public that its interests in justice and an orderly community are protected."
Student newspaper settles with college over sexual harassment documents

NEW YORK — Nassau Community College settled a lawsuit in September with the student newspaper, The Vignette, to gain access to documents regarding charges of sexual harassment against professors.

According to the attorney for the paper, Gregory Schwartz, Nassau Community College agreed to grant the Freedom of Information request of The Vignette for letters of reprimand and sanction placed in the personnel files of college employees who have violated the sexual harassment policy of the school.

Schwartz, of Porzio, Bromberg & Newman in Morristown, N.J., said the settlement was a two-fold victory: one for the community and one for women or others who have been sexually harassed.

"There has to be an open exchange between students, faculty and the community at large," Schwartz said. "There shouldn't be a policy of secrecy on the part of the school."

The Vignette filed a lawsuit in August 1992 with the New York Supreme Court after NCC denied requests to see the documents. Schwartz said they were specifically aware of one letter of reprimand placed in the personnel file of Professor Barton Friedberg.

Counsel for Friedberg and NCC showed Schwartz the letter to convince him that it had no reference to a finding of sexual harassment, and therefore, would not be subject to the Freedom of Information law.

But after reading the letter, Schwartz decided to request it and additional documents involving Barton's sexual harassment case.

"You don't need adjudication in court of sexual harassment to be required to disclose this information," Schwartz said. "You just need a demonstration that the issue is important to the public."

Attorneys for NCC and Friedberg agreed to produce the letter after Schwartz stated his intentions.

"When they [the college] saw we were serious about going after more documents they said, 'Let's give him what he wants,'" Schwartz said.

The attorney for the school, Gerard Guilano, of the Nassau County Attorney's office, said he could not comment on the case because of general (See VIGNETTE, page 12)
Newspaper bans stories on student government

ARIZONA — When the executive committee of the student government at Arizona State University closed its meetings to the public, the campus newspaper took a unique approach to the problem.

It cut out almost all coverage of student government news.

Scott Smith, editor in chief of the ASU State Press, said the paper still covers the Arizona Student Association, a lobbying group of student government leaders and student-appointed by them.

“We haven’t technically banned all coverage of student government,” Smith said. “But the piddly back-biting scandals in the Senate, we cut that out.”

According to Smith, a combination of apathy on the part of students toward student government, limited space and decreased ad revenue forced the State Press to cut coverage last year of the Associated Students of Arizona State University, the student government.

Over the summer, the executive committee of the student government closed its meetings to the paper, and then did it again just before the start of classes.

Jonathan Scaggs, executive assistant to the president of ASASU, said the meetings were closed because they were discussing personnel matters.

“A portion of every executive council meeting is closed, usually for personnel reasons,” Scaggs said. “We are well within our rights.”

The ASASU is funded by student fees and is exempt from open meetings laws, Scaggs said. However, Smith said the executive committee is a public body by their own definition and should adhere to the law.

“But the piddly back-biting scandals in the Senate, we cut that out.”

Scott Smith Editor

'The piddly back-biting scandals in the Senate, we cut that out.'

Professor sues own university

OKLAHOMA — You would think that the best way to keep your job would not be to sue your boss.

But Bill Loving, an un-tenured assistant journalism professor at the University of Oklahoma, has filed a lawsuit against the school and its president, Richard Van Horn.

“The University of Oklahoma does not have enough money to buy my principles,” Loving said. “If I have to lay down my principles to work here, I’ll go dig ditches.”

Loving, president-elect of FOI Oklahoma, an organization that defends the public’s right to know about government operations, was denied access in September to documents relating to an audit of the office of the vice president of administrative affairs, the university food service and the OU golf course.

According to Loving, Van Horn announced in June that results of the audit would be released in about a month. The statements were reported in The Oklahoma Daily, the student newspaper.

Van Horn asked for the audit after a university employee expressed concern about abuse of food service policies that provide free meals or food to employees.

But the university now says that an audit report does not exist.

The university, in a brief filed with the district court of Cleveland County, said it conducted an investigation of alleged violations of university policies and procedures by university personnel.

It said the material gathered in the investigation is exempt from disclosure under the Oklahoma Open Records law.

But Loving said that the public has a right to documents involving the investigation of state employees and materials used to create the audit.

“The university has played games under the open records law before,” Loving said. “This is an institution operated by the state of Oklahoma. Government is the public’s business.”

The school has filed for summary judgment. A hearing date has not been set.
Booth
(Continued from page 7)

occurred in the open because the public has a right to know the qualifications of potential public officials.

Ed Petykiewicz, editor in chief of the Ann Arbor News, said a number of newspapers will be able to use this decision to get access to documents that had long been denied.

"They [the regents] were violating the law and doing it intentionally," Petykiewicz said. "We were going to fight them in court as long as it took them to comply with the law."

In the freedom of information act claim, the regents said their destinations needed to be confidential because candidates feared losing their jobs if their names got out.

"People we would like to have would be unlikely to expose themselves and possibly jeopardize their current position early in the process," university general counsel Elsa Cole said.

But the court said that to be exempt from the law, the information sought must be of a "personal nature" and must constitute a "clearly unwarranted" invasion of privacy.

In this case the court said the travel records of a public body did not qualify as personal in nature.

Vignette
(Continued from page 10)

office policy.

However, a spokesman for the college said NCC gave the letter to the paper as a condition in the agreement between NCC, The Vignette and Barton.

Robert Allen, director of college and community relations, said NCC kept the letter to Barton confidential at first because the school feels documents like this are personal and are not subject to freedom of information laws.

"By keeping the documents confidential, we protect everyone involved," Allen said.

He said NCC agreed to hand over the letter "to end the lawsuit."

Cole said revealing names of the candidates hurts the final selection of a president.

"We're disappointed that the supreme court did not appreciate the problems of an open proceeding for getting the best candidate for the job of presidency."

According to Rowe, the government in Michigan cannot pick and choose what decisions are made under public scrutiny.

"The most important issue in the case is it is a strong statement from the court that when making a decision, it must be made in the open," Rowe said. "It is a strong statement that you can't divide up into sub-committees to get by the Open Meetings Act."

Petykiewicz said he agreed with Rowe, because, without this decision, no one would have to hold the government accountable for its most important functions, such as choosing a university president.
An uneasy alliance
Two papers under fire on Iowa campus

IOWA — Under attack by outraged activists, Daily Iowan editor Loren Keller finds himself in a strange position: allied with the University of Iowa’s conservative monthly in the free speech fight.

The Campus Review and the daily paper usually “tare into each other” in their editorial columns, Keller said. But in September, a group students formed the Coalition Against Terror — or CAT — to put pressure on both papers for expressing conservative viewpoints.

“The interesting thing here is that we’re both in the same corner now,” Keller said.

The controversy began when the Review displayed a “gerbil quilt” in a glass case located in the student union. The four-foot square was decorated with redent caricatures along with fictional names and autobiographical details, according to Review editor Jeff Renander.

“We thought it would be kind of funny,” Renander said, adding that the gerbil quilt was meant to parody the Names Project quilt while sections of the AIDS memorial were on display at the university.

“Radical community went ballistic.”

The Review quilt was intended to “diminish, demean and insult the people who have died of AIDS,” said CAT member Jeff Klinzman, an Iowa graduate.

“It was meant to incite hatred of gays.”

A columnist in The Daily Iowan also drew the ire of the activists when he wrote that “the death of a few abortionists is not too high a price to pay” for preventing third-trimester abortions.

CAT — which has since disbanded — protested, gathered signatures and took their case to the media. They also submitted a resolution to the student govern-

cement calling for the columnist’s firing and the revocation of the Review’s right to use the student union display cases. The resolution was defeated on a voice vote.

Keller stood up for the paper’s conservative columnist. It was a writer from the other end of the political spectrum who ended up getting the boot: in the middle of the CAT uproar, Klinzman was told that The Daily Iowan would no longer run his column.

“He was not fired for belonging to any group,” said Keller, who characterizes the controversy as an employer-employee dispute. “I crossed the line of a conflict of interest.”

But Klinzman, who was warned about his CAT membership and then fired after he went to a local newspaper about that warning, said he believes his free speech and free association rights have been violated.

He went through The Daily Iowan’s grievance process in hopes of being reinstated, but an arbitrator decided against him in November.

To add to the newspaper’s problems, a group of black students has formed a coalition to protest an editorial cartoon The Daily Iowan ran Oct. 27.

In the meantime, both campus editors say they have weathered the storm of media attention. Renander also sees the irony of the uneasy alliance against CAT.

“Even your die-hard liberals are supporting us,” he said, in the face of “left-wing radical censors.”

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Judge reinstates a professor booted for ‘hateful’ remarks

NEW YORK — A professor ousted over remarks called anti-Semitic and anti-white must be reinstated as chair of City College of New York’s black studies department, a federal judge ruled in August.


Jeffries is currently “back as head of the department,” City College spokeswoman Rita Rodin said. The school has appealed the August ruling and expects arguments to be made in December, she added.

The furor began with a July 1991 speech given off campus where Jeffries blamed “rich Jews” for the slave trade and said there was a “conspiracy, plotted and programmed out of Hollywood” by Jews and the Mafia, to cause “the destruction of black people.”

He had already caused controversy by voicing a theory dividing the races into cruel white “ice people” and cooperative black “sun people.”

The university could have taken action against Jeffries based on instances of “brutish behavior,” including tardiness to class and in turning in grades, Conboy wrote, but instead they “inexplicably, and perhaps cowardly, chose to ignore these improprieties” and only demoted him after the public expressed outrage over the 1991 speech. 

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ABUSES OF

POWER

School officials who step out of bounds to censor content could use a *Hazelwood* refresher course.

As the new semester rolls around and students are going back to school, some school officials may also need quality time in the classroom.

The class could be called *Hazelwood 101*.

This class would consist of a thorough examination of the 1988 U.S. Supreme Court decision in *Hazelwood School District v. Kuhlmeier*.

Principals and school superintendents would learn that although the *Hazelwood* decision gave them greater control of school-sponsored publications than they ever had, the case did not allow them to exert censorship at will and without reason.

The *Hazelwood* decision upheld the right of public high school administrators at *Hazelwood East High School* in suburban St. Louis, Mo., to censor stories concerning teen pregnancy and the effects of divorce on children from a school-sponsored student newspaper.

