student press law center
report
FALL 1986
Vol. VII, No. 3

Inside:
Supreme Court,
Court of Appeals
Decisions

PRIVATE SCHOOLS:

Finding Press Freedom Behind the Ivy Walls

The SPLC Report

SPLC *Report* (ISSN 0160-3825), published three times each year by the Student Press Law Center, summarizes current controversies involving student press rights. The SPLC *Report* is researched, written and produced entirely by journalism and law student interns.

Student Press Law Center *Report*, Vol. VII, No. 3, Fall 1986, is published by the Student Press Law Center, Suite 300, 800 18th Street, NW, Washington, DC 20006 (202) 466-5242. Yearly subscriptions to the SPLC *Report* are $10.00. All contributions are tax deductible. A subscription order form appears on page 39.

Contents:

Cover: Private school students want a free press, too. The *Report* offers some suggestions about how they can fight for their rights.....34

Supreme Court
- Fraser's speech rejected by high court.....3

Courts
- *Spectrum* wins major court decision.....5
- Students not covered under N.Y. shield law.....7
- Fridley High School battles *Tour De Farce*.....8
- *Daily Nebraskan* can legally reject ads.....9

Advisers
- Oklahoma adviser continues legal fight.....11
- Adviser removed, reinstated at Northern Ill.....12

Open Meetings
- UCLA ends 16-month dispute.....14
- Miss. and Mo. address university meetings.....16

Libel
- *Dartmouth Review* settles $3 million suit.....17
- Supreme Court gives media major victories.....18
- Cumberland resolves suit.....18
- Texas A&M teacher sues Accuracy in Academia.....19
- Restaurant owner sues Columbia *Spectator*.....20
- *State News* nears settlement.....20
- Kean College sued over advertising joke.....20

Student Government
- *Montana Kaiman* gets $1 for 1986-87 budget.....21
- Wis. student courts can not hear libel suits.....22
- Buffalo St. studies role of student government.....22

Censorship
- High school shooting censored from yearbook.....23
- Police attack UC-Berkeley student media.....23
- *Not For Profit* case still unsettled.....24
- Star Trek cartoon causes uproar at Erie.....25
- Ithaca High principal confiscates film.....25

Advertising
- Planned Parenthood ads target of censors in N.Y.....26
- Court orders anti-draft ads printed in Calif.....27
- Guidelines adopted at Va. high school.....28

Legal Analysis
- The *Fraser* decision: what does it mean?.....29
- Can minors consent to an invasion of privacy?.....31

Supreme Court reverses *Fraser*

Schools can now limit some "vulgar" speech

The Supreme Court, in its first decision since 1969 involving free expression rights of public high school students, ruled on July 7 that school officials can legally "prohibit the use of vulgar and offensive terms" used in a school-sponsored assembly.

In a 7 to 2 decision, the Court said that Bethel (Wash.) High School administrators did not violate the First Amendment rights of student Matthew Fraser by suspending him in 1983 for giving a speech in a school assembly that contained sexually suggestive language (*Bethel School District No. 403 v. Fraser,* 54 U.S.L.W. 5054 (U.S. July 7, 1986)).

Chief Justice Warren Burger, writing for the Court, distinguished between the free speech rights of adults and public school children.

"In *New Jersey v. T.L.O.,* (1985)," Burger wrote, "we reaffirmed that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings."

Justices Byron R. White, Lewis F. Powell Jr., William H. Rehnquist, and Sandra Day O'Connor, joined Burger's opinion. Justice Harry A. Blackmun concurred in the ruling as did William J. Brennan Jr., who wrote a separate opinion. Justices Thurgood Marshall and John Paul Stevens wrote separate dissents.

Fraser is the first Supreme Court free expression case involving the rights of high school students since its landmark decision in *Tinker v. Des Moines Independent Community School District,* (1969), when it ruled that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

In 1983, Fraser, now an undergraduate at the University of California at Berkeley, gave an endorsement speech for a student government candidate:

"I know a man who is firm—he's firm in his pants, he's firm in his shirt, his character is firm—but most of all, his belief in you, the students of Bethel, is firm. Jeff Kuhlman is a man who takes his point and pounds it in. He doesn't attack things in spurts—he drives hard, pushing and pushing until finally he succeeds. Jeff is a man who will go to the very end—even the climax, for each and every one of you. So vote for Jeff for ASB vice-president—he'll never come between you and the best our high school can be."

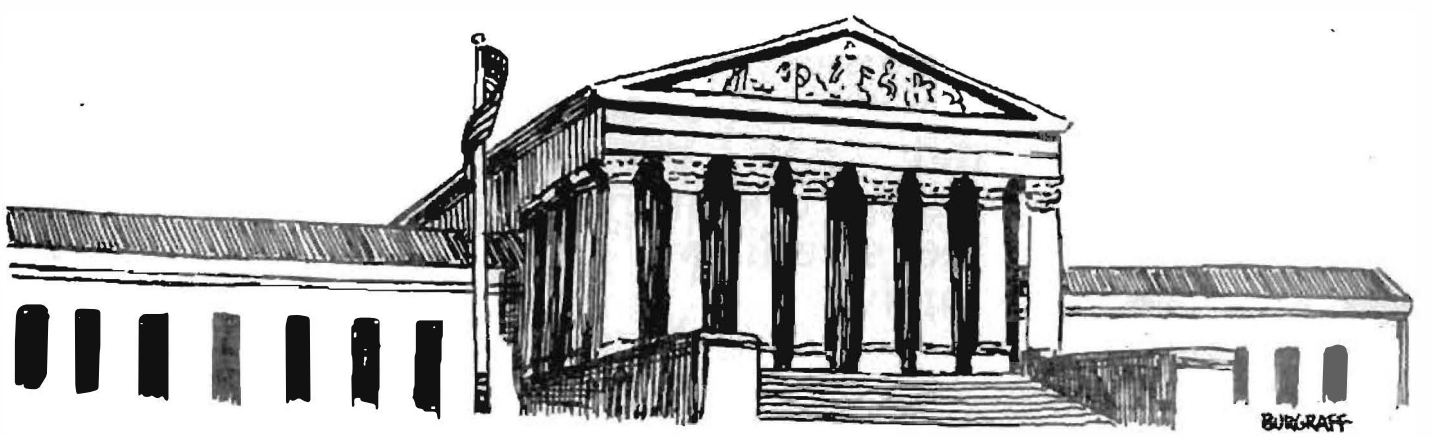
Teachers then complained to school administrators, who suspended Fraser for three days and struck his name from the graduation speaker ballot. The school said Fraser had used vulgar and indecent language and that administrators had a right to control such speech. The school's regulations prohibit conduct that "materially and substantially interferes with the education process. . . including the use of obscene, profane language and gestures."

After exhausting the school district's appeal process, Fraser filed suit, claiming Bethel had violated his First Amendment rights.

The U.S. District Court for the Western District of Washington held that the school's sanctions violated Fraser's right to freedom of speech, that the school's disruptive-conduct rule was unconstitutionally vague and overbroad, and that the removal of Fraser's name from the graduation speaker's list violated the Fourteenth Amendment's due process clause because the disciplinary rule makes no mention of such removal as a possible sanction. Fraser was awarded $278 in damages, $12,750 in litigation costs and attorneys' fees and was allowed to give his graduation speech in June 1983.

Bethel then appealed to the Ninth Circuit Court of Appeals in San Francisco, which upheld the lower court decision. The appeals court explicitly rejected the school district's argument that the speech had a disruptive effect on the educational process. The appeals court also rejected the argument that the school had an interest in protecting an essentially captive audience of minors from lewd and indecent language in a setting sponsored

continued on next page



continued from previous page

by the school. It said the school had no power to control the language used to express ideas during a student-run activity.

The Bethel School District asked the Supreme Court to decide whether school officials have the authority to control "indecent" speech that is not legally obscene. The case also questioned the definition of student speech that creates a "material and substantial disruption of school activity," and the constitutionality of school policies regulating such speech.

Burger said the appeals court incorrectly interpreted the *Tinker* case as precluding any discipline for Fraser. There was a marked distinction between the political message of the armbands worn by students protesting the Vietnam War in *Tinker* and the sexual content of Fraser's speech, Burger said.

"Unlike the sanctions imposed on the students wearing armbands in *Tinker*, the penalties imposed in this case were unrelated to any political viewpoint."

"In upholding the students' right to engage in nondisruptive, passive expression of a political viewpoint in *Tinker*," Burger added, "this Court was careful to note that the case did 'not concern speech or action that intrudes upon the work of the schools or the rights of other students.' "

The Court also noted the interest of school officials in protecting students in a captive audience situation from spoken language that is offensive.

Emphasizing the school's authority to control indecent speech, Burger wrote, "The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board."

"The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as (Fraser's) would undermine the school's basic educational mission."

Burger, responding to Fraser's claim that the suspension violated due process because he had no way of knowing that he would be disciplined over the speech, said that argument was "wholly without merit."

"The school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions," Burger wrote.

Brennan, in a concurring opinion, said that since there was no indication that school officials attempted to "regulate Fraser's speech because they disagreed with his views," he agreed that the school, in this case, could constitutionally discipline Fraser.

Brennan pointed out, however, that had Fraser given the same speech "outside the school environment, he could not have been penalized simply because government officials considered his language to be inappropriate."

In dissent, Marshall said the school board did not present enough evidence that the speech was disruptive. Stevens claimed that Fraser did not have adequate enough warning that he would be disciplined.

Jeffrey Haley, Fraser's attorney, said he didn't expect any significant precedent set by this decision in the long run because "the majority of justices based their decision on facts; very little based on principle and analysis."

"But in the short run," Haley said, "the decision certainly indicates the attitude of the Court with respect to freedom of speech cases. I wouldn't advise others to take similar cases to the Court."

Cliff Foster, an attorney for Bethel School District, said he was pleased with the decision, but that it was "not that earth-shattering a precedent."

"Most Court members agreed that the school had authority to regulate the speech based on its content as long as there was no viewpoint suppression or discrimination," Foster said.

"We never argued, however, that this case should have an impact on the distribution of written materials; they don't pose a captive audience problem." ■

"The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as (Fraser's) would undermine the school's basic educational mission."

Chief Justice Warren E. Burger

Justice Thurgood Marshall

In dissent, Marshall said the school board did not present enough evidence that the speech was disruptive

Missouri

Spectrum wins major court decision

Appeals court says principal illegally censored paper

In a significant victory for high school newspapers, the Eighth Circuit Court of Appeals ruled on July 7 that the *Spectrum* at Hazelwood East (Mo.) High School is a public forum and that the principal violated the First Amendment rights of three former student journalists by censoring articles in 1983.

The court, in reversing a May 1985 federal district court decision, said in *Kuhlmeier v. Hazelwood School District*, No. 85-1614 (8th Cir. July 7, 1986), "We hold that *Spectrum* is a public forum for the expression of student opinion and that the articles objected to by the administrators could not have reasonably been forecast to materially disrupt classwork, give rise to substantial disorder or invade the rights of others. Accordingly, we hold that the deletion violated the First Amendment rights of the student staff."

"The opinion was totally on our side," Leslie Edwards, the students' attorney, said. "It didn't hedge on anything."

Robert Baine, attorney for Hazelwood, filed a motion for a rehearing by all the justices on the Eighth Circuit.

"In light of the Supreme Court's decision in the *Fraser (Bethel High School No. 403 v. Fraser*, see story this issue) case," Baine said, "I think there is a good chance to affirm the lower court's ruling."

The dispute began in May 1983 when Principal Robert Reynolds ordered the paper's former adviser, Bob Stergos, to delete a two-page spread containing articles reporting on teenage pregnancy, runaways and the effects of divorce on children. Reynolds acted without telling the paper's staff. *Spectrum* staffers Catherine Kuhlmeier, Leslie Smart and Lee Ann Tippett-West filed suit on Aug. 19, 1983, claiming that Reynolds had violated their First Amendment rights.

During district court proceedings, Reynolds testified that he had "no objection whatsoever" to articles on teenage marriages, runaways, juvenile delinquents or teenage pregnancy. However, he objected to three "personal" accounts of pregnant Hazelwood East students which described their use and non-use of birth control methods.

Although the three females interviewed gave permission for use of their comments and were not named in the story, Reynolds maintained that readers would still be able to identify them. He also claimed the material was "too sensitive" for the "immature audience of readers" at Hazelwood East.

