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Son of Janet Cooke

By Denl Elliott

A news story that appeared last summer in The Washington Post told readers of a journalistic hoax which may well be titled, "Son of Janet Cooke."

It seems that a Virginia high school journalist won a national award for a school newspaper article on student drug abuse. The psychiatrist quoted in the story was fictitious — a composite, actually, of "seven or eight sources" — according to the student journalist. This student's action was not so different from that of the Post's own Janet Cooke in 1980. Cooke, then a reporter for The Washington Post, wrote a feature on drug abuse among children in Washington, D.C. Cooke's primary focus of the story, an 8-year-old heroin addict named Jimmy, was a fabrication. Jimmy was a composite, said Cooke, of the many children she had heard about. When the details of Cooke's hoax became public, Cooke was stripped of the coveted Pulitzer Prize she had been awarded.

Both of these situations are distressing. As I will discuss shortly, public deception, as that which occurs when the media lie, is damaging to all involved. I find it particularly upsetting that a student journalist would follow in the deceitful footsteps of the professional in this regard. One particular strength of high school and college-aged people is their sometimes unnerving ability to quickly and accurately identify the ills that previous generations have created in society. This student journalism hoax is not an example of students striving to become better and more responsible citizens, better and more responsible professionals than their flawed models. It is an example that suggests that we have no reason to hope that future professional journalists will be any more ethical, any more responsible, than the current practitioners. The student journalist in this case reportedly hopes to become a lawyer, not a journalist. That does little to relieve my concern. I don't want my attorney or my doctor to lie to me any more than I want to read lies in my daily newspaper.

Perhaps this student has learned some lesson through his experience. The disclosure of the hoax put his college acceptance on the line. The student presumably lost the trust and respect of fellow newspaper staff members, faculty and others in the school community. Since his story won a national honor, his downfall too was nationally known rather than simply a private humiliation.

However, when the student is quoted as saying he was not "too upset" about the hoax, and that he "never thought it would go beyond the journalism classroom," I wonder if the student learned the simple fact through his experience that lying is wrong. Lying is inherently wrong because of the harm it causes to the people being deceived and the person deceiving. Lying in a newspaper story is even more reprehensible because, in addition, the act lessens the necessary trust readers have that information they read in the newspaper will be accurate.

Believing faulty information

Lying harms the people deceived in many ways. Perhaps the most obvious is that readers form opinion based on misinformation rather than on truthful statements. The quotations given to the fictitious psychiatrist in the student's story were actually given to the reporter by "a policeman, a parent... things like that." Now, if I read in a news story that a parent or policeman said something like, "Kids today are harming
themselves by using drugs.' I'm going to read that statement differently than if I think it is a psychiatrist saying the same thing. Parents, after all, are going to say that because they don't want their kids using drugs. Policemen are going to say that because they have to uphold the law. But, if I read that a psychiatrist said that, I'm more apt to think that there is medical evidence he or she is using about the human psyche to back up this statement. Part of my believing that statement has to do with the authority of who gave the statement. The deception, then, has caused me to have a belief which rests on faulty evidence. When the truth comes out that no psychiatrist did, in fact, make that statement, I'm going to feel misled, betrayed. I'll not be likely to believe the person who lied to me any time soon, nor am I likely to believe the newspaper which allowed such a lie to be printed.

Liars hurt themselves

The deceiver is harmed as well. Investigators who work in deep undercover, giving up their identities and all contact with their real lives for months or years at a time, psychologically need periods of escape from the deception. They need time to reassess just who they really are; they fear losing themselves in the tightly constructed roles they must play. Philosopher Sissela Bok says about such a case: "Just as one looks at others differently once one knows them to be smooth and experienced liars, so one's view of oneself may alter. For purposes of selfrespect, it may then become especially important to set aside some aspect of one's work or some relationships in which one holds oneself to the highest standards." But, if lying is treated casually, considered to be o.k. if it doesn't "go beyond the journalism classroom," then there is no evidence that one's self-respect, one's view of self is being taken into consideration at all. Perhaps lying doesn't hurt the deceiver in the short-run if the deception is not discovered, but it harms the deceiver in thwarting the development of a view of self that is consistent with that presented to the outside world, in thwarting the development of a sense of self that is worthy of respect.

Readers can't be expected to scan the bylines of their newspaper, thinking, "You can't believe a word this journalist writes," and "Here's a news writer I can trust."

When a lie becomes a public lie, as it does in the newspaper, even greater harm is created. As far as the reading public is concerned, it is not one journalist who lied, it is the newspaper which presented false information to them, disguised as fact. Readers can't be expected to scan the bylines of their newspaper, thinking, "You can't believe a word this journalist writes," and "Here's a news writer I can trust." Instead, they expect the newspaper to only employ journalists who understand the importance of reporting accurate information. When they find they were deceived, they lose trust in the media. They thus lose trust in what is perhaps the single most important institution in guaranteeing a continuation of our democratic way of life.

Political thinkers, from the American Independence through today, recognize that an informed active citizenry is of primary importance to participatory, democratic government. The media, free from government censorship and theoretically free from the influence of private interests, provides needed information in the news section so that the readers understand enough of the issues to take an active part in shaping the country's agenda and future actions.

Democracy requires trust

Through editorials and opinion columns, the media attempt to persuade readers to take particular stands on the issue; they attempt to call readers to action. Without the public trust necessary for this democratic line to function, there is little justification for a free press. A free press exists because it keeps the society it serves free as well.

On the surface, the harm caused by public deception may seem to have little to do with high school journalism. Few high schools are democracies. Despite that, there are some very good reasons for high school journalists and their advisers to be concerned with journalistic deception. First, while high school students may not often have an equal say in school policies that affect them, they do have the freedom to express their opinions and fight for issues of their choice. Back in 1959, when the Supreme Court cautioned that, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," the Court was talking about a far larger group than student journalists. Members of the school community need to be informed about the issues that affect them. While they receive information from other media sources and from official school communications, a high quality student-run newspaper provides a public forum in its editorial pages for student expression on important issues. When trust in the publication breaks down because the readers in the school community discover they have been deceived, an important communication channel is lost —
Son of Janet Cooke—continued

a communication channel that the community may come to depend on to help them exercise their constitutionally protected rights.

A final reason for student journalists to act ethically in deciding never to deceive their reading public is that student newspapers are the training grounds of many future professional journalists. If student journalists learn ethical responsibility along with perfecting their writing and editing skills, the professional press will have fewer incidents of public deception in the future.

Footnotes

1. All information relating to the student journalist's hoax, including direct quotes from the student, were taken from "Student Invented Source in Award-Winning Article," The Washington Post, June 8, 1983, page C-8.