In the decision the Court chose not to follow the standard set in *Tinker v. Des Moines Independent Community School District*, in which it said school administrators could only limit student free expression if it caused a material and substantial disruption of school activities.

Instead, the Court said that the school-sponsored newspaper in *Hazelwood* was not a public forum and, therefore, the students were not entitled to *Tinker*'s strong First Amendment privileges.

The Court went on to say that if the censorship of style and content is "reasonably related to legitimate pedagogical [educational] concerns," it is permissible.

In other words, a principal or a school superintendent must show valid educational reasons to halt publication of non-forum, school-sponsored student expression. They also must show that their censorship is content-neutral.

However, the problem arises when school officials abuse their power to censor material that they believe is inappropriate for publication.

At Meade High School, in Cincinnati, Ohio, the superintendent of Meade city schools prevented a student from printing an advertisement by a school board candidate. (See MEDEIRA, page 16.)

When the student tried to print an editorial about the censorship, it was removed as well.

In May, the principal at Hubbard High School, in Chicago, Ill., suspended a student for four days for not obtaining permission to publish an article that criticized the principal's dress code.

"She's trying to make it a free-press issue, and it's not," said a principal who suspended a student for her critical article.

"She's trying to make it a free-press issue, and it's not," said a principal who suspended a student for her critical article.

(See POWER, page 19)
Principal wrong in censoring reviews
Ban on ‘Rain Man,’ ‘Mississippi Burning’ articles held impermissible

NEW JERSEY — For the first time since 1988, a court has said that a school could not justify its censorship of a school-sponsored student publication even under the Supreme Court’s Hazelwood standard.

A school-sponsored student newspaper article cannot be censored only because of its subject, according to a decision of a New Jersey appellate court involving a student and the school that censored him.

The Appellate Division of the Superior Court of New Jersey ruled in July that Clearview Regional Junior High School should not have censored two movie reviews written in 1989 by Brian Desilets, then an eighth grader, for the student newspaper.


But in this case, the court said that the censorship had nothing to do with style or content of the movie reviews Desilets had written. The subject matter, R-rated movies, was the sole reason the school removed the reviews.

“This is an important distinction; content is what is written; subject is what is written about,” wrote the opinion of the court. “The point of the censorship was not to address stylistic deficiencies or the words chosen by the writer to convey his information; it was to suppress the idea itself.”

Clearview attorney Alan Schmoll said, however, that the court created an artificial distinction between content and subject matter that the school never attempted to make.

“You can’t separate the subject matter of an R-rated movie from the content,” Schmoll said. “It still amounts to encouragement for this age group that shouldn’t be seeing these mov­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­­…
Superintendent first nixes ad, then censors student’s editorial

OHIO—"The fundamental truth of the First Amendment is that all ideas and voices have a right to be heard," wrote Amy Harrod, editor of the Medeira High School student newspaper, in an editorial criticizing the superintendent’s decision to censor an advertisement from a school board candidate.

Harrod’s editorial was censored as well.

The Superintendent of Medeira City Schools, Dennis Hockney, told Harrod that no “political” ads could run in Mustang Echoes.

According to Harrod, Hockney said that sort of ad would open the school to all kinds of political ads.

He also said a political advertisement in the student newspaper would be pointless because the students could not vote.

“He never said the problem that the ad had,” Harrod said. “He couldn’t give me an educational reason.”

The ad in question was sold by Harrod to a local school board candidate as part of the publications class that produced the student newspaper.

Selling the advertisement was a requirement in the course, and Harrod said there was no policy that stated certain types of ads would not be accepted.

The candidate’s ad was an open letter to the students discussing the importance of public education and of setting an example for the community. The ad never mentioned the election or urged students to vote for the candidate.

When the adviser for the paper saw the ad, she told Harrod to show it to the superintendent.

Hockney said that after consulting legal counsel, he decided that he did not have to let the paper run any political ads.

“We made a policy decision that was supported by our legal counsel,” Hockney said. “We will not accept any political ads from anybody. It doesn’t matter who they’re from or what the issue is.”

When asked why political ads could not run in the paper, Hockney refused to give a reason.

The problems continued for Harrod when she attempted to print an editorial about the rejection of the ad.

She claimed, in the editorial, that the newspaper was being denied its First Amendment rights that guarantee freedom of the press.

But the adviser would not run the editorial, according to Harrod, and Hockney said he would get legal advice before making a decision on the matter.

When Hockney failed to get back to her in time to print the editorial, she attempted to publish it without his approval. However, the adviser said it could not run.

Harrod said she tried to convince Hockney that he had violated the law, and that he had to justify the censorship by providing her with a “legitimate pedagogical concern,” as required in the U.S. Supreme Court’s 1988 Hazelwood decision.

Hazelwood gave school officials greater authority to censor certain school-sponsored publications when they could demonstrate a reasonable educational justification for their actions.

When asked about the Hazelwood requirement, Hockney said he read the meaning of the case differently.

“That’s your interpretation,” Hockney said. “We have our own.”

Harrod said she would take legal action against the school if censorship continues.

For now, though, she will tell her story to the media to alert others to the problems at her school.

“I want the story to get out because this could be happening to other students that think their school has the right to censor them,” Harrod said. “I want administrators to know that they can’t get away with this.”

As for Medeira High, Harrod said students should get an education that benefits them in college and beyond.

“School is like our own small society,” Harrod said. “School is where people are supposed to learn about things that happen in the real world. How are we supposed to learn if the administration is censoring us?”
Underground papers stir controversies

Student denied acceptance to honor society after publishing paper criticizing principal

NEW YORK — The faculty at a Rochester High School denied a student acceptance into the National Honor Society as punishment for her newspaper criticizing the principal, the student said.

The paper pointed out problems at John Marshall High School and criticized Principal Richard Wallman and school policies.

Rachel Barnhart, now a senior at Marshall, said school officials would not admit her into the honor society because of a connection they made between the paper and the formation of a school district fact-finding team to investigate Wallman.

The findings of the school district resulted in Wallman taking medical leave.

"I had very little to do with the fact-finding, except for a 10-minute interview [I gave them]," Barnhart said. "The teachers blamed me for everything. All of the school's problems were blamed on me."

Barnhart was suspended for publishing an underground paper, Marshall's Message, when she did not follow school district policy by getting approval of the articles from Wallman for distribution.

William Brandt, an attorney who is representing Barnhart, said she got caught in the political dispute between faculty and the city administration.

"She spoke out," Brandt said. "She criticized [Wallman] fairly for his policies that violated school board policies. When he removed himself, the faculty took it out on her."

According to Brandt, the school did not follow correct NHS procedures in selecting new members. All faculty and staff were given ballots and told to rate students who were eligible for the society that they knew on character and leadership.

Sixty people rated Barnhart, who is ranked number one in her class, but was the only one of nine candidates not selected to NHS.

"There's no way I know 60 adults at that school," Barnhart said.

Not every teacher supported Wallman, but nevertheless, Barnhart said she felt degraded that people felt she lacked good character and leadership qualities.

"It was a very painful experience," she said.

Brandt has written a letter to the school's attorney appealing the honor society rejection and her suspension, but has not filed a lawsuit.

Counsel for the school district did not return phone calls to the Report.

The new principal changed the NHS selection policy to comply with the NHS constitution. Students will now only be reviewed by teachers that have taught them in class.

"I think that shows that I was right," Barnhart said.

Magazine spurs six suspensions

OHIO — An underground magazine supporting "seniors' rights" resulted in the suspensions of six students at Hillsborn High School until they printed an apologetic issue, one of the students said.

The magazine, called the Delphic Oracle, was funny at first, according to Assistant Principal Jim Patrick.

Patrick, who dealt with the students in April, said many students, teachers and administrators were amused by the first issue.

The second issue, however, caused the controversy and the suspension.

Patrick said the magazine made fun of learning disabled students as well as teachers and administrators with physical differences, such as women with facial hair.

"Any school has the right to limit what is said when it is cruel and makes fun of others," Patrick said.

But one of the student writers said that the Delphic Oracle was published because the seniors' rights had been violated.

Terence Williams, who has since graduated from Hillsborn, said that administrators made students change out of clothes they dressed up in for Spirit Day because it was supposedly disruptive.

"When a teacher tells us to stand up and go to the [principal's] office, that's disruptive," Williams said.

Williams said comments were made in the magazine about facial hair because teachers and the principal have facial hair even though students are prohibited from having it.

(See MAGAZINE, page 19)
Artist suspended for picture with hidden message

FLORIDA — An artist was suspended from school for five days last spring because of work published in the Ft. Myers High School student newspaper.

The art consisted of an upside down cross with a depiction of Jesus with a television for a head. There was also a picture of a woman holding a baby that the student, Camm Plummer, got through a high school news and graphics magazine.

Next to the woman was the quote, “Loving You For Your Unlawful Carnal Knowledge. The “F”, “U”, “C” and the “K” were in bold print."

Frances Mallory, adviser to the Tidal Wave, said that people assumed that the woman represented Mary, the mother of Jesus.

Although she was away from school at the time, Mallory said school officials told her that rumors of the meaning of the artwork spread quickly throughout the school.

She said the paper caused a distraction in class because all of the students were talking about the hidden messages.

As a result, Principal James Browder confiscated all copies of the paper, suspended Plummer, who has since graduated, and said all future issues of the paper must be approved by him.

Mallory said she was told the art was offensive to churches in the community and that it probably included sexual references.

She said if the art was causing a disruption, then she believed that Browder did have a right to correct the problem. But she questioned the quick confiscation and the prior approval rule.

Browder would not comment on the suspension.

States to introduce bills
Free-press legislation pending in three states

Although the outlook is dim for student free press legislation pending this fall in state legislatures around the country, more states will consider similar bills in the upcoming year.

These bills are an effort to return to students the free press protections that were limited in the Supreme Court’s 1988 Hazelwood decision.

In Wisconsin, a staff aide to Rep. Peter Bock, D-Milwaukee, who sponsored AB 118, said the bill would probably not pass the Assembly rules committee before the legislature adjourns in March.

In Michigan, HB 4656 is stuck in the House judiciary committee, according to an aide to state Rep. Lynn Jonenthal, D-Okemos.

The aide said her office is trying to gain more support for the bill before scheduling a committee hearing.

But she said the situation does not look promising.

The bill will die at the end of 1994 if it does not get out of committee.

A bill in the New Jersey Assembly education committee will most likely die in January, according to an aide to state Rep. Anthony Impreveduto, D-Secaucus.