Reynolds censored another story which investigated the impact of divorce on children because the reporter failed to contact the parents to explain or rebut the quoted statements of the children. Reynolds said the reporters thereby violated the "rules of fairness" in journalism which justified his censorship.

Reynolds also justified censorship of both stories, claiming they could have warranted an invasion of privacy.

In May 1985, the U.S. District Court for the Eastern District of Missouri held that Reynolds had the right to delete material from the newspaper. The court said that *Spectrum* was an integral part of the school's curriculum, not a public forum, and therefore was not entitled to extensive First Amendment protection. Because the Hazelwood East publications policy required prior review, the judge ruled that the principal and adviser did have control over the paper's content. The court declared that the principal did not have to prove that a substantial disruption would result from the publication.

A central issue in the case was whether the *Spectrum* was a public forum for student expression or merely an "instructionally related activity." The district court ruled that the paper was an essential part of the school curriculum because it was produced by members of the Journalism II class, a textbook was used to teach journalism concepts, and grades and credit were based upon course completion.

But the appeals court held that "although *Spectrum* was produced by the Journalism II class, it was a 'student publication' in every sense. The students chose the staff members, determined the articles to be written and printed, and determined the content of those articles."

> "...Spectrum is a public forum for the expression of student opinion and ... the articles objected to by the administrators could not have been forecast to materially disrupt classwork."

The Student Press Law Center, which filed a friend of the court brief on behalf of the three former staffers, said in its brief that several factors distinguished the paper from a "laboratory exercise." Mark Goodman, SPLC's executive director, said these included the depth of its content, its distribution, and the extent to which the adviser actually influenced choice of material printed.

Goodman noted that the paper published editorials and letters to the editor and articles from persons outside the journalism class, that its circulation exceeded 4,500 during the school year and that it was distributed to the student body and the public. The grades of students enrolled in the course were unaffected by whether their articles appeared in the paper, Goodman said. Further, students not

continued on next page

enrolled in the course could submit articles for publication.

The district court had also held that censorship of non-libelous, non-obscene material in a "classroom exercise" such as *Spectrum* is justifiable provided the principal show a "substantial and reasonable basis" for his actions. It said that Reynolds had done so through his concern that the articles discussing topics such as teenage pregnancy were "not appropriate" for *Spectrum* readers "given their age and maturity."

The appeals court, however, pointed out that the board of education's policy 348.51, entitled "Student Publications" provides: "School sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism."

Citing the 1969 Supreme Court decision in *Tinker v. Des Moines Independent Community School District,* the court said that before a school official can legally prevent publication of material, he must demonstrate that the student expression 'materially disrupts classwork or involves substantial disorder or invasion of the rights of others."

The court held that Hazelwood officials could not have reasonably assumed that the articles in question would "materially disrupt classwork or give rise to substantial disorder."

"There is no evidence which supports the administrators' fear that the pregnancy case study would create the impression that the school endorsed the sexual norms of the students interviewed," the court added.

In dealing with the articles' invasion of privacy question, the court said that "we agree that school officials are justified in limiting student speech, under this (*Tinker*) standard, only when publication of that speech could result in tort liability for the school. Any yardstick less exacting than potential tort liability could result in school officials curtailing speech at the slightest fear of disturbance."

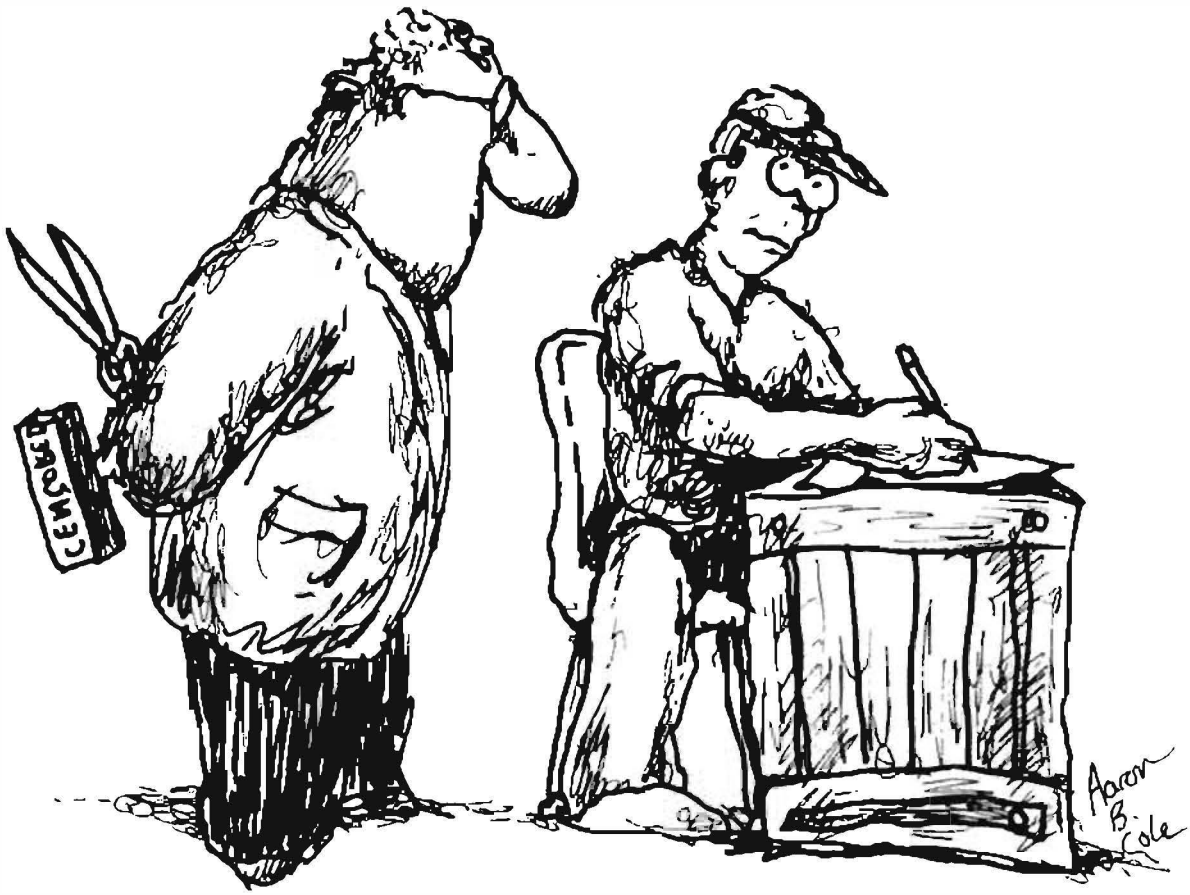
"We conclude that because no tort action based on the articles could have been maintained against Hazelwood East, school officials were not justified in censoring the two articles based on the *Tinker* 'invasion of the rights of others' test."

Edwards said it was the first time a court ruled that an "invasion of a right" must rise to a tort level for administrators to be justified in an act of censorship.

The constitutionality of the school's publications policy was also an issue in the case. Although the policy permits prior restraint, it doesn't offer specific criteria as to what material may be censored. It fails to include guidelines whereby administrators can reasonably predict that certain material will cause serious disruption, and does not provide for prompt review and appeal. Also, the policy does not define terms such as "obscenity," "disruption," "distribution" and "defamatory."

The courts declined to rewrite the regulations for the board of education, but said that it believed "the board of education and the school administrators will make such adjustments to the regulations necessary to comport with the constitutional standards outlined in this opinion."

The court also indicated in a footnote that prior review and restraint could be permissible if the least restrictive means were followed.■



New York

Students not covered under N.Y. shield law

A Nassau County, N.Y., state court judge ruled in May that student journalists are not covered under New York's shield law and must divulge confidential information if subpoenaed.

William Berezansky, a student reporter for the *New Voice* at Hofstra University in Uniondale, wrote about a September 1985 fight involving Hofstra students outside a local bar where up to 10 men beat up two others in what he described as a fight between fraternities. Berezansky had quoted several witnesses to the incident who requested anonymity and was subpoenaed in the criminal assault case this spring. As a result, Berezansky testified at a pre-trial hearing in June.

A May issue of *Newsday* quoted Judge Jerome Medowar as saying, "The Hofstra *New Voice* is not a newspaper as defined by the New York Shield Law. Accordingly, the Hofstra reporters are not professional journalists since they do not work for a newspaper."

Section 79-h of New York's Civil Rights Law states that for a publication to qualify as a newspaper, it must have a "paid circulation."

Although the state has a shield law that gives professional journalists an absolute right to refuse to reveal confidential sources, the statute does not cover student reporters, under the court's interpretation.

In the *New Voice* stories published on September 23 and October 7, 1985, Berezansky quoted several anonymous witnesses about the fight. In one paragraph, he wrote that a witness saw one of the victims "lying on the concrete, with approximately 10 guys around him, punching and kicking him. The witnesses, wishing to remain anonymous, refused to identify those involved."

Attorney Stephen Kunken, who requested the subpoena, said that his clients, Gregory Schor and two other defendants charged in the fight, were identified through photographs of the football team that Hofstra security officials showed the vicitms. However, Schor said he was misidentified. Kunken hoped that he could verify Schor's claim through Berezansky's testimony.

The judge's ruling on the subpoena was part of his decision to allow a special pretrial hearing in June on how the defendants were identified. Calling the identification process "suspect," Medowar said that without the special hearing the defendants could not get a fair trial.

Marvin Zevin, Berezansky's attorney, asked the court to recognize a First Amendment privilege that would protect the student and his sources. But Medowar ruled that the Sixth Amendment right of the defendant to a fair trial outweighed whatever First Amendment rights Berezansky might have.

Medowar said, "The defendants have a right to a fair trial...the freedom of the press is not an absolute right. The First Amendment privilege of freedom of the press can be denied in favor of the right of the accused to a fair trial."

Initially, Kunken subpoenaed both Berezansky and Bari Cohen, another Hofstra reporter. He then decided to drop the subpoena against Cohen, but continued to press Berezansky because Kunken believed he had more information.

The subpoenas called for "all notes, memoranda, documents, reports and news articles regarding a fight at McHebe's Depot...including all notes of interviews with witnesses."

Berezansky, however, said that he didn't reveal any off-the-record information during the pretrial hearing. "I testified only as to how the plaintiffs identified the attackers. I answered the questions with information that was given to me on the record," he said. "The answers I gave didn't bother me. I don't feel I gave any privileged information."

Marvin Zevin, Berezansky's attorney, agreed, saying that Berezansky only told the court what the complainants had told it about identifying the assailants so the court could compare the testimony to verify it.

"William has never divulged his anonymous sources," Zevin said.

"From my point of view," Kunken said, "Berezansky didn't disclose anything that was confidential. The court ruled that he couldn't withhold the information we were seeking based on the situation of the case."

Kunken said it was unlikely that he would subpoena Berezansky again, but added, "I'm reserving my rights to do so." The trial will begin in September. ■

Minnesota

Fridley High battles two court cases

Appealing prior review case; sued over suspensions

Weather is not the only hot topic of discussion this summer in Minnesota. At Fridley High School in suburban Minneapolis, the air is tense and pressure high as the school appeals one court decision and faces another lawsuit filed against it in June.

The first case involves the school's threat to suspend the student publishers of an underground newspaper, *Tour de Farce*, in spring 1985 if they did not submit the paper to the principal for editorial review before distributing it. After exhausting administrative remedies within the school, publishers Cory Bystrom, John Collins and Martin Saperstein, joined by students Adam Collins and David Orangeid, filed suit.

In March 1986, a Minnesota federal district court, in *Bystrom v. Fridley High School*, No. 3-85-911 (D. Minn. March 5, 1986), granted summary judgment for the students, ruling that any prior review of unofficial student publications is a violation of the First Amendment. The school appealed the decision to the Eighth Circuit Court of Appeals. The case should be heard sometime this fall. The Student Press Law Center filed a friend of the court brief supporting the students' position. Meanwhile, the school's prior approval policy will be void unless it's successful in convincing the circuit court to reverse the ruling.

Attorneys for both the school and *Tour de Farce* publishers agree that the case could set precedent on students' First Amendment rights that would measurably affect the seven states served by the Eighth Circuit.

Jan Goldman, an attorney representing the students, with the Minnesota Civil Liberties Union (MCLU), said, "I think we have an absolute winner of a case. If they appeal, it just means we'll win in a higher court and have an effect on all schools in the Eighth Circuit."