Editor's note: Deni Elliott has taught journalism and journalistic ethics at the high school and university levels, and is a doctoral candidate at Harvard University.

Colorado

Writer critical of coach strikes out

When Kevin Kemp, a senior at Alameda High School in Lakewood, Colo., submitted a letter to the editor critical of the coaching style of the school's baseball coach, he did not anticipate the school-wide dispute over censorship which was to ensue.

Principal Ron Mitchell threatened to stop distribution of the March edition of the Paragon if the letter were published, explaining that he did not want the paper to become an open forum for students to publicly criticize teachers and their policies.

Following Mitchell's decision, staff reporter Richard Ransom contacted the Student Press Law Center to learn that the paper had a legal right to publish the letter. Two staff members then took the letter to the Rocky Mountain News and Denver Post, both of which printed it.

In his letter, Kemp stated, "...[the coach's] tactics were intimidating. At many times, I felt humiliated, causing me to react in ways unbecoming to me. Feeling this way, I could not concentrate on other aspects of my life and not until I left did I regain my self-respect."

Because most community papers by that time had already published the letter, Paragon editors decided against printing it in the April issue and instead focused on the issue of First Amendment rights.

Mitchell objected to the letter because he felt contacting either the coach or himself personally was a more effective way of confronting the problem. "The fact that we have the right to say something doesn't mean that it ought to be said," he stated.

Ransom said he was disappointed with the lack of support from other students who seemed to be looking at the issue of the coach's competence rather than the censorship issue. "I think the teachers who reacted the most were the ones most fearful that it could have been them that we were talking about," Ransom said.

A district-wide meeting is scheduled this fall with the school board attorney to discuss student publication issues and policies, according to Betsey Jay, school district spokesperson.

Mitchell says he does not plan on changing current policy and will censor any similar letters if submitted to the paper in the future.

Policy still in deep freeze

Promises, promises. That is what student newspaper editor Robin Gareiss and her adviser Bob Jason have been given time and again by school board members of Richards High School in Oak Lawn, Ill. Since last January, the school board has been promising to revise the existing publications guidelines to forbid prior review and censorship of the Herald.

Newspaper editors and Jason became incensed last fall when Richards Principal Wayne Erck assigned another administrator, Robert Guenzler, to review all material that was to be printed.

"He's violating what we think are our First Amendment rights," said Gareiss. "Every issue they were going to make us submit two copies of the paper before it was printed. If we disagreed with something they censored we'd have to appeal it to the superintendent. By that time it's too late to do anything about it," she added.

Gareiss and Jason presented a revised policy to the school board in early spring which is still under consideration. In May the board sent the policy to the Illinois State Board of Education to get their remarks.

Gareiss and Jason's appeal gained widespread attention from the local media, culminating in an appearance on the Donahue show, along with Richards Principal Dr. Wayne Erck and Student Press Law Center Executive Director Marc Abrams, to discuss student press rights.
Hazelwood case plagued by delays

Three former news editors of Hazelwood East High School in Missouri are learning the hard way about our nation's lengthy and often frustrating legal process.

Cathy Kuhlmeier, Leslie Smart, and LeAnne Tippett are still waiting for their jury trial in the U.S. District Court for Eastern Missouri, originally scheduled for last February, which will determine whether they have a right to print articles in their student newspaper on teenage sex, marriage, abortion, and runaways.

The question arose in May, 1983 when principal Robert Reynolds censored the two-page spread from the Spectrum, calling it "too controversial." Specifically, Reynolds objected to a quote in one of the articles which talked of marital troubles as being caused by "bedroom problems" which he said incited him to cut the whole series.

The three news staffs then went straight to the ACLU to file charges against the Hazelwood Board of Education, school principal, district superintendent and substitute adviser.

August 20 is the new trial date. Several of the delays, according to the judge, were caused by the fact that the case would take a week to try and that the judge did not have a sufficient block of time on his docket. ACLU attorney Steve Miller also attributed some of the delays to the fact that the defendants were unable to agree on stipulations, or the facts surrounding the case. "It's hard to get them to take a consistent position on a lot of little things," said Miller.

Reynolds indicated a number of reasons for censoring the stories. One of these, he said, was because he and former publications adviser Bob Stergos held different views on what should and should not be printed in a school newspaper. Stergos, he said, thought it was an appropriate forum for investigative journalism while Reynolds believed the paper should serve as a public relations sheet for the school. "Every time the paper came out I could depend on a week of criticism," Reynolds said.

"He tries to cover up the fact that there are problems in this school," said Kuhlmeier. "He wants to make it look like we live in a heaven around here."

One of the arguments raised by the school board for censoring the articles, according to ACLU attorney Steve Miller, was that the extra two pages would cost $200 to print and there was not enough money in the budget to cover this. Miller pointed out the irony that while it could not afford the $200 printing costs, the board could somehow find about $30,000 in attorney's fees to prohibit the articles from being printed.

"It's scandalous," he said. "I don't understand how they can spend their money this way acting as a government entity. They forget that their constituency is the students, not just the voters."

Kuhlmeier complained that the quality of the Spectrum has declined since Stergos resigned from his adviser post (for reasons unrelated to the censorship issue.) The new adviser, she says, does not allow investigative or in-depth articles in the paper. "Her idea of an editorial is something on overweight people. We just don't want to do that," she said.

CENSORSHIP

Missouri

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The Montgomery County, Md. Board of Education has yet to come up with a publication policy which meets constitutional standards, despite the legal run-in almost encountered last March when a high school yearbook adviser and principal censored a group of ads from the Winadup, the Walter Johnson High School yearbook.

Both the Student Press Law Center and the American Civil Liberties Union jumped in on the controversy in January, calling the censorship unconstitutional. Both groups submitted suggestions to the board on how the publications policy could be altered to be constitutionally acceptable.

A new policy was drawn up and distributed in early June by a policy committee to be formally presented, discussed and voted upon at its June 25 meeting. While the new guidelines included minor improvements said Executive Director Marc Abrams of the Student Press Law Center, "for the most part, they were no better than their predecessors."

Both the ACLU and the SPLC were dissatisfied with some of the conditions listed in the guidelines which would justify censorship. "They failed to define all terms and sought to control broad areas of speech which are clearly legally uncontrollable. They stifled free expression in the schools in a way which the courts prohibit," Abrams said.

Both legal aid groups spoke at the June 25 meeting where a sec-

Maryland

School board haggles over new publication guidelines

ond, much improved draft of the guidelines was distributed. While the new draft resolved many problems, both Liz Symonds of the ACLU and Abrams urged board members to revise the policy to meet constitutional standards. In a unanimous vote, the board deferred final adoption of the guidelines until later in the summer, after parts of the policy were discussed with an attorney and revised.