Mary Waller said that AB 575 will be re-introduced with a new number when the legislature opens in January.

But momentum is building for student free expression bills to be introduced in other states.

In Oklahoma, Rep. Laura Boyd, D-Brim, said she will sponsor a student free press bill when the state legislature convenes in February.

In January, a new bill will be introduced in the Missouri House of Representatives by Rep. Joan Bray, D-St. Louis, according to her secretary.

The bill is being re-introduced with some revisions from last year’s version, according to Jackie Rost.

A student press bill will also be introduced again in Indiana, according to Dave Adams of the Indiana High School Press Association.

Adams said the bill will be introduced in the General Assembly in January. He

(See STATES, page 19)
Power

(Continued from page 14)
that a school failed to meet the Hazelwood test.

Desilets v. Clearview Regional Board of Education, was the first case since 1988 where a court said a school did not meet the Hazelwood standard when it censored a school-sponsored student newspaper. (See DESILETS, page 15.)

Clearview Regional Junior High School censored two reviews for rated movies because it said they encouraged students to watch material that was inappropriate for children under the age of 17.

The court said in Desilets that the interests of the school do not extend beyond the style and content of the article.

Therefore, just because the movies may have been inappropriate for children under 17, it did not mean a well-written, non-obscene, non-vulgar review could be censored.

If students believe they have been unfairly censored, they need to ask few questions.

Is the publication school-sponsored or produced as part of a class?

Is the publication a closed forum where student editors have not been given content control over the publication?

Can school officials give an educational reason to censor and show that their censorship is not based on disagreements with the view the students are expressing?

If the answer to any of these questions is no, school officials may not be able to legally censor even under the restrictive Hazelwood standard.

If censorship continues, the administrators must take a refresher course on what the law allows them to do.

In addition, it will take the persistence of students and the cooperation of all the parties involved to explain Hazelwood to the editors, who may be ignorant of the law.

Hopefully, the day will come when all schools can make the grade when it comes to their knowledge of the Hazelwood standard.

Magazine

(Continued from page 17)

ing it.

Nevertheless, the students, who had printed the paper anonymously, were discovered and suspended until a third issue of the magazine was distributed to "right the wrong," in Patrick's words.

According to Williams, the students were told the magazine violated the rights of others because it was abusive, disrespectful and vulgar towards school employees.

The magazine also should not have been distributed on school grounds, they were told.

"The students of my school have the right to speak their minds," Williams said. "Freedom of the press and freedom of expression were stressed throughout the Delphic Oracle."

Williams said that the school had the wrong reaction to the magazine. He said it took an entire day and night to produce the third issue and cost the students one day of classes.

Williams said he did not feel he owed anyone an apology, but a suspension was better than expulsion, which had been threatened at first.

"We didn't have a choice," Williams said. "It was too close to graduation."

Williams said he is still behind the Delphic Oracle and hopes someone will carry on with an underground magazine at Hillsboro.

States

(Continued from page 18)
said the bill needs some revisions because it has failed in the state Senate twice in the past.

In Nebraska, a lobbyist for the Nebraska State Education Association said a draft has been made for a student press bill to be introduced in the legislature in January.

Herb Schimmick said that no sponsor has been announced for the bill.

State Sen. Stan Furman, D-Phoenix, said he will introduce a bill in the Arizona legislature towards the end of January.

He said the he is introducing the bill more to keep the issue of student press rights in the public eye than with hopes of it passing.

Five states now have laws protecting student free press rights.
University censors police reports

Controversial article sparks brief policy of deleting names and details

ARIZONA — An article naming a basketball player allegedly involved in criminal activity at Northern Arizona University resulted in the school channeling police reports through the campus public relations office and deleting names for almost two weeks, according to the editor in chief of the student newspaper.

Tom Evans, editor of The Lumberjack, said that the NAU police department and Vice President of Student Affairs David Markee told the paper that the policy for releasing police reports to the media was being changed because stories named suspected criminals who were not described as "alleged."

According to Evans, news articles quoted suspects directly from the incident reports which did not use the word "alleged."

"I prefer it that way because it gives the stories more credibility," Evans said.

Since 1990, police have allowed reporters to get information on campus crimes directly from the incident reports.

After the September controversy, the policy changed to let police send reports to the campus public relations office (University News) where an attorney for NAU could delete names and other information.

Although the policy returned to normal, Evans said he fears the university will keep a close watch of future articles.

"I'm afraid of a heightened awareness by the administration of police reports," Evans said.

Director of the NAU police department Larry Barnett said the paper had printed inaccuracies. He said the change in policy was the same for all media, and there had been no other complaints from other media about the policy change.

Barnett said he requested a return to the old policy, but if a story jeopardizes an investigation or privacy interests, information will still be withheld.

"We need to make student newspapers more responsible," Barnett said. "We need to give some opportunities for student journalists to be responsible."

The media typically gets blamed when things go wrong, according to Evans. He said no one has pointed out any problems with printing inaccuracies to him.

Nevertheless, a school administrator said an interim change was made in the policy only as a routine review which is done every couple of years.

"There was an oral change directed by me," Vice President for Business Affairs Norman Hintz said. "They were proposed changes that were suggested, not implemented."

Hintz, who along with Markee is a member of the President's Executive Council, the top policy review group on campus, said a review of how police release information to the public had already been under way.

An ad hoc group of Hintz, Markee, Barnett and members of the public relations department decided to make the change in policy.

However, when the public relations office said they could not handle the workload of the police reports, the

"MY MY, WILL YOU LOOK AT THAT... YOUR POLICE REPORT... IT SHRUNK!"
UCLA newspaper seeks access to files

CALIFORNIA — The student newspaper at UCLA filed a lawsuit against the university in September after being denied access to settlement and investigation documents of sexual harassment cases.

Josh Romonek, editor in chief of the Daily Bruin, said that although the university disclosed settlement information of one case without names of people involved, he wants documents on other cases and all materials used to investigate the cases.

The attorney for the paper said that after narrowing the request from all sexual harassment information to all settlement information involving payments of $100,000 or more, the university came up with four such cases.

What the paper got, said Cathy Jensen, was the information about one case involving a settlement of $250,000.

The names of the people involved in the cases, however, were removed from the documents, Jensen said.

According to Romonek, the paper also wanted information that led to the investigation of sexual harassment and any other materials regarding the investigation.

“We wanted investigatory materials and other research materials used to assess the liability of the university in these cases,” Romonek said. “My concern now is what other cases the university has chosen to strike from its institutional memory.”

The information requested, however, is personal and could damage careers, an attorney handling the case for UCLA said.

Philip Spiekerman, university counsel, said that records relating to allegations of sexual harassment entail matters that are private under the California Constitution.

“The records contain highly detailed graphic information,” Spiekerman said. “They could be highly damaging to alleged perpetrators of sexual harassment and alleged victims.”

According to Spiekerman, California law allows a public body to keep records when the public interest of withholding the information outweighs the public interest in disclosure.

The result of disclosing investigation materials to the public would hinder the ability of the university to thoroughly look into an alleged sexual harassment, according to Spiekerman.

He said if names of those involved were disclosed, it would put a chilling effect on the university because the publicity would disrupt the investigation.

But if all of the parties involved agree to let the public see the settlement information with names removed, the university will provide access to the information, he said.

Spiekerman said that stipulation allowed the Daily Bruin to have access to one settlement and soon they will get another.

Nevertheless, Romonek said that the public interest is implicated when a university keeps information that the community would not have known without asking.

He said that although sexual harassment charges can be sensitive matters to every one involved, the risks of not discussing it are far greater.

“Without knowing what is in the settlement, we can’t know if the university is doing anything about it,” Romonek said.

Jensen said there could be fewer of these types of cases if the public knew that harassment would not be tolerated.

The only way to clue the public in on what is happening on campus, she said, is for the university to report on findings of sexual harassment even if the names are not released.

“There is a great learning opportunity here,” Jensen said. “There is confusion about sexual harassment. People think that women sue because they are offended. Once you redact the identifiers, where is the privacy interest in that?” Jensen said.

Reports

(Continued from page 20)

committee decided to stay with the 1990 policy.

“The public relations office, having such a small staff, said they would not be able to be responsive,” Hintz said. “We go out of our way to be responsive.”

The administration tries to balance the need to know of the public with protecting those involved in an incident, Hintz said. In this case, the committee saw no need to continue to filter stories through public relations.

“Our role is to protect the rights of victims or persons involved in serious incidents,” Hintz said. “If it is determined by the police that an incident might need to be reviewed, University News or the Executive Council can look at it and make any redactions necessary.”

Evans said he is satisfied with NAU if the policy works as it has since 1990.

“If I feel there is not a valid reason to withhold information, I will definitely challenge that,” Evans said. “I have no reservations about challenging either through the university or the legal system.”

Winter 1993-94
Getting the message out

Distributing publications on campus can be an uphill battle

The days when there was one publication on a college or university campus are quickly fading from memory. Today, in addition to an "official" student newspaper, there may be several other publications produced by students that represent different ethnic or political groups or that focus on humor, sports or some other topic. In addition, there may be "shoppers" or coupon books that count students among their primary audience.

All of this competition for advertising revenue and readers can make life interesting for this student press. But it also poses the question of just who is allowed to distribute on campus. Can a school allow only certain "approved" publications to have direct access to student readers?

While the scope of distribution rights on public college and university campuses has not been clearly defined by the U.S. Supreme Court, related decisions by the Court and lower court cases that have addressed the issue provide considerable guidance. Indeed, two things are certain. First, as long as a publication does not contain unprotected speech (that is, speech that is substantially disruptive, libelous, obscene, a violation of copyright laws, etc., see discussion, below), school officials will not be able to completely ban its distribution on campus by a student. Second, with but a few rare exceptions, school officials will be able to reasonably regulate the manner of distribution. These two principles establish the parameters for a discussion of distribution rights. Unfortunately, these general rules fail to answer the specific where, when, who and how questions that arise as one tries to get a publication from printing press into the hands of student readers.

Beyond the two very general rules stated above, there is no simple answer.

3) What is the method of distribution? By hand? By distribution box? Each of these questions will be considered separately below.

Character of the Publication

Before asking whether or not the First Amendment protects the right of an individual to distribute his or her publication on campus, it must first be determined whether or not the speech contained within the publication is itself protected by the First Amendment.