School board member Joe Lapinski and other school officials said it wasn't what the paper said, but the way it said it, citing "totally inappropriate language."

Although Goldman considers the case an opportunity to broaden students' First Amendment rights, Lapinski views it as an important means to retain school authority to stop distribution of obscene material to students.

The school attached to its reply brief before the Court of Appeals the paper's last issue, which it did not include during district court proceedings. Foley then filed a motion to remove the issue from the brief, which will be decided during oral arguments before the appeals court.

"You cannot introduce new evidence at the appeals level," Foley said. "There have been definite rulings on that."

The second case involves the sus-

pension of Bystrom, Drangeid and Adam Collins on Tuesday, June 2, following an article called "Slash and Trash '86," that appeared in the paper the day before.

The article reported that the home of Adele Gorman, foreign language teacher, had been vandalized, with tires slashed and the house pelted with eggs, spray-painted and covered with shaving cream. School Superintendent Dennis Rens said the articles said that many students attending Fridley would like to claim responsibility for the act. It also said, "We at *Tour de Farce* find this act to be pretty damn funny."

Rens said the suspensions were due to the article's content, not its distribution. School officals believed the paper had advocated student vandalism against teachers.

Assistant Principal Brian Ingvalson said he didn't overreact by suspending the publishers, but "really believed" they could have incited other students to vandalize teachers' properties.

Attorney Stephen Foley, who also represents the students, called Ingvalson's comment "nonsense."

"There was no reason to suspend the students," he said. "Nothing in the newspaper incited students to vandalism."

In June, Foley filed suit in federal district court, claiming the suspensions violated the students' rights to due process and free speech. As of mid-July, he was taking depositions of school officials and teachers and expected the discovery process to be finished sometime in September.

The suspensions occurred two days before the end of school and prevented the students from taking final exams. According to the student handbook, they had until June 27 to take makeup exams and clear incomplete grades from their report cards. A school official said all three were good students and the suspensions could damage their high school records only if they failed to arrange makeup tests.

In St. Paul, U.S. District Judge Donald Alsop rejected Foley's request for a temporary restraining order that would have allowed the students to take their final exams as scheduled. The students completed the exams on time, but Foley said there was "some question as to whether they received all the preparatory materials to take the tests."

MCLU Executive Director Matthew Stark said he will seek a permanent injunction to remove the suspensions from the students' files and to stop the schools from taking such action again.■

Nebraska

Paper can constitutionally reject ads

Court rules that paper has absolute editorial control

In a victory for student editors, a federal district court ruled on June 13 that the University of Nebraska's student newspaper is not compelled by the Constitution to take advertisements from persons wishing to express their sexual orientations when selecting roommates.

"The campus newspaper of a state supported university is entitled to the constitutional protections afforded the 'press,' including freedom of expression for the editors," the court said in *Sinn v. The Daily Nebraskan,* No. CJ85-L-556 (D. Neb. June 13, 1986). "The degree of discretion which editors utilize in rejecting advertisements is not distinguishable, under any First Amendment analysis, from that exercised over any other submitted material."

Therefore, the court added, "Rejection of an advertisement is a constitutionally protected editorial decision."

The decision ended a two-year legal battle pitting the University of Nebraska-Lincoln student newspaper and publications board against students Pam Pearn and Micheal Sinn. In 1984, the *Daily Nebraskan* refused to accept their ads seeking homosexual roommates.

The publications board had already established a "non-discriminatory" ad policy stating that the newspaper should not accept ads for roommates that specified race, religion, or marital status. The ads could only indicate gender and smoking habits. After reviewing the homosexual ads, the board added sexual orientation to its policy.

Pearn and Sinn then filed suit against the paper and publications board, alleging that the refusal to print their ads was a violation of the First and Fourteenth Amendments.

> "The campus newspaper of a state supported university is entitled to the constitutional protections afforded the 'press,' including freedom of expression for the editors."

Jerry Soucie, the students' attorney, has filed a motion for a new trial.

In the opinion, the court determined that no "state action" was present with regard to the editorial decisions of the paper.

"It must be conceded that the *Daily Nebraskan* is an instrumentality of that state and a creation of the University of Nebraska-Lincoln, and thus is sponsored by the state."

However, the court added, "the campus newspaper is not an agency of the state for all purposes. In its editorial decision making the *Daily Nebraskan* functions like a private newspaper. Thus, the exercise of editorial discretion does not constitute state action."

Another issue in the case was whether the board could constitutionally control the paper's editorial decisions.

The board governs the paper's business affairs and oversees its compliance with a code of ethics for student publications.

continued on next page

During trial testimony, the court said, some of the board's members believed that, in effect, the self-descriptive ads discriminated against non-gay or non-lesbian readers as would an ad stating "only homosexuals need apply."

Dan Shattil, the *Daily Nebraskan's* business manager, testified that the policy barring sexual orientations was first made by the paper and then adopted by the board.

In defining the proper relationship between the paper and the board, the court said that the "Publications Board acts as publisher for the *Daily Nebraskan* and is responsible for the newspaper's general business operation. However, the *Daily Nebraskan* is editorially independent.

"Thus, the information, opinions and ideas expressed in the *Daily Nebraskan* are those of the editors and writers presently operating the newspaper and not those of the University."

The court added that although the board is responsible for assuring that the paper's material is "within the code of ethics, this in no way suggests that the board can censor the content of the student newspapers."

Though the board supported the editor-in-chief's prior decision not to print the ads, and then amended its discrimination policy for advertising, the court said "nevertheless, the student advertising editor ultimately interpreted and necessarily applied the policy. Moreover, the University, acting through the Publications Board or otherwise, could not have directed the *Daily Nebraskan* not to publish the advertisement had it chosen to do so. Censorship of content impermissibly would exist if the University were to dictate what the *Daily Nebraskan* could or could not print."

"We were disappointed," Soucie said. "We think the judge erred when he said there was no state action involved. The publications board is directly appointed by the Regents, which control funding and the newspaper operates without having to pay rent or utilities."

The court said, though, that its decision would have been the same had it decided that there was state action.

The court disagreed with the students' claim that the paper constituted a public forum and they were therefore unconstitutionally denied equal access to its pages.

"The *Daily Nebraskan* has not consented to unrestricted access by the general public to its pages," the court said. "There is no evidence that the *Daily Nebraskan* has relinquished its editorial control over advertisements by accepting proffered material as a matter of course. It is the presence of this editorial discretion which precludes a constitutional right to access to the columns of the newspaper. Consequently, neither newspapers in general nor the *Daily Nebraskan* in particular may be characterized as a public forum."

"The plaintiffs' freedom to express their respective sexual orientations does not prevail against editorial freedom of expression."

Shattil was pleased with the decision, because "it said the student press basically has the same rights as a commercial newspaper and that the board could not have directed the editor not to publish the ad had he wanted to."

Shattil said that even if the judge had ruled there was state action and a limited public forum did exist, the paper needed only a reasonable excuse not to take the ad.■

Oklahoma

Adviser continues fight with Putnam High

After being fired from her position at Putnam West High School in 1984 as newspaper and yearbook adviser, and then reassigned as a junior high English teacher, Patricia Miller awaits her chance to fire back.

Attorney Judith Onken expects Miller, who filed suit against the Putnam City School District near Oklahoma City, Okla., soon to get that chance. "The case has not yet been set for trial, but we think it will be by the end of August or the first of September."

Miller claims she was fired for allowing the student newspaper, the *Town Cryer,* to publish a six-part series on abortion, birth control, teenage pregnancy and adoption. The articles, written by seven student reporters, appeared on April 4, 1984.

Onken said the school's major complaint concerned a chart describing contraceptives and their reliability and effect on sexual activities.

The Putnam City School District's Student Publications Guidelines require the newspaper to reflect "school and community philosophy in publication content" and "to assure reliability and good taste."

Although the administration found the chart in poor taste, Onken argued that the "articles dealt with the issue of teenage pregnancy in a balanced and responsible way."

Even William Bleakley, attorney for the school district agreed, saying, "The article was probably considered controversial, but I think the attitude about the quality of the article was that it was a pretty good issue."

The school also said that Miller failed to comply with an unwritten regulation to clear controversial issues with the administration before publishing them.

Onken had tried unsuccessfully to settle the two-year dispute out of court, but said that "there was no middle ground for settlement; no give there."

Miller is seeking reinstatement as faculty adviser of both the newspaper and yearbook. Onken is requesting compensatory and punitive damages because she contends that the school district "acted in bad faith" and violated Miller's constitutional rights.

Bleakley disagrees. "This is not a First Amendment issue," he said. "There were other personnel reasons (for Miller's dismissal)... prior to the issue of the paper."

Since a March 1985 settlement conference failed to resolve the legal dispute, Onken has attempted to get Bleakley and his associate, Linda Mealey, to disclose what happened in a May 1984 executive session held by the school board and in subsequent closed meetings of the board and its attorneys.

Onken filed a motion to compel, requesting that details of all meetings be disclosed, which was granted. Bleakley and Mealey, however, contend that the judge meant only that the board's executive session be disclosed, not meetings involving the board and its attorneys. Through the judge's order, Onken learned that in the May 1984 board meeting, the Putnam superintendent announced he would reassign Miller, after her dismissal as adviser.

After Bleakley and Mealey refused to disclose details in meetings they attended, Onken requested the judge to clarify the order. Onken contends that on clarification, the judge said that all meetings must be disclosed, saying there was no executive session privilege under federal law.

But Bleakley and Mealey argued that because of their attorney-client privilege, they could not be forced to answer questions about those meetings.

"The fact is," Onken said, "that he (the judge) has already issued the order twice, and if he intended for his order to (cover only sessions involving the school board), then he would have said so."

As of this writing, Onken was asking for yet another clarification.

Onken added, however, that she had enough "circumstantial evidence" to prove that Miller was dismissed and transferred in violation of her First Amendment rights, even without obtaining information from the closed sessions.

The court, Onken said, referred to the "timing of the dismissal of Miller as very coincidental." She pointed out that during Miller's ten years as adviser, the newspaper had won 65 journalism awards. Also, Miller received the 1985 Beachy Musselman award, presented by the Oklahoma Press Association, for aiding the advancement of print journalism.

"Miller is recognized in the journalism community as quite a competent adviser," Onken said. "She was frequently called upon to speak at various journalism seminars, and received excellent evaluations at the school."■

Illinois

A tale of twists and turns at Northern Illinois

Adviser removed, then reinstated; president resigns

Since early spring, the small city of DeKalb, Ill., home of Northern Illinois University, has been a big source of news as the student newspaper's adviser filed suit after being removed from his position and reassigned by the university president, who was later asked to resign.

Jerry Thompson, who had been adviser of the *Northern Star* since 1970, was transferred to a university public relations post by former NIU president Clyde Wingfield on April 30, following a series of articles critical of Wingfield. In a U.S. district court suit filed in May, Thompson charged that the action was retaliatory, and sought reinstatement and $110,000 in damages for defamation of character.

Wingfield, who was forced to resign after Illinois lawmakers questioned his performance following articles in the *Northern Star* labelling him an "extravagant spender," contended that he replaced Thompson because of an internal audit critical of *Star* business practices.

Wingfield said he was looking only at the bottom line when he replaced Thompson. He believed that the adviser's performance in overseeing the paper's finances wasn't adequate.

"There is not in any way a First Amendment issue here," Wingfield said. "You cannot hide behind a symbol such as a free press to disguise the fact that we've had fiscal and managerial non-feasance—at best—for the better part of a decade. We've simply acted to correct that. He's seized the freedom of the press issue to resist a perfectly orderly administrative transfer."

But Thompson said the decision to transfer him was an attempt by Wingfield to muzzle the student newspaper, which has a daily circulation of about 17,500. At issue was Thompson and the *Star's* editors' accusation that Wingfield threatened their First Amendment rights.

"We've got to have a free press," Thompson said. "You can't let it be eroded away, even on one little college campus."

In his 15 years as adviser, Thompson said he has diligently encouraged the paper's staff to put the spotlight on other people. "A newspaper's role is not to be a cheerleader for the administration," he once said.

Thompson and the *Star's* editors said Wingfield had been uncomfortable with that sort of watchdog approach to journalism.