Many board members did not appreciate the SPLC and ACLU involvement in formulating a new publications policy. As board member Marian Greenblatt said, "The school system is not being run by lawyers, it's being run by board members; I think it's up to the board now."

The 10 pages of ads which triggered the conflict included pictures of beer cans, students drinking beer, and a drawing of four tombstones. On one of the tombstones were the words from a song by the Grateful Dead "Riding that train high on cocaine" while another read "Have you gotten on her yet?"

"Essentially what [the board] is trying to do is to ignore reality," said Alan Hansen, one of the students who bought the ads and also a yearbook staff member. "They don't want to admit that high school students drink alcohol and use cocaine."

School board president Marilyn Praisner expects to have a final policy adopted by the end of the summer. Yet Hansen warned that "there's a potential for numerous lawsuits if they don't."

Maine

Student wins right to print gory quote

It took three months of legal battles, but an out of court settlement won Joellen Stanton the right to print a quote about the death penalty next to her senior picture in the Brunswick (Maine) High School yearbook.

Stanton filed suit against the Brunswick School Board in the U.S. District Court for Maine last January, claiming that the school's principal and superintendent violated her right of free speech by censoring the Time magazine quote from the Dragon.

Terms of the settlement allowed for the quote to be printed next to Stanton's photo on the condition that she include the source, date (Jan. 24, 1983) and a sentence of explanation reading "This quote focuses on the reality of violence in today's society."

The quote states: "The executioner will pull his lever four times. Each time 2,000 volts will course through your body, making your eyeballs first bulge, then burst, and then broiling your brains."

The board also agreed in the settlement to pay the Stantons' $7,000 legal fees as well as any additional costs incurred from printing delays.

"We feel we won," said Joellen's father, Bill Stanton. "It's not a complete victory, though. We feel there was some abridgement of our rights."

In late April, the school board voted 4-3 to exclude the quote from the yearbook, to refuse the Stantons' proposals, and to use all legal avenues necessary to accomplish this end — a decision that would cost the board more than $100,000 and a two-year delay, according to Principal Gerald Millett.

At this point, students began to worry about not getting their yearbooks on time and some voiced
Wyoming

Adviser demoted after policy fight

“They think students aren't capable of making sound decisions,” said publications adviser Judy Worth of Campbell County (Wyo.) High School. Worth was referring to school administrators and board members who supported the decision of school Principal Jay Cason to censor a cartoon critical of the Moral Majority from the Dec. 20, 1983 issue of Camel Tracks.

Worth became even more embittered with Cason in April upon learning through a local newspaper that she had been replaced as adviser for the coming school year. She attributes this to the fact that in the ensuing controversy over school publications policy, she contacted both the Student Press Law Center and the American Civil Liberties Union for legal advice on how to change the existing policy, and that Cason did not like that.

A revised publications policy modeled after the SPLC Model Guidelines was presented in May to the school board by attorney Paul Drew, who represents Worth, editor Dennis Cross, feature editor Jennifer Snell and assistant editor Mark Hester. This policy prohibits prior administrative review, defines libelous, obscene and disruptive material, and requires students to verify all quotes and facts before going to press.

In June, however, the board came up with its own policy draft which, according to Student Press Law Center Executive Director Marc Abrams, "still seriously lacks the mandated protections of student expression which would allow them to be viewed with favor by a court." Specifically, Abrams cited "the lack of definitions of many of the terms used and the overbroad attempt to ban speech clearly protected under the Constitution."

Cason expressed his and other administrators' disapproval over the proposed guidelines. "I'm more com-

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comfortable with a policy that puts responsibility in the hands of a professional rather than those of a 16-year old."

While Cason denies that Worth's replacement had anything to do with the cartoon controversy, Worth contended, "you make the district upset and the district will get even." Worth said she will decide in the fall whether to sue the school board and administrators on the grounds that they violated her First Amendment right to free speech.

Cross said that the editors chose the cartoon because it illustrated their feelings towards a controversy that arose last year when certain books were banned from the library, such as Steven King's The Shining.

"You'd think we were in the Bible Belt," Worth added.

Worth complained that many people confused the issue of whether or not one should criticize the Moral Majority with the issue of whether students should be allowed to print a story or cartoon that criticizes groups such as the Moral Majority. "You could see in some of the letters to the editor we printed — some people just don't understand journalism and what freedom of the press and First Amendment rights mean," she said.

Brunswick continued

concern at a school board meeting. Taking these grievances as well as mounting legal costs into account, the school board agreed to settle the issue out of court.

"A lot of kids respected her right and her position," said Bill Stanton, "but they really didn't seem to come to grips too well with the First Amendment issue and what it meant to them. They placed the yearbook over that."

"I had thought the yearbook was a private, community-based memory bank and that we had a responsibility to control it somewhat," Millett said. "We do not choose to make it a public forum."

School Attorney Merton G. Henry presented a new policy draft to the policy evaluation committee last May. To avoid future ruffling of feathers the draft proposes to eliminate senior quotes from future Dragons. Ironically, a group of distressed Brunswick juniors (who, in the Spring, opposed printing Stanton's quote) presented Millet with a petition in early June to allow quotes to be printed next to their senior pictures in the 1985 yearbook.

Henry said that because the judge declared the Dragon a public forum only for the 1984 issue, the policy could be changed by the school board without being in conflict with his decision.

"They think students aren't capable of making sound decisions," said publications adviser Judy Worth of Campbell County (Wyo.) High School. Worth was referring to school administrators and board members who supported the decision of school Principal Jay Cason to censor a cartoon critical of the Moral Majority from the Dec. 20, 1983 issue of Camel Tracks.

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Colorado

Adviser rights

Olson decision pending in Colo. Supreme Court

Do advisers have First Amendment rights?

The Colorado Supreme Court has been pondering this question lately, but has yet to hand down a decision on a suit started back in 1979 when newspaper adviser Judith Olson of Pikes Peak Community College in Colorado Springs, Colo., found herself without a paper to advise.

The case, Olson v. State Board of Community Colleges and Occupation Education, 652 P. 2d 1087 (Colo. Ct. App. 1983), was argued before the state Supreme Court last October, and besides becoming law in Colorado it will be persuasive precedent for courts around the country. The decision, however, affects only state schools funded with state finances. Private colleges are not bound by this ruling.

The question arose when the PPCC student government withdrew $12,400 in allocations to the Pikes Peak News, cutting the paper's budget by two-thirds. Eventually, the paper was forced to fold completely. The PPCC Fuse, published by the school's journalism department, became the official student newspaper.