In Tinker v. Des Moines Independent Community School District, the U.S. Supreme Court held that "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech and expression at the schoolhouse gate." The Court added, however, that student expression can be restricted where school officials can demonstrate that it would "substantially disrupt" the educational environment or would intrude on the rights of others.

This is a very difficult standard to satisfy. The Supreme Court emphasized in Tinker that school administrators must be able to show that their restrictions of expression are motivated by more than "a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." In addition, school officials must also demonstrate (See DISTRIBUTION, page 23)
Distribute
(Continued from page 22)

facial evidence of a disruption. It is not
enough that the expression in question
"could" or "might" cause a disruption.4

Aside from substantially disruptive
publications, school officials may also
restrict or prevent the dissemination of
other expression that is unprotected by
the First Amendment. This includes ex-
pression that is obscene, libelous, con-
tains "fighting words," or is "likely to
produce imminent lawless action." Note,
however, that while universities may
prevent the distribution of these types of
expression, they are generally prohibi-
ted from establishing a system of prior
review or restraint to make such deter-
minations.5

School officials may also have greater
flexibility in restricting commercial
speech. Commercial speech can be
loosely defined as speech that does no
more than propose a commercial trans-
action.6 Publications are often difficult
to characterize as either commercial or
political (non-commercial) because they
usually contain both commercial and
political messages. However, it is settled
that where political and commercial
speech are "intertwined," the speech will
be given the same protections as purely
political speech.7

Thus most publications that sell ads
merely to finance the publication of their
non-commercial messages, would not
be subject to the less protective stan-
dards for regulation of commercial
speech. However, publications that con-
sist entirely of advertisements, such as
shoppers or coupon books, would be
given less protection. The U.S. Supreme
Court has also made clear that commer-
cial speech will not receive greater First
Amendment protection merely because it
contains some political speech.8 As a
result, the purveyor of an otherwise
purely commercial publication will not
receive greater First Amendment pro-
tection by adding one or two token po-
tical messages. Also, publications can-
not be characterized as commercial
merely because they are sold rather than
given away.9

Commercial speech, in order to be
protected, must concern lawful activity
and may not be misleading. If these
criteria are met, the government must
also show that its interest in restricting
the speech is substantial, that the restric-
tion directly advances its asserted inter-
est and that the restriction is no more
extensive than necessary to serve that
interest.10

Blanket prohibitions on the distribu-
tion of commercial speech are probably
not constitutional. Although it does not
receive the same level of protection as
political speech, commercial speech is

Finally, there is some support for the
notion that public university campuses
are limited public forums whose use is
intended to be restricted to students of
the university. In Widmar v. Vincent,14
for instance, the court made clear that
university campuses are not inherently
public. "We have not held, for instance,
that a campus must make all of its facil-
ties equally available to students and
non-students alike, or that a university
must grant free access to all its grounds
or buildings."15 As a result, a university

University officials seeking to restrict
distribution will have to demonstrate that
such distribution has or will substantially
disrupt the educational process.

protected by the First Amendment, and
"cannot be banned because of an
unsubstantiated belief that its impact is
detrimental."11

Thus, the First Amendment protec-
tion afforded commercial speech must
be outweighed by the state’s asserted
substantial interests in order for restric-
tions on commercial speech to survive.
For instance, in Fox v. Board of Trustee-
s of State Univ. of New York,12 the Su-
preme Court held that a public
university’s interests were substantial
enough to prohibit the door-to-door sale
of housewares in university dormito-
ries. In Fox, two state interests were
implicated by the plaintiff’s distribu-
tion — the right of the university to con-
trol the use of its property and the right/
obligation of the university to secure a
peaceful and studious environment for
students living in the dormitories. It is
unclear, however, that Fox could be
expanded to prohibit distribution in-cam-
pus dormitories of commercial publica-
tions, which are obviously less intrusive
than is face-to-face solicitation.13 In ad-
dition, Fox would not apply to restric-
tions on distribution of non-commercial
publications, or with respect to distribu-
tion in other, more public areas of cam-
pus.

might claim that its property has, since
its very creation, been reserved for the
exclusive use of its students, and that
non-student speakers do not enjoy the
same access privileges. The success of
this argument in a given case will largely
depend on the location of the distribu-
tion point and the university’s pass policy
or practice in limiting access in that area
to students only. (This argument is dis-
cussed more fully in the following sec-
tion.) Note, however, non-student groups
would probably be able to sidestep any
"student-only" regulation simply by en-
listing the help of willing students to
assist with distribution.

To summarize, there are two content-
centered standards for testing the con-
stitutionality of restrictions on the dis-
tribution of publications on public univer-
sity campuses. In most cases, Tinker
will be the applicable standard. Specifi-
cally, university officials seeking to re-
strict the distribution of a publication
will have to demonstrate that such distribu-
tion has or will substantially disrupt
the educational process or infringe on
the rights of others. If the publication in
question is commercial, however, a less
exacting standard will apply. Ostensi-
bly, university officials have greater
(See DISTRIBUTE, page 24)
Distribute
(Continued from page 23)

authority to restrict commercial publications, but because commercial speech is entitled to some First Amendment protection, the government must still create—by express policy or simply by practice—a "limited" or "semi-public" forum, access to which may be limited to certain groups or to discussion of certain topics. A limited public forum is created where a state intentionally opens previously private property up for

Expression in closed or non-public forums is given less First Amendment protection than expression in public or limited public forums.

...distribute a substantial interest in restricting the distribution of such publications. And finally, there is some authority to suggest that students may have a stronger First Amendment right of distribution on campus than their non-student counterparts.

Location of Distribution
In addition to the significance of the character of the publication, the rights of a person seeking to distribute are also affected by the location where distribution is planned. The U.S. Supreme Court has consistently held that expressive activity that occurs in "traditional" or "quintessential" public forums is afforded greater First Amendment protection than speech in non-public forums. Content-based restrictions on speech in public forums are subject to strict judicial scrutiny and are constitutional only if they serve a compelling government interest and are narrowly drawn to achieve that end. The government may impose content-neutral regulations affecting the time, place and manner of expression in a public forum; however, the state must show that those regulations are narrowly tailored to serve a significant government interest and that they leave open ample alternative channels for expression. Government-owned property is a public forum if it has traditionally been used by the public for expressive activity. In addition to traditional or quintessential public forums, a state may also

...public expression. It cannot be created by government inaction. As a result, in determining whether a limited public forum has been created, courts look to the policy and practice of the government to determine its intent.

In creating a limited public forum, the government may limit access to certain people, issues or modes of expression; however, once the government has opened a forum for communication, "it is barred by the First and Fourteenth Amendments from discriminating among forum users solely on the basis of message content." Where a limited public forum has been created, expression in that forum is given the same First Amendment protection as expression in a traditional public forum.

Finally, expression in closed or non-public forums is given less First Amendment protection than expression in public or limited public forums; nevertheless, regulation therein still must be reasonable and not based on the speaker's viewpoint. Government property that is neither a public nor a limited public forum is considered a non-public forum.

The U.S. Supreme Court first addressed the public nature of university campuses more than twenty years ago in Healy v. James. The Court recognized in Healy that "the college classroom with its surrounding environs is peculiarly 'the marketplace of ideas.'" A decade later, the court went further by stating that the "campus of a public

university, at least for its students, possesses many characteristics of a public forum." Several other courts have since found parts of public university campuses to be either public or limited public forums. In other cases, courts have found very specific parts of public university campuses to be public forums.

Not all areas of university campuses are likely to be considered public forums. For instance, areas such as administrative and faculty offices would almost certainly not be considered public forums. Also, at least one circuit court has held that public university dormitories only possess some of the characteristics of a public forum. Nevertheless, given all of the above precedents, certain areas, such as sidewalks, lawns and plazas are likely to be considered public forums for expression and distribution. These areas are clearly the types of places that on most campuses have traditionally been open for expressive activity.

There are certain areas of campus, such as lobbies, hallways and other common areas indoors whose forum status is more difficult to determine. These areas are not the type that typically come to mind when one thinks of traditional public forums, but at the same time, they share many of the same characteristics as sidewalks and plazas. Furthermore, these areas are typically created with the expectation that they will serve as venues for at least some speakers and some types of expression. It is most likely, therefore, that these areas would be presumed to be public forums, subject to evidence by the university that they are only limited public forums, and that access to them has been restricted to certain issues, individuals or groups.

Assuming the location of distribution in question is considered a public forum, content-based restrictions therein will be subject to strict scrutiny. To illustrate, regulations that prohibit the distribution of, for instance, "radical right-wing" publications, or even "political" publications, would be subject to strict scrutiny because they are based, respectively, on the viewpoint and content of the message. Furthermore, regulations that are not explicit with respect to content...
**Distribute**

(Continued from page 24)

ent or viewpoint, but which nevertheless discriminate among parties seeking access to a public forum would also be subject to strict scrutiny. Thus, regulations in a public forum that allow distribution of, for example, a university-supported publication, but not a non-university supported publication, would be strictly scrutinized by the courts.

One court held that a public university could not seek to increase the popularity of its own official student publication at the expense of other publications. The same would be true of regulations that allowed distribution of student-run publications, but not non-student-run publications, or distribution of The New York Times, but not The Washington Post. In short, any dissimilar treatment of publications distributed in a public forum will be strictly scrutinized by the courts.

Some of the discrimination among ideas and parties described above might be constitutional if the university could demonstrate that the forum in question was a limited rather than traditional public forum, and that its use had been properly restricted to discussion of those topics or use by those specific individuals or groups. For instance, university officials will often seek to limit access to campus, or parts of campus, to those publications that are somehow affiliated with the university — either because they are supported in some way by the university or because they are produced by university students or student groups. Assuming the forum(s) in question had not previously been open for distribution of all publications, this kind of regulation might be a permissible limitation on access to a newly created public forum.

However, in determining the forum status of a particular place, it is necessary to examine not only the university’s declarations and policies, but also the manner in which the forum is actually used. Therefore, a university could not successfully prevent distribution of certain publications if its practice has been to allow general public access to its property. If a university has traditionally permitted distribution of both student and non-student publications, it cannot subsequently impose a policy limiting access to student publications. While the university might be able to close the forum altogether, it could not pick and choose which publications may distribute and which have to seek alternative avenues.