Wingfield took office in summer 1985. Before then, the university had performed two audits critical of the newspaper's finances, and John La Tourette, the president who preceded him, had ordered a blue-ribbon panel to look into the *Star's* fiscal operations.

According to NIU rules, because the newspaper is part of the university, it must abide by the institution's regulations for handling money. Because it is independent of the journalism department, the adviser, the paper's only full-time employee, is directly responsible for the paper's finances.

An internal audit completed in February discovered many violations of university policy: cash and checks were hidden in unlocked drawers in an unlocked office; records of financial transactions were missing; the paper's payroll was not properly operated; and on one occasion, the paper went 30 days without depositing money in its account in the university bursar's office, and then, within two days, deposited more than $55,000.

Thompson and *Star* editors said they corrected many of the problems. They also pointed out that during

Thompson's time as adviser, the paper never lost money. At the end of last academic year, they said, it was $90,000 in the black.

"Right now," Thompson said in a mid-July interview, "we have a cash balance of over $120,000, the largest the paper has had since I've been here."

In spring 1986, two issues concerning Wingfield received major coverage by the *Star*. The first was the remodeling of his house, originally projected to cost about $35,000. According to the *Star*, the cost exceeded $100,000. University officials priced the house's maintenance costs at about $63,000. The paper also reported on the costs of Wingfield's inauguration ceremony, said to run $10,000 to $15,000 and printed editorials attacking the use of university funds.

The *Star's* editors said the series of critical stories prompted Wingfield to transfer Thompson. Wingfield, however, contends the paper started printing the stories only after February, when a preliminary copy of the audit was given to Thompson. Wingfield said the paper printed the articles to make it look as though any action he might take to deal with the paper would be an attempt to squelch the articles.

"Immediately, a barrage of stories appeared, designed, I believe, to create the impression that any action I would take would be retaliatory—which is patently false," Wingfield said.

Thompson countered that many of the articles ran in the spring because that was when reporters were getting the information. "The plain truth is, if we'd had the information in the first semester, the stories would have run in the first semester."

In mid-May, after meeting with Wingfield, Carol Burns, chairman of the board of regents, issued a statement, saying, "We have concluded that Dr. Wingfield's management style at Northern was not compatible with the board's expectations." A spokesman said the board asked Wingfield to resign and he complied.

John Pembroke, NIU's vice-chancellor for administrative affairs, said the regents' decision was unrelated to the *Star* controversy.

Many *Star* alumni saw Wingfield's action as the culmination of a longstanding dispute between the paper and administration. As a result, the alumni, many who are now reporters and editors at various Illinois newspapers, quickly formed Alumni for a Free Press, a group that has since staged protests at the university's graduation ceremony and law school commencement and has started a vigorous letter-writing campaign to protest the decision.

The group has also launched a "Free Press Defense Fund," and is encouraging other graduates to place money in the fund, rather than giving it to NIU's scholarship funds. The money will help pay Thompson's legal fees.

Mike Royko, the Pulitzer Prize-winning syndicated columnist for the *Chicago Tribune* announced he would return the "Illinois Journalist of the Year Award" given him by the school in 1971.

"Freedom of the press is as important at a college newspaper as it is at the *Chicago Tribune* or *New York Times*," Royko said. "It's clear that Thompson's removal will weaken what has been an aggressively independent student newspaper."

In early May, federal judge Stanley Roszkowski denied both a motion by Wingfield's lawyer to dismiss the case and a motion by Thompson's lawyer, Kurt Klein, for a temporary restraining order which would have allowed Thompson to return as adviser until the case is settled.

Then in late May, the judge issued a federal court order allowing Thompson to temporarily retain his position until approximately June 20. The judge also ordered journalism professor Donald Brod, appointed by Wingfield as the new adviser, to work alongside Thompson during a transition period that began June 2.

"The judge didn't want the newspaper's ability to be interfered with," Thompson said, "so he gave the temporary injunction to allow for the transition period."

Brod never appeared June 2 because NIU's attorneys never informed him of the judge's order. After listening to NIU attorneys apologize for not following instructions set by the preliminary injunction, on June 18, the judge approved Thompson's request for a two-week extension of the injunction until July 8, barring Thompson's transfer to another campus post.

Thompson said NIU's attorneys tried to blame him for Brod not showing up, "since I knew him personally. But the judge said, 'no, that was your responsibility.' "

Then, in a surprise move, NIU's Board of Regents voted Thursday, June 19, to reinstate Thompson, pending the outcome of his suit against the university. However, university officials said the decision did not mean that his job is secure. Board member James Wright said the regents voted 5-4 to permanently remove Thompson.

Thompson's lawsuit is still pending, with no trial date set. His lawyer said discovery could take a year.

The regents' decision, Wright said in a *Chicago Tribune* article, was because "we're taking so much heat over this situation. That was a factor in putting Thompson back."

Chancellor William Monat said the board's action does not indicate a softer stance. "I think the regents' strong feeling is that the university has the prerogative to reassign people and I think they are firmly committed to that position," he said.

Board member Clara Fitzpatrick said the regents will not seek a negotiated settlement. She said talks ended when NIU counsel rejected Thompson's requests of permanent reinstatement and payment of $20,000 in legal fees.

"He is only reinstated because we didn't want any more interruption in the *Star* operations," Fitzpatrick said. "We feel it will only be for two or three weeks until we have a court decision."

Thompson's tentative reinstatement also hinges on a study by a 15-member committee of NIU's University Council asked to examine the structure of the *Star*. That study does not concern Thompson's past performance.

Klein said some have debated over whether the paper should be an independent corporation instead of affiliated with the university.

He said Thompson's reinstatement was on a "permanent-temporary basis. Permanent, in that he will be adviser until the *Star* is restructured," Klein said, "and temporary, in that the university committee will probably restructure the *Star*, but that would take a few months or even a year." ■

California

UCLA ends open meetings dispute

Newspaper and Chancellor's office reach compromise

In an effort to end a 16-month dispute at the University of California-Los Angeles to determine whether the student media and public should have access to university committee meetings, the *Daily Bruin* student newspaper and the chancellor's office agreed in May to work together to establish a document detailing which committees would be open.

In preparing the document, Peter Pae, *Daily Bruin* editor, and John Sandbrook, UCLA's assistant chancellor, defined what constituted a committee, listed all campus committees and determined which committees would be open.

> "The objective of the document," Sandbrook said, "is to reach an understanding, to have some procedures that will be uniform and consistent. This is an agreement in advance to avoid having any controversy by a committee chairman."

The document was to be presented in its final form to Chancellor Charles Young by the end of July. All open meetings procedures, Pae said, "will be in effect this fall."

The document affects nearly 100 university and administrative committees. The faculty senate and committees not appointed by the chancellor are not covered.

However, Pae said, "there is a clause in the document whereby the chancellor suggests that (open meetings) would be a good procedure for other committees to follow also."

"The objective of the document," Sandbrook said, "is to reach an understanding, to have some procedures that will be uniform and consistent. This is an agreement in advance to avoid having any controversy by a committee chairman."

Both Pae and Richard Sublette, publications director, agree that the compromise is the first indication that the chancellor is "sincerely trying to open up the university."

Sublette said the document will at least be a way to notify the newspaper if and when a meeting will be closed. He added that if a committee chairman does not notify the paper or refuses it access to a meeting, the paper can appeal to the Chancellor. "Before, we've never had that opportunity," Sublette said.

Sublette added, however, that without an eventual sign from the legislature mandating that UCLA's campus meetings be open, "it is feasible that this whole agreement could come unraveled."

"We're just going to give it a shot," Sublette said. "If it works the way we and the chancellor want it to, then it's a step in the right direction."

The dispute involved differing interpretations of the California Bagley-Keene Open Meeting Act, which stipulates that governmental bodies keep their meetings open to the public. A 1983 amendment to the act made the University of California (UC) Board of Regents, which oversees eight campuses, including UCLA, subject to the act.

UCLA administrators argued that the open meetings law pertained only to the UC Board of Regents committees and not to committees on individual campuses. The *Daily Bruin* said the statute covered UCLA committees.

"We disagreed with them," Pae said, "but instead of fighting through legislation or the courts, which could take years, we decided that it would be better to establish our own guidelines."

"So essentially we've each given up something," Pae said. "We (won't pursue our right to) cover these meetings legally and they (UCLA) can't arbitrarily close meetings."

If a situation should arise in which a committee chairman decides not to comply with the document because it has no legal basis, Sublette said litigation would be likely.

If the paper were to litigate it would have to go through the Communications Board to get funds to pay for legal counsel and then use the student government's counsel. This would be difficult, he said, considering the adversary relationship between the paper and the student government. An individual, however, such as an editor, could sue on his own behalf.

> "... Essentially, we've each given up something," Pae said. "We (won't pursue our right to) cover these meetings legally and they (UCLA) can't arbitrarily close meet ings."

Problems began at UCLA in November 1984 when the Associated Students of UCLA (ASUCLA) Board of Control (BOC) refused to allow the *Daily Bruin* and KLA, campus radio station, to cover its two-day retreat.

The BOC claimed it was exempt from the act because it was a private organization and not affiliated with the university. Therefore, it argued that it was not required to hold open meetings and could prohibit atten-

dance of the public and student press.

After closely examining the state's open meetings laws, UCLA student media discovered that California operates under the Brown Act, which applies to local agencies within the state, and the Bagley-Keene Act, which covers the eight UC campuses, California State Universities and state agencies.

The problem with the Bagley-Keene Act is that it does not mention the UC system. It states, "Under the provision of this article, the official student body organization at any college of the California State University and Colleges, or of the California Community Colleges, shall be treated in the same manner as a state agency."

Greg deGiere, press spokesman for state Sen. Barry Keene, explained that the UC system had been left out of the Act in 1974 because there was a commitment at that time from both the statewide association of student governments and Charles Hitch, former president of the UC system, that campuses would open their meetings voluntarily. That never happened at UCLA.

So there was a compromise, deGiere said. "The UC Board of Regents includes some of the most politically powerful people in the state. Because of verbal commitments, the UC system was left out of the Act. Like any negotiation, if you don't compromise, you might ge everything, but then again you migh get nothing."

On Nov. 14, 1984, Dirk W. van d Bunt, former publisher of the *Dail Bruin*, wrote a letter to two stat legislators urging that legislation b sponsored which would amend th section to include the University c California.

Sen. Keene, in response, sent a lette to UC President David Gardne "blasting the university for denyin student reporters access to publi meetings."

"I believe the legislature has th clear constitutional ability to appl the same open-meeting requirement to UC student governments, whic legally exercise authority delegated t them by the Regents, that it ha applied to the Regents themselves," Keene said in a Jan. 28, 1985, letter.

Chancellor Charles Young the said that the BOC was part of UCL and not private, but argued that i was exempt from the open meeting requirements because the Act did no include the UC system.