Olson argued that rescinding the paper's funds was part of efforts by the student government to censor the paper's contents. This, she claimed, created a difficult environment in which to teach First Amendment ideology to her students.

Larry Hobbs, Olson's lawyer, said the decision should be out sometime this fall, as the Colorado Supreme Court has been known to take over a year to decide a case.

Supreme Court decision

Money: When it can be printed in the paper; when it can't

Editor's Note: While the following story does not involve a member of the student press, we include it because the problem is one frequently encountered in high school and college newspapers.

It may be called "the almighty dollar" but at least according to the Supreme Court, money is not so sacrosanct that it can be removed as a symbol from our national discourse.

In July, the Supreme Court struck one section while maintaining the bulk of a 120-year-old statute which makes it a crime to print or photograph any likeness of U.S. paper currency, regardless of whether there is an intent to defraud or a probability that the reproduction might be passed off as "legal tender."

Drafted during the Civil War as a government fund-raising measure, the act served as one of the primary provisions under which the government prosecuted counterfeiting violations. A modification of this flat statutory ban, passed in 1958, permits "illusions" of money to be published "in articles, books, journals, newspapers or albums" under certain narrowly-prescribed circumstances.

As an overly drastic means of accomplishing a legitimate end, the 1864 law's unqualified prohibition against publications of currency il-
Money continued

Illustrations was not saved by the subsequently enacted exceptions. To fall within the law's exemptions, an illustration must appear in one of a number of specified forums for one of several enumerated purposes: "philatelic, numismatic, educational, historical or newsworthy."

Indeed, the problem of varying statutory interpretations created a sharp divide among federal enforcement authorities over the meaning of such terms as "educational," "historical" and "newsworthy."

While Treasury Department representatives in Washington, D.C. take a broad view of these "purpose" limitations, government advisory rulings indicate that only illustrations of money "relating directly to the item being illustrated" will be exempt from the law's comprehensive ban on pictures of currency — that is, a reproduction of a $10 bill would be acceptable as part of a newsworthy article on $10 bills, but not when it accompanies a story about inflation.

Both the District and Supreme Court agreed in their rulings that this purpose requirement could not be sustained as a valid regulation because it discriminates on the basis of content. Only to this extent did the Supreme Court uphold the lower court's decision. Additionally, the 1958 law imposed three restrictions: 1) the likeness must be in black and white, 2) it must be of a size less than three-fourths or more than 1½ times the size of the currency depicted, and 3) the negative and plates used in making the illustrations must be destroyed after their authorized use.

The Supreme Court disagreed with Judge Broderick's contention that these restrictions have no direct relationship with the evil — counterfeiting — sought to be avoided. "This statute is one weapon in an arsenal designed to deprive would-be counterfeiters and defrauders of the tools of deception," said Justice Stevens.

The case, Regan v. Time, Inc., No. 82-729 (U.S. July 3, 1984), involved a Time graphic where a reproduction of part of a $1 bill that was substantially obscured by a life preserver led to visits from a Treasury Department representative, and a Sports Illustrated cover photo of $100 notes pouring into a basketball net prompted threats from federal agents.

After numerous warnings to refrain from using photographs and artistic renderings of money in its various publications, Time, Inc. brought suit against the government to challenge the constitutionality of these two anti-counterfeiting laws. Despite government claims that the media does not have a constitutionally protected right to publish pictures of currency in any manner that it considers most effective, Judge Broderick ruled that the image of money is "an effective symbol for the communication of ideas" and thus fully protected under the First Amendment.

In his June 1982 decision, Judge Broderick discounted the government's argument that the disputed statutes were required to protect "the value [of] and respect for" this country's currency system. Such a justification, he observed, was impermissible since "government cannot compel or prohibit respect for any symbol or idea." While the court agreed that the need to prevent counterfeiting was an overriding one, it concluded that the provision intruded unnecessarily upon First Amendment freedoms.

The Supreme Court did not follow the lower court's reasoning, noting that "the color and size requirements are permissible methods of minimizing the risk of fraud as well as counterfeiting and have only a minimal impact on Time's ability to communicate effectively." Because color depictions of money require several printing plates, the Supreme Court further reasoned, there is an increased accessibility of such plates to would-be counterfeiters than if only one plate was needed, as is the case with black and white prints.

Because most high school and college publications are printed in black and white, it is likely that the color restriction will have little impact. As for the size requirement, student journalists probably need not worry about Treasury officials knocking on the darkroom door, but nonetheless should be wary of the law's current status. Hopefully, the Supreme Court's ruling will provide student journalists with more definitive solutions to their fiscal photo dilemmas.
Cover story

Incorporation: Should college papers risk taking this road?

As college newspapers have struggled to develop a new identity over the past 15 years, many have attempted to become less dependent on their institutions. One of the methods used to achieve this goal has been incorporation — establishing the student newspaper as a separate legal entity with its own board of directors.

Reasons for incorporating

The decision to incorporate may come from the newspaper staff or the school administration. At some schools, the decision to incorporate may be an effort by the newspaper staff to avoid editorial interference and administrative bureaucracy. At others, the university administration may wish to disassociate itself from an editorial stance with which it disagrees or may be trying to avoid the possibility of liability for the paper's debts or libels. Often the decision will involve a combination of motivations. Whether incorporation is a solution to these problems will depend on a careful evaluation of a newspaper's individual circumstances and the statutes of the state where it is located.

For many students, incorporation is seen as a method for complete escape from control by the university or student government. But incorporation does not necessarily mean freedom from editorial supervision. Restrictive provisions can be written into the paper's articles of incorporation. If control of the board of directors is placed in the wrong hands, an incorporated paper could be less independent than before.

Legally, incorporation may not be necessary to avoid interference. Statements of the United States Supreme Court make it highly unlikely that a state university has any control over the content of a student newspaper. School administrators are prohibited from interfering in the editorial process by the First and Fourteenth Amendments whether or not the paper is incorporated. To avoid control by administrators in a private university, where this constitutional prohibition does not apply, or control by a student government in any school, the articles of incorporation could be used. However, provisions separating control of the paper from the college's grasp must be explicit. Many incorporated papers handle this by requiring that a majority of the board of directors positions be filled by students.

How much it costs

Student editors must realize that incorporation alone will not make a newspaper invulnerable to pressure created by the university. A student newspaper will always be somewhat dependent on its university, whether it be for funding, official recognition, effective campus distribution or merely good will.