Similarly, even after a university promulgates a policy limiting access to a particular forum, if the university’s practice is to allow distribution of various publications in the forum, it may not be able to enforce the regulation. Thus, any presumption that a university is a public forum but only for students can be rebutted by evidence that the university intended to allow access to both students and non-students alike, or that solicitation and 3) regulations that establish a licensing system for distribution of publications.

The U.S. Supreme Court has held that the distribution of literature is protected by the First Amendment. This principle has been applied to distribution of newspapers via newstands. Still, content-neutral time, place and manner restrictions are constitutional, provided they are narrowly tailored to serve a substantial government interest and they leave open ample alternative channels of communication.

Blanket prohibitions on the installation of or distribution boxes anywhere on public college property would probably be unconstitutional. It is unlikely that university officials could demonstrate a substantial enough interest to justify such a rule. If university officials could show that newstand distribution was “uncommon with the normal activity of a particular place,” the regulation might be constitutional. But this seems unlikely, because most areas of public university campuses are either public forums or limited public forums, and those areas are by definition appropriate places for the distribution of publications.

Regulations affecting the placement of newstands are much more likely to be constitutional than complete bans. For instance, regulations that prohibit “structures” from being left on public lawns, or that prohibit the placement of newstands in areas that would pose a threat to public safety, are not uncommon. These types of regulations are typically upheld, provided they do not burden “substantially more speech than is necessary to further the government’s interest,” and provided they produce “significant gains in safety and aesthetics.”

There is still more support for regulations that prohibit “hawking” and other direct

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**Method of Distribution and Restrictions**

Despite the fact that a particular publication is entitled to First Amendment protection, its distribution may nevertheless be subject to reasonable time, place and manner restrictions. The three most common types of time, place and manner restrictions in this context are: 1) regulations that either prohibit the installation of distribution boxes or restrict their placement, 2) regulations that restrict “hawking” and other direct
Distribute
(Continued from page 25)
direct solicitation. Courts have recognized that hawking poses dangers of disruption, congestion, harassment and duress. Whether those concerns are substantial enough to warrant restrictions on hawking on public university campuses is not clear. However, the U.S. Supreme Court has upheld university policies prohibiting face-to-face solicitation in campus dormitories, and one federal district court has upheld prohibitions on hawking in areas of campus reserved for tables for student organizations.

Finally, regulations that establish a distribution licensing system or any sort of prior restraint are constitutionally suspect, although not necessarily unconstitutional. In City of Lakewood v. Plain Dealer Publishing Co., the U.S. Supreme Court held that a licensing scheme that gave a particular government official "unfettered discretion" to decide which vendors may place their machines on public property was unconstitutional. While the state certainly has an interest in directing the placement of structures on public property, any regulations must establish precise criteria, not based on content or viewpoint, on which applications are to be reviewed. Otherwise, the Court held, it would be impossible for a rejected distributor to prove that a denial of permission was based on the content or viewpoint of the publication.

Despite these limitations, however, several types of pre-distribution regulations have been upheld by the courts, including payment of licensing fees and requirements that vending machine owners purchase liability insurance.

Summary
As the foregoing discussion suggests, there are a number of factors that will affect the access rights of those who wish to distribute publications on public college and university campuses.

Determining the precise scope of distribution rights in a particular case requires application of several distinct legal principles. Furthermore, every school has different traditions, policies and physical characteristics that make it impossible to establish a definitive and universally applicable set of rules in this area.

Restrictions on the distribution of publications on public campuses will generally only be permissible in three situations: 1) where the forum in question is either private or limited to certain groups or issues, 2) where the content of the publication in question is disruptive of school activities or otherwise not protected by the First Amendment or 3) where the time, place or manner of distribution implicate a significant interest of the university such that content-neutral regulations are warranted.

With respect to the first of these, most common areas of campuses are likely to be considered public forums for expression. Areas such as plazas, sidewalks, and even certain areas indoors are typically created with the recognition that they will serve as venues for public expression. Conversely, university offices, classrooms and similar places are likely to be considered private, because those areas are not the type that were created with the intention of accommodating public expression.

The accessibility of most other areas will likely depend on the policies and practices of the university. In order to restrict distribution in those areas, the university must be able to demonstrate either that those areas are private or that the party seeking access is not in the class of speakers for which the forum was created.

Some university officials might contend that because their campus was created to serve students, access by non-students may be freely restricted or prevented. However, this argument is much more viable in theory than it is in practice. The fact is that most public universities have traditionally permitted expression by non-students on their campuses. Where a university has done so, it may not draft a policy or enforce an existing policy that denies access to non-students.

Aside from the character of the forum in which a party seeks to distribute, the character of the publication is also important. School officials can restrict publications if they can establish that the publication's content is either disruptive of university activities or is unprotected by the First Amendment.

These types of restrictions are rare, however, because the content of most publications is protected by the First Amendment, and it is extremely difficult to establish that a publication could be so provocative that it causes a disruption of school activities. More common are restrictions on publications whose content is purely commercial. Still, it is difficult to justify restrictions on these publications. While they may receive less First Amendment protection, they are not without value, and it is unlikely that a university could demonstrate that treating these publications differently than other publications serves a substantial government interest.

Probably the most common regulations affecting distribution of publications are those that relate to the time, place and manner of distribution. These types of regulations may seem less insidious, but they are often the same effect as outright censorship. Parties seeking to distribute their publications should be especially vigilant of attempts by the university to disguise content-based regulations by using content-neutral language.

On the whole, those seeking to distribute publications on public college and university campuses will typically have considerable legal support for their efforts. While there are several different rationales for restricting publication distribution, they each have legal standards that are difficult to satisfy.

(See DISTRIBUTE, page 27)


**LEGAL ANALYSIS**

**Distribute**

(Continued from page 26)

Sources:
2. Id. at 509.
3. Id. at 509.
4. Id. at 508.
13. Note, however, that if the papers themselves were sold door-to-door and in person, the state's interests in prohibiting such distribution would be the same as they were in Fox. Also, even if the papers were given away by students walking through the dormitory halls, the university's interest in preventing harassment of students may be substantial enough to warrant restrictions.
15. Id. at 267-68 n. 5.
24. Cornelius, 473 U.S. at 800. Thus, content-based restrictions in limited public forums, just as in traditional public forums, are unconstitutional unless they serve a compelling government interest and are narrowly tailored to achieve that objective, and content-neutral regulations affecting the time, place and manner of distribution are unconstitutional unless they are narrowly tailored to serve a substantial government interest and leave open ample alternative channels for expression/distribution.
28. See, e.g., Hays Co. Guardian v. Supple, 969 F.2d 111, 117 (5th Cir. 1992) (holding that all areas "outdoors, on grounds owned or controlled by the university" are public forums); and University of Utah Students Against Apartheid v. Peterson, 649 F.Supp. 1200, 1209 (D. Utah 1986) (holding that "the university campus is available to students as a public forum").
31. Also, because of concerns over congestion and safety and because of the proximity of these areas to classrooms and offices, content-neutral regulations affecting the time, place and manner of distribution are much more likely to be constitutional. See discussion, infra, p. 15.
34. Id.
36. It is not entirely clear what characteristics courts would look at to distinguish student from non-student publications. But the Fifth Circuit implied in Hays County Guardian v. Supple, 969 F.2d 111 (5th Cir. 1992) that any student involvement, either with production or distribution, would be enough to characterize the publication as student expression. Id. at 118.
37. See Perry Education Ass'nv. Perry Local Educators' Ass'n, 460 U.S. 37, 46 (1983).
38. The state probably could not close the forum because of a disagreement with the viewpoints being expressed in the forum. See Trujillo v. Love, 322 F.Supp. 1266 (D. Colo. 1971).
39. See Widmar, 454 U.S. 263 (holding that once a university had opened up its classrooms for use by registered student groups, all registered student groups had to be given equal access to those areas).

30. See, e.g., Hays County Guardian v. Supple, 969 F.2d 111 (5th Cir. 1992) (striking university regulation restricting distribution of publications containing advertising where, in practice, university had permitted distribution of papers such as The New York Times, USA Today and a university-supported newspaper, all of which contained advertisements).
43. Ward, 491 U.S. at 791.
44. See, e.g., Providence Journal Co. v. City of Newport, 665 F.Supp. 107 (D.R.I. 1987) (holding that government's concerns over aesthetics were insufficient to justify a prohibition of newstands).
46. See Healy v. James, 408 U.S. 169, 180 (1972) (holding that "the college classroom with its surrounding environs is peculiarly 'the marketplace of ideas'.")
47. Students Against Apartheid Coalition v. O'Neill, 838 F.2d 735 (4th Cir. 1987).
49. Ward, 491 U.S. at 799.
51. "Hawking" is the face-to-face sale of publications, usually on public sidewalks, street corners and other public areas.
52. See Hays Co. Guardian v. Supple, 969 F.2d 111, 120-121 (5th Cir. 1992). The Fifth Circuit held in Supple that "hawking" does not include distribution by hand of free newspapers. The court held that when newspapers are simply being given away, this activity does not pose the types of dangers that underlie most anti-hawking regulations. Indeed, such activity is virtually indistinguishable from leafleting, restrictions on which have been consistently rejected by the courts. Lovell v. Griffin, 303 U.S. 444 (1938). Still, some courts might still find that even distribution by hand of free newspapers may still pose some dangers, such as congestion, etc., which might be significant enough to justify content-neutral regulations.
56. Id. at 772.
58. Jacobson v. Harris, 869 F.2d 1172 (8th Cir. 1989).

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SPLC Report 27
A Crime Wave

The trend continues as college newspapers are stolen from coast to coast

As a tidal wave of newspaper thefts washes over college campuses from California to Maryland, many administrators and campus police are doing nothing to prevent thousands of papers from being swept away.

In many of the 29 incidents reported to the Student Press Law Center in 1993, no one has been caught. When the thieves do confess, the university has sometimes let them off scot-free.

That trend is beginning to turn around, however. At Duke University a student was recently placed on disciplinary probation for stealing copies of a conservative campus paper. And two Pennsylvania State University students charged with criminal theft agreed to enter a rehabilitation program to avoid prosecution.

Despite the disappearance of thousands of newspapers at the University of Nebraska at Omaha, assistant editor Julie Larsen said that campus police refused to investigate — even though papers vanished from bins right in front of their office.

City police are looking into the thefts — which began Oct. 1 — and Larsen said The Gateway has set up stakeouts and increased its press run to compensate for the trashed papers.