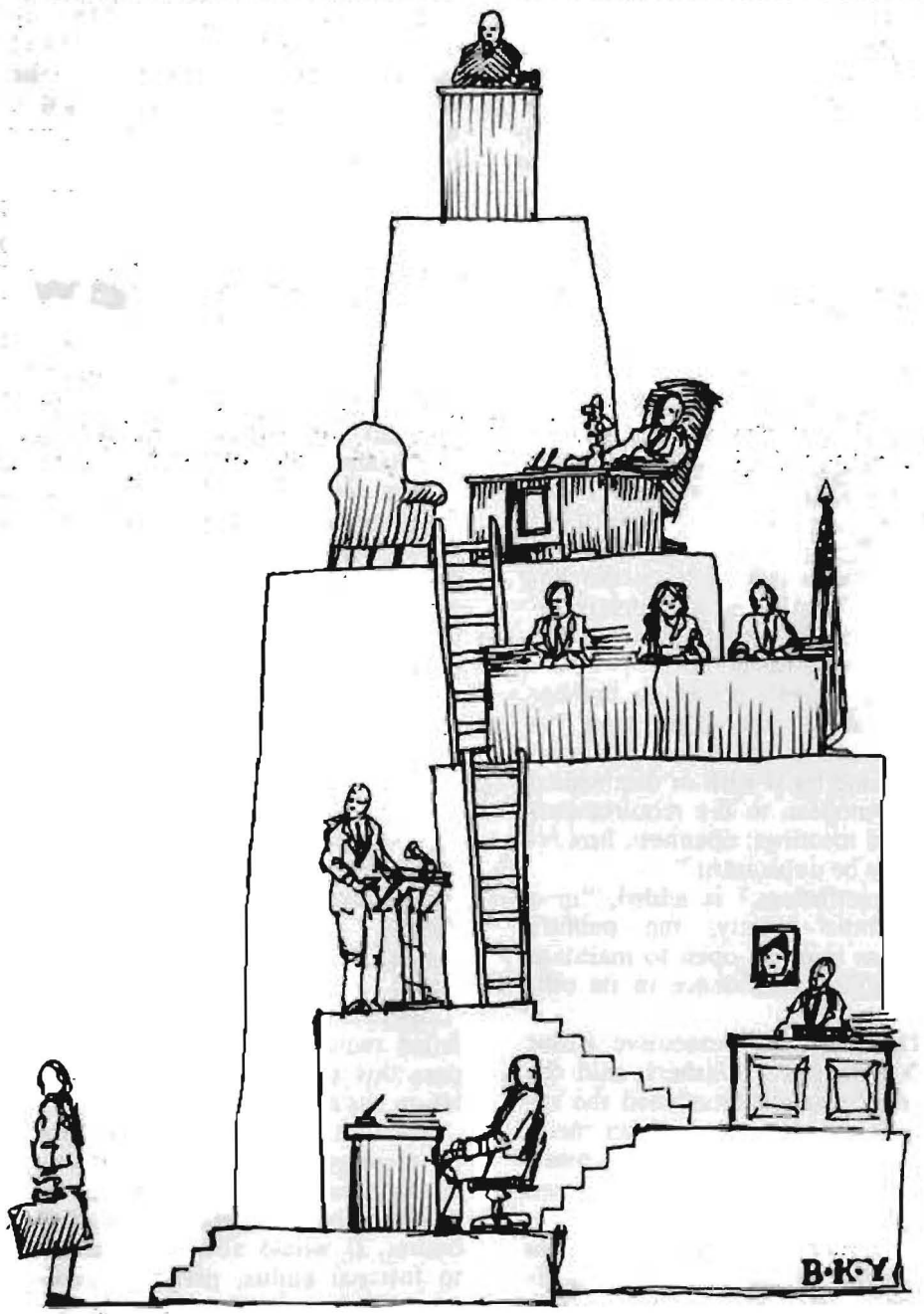
However, the *Daily Bruin* reporte that he had overlooked the 198 amendment to the act, which sai the UC Board of Regents is subject t the same rules that govern state bod ies. Since the student government i part of UCLA, it is required to follow the act because what applies to th Regents applies to everybody dele gated authority by the Regents, th paper argued.

ASUCLA meetings also had to b open because section 11121.2 of th Act mandates that any committe which receives state funds shall b open, regardless of whether it is oper ated by a state body or private cor poration, the *Daily Bruin* reported.

ASUCLA does receive state funds from both the General Fund and student tuition fees, which is taxpayers' money.

Chancellor Young admitted he was wrong in claiming that the ASUCLA Board of Control was exempt from the state open meetings act, and said that the "BOC is trying to take action to show that taken in spirit it will not go against the Bagley-Keene Act."

With that battle won, UCLA student media faced another. In November 1985, a *Daily Bruin* and a KLA radio reporter were barred from a UCLA financial aid policy meeting. Executive Vice Chancellor William



continued on next page

continued from previous page

Schaeffer had reasoned that the room was too crowded and asked reporters to leave.

In the same semester, the *Daily Bruin* was not allowed to attend a UCLA Academic Senate Committee on Educational Policy meeting, which made a recommendation regarding the school's add/drop deadline.

Chancellor Young, in an apparent contradiction of his earlier statement, said the Bagley-Keene Act "pertains to meetings of the Board of Regents and committees of the board and no other entity within the university."

But because Section 11121.1 of the act says that "'State body' also means any board, commission, committee, or similar multi-member body which exercises any authority of a state body delegated to it by that state body," the *Daily Bruin* argued that the act implies that all advisory and other subsidiary boards are just as significant as the main bodies. Therefore their meetings should also be open.

DeGiere agrees: "Because the Regents have delegated authority to student government and the faculty senate, their committees should be open.

But James Holst, counsel for UCLA, said that according to the California constitution, article 9, section 9a, only meetings of the Board of Regents should be open.

"The authority of the legislature to enact legislation regarding open meetings extends only to the Board of Regents and their committees," Holst said. "The Educational Code restricts legislative authority relating to the UC system beyond that." He added that California's attorney general supports his position.

Based on Holst's reasoning, deGiere said, the "end result is an absurd situation."

"If that position is correct," deGiere said, "any campus of the UC system could establish a subcommittee of the Board of Regents and delegate authority to the subcommittee and then do everything in secret because the state constitution says nothing about subcommittees of the Regents."

Tyrone Netters, a spokesman for legislator Gwen Moore, author of the 1983 amendment, said the bill covers "95 percent" of all UC activities.

Netters said exclusions are limited to areas such as UC hospital contracts, national security and personnel matters.

"The fundamental question here," Netters said, "is what would any committee possibly want to meet about in private that the public should be excluded from, unless it is an executive session? They don't have that right."■

Mississippi

States address issue of open meetings law

The Mississippi Supreme Court ruled on Oct. 2, 1985, that the College Board, which governs the state's eight publicly supported universities, must adhere to the state's open meetings law.

Mississippi Publishers Corp., publisher of *The Jackson Daily News* and *Clarion Ledger,* sued the College Board after a reporter was excluded from meetings between the board and university presidents and a luncheon with student editors from each university.

Stuart Robinson, Hinds County Chancellor, ruled on Sept. 20, 1984, that the College Board violated the state's open meetings law when it held the closed sessions.

The College Board appealed the ruling to the state supreme court. The board claimed that because it was created by the state constitution and mandated by statute to govern state-supported universities, its constitutional duties conflicted with the open meetings law required by statute. The board asserted that the open meetings law has to "yield for it to effectively function and perform its constitutional duty." The 13-member board argued that the decision would inhibit it from conducting candid discussions with education officials.

The state supreme court affirmed Robinson's decision and denied the board's request for a rehearing on November 6. The Court held that the luncheon and sessions with institutional heads were "meetings" and that all deliberative stages of the decision-making process that lead to "formation and determination of public policy" are required to be open to the public.

"The Board's power to manage and control," the Court said, "is not unconstitutionally infringed upon, interfered with or diminished by submission to the requirements of open meetings; openness, however, may be unpleasant."

"Nevertheless," it added, "in a democratic society, the public's business must be open to maintain the public's confidence in its officials."

David Hardin, executive editor of Mississippi Publishers, said the ruling "certainly broadened the application of the state's open meetings law, and that it pretty much upheld its intent. But the litigation should have been unnecessary."

The board also tried to keep its academic program reviews confidential, claiming that privacy would encourage frank discussions. The reviews are studies by out-of-state consultants who evaluate each program and department at the eight state universities.

The court ruled, however, that the reviews are "a legitimate inquiry into the operation of a public body" and produce valuable information which should be available to prospective students and their parents.■

Missouri

A bill proposing to open University of Missouri meetings to the public finally reached the full Missouri House of Representatives with a 7-2 vote from the Governmental Review Committee in February.

Sponsors say the proposal, which failed twice in two years, will not pass this session since other legislation has a higher priority.

The bill, if passed, would open up meetings below the curator level, by changing all references of "governmental" bodies to "public" bodies. It would also allow access to internal audits, private consultants briefs and other reports.■

New Hampshire

Dartmouth resolves Rev. Hyde's libel suit

A libel and invasion of privacy suit brought against the *Dartmouth Review* was settled after the paper published an apology for printing "false and misleading" information about a former associate chaplain of Dartmouth College in 1983 and 1984.

The apology ended a $3 million suit filed last year by the Rev. Richard H. Hyde against Hanover Review, Inc., the *Review's* publisher, and former editors Dinesh D'Souza and Andrew Pickens.

"The settlement was acceptable to both sides," Peter Hutchins, the *Review's* lawyer, said. "There were a lot of factors involved and we seemed to feel that this was the best way to end the litigation."

Hutchins added that there was "no action or attorneys' fees involved," but would not comment further on the settlement or say whether Hyde received damages.

Hyde's lawyer, Jill Gonya, would not discuss the case, except to say, "I believe Rev. Hyde is satisfied." Hyde left Dartmouth in summer 1985 and could not be reached for comment.

The apology, printed in the *Review's* special graduation issue last spring, said that two articles about Hyde "gave a false and misleading account of his views on certain aspects of Christian morality and life. In addition, one of these issues contained false and misleading information about the Rev. Hyde's personal life."

"While we did not and do not agree with what the Rev. Hyde said," the paper continued, "we respect his right to speak, as he respects our right to speak and to publish this newspaper. Therefore, the *Review* and those responsible for these articles apologize for any harm that may have resulted to the Reverend Hyde, and retract any and all false information contained in those articles."

Hyde claimed the libelous articles were published following an April 1983 lecture he gave on "A Christian Understanding of Love and Sexuality." Among other charges, his suit said the paper incorrectly reported that he defended the Man-Boy Love Association.

In the April 16, 1984, issue, the *Review* wrote a paragraph in its satirical column, "The Dartmouth Liberation Front," saying, "This associate chaplain is barely a Christian. He is possessed by an uncontrollable rage, which contracts his epicene manner and generates a comic effect. Hyde sometimes has a good word for the North American Man-Boy Love Association, which may be his idea of perfected Christianity. Last fall he married a girl he had met only six weeks earlier."

Hyde claimed the *Review* published "several articles containing false, misleading, and inflammatory information about his professional and personal life," which he said were "done negligently, intentionally, maliciously, and with reckless disregard for the truth."

Hyde further charged that the stories caused "severe emotional distress, embarrassment, indignation, including anxiety over the potential loss of his position at Dartmouth College."

Several articles, he said, "have been read... by a substantial and respectable number of individuals both within and outside of the Dartmouth College community, to impugn the integrity and moral character of Rev. Hyde."

According to the *Review*, Hyde blamed the paper, at least in part, for his not being promoted to Dean of the Tucker Foundation, and position traditionally awarded to one of the college chaplains.

In late 1984, the new Tucker Dean was appointed by a special committee created by the university president. Administration sources, the *Review* said, told the paper that Hyde's controversial leftist stances on issues such as abortion, homosexuality and premarital sex had put his career at the college in "severe jeopardy." For whatever reason, Hyde was not appointed.■

Supreme Court decisions

High Court gives media major libel victories

The U.S. Supreme Court gave the media two significant libel litigation victories in recent months, both of which should serve to discourage libel complaints from being filed.

In June, the Court, in a 6-3 decision, decided that libel cases brought by public figures must be dismissed before trial unless they show "clear and convincing" evidence of their claims. The case, *Anderson v. Liberty Lobby*, 54 U.S.L.W. 4755 (U.S. June 25, 1986), centered on how much evidence public figures need to defeat a defense motion for dismissal of a case that the defense contends is so weak that it should not go to trial.

Dismissing a case before trial, known as a summary judgment, is important to news organizations because they can save the considerable time and expense of trials. Requiring clear and convincing evidence of libel is a higher standard of proof than is usually required in civil cases.

The Supreme Court has said that public officials or public figures who file libel suits must prove in trial that information was published with actual malice, that is, knowing the information was false or recklessly disregarding whether it was true or false.