The costs involved in running an incorporated business also must be carefully weighed before a newspaper decides to incorporate. Initially, an attorney must be secured to draw up and file the incorporation documents. A lawyer for the university or from the community might be willing to donate these services. A filing fee must also be paid, the amount which will vary
Incorporation continued

The price of independence

from state to state.
Salaries can be a sizable amount of the incorporated newspaper's annual budget. The accounting and payroll functions that the school might have previously handled may have to be taken over by the newspaper. Additionally, the cost of non-student personnel needed to assist both the business and editorial staffs in the daily running of a newspaper formerly paid by the school may have to be assumed by the new corporation. The corporation should be prepared to seek experienced professionals who can add to the stability of the organization.

What are the benefits?
Ideally, an incorporated student newspaper's goal should be financial self-support. Although this is an important step toward independence, some publications may not have the necessary advertising or subscription potential. For a very small newspaper, incorporation may create a business disadvantage.

The greatest benefit a student newspaper gains from incorporation is flexibility. Institutional red tape will be avoided so decisions can be made in a fraction of the time previously required. The paper can grow according to its profitability rather than waiting for university approval. Students also have the educational advantage of working in an environment like a "real-world" newspaper.

Incorporation does have its limitations, however. In some states a public university may not be allowed to allocate its funds to an independent corporation. Political involvement by the newspaper may endanger its tax-exempt status. And many states require that the directors of a corporation be over 18 years old, which may affect the students who can serve on the newspaper's board.

Limiting liabilities

Incorporation can often be attractive to the academic institution as well. Many colleges approve of incorporation as a method of limiting their liability for the newspaper's actions. In a case involving an alleged libel by the separately incorporated Memphis State University Press, the Tennessee Supreme Court held that the state university itself was still protected by sovereign immunity (the traditional privilege of a state not to be subject to suit without its consent) when the publishing corporation's activities were distinct from the university's and the funds of the two organizations were kept separate.

However, court decisions and legislation in many states have created exceptions to the sovereign immunity doctrine leaving state as well as private universities open to liability for damages. Whether a school will be accountable for the actions of a student newspaper may depend on a theory of vicarious liability. Under this theory, if the newspaper is found to be an agent of the university and it is acting within the scope of its actual or apparent authority, the university will be liable for the newspaper's actions. Conversely, incorporation by the paper — separation from university control — may yield protection for the school even where the school is not protected by sovereign immunity.

The main issue in vicarious liability is the ability of the university to control the newspaper. Liability may rest upon a court's view of who controls the paper, with incorporation being only one factor considered. Many schools retain financial control over their student publications, whether through direct contributions of money or through the donation of valuable office space and equipment. Official recognition as a university organization also may require the newspaper to follow certain managerial policies.

What the courts say

Although incorporated as well as unincorporated student newspapers would be subject to these same controls, at least one court has held that financial control is not sufficient to impose vicarious liability for libel. In Mazart v. State, the New York Court of Claims held that the furnishing of office space and janitorial services was not equivalent to the university's control of an agent. Some editorial control would seem necessary for a finding of university liability.

As mentioned above, the United States Supreme Court has determined that a state university has no right of control over the content of a student newspaper. Some lower courts have applied this same reasoning to situations where the
Incorporation continued

school was only attempting to prevent a potential libel. In Milliner v. Turner, a Louisiana Court of Appeals held that because the First and Fourteenth Amendments barred Southern University of New Orleans from exercising editorial control over its student newspaper, the university would not be liable for defamation published in the paper.

Often incorporation will be an indication of a private university's waiver of control over and responsibility for the newspaper. Traditionally, incorporation is recognized as limiting liability to the value of the assets of the corporation. But an incorporated paper could still be subject to the school's editorial control. In such a case a court might well "pierce the corporate veil" and find the university liable for defamatory materials printed in the newspaper. Thus it appears that incorporation will not be the key factor; rather, the ability to exercise editorial control will determine liability for a university.

Steps to disassociation

One commentator has suggested several measures that might make incorporation effective in preventing liability for a private university. First, the formalities of corporate separation, such as a clear division of university and newspaper funds, should be rigorously adhered to. Second, the newspaper should plan in its operation for a possible libel action, perhaps by purchasing insurance. Third, a disclaimer in the paper stating that its views are not necessarily those of the university will emphasize the separation to the public. And fourth, the corporate charter should clearly provide for separation in editorial control.

Incorporation can have some public relations advantage for university administrators as well. When the student newspaper adopts an unpopular view or takes some action the school deems inappropriate, administrators can justifiably claim no responsibility and refer complaints to the newspaper's corporate board. Many members of the university community, however, will continue to see the newspaper as a voice of the school regardless of its independent status.

In sum, the decision to incorporate requires an evaluation of the financial base of the newspaper, the ability of the paper's board and officers to deal with finances in a business-like manner and in general the need for making a change from the paper's present form. Many of the advantages of incorporation can be had by less complicated means. But for some, the decision to incorporate may lead to the discovery of a college newspaper's hidden potential.

Footnotes

2. Applewhite v. Memphis State University, 495 S.W. 2d 190 (Tenn. 1973).
7. Note, supra note 3, at 1075.
A Cumberland, R.I., school committee member who filed a libel suit last January against Cumberland High School editor Colin Murphy wants to drop his suit, but Murphy will not let him off the hook so easily. William O'Coin, also an attorney, sued after Murphy wrote an editorial for the *Clipper Courrier* last December questioning committee member O'Coin's absentee rate at committee meetings.

Shortly after filing the complaint, O'Coin's lawyers offered to drop the suit, but Murphy's attorney, Natalie Urso, refused to accept their offer. Urso instead plans to file separate charges in the fall charging O'Coin with violating Murphy's First Amendment rights and with malicious prosecution by trying to intimidate Murphy with a lawsuit.

Murphy wrote his editorial after O'Coin had attacked school system teachers on their attendance records. Murphy learned of O'Coin's statements from an article in a local paper which also reported the attendance statistics of both teachers and school committee members for that year.

Murphy's editorial stated, "Mr. O'Coin's irresponsibility was shown to the public when he made bitter remarks concerning the Cumberland teachers' absentee rate...he seemed to be enjoying the unseasonably warm weather during the month of June of the 1983 school year when his attendance rate was a mere 25 percent."

O'Coin's complaint asks for a total of $1 million in compensation for "severe adverse and irreparable harm to his professional reputation and integrity."

"He was trying to intimidate us with a lawsuit — trying to scare us off," said Murphy. Urso said that since O'Coin is considered a public figure and because his complaint contains "nothing substantial" — that is, is based on conclusion rather than fact — winning the case should be "no problem."

"I really don't think [O'Coin's suit] is going anywhere," said Murphy, who thought they might be granted summary judgment, meaning that the case would be dismissed by the judge before it ever goes to trial.