The problems began after the paper endorsed one of the candidates for a student government post, Larsen said, and since then two distribution bins have also been destroyed by the thieves. "These people are really serious about this," she said.

About 10,000 copies of the University of Maryland's Diamondback — half the number printed — were stolen from bins Nov. 1 and replaced with fliers that said: "Due to its racist nature, the Diamondback will not be available today — read a book!"

There had been protest over lack of minority representation in an Oct. 20 fashion supplement that showed mostly white models, Editor Drew Weaver said. Campus police had at least two suspects and are looking for more. Weaver added, and told him they expected to make arrests in the case.

About 750 copies of the student newspaper at Briar Cliff College in Sioux City, Iowa, were stolen Oct. 21. Staff members suspect that a story in the issue about a campus traffic accident may have sparked the theft.

The issue was reprinted the same day, and adviser Michael Crowley said the theft has been reported to campus and city police.

A controversial cartoon sparked the theft of 1,500 newspapers from Johns Hopkins University dormitories in late September. The cartoon showed an Asian man wearing a Chinese Student Association t-shirt telling a white woman "Tony, don't think."

The cartoon illustrated a column by an Asian-American woman who complained that ethnic groups on campus tend to form cliques and urging more efforts toward inter-racial friendships.

"It's our policy not to censor the opinions page," said News Letter co-editor Andrew Dunlap, adding that while a number of Asian student groups are upset about the cartoon "no one has come forward to claim responsibility" for the thefts.

In the university's response to the incident, Dean of Student Services Larry Benedict wrote that while the theft violated the student conduct code he felt the cartoon was (See THEFT, page 29)
Theft
(Continued from page 28)

"offensive" and in “poor editorial taste.”

The university should have condemned the dumping of papers in stronger terms, Dunlap said. “I think they honestly didn’t like the fact that the students dumped [the newspaper], but the priority was denouncing the slur.”

Campus security agreed to investigate the theft, but Dunlap said he is “a little dissatisfied” with the fact that during the incident two students told a guard in a residence hall that they were removing papers in protest and the guard did nothing.

At East Texas State University, at least 3,000 copies of the student paper were stolen in early October, and editors believe they may have been trashed because of a story about the president-elect of the fraternity association.

The issue was quickly reprinted and distributed again the next day, according to adviser Fred Stewart. Campus security officers are investigating the theft.

About 3,000 copies of the student newspaper at West Valley College in Saratoga, Calif., were trashed Oct. 14. While some were recovered from dumpsters, News Editor Jerry Simmons said, they were soaked with rain.

The editors decided to reprint three controversial articles in the next week’s edition, stories dealing with the student government’s violation of open meeting laws, an employee who threatened a student with a lead pipe and a Mexican-American student group upset with professors. Police are still investigating the theft, Simmons said.

A special publication distributed before Ohio State University football games was dumped at the direction of the athletic department because it created litter, according to Lantern editor Chris Davey.

After copies of the Stadium View were nowhere to be found at an Oct. 2 game, photographers were posted by distribution bins two weeks later and stopped men in an OSU vehicle from confiscating copies of the paper. The Lantern is asking for compensation and a written apology.

At Stanford University, 3,000 copies of a conservative campus paper were stolen in mid-October. The theft was reported to the police department and the judicial affairs office, but there are no suspects.

At El Camino College in Torrance, Calif., a professor admitted to taking about 2,000 newspapers Nov. 4 after the paper wrote a story about him being removed from teaching a business math class. Students had complained about the professor’s performance.

The Warwhoop filed a complaint with the campus police, adviser Jolene Combs said, but most likely will not pursue charges of theft and destruction of property after the professor wrote a letter of apology and paid the paper $350 for reprinting costs.

Combs said the professor, a candidate for city council, told her he stole the papers because he thought the story would tarnish his reputation. “He was afraid this was going to hurt his political life,” she said. “He did not seem to be concerned about his teaching future.”

“Him stealing the stacks was inexcusable,” said Warwhoop Editor Marisela Santana. “We felt that the educational process was disrupted by his actions.”

On Nov. 5, more than 3,000 copies of the Tufts University Observer were stolen, leading Editor Adam Solowsky to file a complaint with the university. The associate dean of students has questioned two members of the men’s soccer team in connection with the theft, which trial in the university judicial system, Solowsky said he hopes they will be forced to reimburse The Observer for printing and other costs.

“Expulsion would be nice too, but I don’t think that will happen,” he added, “because this was an act of stupidity rather than anything political.”

Crime and punishment

If students are punished by the judicial process at Tufts, the school will be following the lead of Duke University. A student there was found guilty of theft Nov. 3 and placed on disciplinary probation for the rest of the academic year.

Junior Nico Tynes admitted to stealing copies of the Duke Review after the conservative paper’s editor spotted him taking a pile of papers and followed Tynes into the Black Student Alliance offices.

Tynes was “very defiant, very con-

(See THEFT, page 30)
Thief

Frontational," Review Editor Tony Mecia said. After the two argued for about half an hour, Mecia took back the newspapers and left the office. Tynes said he objected to several articles, including one warning black students that if they disagree with the Black Student Alliance's agenda and "don't toe the party line, you'll be branded as a sellout or an Uncle Tom."

"We'd noticed newspapers missing previously," Mecia said. "This is the first time we've caught someone red-handed."

Tynes admitted to twice confiscating copies of the Review last spring. "I don't think I've done anything wrong," he told The Chronicle, Duke's daily student paper. "I consider it litter, and when I see litter I throw it out."

Disciplinary probation increases the possibility of more serious punishment if Tynes is caught taking papers again, Mecia said, but there are no day-to-day sanctions and it will not be placed on his permanent record. Tynes may still appeal the decision.

Mecia said he was pleased by the case's outcome, which he had not expected "given incidents at other schools where hearing panels, etc., exonerated students." He did not think the Review would take further legal action in the case.

Without taking a stand on Tynes' actions, Black Student Alliance President Sana Coleman said she is circulating a petition protesting the way the trial was conducted.

"It's not right," she said. "It's supposed to be a judicial system and there was no justice there. They wanted to make an example of Nico and they did."

Duke President Nan Keohane's public statement condemning the theft and calling it "unacceptable to deny others the right to express their views or to distribute material that might be offensive" unfairly influenced the trial's outcome, Coleman said.

Tynes' case is not the only one where students have been punished. Two journalism graduates have agreed to enter a rehabilitation program after being charged with stealing 4,000 copies of the conservative student newspaper at Penn State, The Lionhearted.

Shannon Coulter, former co-director of a campus women's group, and her former roommate Alisa Giardinelli, were charged by Assistant District Attorney Ray Gricar with theft by unlawful taking or disposition, receiving stolen property and criminal conspiracy.

The stolen issues included a caricature of a female columnist from The Daily Collegian — the mainstream paper — in a bikini next to a sign reading "Feminist at Work."

If the court approves his recommendation, Gricar said, Coulter and Giardinelli will be on probation and pay restitution to the newspaper. They can ask to have their record expunged in about a year, he added.

Ben Novak, a Penn State trustee who acts as an adviser to the paper, said The Lionhearted's staff agreed to the rehabilitation program and has received $1,500 in restitution so far.

Newspapers thefts continue, he added — 500 to 1,000 were stolen in mid-October — but he hopes the addition of a new publication funded by the National Organization for Women will help solve the problem.

The news is not so positive at the University of Pennsylvania. Nine students who dumped 14,000 copies of The Daily Pennsylvanian will go unpunished, the school's president and provost decided in September, although they warned that future thefts will be dealt with "swiftly and sternly."

The Black Student League organized and sanctioned the incident last April, according to the university. The group was protesting what it called the paper's insensitive policies and more specifically the writings of a conservative columnist who complained that the university gave blacks preferential treatment.

"Mistakes by students must be seen more as opportunities for education than as occasions for punishment," said Professor Howard Arnold, who was appointed to handle the case and recommended that no disciplinary action be taken.

"Of course it's appalling," said editor Stephen Glass of the decision. The outcome shows that "right and wrong no longer mean anything at this university," he added.

Also, administrators at the State University of New York at Rochester have taken no action against students who trashed more than 3,000 copies of the Campus Times last month because a personal advertisement revealed a fraternity's secret motto.

"We put it into the campus legal process," said editor Adam Keats, but "they said it's been so long that there is nothing they can do about it."

The administration had considered drafting a policy outlining the consequences of future newspaper thefts. But Keats said that while a policy "would set an example on campus," administrators recently decided against adopting one.
Intern appealing prison sentence

Judge finds student in contempt of court, orders time in ‘crook box’

MICHIGAN — A Detroit judge sentenced an intern to five days in jail in June for contempt of court, and added a few conditions. The Wayne State University student was ordered to serve his time in the courtroom — dressed in prison garb.

"And we're going to sit you in the crook box, one of the best seats in here, and you can see everything both from a reporter's point of view and a prisoner's point of view," Judge George Crockett III told Detroit News intern Santiago Espana, who has since appealed the sentence and has not spent any time in jail so far.

Espana had just begun his first reporting internship last June when he made the brief phone call that would plunge him into the middle of a bitter battle between the judge and local newspapers.

Crockett had several other run-ins with the press during the potentially explosive trial of three white former police officers charged with fatally beating a black man.

During the June 18 contempt hearing, Espana testified that he accidentally called a juror while compiling a list of telephone numbers to be used when the trial ended. He did not ask any questions and later called back to apologize, he added. But Crockett held that speaking to a juror before a verdict was inexcusable.

When pronouncing the sentence, Crockett said he had mistrusted the News since he was a child, when the newspaper attacked his father during the McCarthy era for defending people accused of being Communists.

The Michigan Court of Appeals stayed Espana's jail sentence until it can consider the case, said Mark Hass, a Detroit News assistant managing editor. The three-judge panel has heard the appeal and taken briefs but set no timetable for a decision.

"This is not a priority for them," Hass said. "I expect that they're not going to do anything until the furor dies down over the trial."

In the meantime, Espana said the jail sentence and resulting media feeding frenzy have not soured him on a journalism career. He plans to return to the News next summer as part of a scholarship program where the paper pays for his education.

His encounter with Crockett gave him a new view of the journalism world as he became the focus of media reports. "The TV people were just the worst," Espana said, describing how reporters hounded his family and deluged his grandparents' house with phone calls.

Journalists from the city's print media were less intrusive, he added, and not every television station was rude.