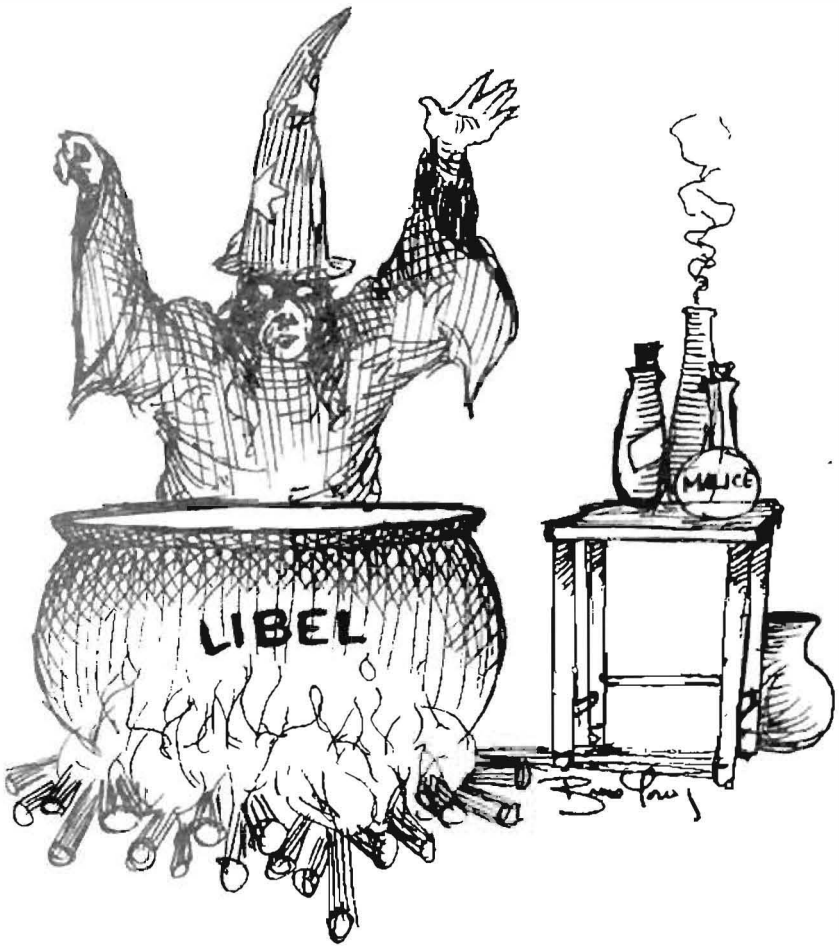
This case arose when the Liberty Lobby, a self-described citizens lobby, filed suit against columnist Jack Anderson, over two articles printed in a 1981 issue of a magazine published by Anderson. The article portrayed the group as neo-Nazi, anti-Semitic, racist and fascist.

The decision is seen by some as likely to clear court dockets of a large number of libel cases and save media defendants substantial sums in lawyer fees and libel insurance premiums. However, other observers say the opinion does not precisely spell out how this tougher standard is to be applied, which will lead to confusion among the lower courts.

The opinion was the second in less than two months in which the court ruled in favor of the media. In April, the court, in a 5-4 decision, ruled that people who sue for libel must prove that the statements at issue are false.

In that case, *Philadelphia Newspapers, Inc. v. Hepps*, 106 S. Ct. 1558 (1986), the court ruled that the person who claims statements are libelous has the burden of proving they are false. Before this ruling, some courts had placed the burden of proving the statements were true on media defendants. The side that has the burden of proof has the responsibility of providing evidence to substantiate his claim, thus the harder job of winning his case.

This decision is expected to discourage additional libel suits. ■



Rhode Island

Parties settle libel suit filed against editor

A libel suit filed in January 1984 by school committee member William O'Coin against a Cumberland (R.I.) High School student, was settled in January according to the state court clerk.

Colin Murphy, former editor of the student newspaper, the *Clipper Courier*, wrote an editorial criticizing O'Coin's absentee rate at school committee meetings after O'Coin had referred to teacher absenteeism at the school in a local newspaper.

Murphy wrote, "He seems to be enjoying the unreasonably warm weather during the month of June . . . when his attendance rate (at committee meetings) was a mere 25 percent."

O'Coin was asking for $1 million in damages.

O'Coin's attorney Howard Croll confirmed that a settlement had been reached but would make no further comment. Murphy's attorney was unavailable for comment and James Santaniello, representing Cumberland High School, would only say, "That's a litigation matter. I'm not at liberty to discuss it."■

Texas

Accuracy in Academia sued for libel

Texas A&M teacher claims quotes inaccurate

A professor at Texas A&M University has filed a libel suit against Accuracy in Academia for an article published in its November 1985 bimonthly newsletter that was sent to nearly 200 college newspapers around the country.

Professor Terry Anderson, who won the college's teaching award in 1984, was quoted in the A.I.A. article as saying, "I do not believe in the institution of marriage...I'm an atheist..I am not patriotic toward Texas A&M, the flag or America."

Les Csorba, executive editor of the newsletter, and Matthew Scully, associate editor, wrote in the article that "Lucifer himself could not have framed his credo any better. But such erudite comments make us wonder just what a man does revere who has no wife or party or country or God." Scully left the organization in early spring.

Andersen said in the April 5 issue of *The Nation* that A.I.A.'s story is "totally inaccurate. They never checked any of those quotes with me. They say I'm an atheist; in fact I'm a humanist. They say I'm not patriotic; in fact I'm a Vietnam vet."

The Nation reported that A.I.A. took the quotations from Texas A&M's student newspaper, the *Battalion*, and sent the story to nearly two hundred campus newspapers. Csorba said 10 to 12 reprinted it.

Csorba added, "our story is accurate. The papers that published it are the ones to be sued, if anyone is."

William Harper, Andersen's attorney, said Andersen decided not to sue any student newspaper because they were "more of a passive receptacle of information. He said students make mistakes so let's not press this on them."

A.I.A. is a 10-month-old organization that, according to *The Nation* article, is "seeking to root out the dissemination of 'disinformation or misinformation' by radical professors."

"Virtually none of the stories come from student monitors' reports about professors' classroom statements," *The Nation* wrote. "For the most part, they are from accounts that have appeared in print elsewhere."

The Nation incorrectly reported that the University of Minnesota's *Daily* published A.I.A.'s story. What it did publish was an opinion piece written by then-managing editor Michael Norton, now a reporter with the *St. Cloud* (Minn.) *Daily Times*. The article, Norton said, was about "why we didn't publish the story, why it was potentialy libelous and why they (A.I.A.) did such a lousy job reporting on it."

Norton said the *Daily* originally was ready to publish a two-page spread that included the A.I.A. article along with a companion piece from a campus professor who disagreed with A.I.A.

Norton said at the last minute he decided to call Andersen to see if the comments attributed to him were accurate.

"If it had been another day or whatever, I probably wouldn't have checked," Norton said. "But the opinion page editor said 'this (A.I.A. article) looks pretty rough.' "

"It gnawed at me all day, so I checked," Norton said. "I figured that even if I called and didn't get hold of Andersen, that would be a mitigating factor if we were sued."

Norton said Andersen knew nothing about the A.I.A. situation before the call. "Andersen had no idea that this was being distributed. Then he got angry."

The impetus behind this tale of twists and turns began in October 1984, a month after Andersen received the teaching award. A student reporter for the *Battalion* did a 45-minute personality sketch on Andersen for a journalism class that appeared in the paper two weeks later.

Andersen said much of the article "was out of context; five errors in 10 small paragraphs." This article contained the disputed quotations.

Norton said a *Battalion* editor told him that "those quotes weren't exactly accurate."

"The article was laughable," Andersen said. "It was so ludicrous that I didn't write a reply. I didn't think anybody would take it that seriously."

Then, *Campus Review*, a Christian magazine published by student writers in Texas, republished the flawed article. It was from *Campus Review*, Norton said, that A.I.A. took the quotes for its story published in fall 1985. It never checked the accuracy of the material with the *Battalion, Campus Review* or Andersen.

After hearing from Norton, Andersen sent a letter to A.I.A. on Dec. 17, 1985, asking them to retract the statements.

According to Andersen, A.I.A. never responded. The first he heard from them was when an A.I.A. reporter called in June, days after he and Harper filed the lawsuit. Andersen told the reporter it was too late for a follow-up story.

But Csorba claimed A.I.A. sent a letter back to Andersen in January, citing the sources it had used in publishing the article, and saying that "we would do whatever they asked; be it a retraction or whatever." "They never responded," Csorba said. "The first we heard from them was this lawsuit."

Harper called Csorba's claim "nonsense."

Csorba said, "We're going to fight this suit and I think we're going to win. We still think the story is true, basically. The professor was surely aware that it was true because he did not ask that it be retracted."

"It's going to be very difficult for them to prove we knew the story was false, and even if it was false," Csorba added, "we weren't aware of it and certainly had no intention of harming the professor, but only to point out his responsibility as a teacher." ■

New York

Restaurant owner sues *Spectator*

The Columbia University *Spectator* and Spectator Publishing Co. Inc. face a $1 million libel suit filed by Robert Forlini, an owner and stockholder of Campus Dining Room, a restaurant and cocktail lounge.

Forlini is suing for emotional and punitive damages resulting from allegedly libelous statements in a Sept. 26, 1985, article by Jacqueline Shea Murphy, editor-in-chief of the New York City newspaper and president of the publishing company. The company received a summons on Feb. 20, 1986.

The case will appear before a New York state trial court.

According to the complaint, Forlini and his lawyer, Harold W. Grubart, contend that Murphy "falsely and wrongfully" printed a front page story along with a "large" picture of Forlini, saying that Forlini, his father Andrew, and 21 others were indicted on charges of running a multi-million dollar heroin and cocaine ring in May 1983.

Furthermore, Forlini said, Murphy "wrongly and falsely informed readers 'that one of those indicted had used Campus Dining Room to make transactions.' "

"The printed material, in a wilfull and malicious manner," the complaint reads, "has damaged the plaintiff in his restaurant business and his good name, his status; has damaged him in the profession and in the community to the extent that plaintiff's restaurant has substantilaly suffered and numerous persons will no longer do any business with plaintiff or remain as customers of the Campus Dining Room."

Murphy's article revealed that the Campus Dining Room, now called the Lower Level, had completed a $6,000 renovation project, despite knowing that its lease with Columbia University expired in February and that Bill Scott, Director of Institutional Real Estate, had no intention of renewing it.

Robert Forlini had stated that the restaurant's reputation as a center for drug transactions should not have had any bearing on the university's decision not to renew the lease.

"I was in trouble myself for that a few years ago," he said in the *Specatator* article. "If I see anyone who comes in here doing anything like that they'll be asked to leave."

Neither Murphy nor Elizabeth Schwartz, the *Spectator's* managing editor and secretary-treasurer, would comment. Karen Shaer, the *Spectator's* counsel, would not comment except to say there had been no discovery proceedings as of mid-July.■

Michigan

State News close to settlement

The Michigan State University student newspaper, *State News*, sees a "settlement on the horizon" in the "beer and munchies" libel suit pending against it, said Noah Yanich, the paper's attorney.

Robert H. Boling Jr., president of Eco-Tech, Inc., filed a $10,000 suit against the paper for an article in 1983 that he claims contained "false and defamatory matter."

The story described the ecological data management firm's spending of University funds as "highly questionable." The company was allegedly using money from the university contract fund worth $227,000 on "fringe benefits" such as "beer and munchies."

Yanich said, "We were preparing the motion (for summary judgement) but before it was filed we got a settlement proposal. He (Boling) wants to drop the case, and it would cost more to file and argue the motion than to pay the amount asked."

State News' insurance company apparently agrees and would prefer to pay the amount than pay for attorney's fees. According to Yanich, "This is a dilemma that newspapers come up against all the time."

The settlement does not include a retraction of the story that sparked the suit. "We do not admit that there was anything wrong in the story," Yanich said.■

New Jersey

Advertising joke could be costly

The April 1985 spoof issue of *The Independent,* the weekly paper of Kean College in Union, N.J., may turn out to be the most expensive one yet if the paper loses the $1,750,000 libel suit pending against it.

The issue, renamed *The Incredible,* printed a classified advertisement that caused Ann Walko, assistant to the vice president at Kean, to seek damages.

Walko's name was one of four listed under the "Whoreline" classification, a take-off from *The Independent's* "Hotline" section. The ad said, "Have a problem? Want to rap? Call Whoreline at 687-SEXY anytime."

Walko is now suing the paper's seven editors and the Council of Part-time Students, who funded the issue, for $250,000 each on six counts, including "false and malicious" libel, invasion of privacy that put her in a false light and intentional infliction of emotional stress.

Walko's husband added a $250,000 count to the complaint, claiming he "suffered and will in the future suffer the loss of usual services... of his wife and has been required to provide special services and care to her."

Nanette Strehl, an editor for the spoof issue said, "The spoof is a tradition. We do it every year, but as a result of the suit, the spoof isn't being published anymore.

"Kean is such a pluralistic college that you never know if you are offending someone," she added.

Attorney for the Walkos, Robert Renaud, confirmed that the suit had been filed in state court on April 29. "The complaint indicates that the advertisement is offensive, and it is. It would be to anyone," he said.

The full-time student government, according to Strehl, refuses to fund spoof issues to protect itself from such law suits. Instead the Council for Part-Time Students took responsibility. "but the council doesn't have money for libel suits", she said, "and neither do I."