Urso says that the "real case" will be their own suit against O'Coin which will wait until the fall "after the successful conclusion of this first case. We also wanted to wait a while to give Colin a break. It's interfering with his schoolwork," he added.

Urso said they will sue under Section 1983 of the Civil Rights Act. This section creates the right of individuals to sue for damages based on a violation of their constitutional rights.

Howard Croll, O'Coin's attorney, declined to comment on the suit.

Murphy feels that the paper has suffered as a result of the lawsuit. "The staff got intimidated. We're no longer allowed to write strong editorials. The paper just went downhill ever since the suit," Murphy said.

Ironically, Murphy was elected as a representative to the school committee at the end of the school year, the same committee on which O'Coin serves.
Georgia high court to review ‘sick’ humor mag.

At the Medical College of Georgia, former humor magazine editors John Jarman and Brian Stone await a decision from the Georgia Supreme Court to determine whether they overstepped the boundaries of First Amendment protections when they wrote a satirical response to a nursing student’s letter to the editor.

Susan Brooks, the former graduate nursing student, brought charges against the editors over a year ago when she wrote a letter asking that the Cadaver upgrade its style of humor. A third editor and the adviser, originally named in the suit, have since been dropped.

The response, signed “Bones” stated, “Our style of humor is really out of control. . . . Our mothers were German Shepards, our fathers were Camels, so naturally we love to hump bitches in heat. Say, Ms. Brooks, when do you come in season?”

Last March the Georgia Court of Appeals reversed a lower court decision which favored the editors, holding that the case did state a cause of action for defamation despite the satirical nature of the magazine, which is normally considered to alert readers to take lightly any material which might otherwise be considered libelous. The Supreme Court soon after granted the defendants’ request to hear an appeal of this decision.

The Supreme Court professed concern over the Appellate Court’s disregard of Pring v. Penthouse International, Ltd., 695 F. 2d 438 (10th Cir. 1982), in its written decision. Pring involved a story printed in Penthouse magazine about a former Miss Wyoming performing “acts of fellatio” (oral sex) with her coach and baton. While being tasteless and crude, the court ruled, the story was non-libelous since it was clearly intended to be satirical. The lower court ruled that Pring was not persuasive and that, coming from another circuit, Georgia courts were not bound by its ruling. The Supreme Court can, if it chooses, adopt the reasoning from Pring for Georgia courts.

Jarman said the defendants presented three arguments in their July court hearing: first, that the reply as well as the magazine itself was “clear satire”; second, that printing the reply is protected by the First Amendment since it was stated as an opinion; and third, Brooks, in writing the Cadaver and calling its contents “sick,” “junk,” “trash,” “something to be dug out of the garbage heap,” and “for the bottom of bird cages,” purposefully instigated the exchange of words.

MSU eds ask suit dismissal

Attorneys for two Michigan State News reporters expect to file a motion for summary judgment in July, hoping that the judge will dismiss libel charges brought against them by Eco-Tech, Inc., an East Lansing, Mich., ecological data management firm. Robert Boling, Jr., president of Eco-Tech, filed charges against the Michigan State University paper last December after it reported on an internal audit made by the university of a $227,000 University contract with the firm. The auditors found some “highly questionable” expenditures of the money, such as on “beer and munchies.”

Boling, who requests $10,000 in damages, claims in his complaint that he was unjustly singled out in the articles and calls statements in them false and misleading.

Boling demanded retractions and apologies from the State News as well as of other professional Michigan papers which ran the story. While two other papers printed retractions, the State News did not.

Michigan
Student pols, eds bicker over funds

A political boxing match is entering its third year at Northern Illinois University in DeKalb. In one corner: the Northern Star, represented by adviser Jerry Thompson and editor Paul Amundson. In the other: the Student Association, represented by student president Ed Gallagher.

The two groups have been fighting for control over $30,000 in budget allocations ever since the Student Association suspended the Star’s funds two years ago after the paper refused to print on the front page of every issue: “Funded by the Student Association” or “Partially funded with student activity fees.” This figure makes up nearly 10 percent of the paper’s revenue.

“I want to know where my money’s being spent,” said Gallagher, who had a few more complaints about the way the paper was being run. “There’s a lot of things going on [at the paper] that are not kosher,” he said, and indicated that the Star misused funds to wage massive campaigns in the paper for political candidates or referendum votes favored by the newspaper staff.

Gallagher did not have many nice things to say about Thompson’s personal character, which seems to be one of the reasons behind the student president’s support of the funding withdrawal. For his part, Thompson feels that “the mentality of one administration to another has not changed” and said that the SA is in fear that the “once almost total sovereignty they had may be earmarked off in the future.”

The saga continues throughout this school year, as the SA has decided against funding the paper for the third year in a row. Meanwhile, Star staffers have kept the paper running on $7,500 of administrative subscriptions and its advertising revenues. Thompson said that he and Star editors will be looking into taking legal measures later this fall.

California

Editor tests Calif. open mtgs. law

An attempt by the Ohlone (Calif.) Community College Faculty Senate to bar student reporters from attending its meetings touched off debate last spring on the public’s right of access to information. They appealed to the California Attorney General and were given an opinion interpreting one of California’s two open meeting laws as applying to community college senates.

The incident arousing debate on the issue occurred last February during the senate meeting on the Fremont, Cali., campus when members decided that a certain item on the agenda was too “sensitive” for outside ears to hear. An Ohlone Monitor news editor in attendance, Sue Hoexter, was told to leave the room.

The (Ralph M.) Brown Act requires that “legislative bodies” of “local agencies” hold their meetings open to the public. Exceptions to this rule are personnel hearings and matters affecting the security of the public and school property. The act states that a “legislative body” includes “any advisory commission, advisory committee or advisory body of a local ordinance created by charter or similar formal action.”

While the Brown act applies to local agencies, California’s second open meetings law, the Bagley-Keene Act, applies to state organizations. This means that the Brown Act applies to California community colleges, which elect their Boards from their own localities, and the Bagley-Keene Act applies to University of California system.

Future faculty senate agendas may include a “personnel item” which will close senate doors to the public when employee matters are discussed.

“I’m concerned that these ‘personnel sessions’ appearing on agendas could cause a few problems in the future,” said Monitor advisor Florence Reynolds. Reynolds expressed concern that private sessions could be used to discuss things which should normally be open to the public.