"I get teased a lot now when I call people for interviews," said Espana, who works on Wayne State’s student newspaper, The South End. "They ask, 'How was jail?'"

The appeals court has a backlog of about a year, Espana said, so he may not know for some time whether he will actually have to serve the sentence.

Espana is not the only journalist to draw Crockett’s wrath. A Detroit Free Press photographer was also charged with contempt for taking a picture of a trial witness who had asked not to be photographed, even though the witness was on a public street.

That case was transferred to a different judge and dismissed in September, according to Detroit Free Press photo editor Mike Smith.

Prez tries to cut funding

FLORIDA — After the campus newspaper endorsed his opponent for student body president, University of South Florida student Jim Johnson charged that the paper had violated a school statute and could lose $200,000 in funding.

Sour grapes? Maybe — except that Johnson won the election.

The narrow victory did not stop him from pointing to a student government statute prohibiting organizations receiving student fees from assisting a political campaign. He asserted that he did not file the charges because the paper backed another candidate.

"Despite the Oracle’s status as the member of the press, the Oracle is a governmentally subsidized publication and must follow the rules of the government," Johnson wrote in an Oct. 20 memo to Editor Phuong Nguyen.

But after a heated debate at the Tampa campus — and a St. Petersburg Times editorial titled "A sore winner at USF" — Johnson backed down six days later, dropping the charges and suggesting that the statute itself needed to be re-examined.

"It's just another victory for freedom of speech," Nguyen said. "He's the new president. There's always a power struggle."

When the charges were first filed with the student supreme court, the Oracle responded with news stories as well as an editorial blasting the complaint as "a sad display of sour grapes" and "a violation of free speech."

(See ORACLE, page 34)
SUNY backs down
School had barred reporter from campus

NEW YORK — Banned from a college campus for what he called persistence and school officials charged was harassment, a freelance journalist fought back and won.

But Eric Coppolino, a former graduate student at State University of New York at New Paltz, is not satisfied. Although the school backed down just before a hearing — rescinding the ban Sept. 1 — Coppolino plans to pursue the lawsuit seeking $125,000 in damages.

"We're saying we never want this to happen again here," he said. "They have to understand that they can't just go around kicking journalists off campus."

The clash with SUNY officials grew out of Coppolino's investigation into the aftermath of a December 1991 transformer explosion, an accident that contaminated six campus buildings with toxic polychlorinated biphenyls.

Coppolino's muckraking reports on the PCB cleanup effort, sporting headlines like "Deep trouble" and "Afterglow," have not done much to endear him to school administrators.

At an editorial board meeting with The Times Herald-Record, for example, SUNY Chancellor D. Bruce Johnstone said he was in favor of barring Coppolino from the campus.

"I really don't even consider Eric a journalist," the Record quoted Johnstone as saying. "He has no interest in the truth but has some other agenda."

Coppolino's comments about the university are equally acrimonious. "All they do is trample on people's rights, almost without exception," he said. "They don't do much educating here."

Last May, Coppolino — who says officials had not returned his phone calls in five months — turned up the heat by enlisting a colleague with a video camera and confronting officials in the lobby of the administration building, questioning University President Alice Chandler as she stepped out of an elevator.

Coppolino's lawyer, Alan Sussman, contends that the incident was simply an attempt to get answers. Harassment would be if "he held her hostage or followed her home or called her in the middle of the night," Sussman said.

But Coppolino was simply "asking questions they didn't want to answer," Sussman said. "He was persistent, but that's what reporters are supposed to be."

David Eaton, the associate vice president for student affairs, disagreed. The next day, Eaton sent Coppolino a letter declaring him "persona non grata" because he "interfered with and harassed pedestrian traffic" and for another incident where he allegedly disrupted a campus tour.

The persona non grata status meant that Coppolino would be subject to arrest if he set foot on SUNY-New Paltz's campus without written authorization from either Eaton or the dean for student life.

"We believe he was kicked off campus because of what he was pursuing," said Sussman, who is seeking — along with... (See COPPOLINO, page 34)
School’s punishment of adviser upheld

LOUISIANA — Without affirming a lower court’s reasoning, the U.S. Court of Appeals for the Fifth Circuit upheld the dismissal of a history teacher’s suit over censorship of a class newspaper.

The court ruled Sept. 24 in Moody v. Jefferson Parish School Board, 3 F.3d 604 (5th Cir. 1993), that Geraldine Moody’s academic freedom case was properly dismissed, but added that the district court’s opinion cannot be cited as an authority “because there may have been flaws in the reasoning ... on the issues of standing, jurisdiction, and the reach of academic freedom.”

Moody was punished after a group of her students published a 14-page newspaper as part of a lesson on the First Amendment. Along with poetry and campus fashion photos, Your Side included criticism of the counseling office and horoscopes advising students to use birth control pills and snort cocaine.

The lesson on freedom of the press came to an abrupt end, however, when the principal ordered the students to stop distributing the paper. Although he rescinded the order after the ACLU intervened, Moody was reprimanded for failure to supervise the student project and transferred to a junior high school.

Judge Marcel Livaudais Jr. dismissed Moody’s suit in October 1992 before it went to trial, citing several reasons. Since she played only a supervisory role in the newspaper, he said, Moody was “not her own — First Amendment rights and lacked the third-party standing necessary to do so. Other courts have allowed advisers to sue on behalf of their students for violations of the students’ rights.

In its decision, the Appellate Court said the school board’s motion for summary judgment was properly granted because Moody failed to present evidence rebutting the school board’s stated reasons — inadequate supervision of students, willful neglect and violation of the school’s financial policy — for reprimanding and transferring her.

“It shatters one’s belief in the judicial system,” said Ronald Wilson, Moody’s attorney, adding that it was “totally unfair” of the Court to base its decision on reasons different from the district court judge’s.

“I think the Court of Appeals hit the nail right on the head,” said lawyer Olden Toups, who represented the Jefferson Parish school board. “This was the kids’ newspaper. It wasn’t hers. . . Her ox wasn’t being gored.”

Moody said she plans to appeal to the U.S. Supreme Court. “No matter what it takes, we’re going to get justice at some level,” she said.

Column

(Continued from page 32)

The entire La Guardia community was appalled by the anti-Semitic article that appeared in the latest edition of ‘Bridge,’” Bowen wrote. “Not only was the article filled with inaccuracies, but it tarnished the image of one of the most racially and ethnically inclusive colleges in the nation.”

The opinion piece, entitled “Who’s the real problem?”, stands up for Mayor David Dinkins and blames Jews for the city’s problems. “Their race was almost extinct. Now they are trying to ‘extinct’ blacks out of everything including existence,” it read in part.

Williams contends that he had corrected mistakes in the piece, but a computer error resulted in an older version being printed. But he also defends his article. “Everything I put in there, I have facts,” he said, citing books and the Bible as his sources.

Admissions staff dumped paper to hide stories on flasher, feces

TENNESSEE — Front page stories on flashers and feces did not project a rosy image, so staff in Vanderbilt University’s admissions office trashed copies of the campus newspaper to keep the articles from prospective students.

A new policy mandating the display of The Vanderbilt Hustler and three other newspapers was adopted by the dean of admissions at the Nashville school in September, soon after he was told the paper was being dumped.

“I had never thought that there needed to be a policy,” said Dean Neil Sanders. “The Hustler should have never been pitched.”

The Aug. 31 issue was thrown away because of a story detailing a woman’s report that she had been flashed at the student center, and the Sept. 14 issue was discarded because an article described how library books were found smeared with feces.

Hustler news editor Bryant Palmer was delivering the Aug. 31 issue to the admissions office when, he said, the receptionist asked if “there was anything bad” in the paper. A photographer captured trashed copies of the Sept. 14 issue on film and the Hustler ran a story.

Sanders promptly apologized and adopted the formal policy, Palmer said. “I’ve been in the office a couple of times since then,” he added, and the Hustler has been on display. The office receives about 100 copies of each issue.

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NEW YORK — When Daniel Harris made a promise, he was prepared to go to court to keep it.

The effort paid off in July when a District Court judge decided Harris, a third-year law student at State University of New York at Buffalo, could not be forced to turn over a tape recording of an interview he had done for the law school newspaper.

The associate dean he had interviewed “was uncomfortable with the tape recording, but I assured him that no one else would hear the tape,” Harris said. “I was convinced that I had to keep my word.”

Jeffrey Blum, a former professor at the law school, sent Harris a subpoena seeking the tape in April. He believed the recording would support his allegations that the school terminated him because he advocated controversial positions.

Unfortunately for Harris, the subpoena came during final exams. “It was a big headache,” he said.

But with the law school’s trial technique instructors as counsel, Harris fought back. He spent part of his summer meeting with his lawyers and going to the hearing.

Blum argued that because Harris — who writes for The Opinion as a volunteer — is not a professional journalist, he is not protected by New York’s shield law. That law says people working as journalists “for gain or livelihood” will be protected against subpoenas seeking to force them to reveal sources or information they have gathered.

But on July 19, the court found that the case was governed by federal common law rather than the state statute because Blum was claiming violation of his rights under the federal constitution, giving Harris a qualified journalist’s privilege. “[W]hether a person is a professional journalist is irrelevant,” the judge wrote in Blum v. Schlegel, 150 F.R.D. 42 (W.D. N.Y. 1993). “The question is how the person asserting the privilege intended to use the information gathered.”

Because the information was not received “under a cloak of confidentiality,” the decision continued, Harris’ privilege was not absolute.

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**Coppolino**

*(Continued from page 32)*

damages and legal fees — a declaration from the court that the four-month ban violated Coppolino’s First Amendment rights.

University spokesman Kenneth Burda said officials at the school cannot comment on a case in litigation.

A hearing on a preliminary injunction was scheduled for Aug. 20, but 47 hours before the court date school officials “said uncle” by faxing Coppolino a letter admitting him back onto the campus, he said.

Offered a negotiated settlement where the university would drop the ban if he and Sussman would abandon the lawsuit, he added, “We in professional legalistic language said, ‘Ha!’”

A change of heart was not enough, Coppolino said. He wants the school to admit they were wrong. “I think it’s incredible that in this day and age you need to go to court to have access to your civil rights. I worry about the people who don’t have first rate civil rights lawyers.”

With the access issue moot now that Coppolino is free to roam the SUNY campus, Sussman said he expects the case for damages to go to trial in March.

Meanwhile, Coppolino said the PCB cleanup story is “moving along just fine. Once I got back on campus, it was much easier to talk to students.”