Tara Higgins, representative of the Council of Part-Time Students had no comment. No trial date has yet been set.■

Montana

Newspaper gets $1 for 1986-87 budge

Considering legal action against student government

The *Montana Kaiman*, the student newspaper of the University of Montana, is thinking about court action after receiving only $1 for its 1986-87 budget, said Faith Conroy, the paper's news editor.

The decision depends on whether the new student government, elected last March, will allocate more funds once the paper's existing revenues run out.

The *Kaiman's* budget was slashed in February after the former student government president, Bill Mercer, decided "he didn't like what we were reporting," said Conroy.

"We were attacking his administration pretty rigorously for its unethical behaviour when he (Mercer) said the *Kaiman* didn't need the money (or) a faculty adviser.

"We do have enough money (from advertising) to get us through for some time, but no way are we giving up our faculty adviser," she added.

According to Conroy, the former student government's behavior was brought into question when Mercer, newly elected to office, pushed through a motion that cut salaries of the newspaper staff.

"He passed a fiscal policy that cut all salaries of new employees or those who switched jobs, in a kind of grandfather clause," Conroy said.

"When I became news editor I was earning $60 a month less than th former news editor. At the same tim the student president himself receive a raise of $100," she said.

Mercer also proposed changing th authority of the student publicatio board, which oversees the *Kaiman*, t get control over the paper's content.

Carol Van-Valkenburg, faculty a viser to the student newspaper, sai "They tried to restructure the public tions board so they could specify th paper's areas of news content and sa 'You must have more features' o 'You must have more of this o that.' "

"This was never acted upon," sai Faith Controy "because it was the la couple of weeks of the term. But was accepted by the publication com mittee, although, not the whole stu dent government," she said.

Mercer has since graduated fro the University of Montana and coul not be reached.

The newly elected central boar part of the student government hea ing about the proposed law suit, tol student editors that the paper woul not go under for lack of funds.

The board refuses to give the *Ka man* any money and refuses to revers the $1 budget decision of the ol administration, but, according to Cor roy, they insist that a special alloc tion of funds will be made availabl when absolutely necessary.

The former student governmen also attempted to eliminate the facult adviser's position by controlling th things the paper's money could b spent on.

Van-Valkenburg said, "They trie to tell the paper how to spend th money it makes from advertising an in that way get rid of my job, but th new student government just ignore this directive and have appointed m as an adviser to the publication board.

"It is an unpaid position but i means they expect that I will b around for the next year," she said.

Van-Valkenburg will not know i her job is safe until fall when th

continued on next pag

continued from previous page

student government looks again at the paper's financial position.

Van-Valkenburg, who receives three quarters of her salary as the paper's adviser, said, "If I lose my job it will be purely on the fiscal situation. Student bylaws might prevent this student government administration from rebudgeting, and I then might be hard pressed to blame the new central board. In that case, I'm not sure what my recourse would be. If it was still the Bill Mercer administration I would undoubtedly take action."

When asked about action the paper might take to increase their budget, Conroy said, "The ACLU (American Civil Liberties Union) has told us they can't really help us until the board determines that they will not rebudget or give further funds. The new editors and staff don't want to get involved in any law suit, so there's nothing we can do until we run out of money."■

New York

Buffalo St. College studies relationship between student newspaper and government

Dr. Phil Santa Maria, dean of students at Buffalo State College in Buffalo, N.Y., has established a fact-finding commission to set up guidelines for the student newspaper and student government following a dispute between the heads of the two organizations.

Both Marty Morahan, editor of *The Record*, and Greg Hoffman, United Student Government president, graduated last spring, Santa Maria said, "but there is still the question as to the role of USG overseeing the paper, and whether that role is proper."

The commission will be comprised of media personnel from the Buffalo area and college alumni, Santa Maria said.

The dispute began when the student senate, following the lead of Hoffman, passed a motion in March 1986 to fire Morahan.

"There had been a history of personal differences and bad feelings between Marty and Greg," Dr. Janet Ramsey, the paper's faculty adviser, said, "but there was not a clear indication that this would lead to the firing."

Morahan refused to accept the dismissal and continued as editor. He didn't appeal USG's decision because Hoffman appointed the committee that would have heard the appeal in a binding arbitration.

Santa Maria then served as mediator and settled the dispute, persuading Hoffman and Morahan to agree that both were partly to blame for the incident.

Ramsey said Hoffman had fired Morahan for not signing editorials, a negative attitude toward USG, taking out a personal ad against USG "which was vindictive," "blatant errors" on front page stories, and not providing USG with a constitution for the paper.

But after consulting USG's lawyer, Hoffman learned that the paper not having a constitution was the only legal basis for firing Morahan.

"After Hoffman was advised by counsel that he couldn't use most of those reasons to fire Morahoan, and that not having a constitution was the only valid reason, he sort of backtracked," Ramsey said.

Part of the settlement was that the paper's staff prepare a rough draft of a constitution, which was submitted to USG and was in the review committee as of this writing. Ramsey said USG considers itself a business organization and campus groups it funds as members of the corporation. Groups are required to submit a constitution to USG detailing their financial status in order to receive funding.

At one time, Ramsey said, the paper had a constitution. In the 1970s, after a series of quarrels between editors, one group left the paper and took various files including the constitution with them.

The only constitution that could be found was from 1935, which was inoperable because USG didn't incorporate until the 1960s.■

Wisconsin

Att'y General rejects suits in student court

Student courts have no authority to hear libel suits, the Wisconsin Attorney General ruled in June.

Doug Hissom, editor-in-chief of the University of Wisconsin-Milwaukee's student newspaper, *The Post*, and state representative Barbara Notestein asked for the attorney general's opinion even after the Milwaukee campus student court ruled in the paper's favor in a libel claim brought by UWM College Republicans in June 1985. Questions were raised as to the court's legal power to issue binding decisions in libel cases.

The student court had refused a motion by *The Post* to dismiss the action. The paper had claimed that the court "clearly lacks either the authority, jurisdiction, or experience to deal with the complex issue of free speech in a democratic society."

Instead, the court accepted another *Post* motion for summary judgment and ruled in the paper's favor.

The attorney general's opinion made it clear that "jurisdiction over the College Republican libel action lies exclusively with the (state) circuit court; the student court has no authority to hear the action."

The "suit" was filed after Hissom wrote an editorial slamming two alleged College Republican members as "Nixon Youth." The College Republicans said, however, that the individuals were not members and therefore the paper was attempting guilt by association.

Referring to any further action by the College Republicans, Hissom said, "they're pretty much finished with it. We knew that this (decision) would be made all along so it really clears things up for any other groups in the future."

Instead, the College Republicans have created a rival newspaper, which charges *The Post* with being too liberal, Hissom said. ■

Texas

Principal censors shooting from high school yearbook

On Sept. 20, 1985, a shooting occurred at Langham Creek High School in Houston, Texas, but you would never know it by looking at the student yearbook.

That's because principal George Hopper told the yearbook staff that he didn't want any details published of the incident that left assistant principal Marvin Webster partially paralyzed.

The shooting occurred a month after the high school opened when Gerald Ingles, a 17-year-old student, started shooting in the cafeteria during lunch. The shots severed Webster's spinal cord and hit another student in the ankle. Ingles was arrested and held in Harris County jail on charges of aggravated assault.

Kay Weiman, journalism and English teacher, said the staff had prepared a double-page spread of the incident, including pictures of the three principal figures and eyewitness accounts of four students.

But Hopper took the layout material. "I basically didn't want a high pictorial display of the shooter. There was a lot of emotional trauma. However, I didn't tell them (yearbook staff) that I didn't want anything about the shooting in the book."

Hopper claims he knew what the law was regarding censorship, but that under the circumstances, he did what he thought was best.

Weiman said Hopper feared possible results of having the pictures and eyewitness statements of students in the yearbook.

Hopper said he feels that Ingles "may be mentally disturbed" and was concerned about what might occur if the eyewitness accounts were in the yearbook and Ingles saw them if and when he is released from jail.

But Gayla Conners, student editor, feels that even tragic events should be published.

"A yearbook is supposed to reflect what happened at our school, good or bad," Conners said. "And (the shooting) was the most important thing that happened at our school. It's something that affected us all."

Hopper did allow the yearbook to be dedicated to Webster, with a small tribute to him written by Conners as an opening to the book. But nowhere does the book say why it is dedicated to Webster.

The book did include pictures of Webster during his stages of recovery, but did not say how he was injured, nor mention the shooting itself.

A story by the *Houston Chronicle* said that because of Hopper's censorship, "memories will begin to get hazy."

Scott Kirkham, a yearbook photographer who spent much time developing on-the-scene pictures and gathering eyewitness accounts, said that has already happened.

"Stories have become twisted. It's not been that long, and I've already heard so many stories and they're all different."

The student newspaper published all information concerning the shooting, but Weiman said that was "probably accidental," saying that she didn't think Hopper "realized the issue was going to come out that quick." It appeared just over a week after the shooting. Hopper prevented the newspaper article from being in the yearbook in any form.

After that issue, subsequent issues were censored "very, very carefully" by an assistant principal, Weiman said, who "wanted only positive news."

When Ingle's trial began, Weiman said neither she nor anyone else was permitted to cover the trial for the paper. Hopper also prohibited the newspaper from publishing rewrites from stories that appeared in Houston's local papers.

In the state of Texas, Weiman said, it is common practice for the "principal to have the last say" as to what is allowed in student publications, despite court rulings that have stated otherwise.

"The principals and school boards have the right to say yes or no to anything that goes into yearbooks or newspapers, before it goes in."■

California

Police attack on student media results in court action

The *Daily Californian*, the independent student newspaper, and KALX, the student radio station, at the University of California at Berkley both had grievances with the university police for what they called "intimidation and violence against the press."

The *Daily Cal* filed for a temporary restraining order against university police in April after newspaper staff members were attacked while covering student anti-apartheid demonstrations on campus.

Editor-in-chief Howard Levine said, "One particular police officer jumped a police line and hit one of our photographers in the face."

KALX, whose broadcast was stopped while covering the demonstrations, filed a friend of the court brief in support of the student newspaper.

"Power was pulled on our station (during the demonstrations) so that we could not continue our broadcast," said Bill Davis, the station's general manager.

"You could say there was a low-scale riot with police breaking ranks and attacking reporters and then demonstrators throwing rocks and bottles."

Events started after protestors had built parts of their shanty town too close to the campus administration building, California Halls.

Davis said, "The university claimed the construction violated its 'time, place and manner rules' regarding demonstrations." A representative from the university chancellor's office, Lynn Atwood, said, "Shanties that were separate from California Halls were deemed to be OK but then they attached them to the administration building." The university then filed for an injunction to have the structures removed.

Jane Kaplan, attorney for the *Daily Cal* said, "The university had filed for an extremely broad-based injunction

continued on next page

that would remove the whole shanty town and permit fewer demonstrations." The judge granted the injunction but limited it only to that part of the shanty town that was a fire hazard. According to Kaplan, this applied only to the parts attached to California Halls.

"The university police then, without warning, began to forcibly remove the whole shanty town and demonstrators at 2:30 in the morning," Davis said, "and they arrested people with the aid of an outside force." It was then that reporters of the *Daily Cal*, KALX and other local press groups were allegedly attacked.

The *Daily Cal's* restraining order against the police was denied. Kaplan said, "The judge said there was not a 'sufficient pattern of violence' against the press. But if there are any more problems," she added "we will request another restraining order."

Davis, in the meantime, wrote a letter to the university chancellor threatening to file suit, since campus police had violated Federal Communications Commission regulations and federal law with a "clear violation of First Amendment rights," he said. However, an agreement was eventually thrashed out.

"Agreement was reached by the chancellor's office and KALX saying police will not arbitrarily pull the plug (on the station)," Atwood said, "but KALX is obliged to observe the same reasonable functions of the rest of the press without having oversized equipment that would get in the way of police action."

In a written statement about the events, Chancellor Ira Michael Heyman said, "I am and was, of course, responsible for the campus police decision to make arrests, if necessary, in order to remove the shanty structures from where they were. It happens, however, that I was (away) that evening... but I have no reason to disagree with the decision to go ahead for calling in supporting police under mutual aid."