The faculty senate, not happy with Attorney General John Van De Kamp’s opinion, may still request an opinion of the Brown Act from local state Senator Bill Lockyer’s office. This is because they feel the Attorney General’s opinion is just that — only an opinion — which may or may not hold up in court, depending on the particular judge’s sympathies. However, until challenged successfully, that AG’s opinion is the binding state position.
Student gov causes ‘Logjam’ at Salem State

Whether school politicos may control the quality of the school newspaper they allocate money to or whether the paper is entitled to complete independence from outside control is an issue which currently plagues both the student government and newspaper editors at Salem State College in Salem, Mass.

Student Government President Gary Fravel froze the Log funds last April because he said the paper was not following the “canons of journalism” written in the school constitution. “They claim it’s blackmail, but that’s life,” said Fravel. “Freezing their funds is the only means we have to make them abide by the constitution.”

Fravel said the paper misused funds, did not follow a fair endorsement policy during school political campaigns, skipped issues, and often threw out letters to the editor opposed to the staff’s own views. Perhaps Fravel was also miffed when, after being elected president last March, his picture appeared on the front page of the Log adorned with mask, earrings, and horns. Editors say the picture was placed in the paper by “mistake.”

Current Log editor-in-chief John Fitzgerald denies Fravel’s allegations of abuses and feels that the student government’s manner and approach to altering the paper’s content was “inappropriate.”

“They’re holding the paper hostage and saying, ‘you do this and you do that and then you’ll get the carrot,’” said former Log photography editor Scott Simmons.

“This is fundamentally wrong. It’s a violation of our First Amendment rights.”

Although the editors have expressed a desire to avoid litigation, Log lawyers threatened the student government in July with a lawsuit if an acceptable agenda was not given to them by July 6.

In another First Amendment issue on campus, spring Log editor T.J. Culinane was found guilty of libeling and slandering Fravel on the front page of the paper’s pre-election issue after all 5,000 copies of the issue were stolen from the printers by two unidentified people the morning it was to come out on March 28.

Culinane decided that afternoon to print an additional 5,000 copies but altered the front page to include a statement from the editors describing what happened and that they thought the perpetrators were “opponents” of Don Powers, the Log-endorsed candidate for that election.

Fravel, believing the editors to implicate him in the word “the opponents” pressed charges in school court against Culinane and won. As punishment, the former editor is placed on probation and is restricted from writing anything in student publications.

ACLU lawyers have taken up Culinane’s case and believe that barring him from contributing to the paper violates his First Amendment right to free speech. Action will probably be taken sometime this fall.

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SPLC gratefully acknowledges the generous support of the following institutions and people, without whom there might not be an SPLC, and without whose support defending the First Amendment rights of the student press would be a far more difficult task.

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Lou Inglehart (IN)

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Carol Ann Hall (OH)
Richard Sublette (CA)
Nancy Green (TX)
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Dorothy McPhillips (WA)
Sarah & Reuben Ornstein (NY)
Judy Worth (WY)
Regis Boyle (DC)
Donal Brown (CA)
Tom Eveslage (PA)
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Bear Tracks/White Bear Lake Area HS (MN)
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Sir Francis Drake HS Jolly Roger (CA)
Thurston HS Pony Express (OR)
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U. of Cincinnati Student Media (OH)
Stephen Wines (VA)
David Reed (IL)
Ocean County College Viking News (NJ)
Madeline Dubeck (IL)
Oregon State Daily Barometer (OR)
Who is right? More to the point, who is wrong?

Newspaper staff members of Hazlewood East High School in St. Louis, Mo. prepared a two-page supplement on teenage pregnancy, marriage, runaways, juvenile delinquency and the effects of divorce on families for the March 13, 1983 issue of the Spectrum. After printing the issue, however, editors opened the paper to find that the articles had been deleted by their principal, Robert Reynolds. After voicing protests to Reynolds, the students went directly to the American Civil Liberties Union, bypassing all available in-school remedies, and filed a lawsuit in U.S. District Court.

Now these students await trial in August to determine whether Reynolds was wrong in removing the articles or whether the students, as the Reynolds claims, were wrong in ignoring in-school appeal procedures to the superintendent and school board, thus violating their “right to due process,” as the principal contends. (See story on page 6.)

The students’ concern is with censorship. The principal’s concern is with what is called the ‘exhaustion of remedies’ process.

The doctrine of exhaustion of remedies states
that when administrative remedies to grievances are provided by statute or school policy, all available solutions to a dispute must first be sought by such remedies before courts will act.

Why one should exhaust remedies

Two reasons exist for requiring exhaustion of remedies: first, to be conservative with judicial resources — to prevent further backlog in the already overburdened courts and second, to encourage the use of administrative avenues which may offer easier, more accessible means of relief.¹

As demonstrated by the Hazelwood incident, college and high school students often think that resolution in court is the best and perhaps only way to obtain redress when they feel their First Amendment rights have been violated. Frequently they are unaware that there are methods of negotiation before going to court.

A group of high school students at Walter Johnson H.S. in Bethesda, Md., on the other hand, were very aware of and strictly adhered to the exhaustion of remedies process last spring after publications adviser Susan Cecil prohibited a group of student-paid advertisements from being printed in the 1984 Windup (See story on page 7.) The ten pages of ads she opposed had pictures of students drinking beer, beer cans and a drawing of four tombstones, one inscribed with a line from a 1960s song by the Grateful Dead: “Riding that train, high on cocaine.”

‘A lot of red tape and uncooperative administrators’

One of the students involved in the dispute complained of having to cope with “a lot of red tape and uncooperative administrators” in the period before the settlement.

After the ads were censored, the yearbook co-editor, the business manager and a staff member appealed the adviser’s decision to the school principal.

The principal upheld the adviser’s decision. The students then appealed to the school district associate superintendent and the deputy superintendent. Their final step before the lawsuit was the board of education.

After two months of meetings, debates and letters and just hours before a court hearing in the U.S. District Court for Maryland in which the students had requested a temporary restraining order, the school board voted to allow the ads to be published. The vote came March 1, only three days after the students had filed the lawsuit against the school board, the superintendent, the principal and the adviser.

Considering how many layers of appeals these students went through before any results were realized, one might well prefer to fill out tax forms, as the exhaustion of remedies process can often prove frustrating. Unfortunately for those exasperated with such a procedure, adherence to the exhaustion of remedies process is required in some states.

Whether students must use all administrative remedies prior to filing a lawsuit depends on the particular state statute which establishes the method for alleging a violation of rights. Some statutes explicitly require that judicial review be exercised only after administrative remedies have been exhausted.

Other state statutes, however, may require students to appeal to an administrative group, but here the exhaustion of remedies doctrine is inapplicable.² The doctrine is also inapplicable if the following conditions hold: 1) a question of grievance involves constitutional rights,³ 2) appeals are met with inadequate response,⁴ and 3) there exists a possibility of harm from delays in following the exhaustion of remedies process.⁵

Considering how many layers of appeals these students went through before any results were realized, one might well prefer to fill out tax forms.