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**Oracle**

*(Continued from page 31)*

speech.”

The Oracle received $200,000 from student fees last year to cover printing costs, a third of the newspaper’s total budget. In his memo to Nguyen, Johnson proposed that the student government continue to pay for printing and the Oracle in exchange agree to provide space for free classified and student organization ads. But Nguyen said the paper already devotes a full page to free announcements every day.

On Oct. 26, Johnson sent Nguyen another memo, “After consultation with University officials, other experts in the field of law, and close friends, I hereby drop the charges against the Oracle,” he wrote.
Absence of Malice

Legal protections can help newspapers beat libel lawsuits

While a libel suit can strike at the finances of a school newspaper, court rulings protecting opinion and criticism of public officials can often provide the antidote to the lawsuit's venom.

Victories have been won recently in several libel cases against college papers as judges recognize opinion and satire or find that police officer plaintiffs are public officials.

In September, a judge dismissed a case in California, Nungaray v. Cuesta College, after deciding that a safety officer was a public official. (See NUN GARAY, page 36.) Courts have held that public officials and public figures must show "actual malice" to make a successful libel claim, meaning they must show that the paper knew the statement was false or had reckless disregard for determining its truth.

The distinction comes from a U.S. Supreme Court case, New York Times Co. v. Sullivan. It would "put too much of a chill" on expression, according to Libel Defense Resource Center general counsel Henry Kaufman, if "you had to prove the ultimate truth of what you publish."

The judge also decided in the case against Cuesta that the cartoon in question — which showed the officer ignoring a burning car to chase a cyclist riding outside the bike lane — was clearly a caricature. The U.S. Supreme Court has said statements which no reasonable person would believe to be stating actual facts, such as satire, are protected by the Constitution.

The difference between a public official and a private individual also came into play in the case against a student newspaper at Cleveland State University in Ohio. (See CLEVELAND, page 36.)

A police officer filed the suit after a newspaper editorial accused him of brutality and discrimination. The judge dismissed the case after deciding the officer was a public official. That case is under appeal.

While many libel suits are won or lost on the question of whether the person claiming injury is a public official, public figure or private individual, courts are not always consistent in making the determination.

A public official is generally defined as one who has, or appears to the public to have, a substantial responsibility for or control over the conduct of government affairs. Courts have divided on the issue of whether police officers are public officials, Kaufman said.

Another protection the courts have given journalists deals with the distinction between opinion and fact. That distinction led a judge to rule in November that a letter to the editor published by Indiana University of Pennsylvania's student paper was not defamatory because it contained only opinion based on facts the author had stated in the letter. (See PENN, page 37.)

The Supreme Court decision in Milkovich v. Lorain Journal Co. determined that opinion based on a description of libelous facts was no less libelous. But pure opinion addressing matters of public concern "which does not contain a provably false factual connotation" is still fully protected.

With Milkovich, Kaufman said, the court moved away from the idea that opinion is always a defense. "They will not necessarily protect something because you wrote, 'In my opinion . . . ."
Officer accused of racism appeals dismissal of suit

OHIO — A retired police officer is appealing the dismissal of his libel charges against Cleveland State University, charges he filed after a campus news magazine said he had a reputation for "excessive use of force, brutality and discrimination."

Officer Bill Waterson's case, which revolved around an editorial in a student publication for the black community called The Vindicator, was argued at the end of August.

The state's motion for dismissal of Waterson v. Cleveland State University, No. 93-API-091348 (Ohio Ct. App. 10th Dist., Sept. 14, 1993) was granted after the judge determined that Waterson was a public official and must prove actual malice, according to Assistant Attorney General Catherine Cola, who defended the paper.

"We got hammered," admitted Christopher Kuebler, Waterson's attorney. But a 41-page appeal was not long in coming. "The ink of the decision was not even dry when we filed an appeal."

The lawsuit, filed with the Ohio Court of Claims in March 1991, asks for $300,000 in compensatory damages. Because only a state agency can be sued in the Court of Claims, claims against The Vindicator's editor, the adviser and a police officer who allegedly provided false information for the editorial were dismissed.

The editorial, written by Vindicator editor Zina Quarles, was headlined "Does Bigotry Win over Student Safety?" and alleged that, among other things, Waterson "held a gun to someone he assumed to be gay and made him walk across a frozen pond" and "has been known to choke students until they pass out."

Quarles attributed quotes calling Waterson an "extremist" who makes others "uncomfortable" to anonymous sources within the police department.

In the next issue of The Vindicator, Quarles wrote an explanation at Waterson's request and reprinted the editorial with minor changes. "In no way was the editorial to be taken as if it were following an investigation by authorities but as allegations from concerned employees within the department," she wrote.

Quarles was a graduate student who has left the school and did not testify at the trial, Cola said, although school administrators submitted depositions.

In the appeal, Kuebler argues that Waterson was not a public figure and "the statements were so outrageous that no individual, whether engaging in reasonable inquiry or otherwise, could possibly believe that the accusations were true."

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Judge: Cartoon wasn't libelous

CALIFORNIA — A libel case over a comic strip was dismissed in September after the judge decided a Cuesta College safety officer was a public official and the cartoon was clearly a caricature.

Officer Tom Nungaray filed the lawsuit in April 1992 asking for $50,000 in damages after The Gov, a student government newsletter, printed a comic strip depicting Nungaray as ignoring a burning car to chase down a cyclist riding outside the bike lane.

"It was a cartoon. It was done in fun," said Gov adviser Karen Berger. "I was very concerned about what this was going to do as far as free speech."

The suit charges that the comic strip caused Nungaray to suffer "loss of his reputation, shame, mortification and hurt feelings," injuring him in his occupation by accusing him of incompetence.

In Nungaray v. Cuesta College, et. al., No. CV71542 (Cal. Super. Ct. San Luis Obispo County, Sept. 24, 1993), the judge granted a motion for summary judgment after finding that Nungaray was a public official and "failed to come forward with any evidence of actual malice let alone clear and convincing evidence thereof."

Even assuming Nungaray was not a public official, the judge added, "the average reader would easily recognize the subject publication as a caricature in comic strip form."

"It was a close call, but I think it was a good one," said Cuesta attorney Clayton Hall.

William McKenzie, Nungaray's attorney, said he doubts there will be an appeal in the case, but he also criticized the decision.

"To say someone who hands out parking tickets is a public official is really stretching it," he said.
Libel suit against The Penn dismissed

Letter to the editor accusing professor of favoritism ruled not defamatory

PENNSYLVANIA — A letter published by Indiana University of Pennsylvania’s student paper contained only opinion and was not defamatory, a state judge decided in dismissing a libel suit Nov. 3.

"We'd contended all along that there was no basis for the lawsuit," said The Penn’s lawyer, Robert Dunham. "This is a satisfying victory because we felt the law was pretty clear and the court agreed.

Professor Thomas Sedwick and his son — a student assigned to be his father's only teaching assistant — sued The Penn in April after the paper published a letter to the editor they thought alleged nepotism.

The letter was signed by unidentified "students concerned with retaining the respectability of careers in higher education," but also wrongly listed the names of the university president and the dean of the graduate school.

"It is true that the letter at issue questions the ethical and professional integrity of Professor Sedwick," Judge P.J. Ruddock wrote in Sedwick v. Perrine, No. 51.5 C.D. 1992 (Ind. Cty. C.P., Nov. 3, 1993), "however, it is important to note that the letter was published in a 'Letters to the Editors' format. This format alerts readers that the letters published therein are opinions.

While being in a letters section does not automatically mean the statements are not defamatory, the court ruled that the letter was an opinion based on dis-closed facts — it did not imply the existence of undisclosed facts justifying the author's opinion.

The judge also decided that the letter's headline, the fact that the dean and president's name were mistakenly signed to the letter and a correction noting that mistake could not be defamatory because the letter was not defamatory.

Amy Casino, director of student publications at the university and an adviser to The Penn, said she was excited by the decision. "It's been a long two years and we're happy things turned out this way," she said.

But Dunham warned that the case may not be over, since the Sedwicks may still appeal.

Charges against student dropped, university seeking a settlement

ILLINOIS — A former college yearbook writer is off the hook in a libel suit, but the university’s board of governors is still struggling to work out a deal in the separate case against the school.

Charges against Warbler staff member Stephanie Cruse were dropped in June, but Eastern Illinois University's board of governors is hoping for a settlement. "Discussions between the attorneys are taking place," said Board spokeswoman Michelle Brazell. "Obviously, the issue is money."

Stephanie Cruse, one of the yearbook's editors, had written an article stating that then-freshman Corina Grissom lied to police when she reported that a man had attacked her in her campus apartment. At the time of the story, Grissom had been formally charged with disorderly conduct.

The feature on campus security, titled "Fearing the Unknown: Fabricated assaults and thefts prompt safety for students," reported Grissom's arrest and said her story was a hoax that "fell apart."

A month after the yearbook came out in April 1990, however, Grissom was cleared of the charge and filed a $15,000 suit against both Cruse and the Board of Governors.

John David Reed, chair of the journalism department at Eastern Illinois University, said he believes the lawsuit against the Board of Governors "should be tossed out." Because the student editors have the final say on what goes in the yearbook, he said, the university is not responsible for damages.

Grissom and her lawyer "should have sued the editor or the yearbook," Reed said, "and they didn't do that.

The suit, Grissom v. Cruse, charged that Grissom's "reputation and good name" were damaged by the story, and added that she has "been caused grievous mental suffering and humiliation."

Newspaper sued for personal ads

NEW YORK — Personal ads accusing a student of being promiscuous and claiming she might have AIDS are the basis of a $300,000 libel suit against the State University of New York at Brockport student newspaper.

Adora Masci filed suit Oct. 13 against the editor of The Stylus, the university, a communication professor and her former roommate who placed the ads.

The three ads ran in the Oct. 14, 1992 edition of The Stylus and identified Masci by her first name, according to court documents. "All guys who are looking for a show... Ask Adora. She'll masturbate in front of you for only $30 what a deal!" one ad read. Another said, "After 21 guys she probably has A-- - -!"

Stylus editor Eric Coker declined to comment on the case, as did Masci's attorney, Edward Kiley. Ian Mackler, the lawyer representing The Stylus, did not return phone calls.

The suit alleges that communication professor Albert Skaggs told his class that in such a situation they should promise a retraction but never publish it.
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