At the federal level, exhaustion is not necessary where constitutional rights are concerned. Federal law states that in litigation brought under 42 U.S.C. 1983, the court can either hear the case at once or postpone action up to three months to require that all available remedies are exhausted before the case is heard in court.⁶ 42 U.S.C. 1983 is the statute which allows people who think their constitutional rights have been violated to sue in federal court. Such suits are referred to as “1983 actions,” and it is under this statute that the Hazelwood East students seek redress without exhausting school system appeals.

Process must be adequate and concise

To control administrators who enjoy creating tortuous appeal procedures, this same statute states that the court may decide on the appropriateness of the particular school’s exhaustion process, that is, whether it is adequate or too lengthy.

For example, if students decided to sue their administrators, a judge can decide against proceeding with the lawsuit for up to 90 days if he determines that it is possible for students and officials to reach a quick agreement, and that no one will suffer from the exhaustion process. During this time, the District Court cannot dismiss a case.

In the last 20 years, the exhaustion of remedies doctrine has become confused due to the number of exceptions to the exhaustion rule that the Supreme Court has found.

Until 1963, the courts normally required exhaustion. In Myers v. Bethlehem Corp., 303 U.S. 41, 50-51 (1938),...
for example, the court ruled that no one is entitled to judicial relief for a supposed or threatened injury until all established avenues for administrative remedy had been attempted. In *White v. Johnson*, 282 U.S. 367, 373-4 (1930), the court ruled that “plaintiffs must pursue an orderly process of administration and the court will not ignore the plaintiff’s failure to exhaust administrative remedies.”

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A case where students at a racially segregated school requested equality and the right to register in an integrated school led the Supreme Court to rule that exhaustion is not always required. In *McNeese v. Board of Education*, 373 U.S. 668 (1963), these students shunned the exhaustion of remedies process by not taking their complaint to the school superintendent. Here the court ruled that the school board lacked the authority to grant the students’ request, therefore the exhaustion procedure was inadequate and unnecessary in the first place. Resort to administrative remedies is unnecessary, the court said, if the administrative body offers only tenuous protection.

In subsequent Supreme Court cases, the *McNeese* decision was used as a precedent to find exceptions to the doctrine. In *Damico v. California*, 389 U.S. 416 (1967), a case which challenged the constitutionality of state welfare regulations, the court ruled that a federal district court had improperly dismissed a case because the litigants did not follow exhaustion procedures, and that “relief under the act may not be defeated because relief was not sought under state law which provided (an administrative) remedy.”

In *King v. Smith*, 392 U.S. 309, 312 (1968), the court said that a “plaintiff is not required to exhaust administrative remedies where the constitutional challenge is sufficiently substantial as here, to require the convening of a three-judge court.” Alleging violations of constitutional rights is alone not enough to prevent enforcement of the exhaustion doctrine, yet combined with proven inadequacy of administrative remedies, it can be enough to make the doctrine inapplicable.

Litigating the exhaustion question case by case based on the adequacy of the available remedies continued in the lower courts until the Supreme Court again addressed the issue in *Patsy v. Florida Board of Regents*, 102 S. Ct. 2557 (1982).

In *Patsy*, one of the most significant rulings on the subject to date, the court held that exhaustion of remedies could not be required as a prerequisite to *Section 1983* actions in federal courts. The court inferred from Sections 1983 and 1997e—the latter added to complement Section 1983—along with prior court decisions, that exhaustion is not necessary because of the “paramount duty Congress had given the courts to protect constitutional rights.” *Steffel v. Thompson*, 415 U.S. 452 (1974).

In *Patsy*, a secretary at Florida International University alleged that the university practiced sex and race
discrimination in a series of promotion denials. The lawsuit she filed in District Court went through a series of flip-flop rulings before finally reaching the Supreme Court. First it was dismissed by the three-judge District Court panel because she did not pursue all avenues of remedies that the board of regents said were available. Later, the Supreme Court held that exhaustion need not always be followed.

Exhaustion not always required

In determining whether administrative remedies should be used, the Supreme Court in *Patsy* said that a factor to be considered was whether the decision in question misconstrued the meaning of Section 1983, and the intent of Congress for that statute to have the paramount duty to protect constitutional rights.

The Supreme Court said that when the 1871 Congress developed the Civil Rights Act, from which Section 1983 originally came, it did not intend for an individual to be compelled in every case to exhaust state administrative remedies. The decision stated that exhaustion of state administrative remedies should not be required as a prerequisite to bring action under Section 1983.

Recently a Brunswick (Maine) High School senior filed a suit in U.S. District Court because school faculty members and administrators would not allow a quote about capital punishment to be included next to her picture in a special senior section of the school's yearbook. (See story on page 7.)

The school's lawyers argued that because Joellen Stanton did not appeal the principal’s decision to censor the quote to the school board, she did not use the available remedies that were outlined in school policy, thus she acted prematurely by taking the matter to court. Stanton's lawyers, however, argued that the *Patsy* decision “absolutely forecloses that argument.”

Because Stanton’s case involved the alleged violation of a constitutional right, and because the printing deadline for the yearbook could have passed before all avenues of relief were attempted, resort to court did not violate the exhaustion doctrine. Censorship due to delay might have resulted in an infringement of her constitutional rights.

‘Second guessing’ federal judges

One might infer from recent court decisions that exhaustion is not always required. Yet persons bringing suits alleging First Amendment violations should attempt to exhaust all remedies outside court. Marc Abrams, executive director of the Student Press Law Center, said only when time pressures require fast
Exhaustion continued

action should students consider resorting to court before all possibilities for relief have been attempted.

"It is simply not good strategy to second guess a federal judge," he said.

For example, in Sullivan v. Houston Independent School District, 475 F. 2d 1971 (5th Cir. 1973), the court ruled that students' neglect to seek administrative relief outweighed their claim to First Amendment protection. As an added slap on the wrist the court thereafter required "that the students seeking equitable relief from the allegedly unconstitutional actions by school officials come into court with clean hands."

Litigation is expensive, time-consuming, and frustrating. This being the case, following administrative appeal procedures seems the best course to take, provided that time permits. One may even discover in such a process that the dispute arose from simple misunderstandings. Once in court, rectifying such trivial misunderstandings is a great deal harder than within a school's appeal system.

Finally, contacting someone knowledgeable in student press rights, such as the Student Press Law Center or the ACLU, may prove helpful if further questions on how to vindicate one's constitutional rights remain unanswered.

Footnotes

7. Id.
8. Aircraft, Supra

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