While much of the problem is now resolved between the university and KALX, some *Daily Cal* staff are still suing individual university police officers for personal damages, according to Kaplan.■

Florida

Not For Profit case still unresolved

Litigation in motion stage; court date not yet set

In October 1985, a lead article in the first issue of the underground newspaper *Not For Profit* said: "WAKE UP! Hey! You're f—ing lucky! You got your hands on the first issue of 'Not For Profit.' If you save this 'zine for 10 years it might be worth something. Right now, it isn't even worth 25 cents...Well, here it is and we could care less whether you like it or not."

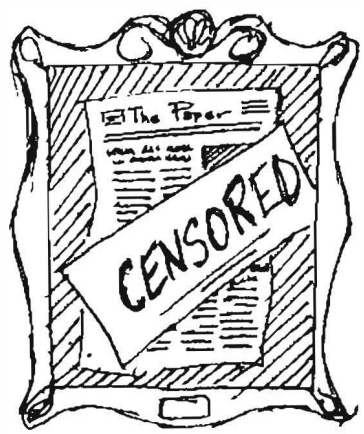
In fact, the Pinellas County School Board didn't think it was worth even a penny, and to say they didn't care for it would be akin to saying that "the sun don't shine" in Florida—a gross understatement.

The board said that *Not For Profit* could not be distributed on school grounds and would suspend students caught distributing the paper.

That first issue included other controversial items. Swear words. An article identifying South African President P.W. Botha as "A——e of the Month" for his administration's support of apartheid. An article encouraging people to subvert Jerry Falwell's Moral Majority by repeatedly tying up Falwell's toll-free phone lines. A piece attacking school board members Gerry Castellanos, Calvin Hunsinger and Frank Pesuth. All three were depicted as cartoon figures in fairly degrading garb.

All these items were written by then-editor of the paper, Manny Sferios, a former student at St. Petersburg (Fla.) High School. He later moved and attended the private Thom Howard Academy and graduated in May.

Sferios thought his paper was worth fighting for so he and three other students filed suit in federal district court against the school board on behalf of Pinellas County public high school students. The suit asks for $110,000 in compensatory and punitive damages, which Sferios said would be divided among all high school students if the paper was victorious.



PORTRAIT OF A NEWSPAPER
BY B.K. YOUNG

Michael Schwartzberg said his clients are suing for the right to receive *Not For Profit*, because with a "blanket ban on distribution, all of the students' rights have been denied."

Schwartzberg said the case is still "in the motion stages now, back and forth. I'm waiting for a court date to be set."

Because it is a class action suit, Schwartzberg said, under federal law one must file with the court to have the class certified to legally represent those that have been harmed.

But, he said, "the school has filed a motion to strike the class certification, saying that my students, and in particular, Manny, are not representative of the students allegedly denied their rights."

According to B. Edwin Johnson, attorney for the school board, Sferios broke the board's publication policy when he failed to submit the paper for review prior to distribution.

Johnson said that content wasn't even the crux of the issue, as yet.

"The question is, are Pinellas County school district kids allowed to produce this kind of material, and if not, why should a non-public school student be allowed to?"

Schwartzberg had advised the students to distribute the magazine off school property to avoid further hassles while the case is in litigation. But school officials confiscated copies of the paper's second and third issues when students brought them back on campus, claiming that the magazine was obscene and unsuitable for the curriculum.

Sferios decided to start the paper to "get students communicating with each other. That's why we started the magazine right now—it's to get our peers, you know, to start thinking for themselves," he said in a *St. Petersburg Times* story. "It seems like when you walk through the high schools all you hear people talking about is, you know, who's going with whom and the famous 'sex, drugs and rock n' roll' type thing and where the parties are."

Since Sferios' publication started, five other magazines have gotten under way, which "I thought was great. After ours came out, students found out they could communicate and express their views. They didn't realize that before," he said.

Sferios sees himself as a champion of his fellow students' First Amendment rights. On a wall in his room he keeps a quote: "Censorship of what we see, hear and read constitutes an unacceptable dictatorship over our minds and a dangerous opening to religious, political, artistic and intellectual repression." ■

New York

"Trekkin" cartoon almost censored

A lengthy cartoon strip featuring "Star Trek" characters involved in "homosexual promiscuity" persuaded the administrators at Erie Community College in Buffalo, N.Y., to boldly threaten censorship - and then back down.

Marcia Sorrentino, Dean of Students at Erie, threatened to withold the stipends of the adviser, editor and secretary of the student newspaper, *The Promethean,* but after talking to the county attorney decided to withdraw the threat, according to newspaper adviser Richard Robinson.

The administration threatened action after they received complaints from someone in the community who brought the "Trekkin" cartoon strip to their attention.

In the strip Captain Kirk, of the starship Enterprise from the "Star Trek" television series and movies, was involved in homosexual acts with his arch enemy Kahn, and there were sexual insinuations about Kirk and his first officer, Spock. The strip appeared in a special lampoon issue of *The Promethean.*

"There was some foul language and I could see how it could be distasteful to some people. The homosexuality was the only thing bordering on obsenity, but then they should have stopped reading it. It wasn't just a three-box comic strip, it was a whole page long," Robinson said.

Sorrentino denies that the administration threatened to withold stipends but in a written statement said, "As Dean of Students I did consult with the county attorney's office as to the legality of withholding stipends pending an outcome."

According to Robinson, after the paper came out only a few copies were distributed before school officials confiscated it. The issue was only released after the administration got legal advice, he said. Sorrentino insisted that they did not confiscate the paper since distribution decisions are left up to the students. "There was no delay in distributing the paper. (It) was fully distributed on campus by the newspaper staff according to their scheduled timetable."

On the issue of whether the cartoon was obscene Sorrentino said, "I'm not saying there was anything obscene in the paper, but we go by our chancellor's code of ethics, and we judge things on what is in the best interests of the community. We were just wondering if this issue followed suit."

Like Robinson, the opinion of the county attorney's office was that the paper was not obscene, and based on previous cases there were no grounds to take any action against the newspaper staff.

In a memorandum from Linda C. Laing, assistant county attorney, to Sorrentino, Laing advised, "The material contained in the *Promethypoon* (the spoof issue of the paper) is (not) legally obscene. Thus, sanctions imposed against member(s) of the Promethean staff ... would be improper."■

New York

Photographer files suit after principal seizes his film

Michael Heath, a high school student photographer in Ithaca, N.Y., who filed suit when the principal confiscated his film in March, has asked for its return if any settlement is to be reached.

Principal John Caren took the film after Heath photographed him escorting from his office a student who had been suspended for distributing an "underground newspaper." The suspension began a winter of controversy between student journalists and administrators at Ithaca High School over the rights of students to distribute their unofficial publications on campus.

Caren claimed that taking pictures of the incident was disruptive and an invasion of the student's privacy. That student and his father subsequently signed papers allowing Heath to develop the film, but Caren still refused to hand it over.

A representative of Heath's attorney, said, "A second part of any settlement would require the school to issue a policy in its handbook stating the freedom of students to take pictures around the school."

The school's attorneys have not yet replied to the law suit and this delay may be used to get an out-of-court settlement, according to the representative.■

New York

Planned Parenthood ads target of censorship

Planned Parenthood advertisements in student newspapers have been the focus of two legal actions involving First Amendment violations in Nassau County, N.Y.

According to an article in *Newsday*, the Nassau County chapter of the American Civil Liberties Union filed suit on June 4 against the Bellmore-Merrick Central High School District seeking to remove the district's ban of a Planned Parenthood ad in the Calhoun High School newspaper, *Hoofbeats*.

Court papers filed by ACLU attorney Alan Azzara in U.S. District Court in Uniondale said the $150 ad arrived on April 8 and was immediately referred to the paper's faculty adviser. She then referred it to the principal, who two days later said it could not run without the superintendent's permission. On May 5, school superintendent Salvatore Mugavero rejected the ad.

Newsday quoted Mugavero as saying, "A decision was made that since the Board of Education does subsidize the newspaper, we take the role of the publisher of the paper. The publisher decided that we do not want to accept the ad."

The *Hoofbeats* dispute began two weeks after the Nassau County Youth Board withdrew financial support of a youth newspaper, *Teen to Teen*, over its running an ad for Planned Parenthood, along with some personal ads the board said were suggestive. That decision by the county, Mugavero said "prompted some of the things that we did, but it wasn't the overriding factor."

Azzara said in the suit that the district violated the students' constitutional rights to free speech and press, due process and equal protection of the law. He sought monetary damages of $2,500 and an injunction to end the ban on the ad.

On June 6, U.S. District Court Judge Charles Sifton granted a preliminary injunction preventing the school district from banning the ad.

Azzara had said that although the order was only a preliminary injunction, "it's like a permanent injunction unless the (school) district gets a stay of the order by an appeal court."

But the district voted not to appeal, according to Barbara Berstein, executive director of the ACLU in Nassau County.

"The school board said that if we didn't sue for damages, they wouldn't appeal," Bernstein said. "We made our point. The newspaper was printed and the case finished."

In the incident involving *Teen to Teen*, Nassau County withdrew its funding for the new countywide newspaper because its first issue contained a Planned Parenthood ad and suggestive personal ads. The county had pledged to pay $75,000, or half of the monthly paper's 1986 expenses.

The $150 Planned Parenthood ad listed its birth-control and pregnancy-testing services on a "confidential basis." The 18 personal ads, at $5 each, were from young people looking for dates. Officials focused on two of them: "Sexy, seductive lady seeking fly guy between the ages of 18-20" and "Hot hunk who loves all types of excitement. Do you fit the position?"

The issue, which ran 35,000 copies, also contained articles about the new drinking age of 21 and movie, record and book reviews. Patricia Weiner, editor, is one of four paid adults on the staff. They supervise 16 high school students who solicit ads and put out the paper, which was distributed free to 55 public schools.

Newsday reported that County Executive Francis Purcell sent a letter to Weiner in late March saying he was ending the county's subsidy because "no public funds should be expended for any project which even a few find objectionable."

Chief Deputy County Executive Henry Dwyer said he was troubled by the ads. *Newsday* quoted Dwyer as saying, "It's not a question of immorality or raciness. It's that a large segment of the population could find this offensive."

The Nassau County Youth Board, which subsidizes *Teen to Teen*, called an emergency meeting March 15, and after more than three hours of debate, recommended that Purcell shut off funding.

County officials, *Newsday* reported, claimed they could legally cancel the agreement. Dwyer said removing county funds was better than trying to impose censorship.

Weiner disagreed. "They (Nassau County) can't sign a contract with us in February and turn around in March and nullify it," she said. "They didn't even give cause. They just said that when something offends, no matter how small the population, they don't want county funds used."

Weiner said the newspaper's board voted on July 14 to sue Nassau County for breach of contract and violation of the First Amendment.

"Obviously the county cancelled the contract because of the Planned Parenthood ad and that is exercising editorial control due to content," Weiner said.

However, Carol Ginberg, special assistant to Ann Irvin, the Youth Board's executive director, said that it "was not true" that the ad was why funding was withdrawn.

"The issue was using taxpayers' money to put out the paper," she said. "Unfortunately, the Planned Parenthood ad was printed, and people jumped on that. The situation was incorrectly reported by *Newsday*."

Ginberg said the county did not want to be in the position of being a publisher. "They were so excited about the idea of having a teen paper, they hadn't thought it through. Then they realized the county should not be in the business of publishing a newspaper," Ginberg said.

Originally, there was some doubt as to whether the paper would be financially able to continue publishing. Besides the county money, it had no other funding in April except for advertising revenue, which accounted for only 20 percent of its budget.

But Irvin said she would help seek private funding for the paper. And since spring, a number of private foundations have donated funds, enabling the paper to come out in May and June. The paper never intended to publish July and August editions.

Enough money remains for the September edition, Weiner said. "Ad revenue has increased substantially but not enough for the paper to be self-supporting." ■

California

Court orders schools to accept anti-draft ads

A federal appellate court has ordered San Diego's Grossmont Union High School District to accept anti-draft advertisements initially rejected for its high school student newspapers in October 1982.

The Ninth U.S. Circuit Court of Appeals, in a split 2-1 decision issued June 6, enjoined the school district from refusing the advertisements submitted by the San Diego Committee Against Registration and the Draft. In its ruling, which binds nine western states, the court held that the district's five high school newspapers are limited public forums, "public property which the state has opened for use by the public as a place for expressive activity."

The district's board of trustees voted on July 8 to petition for a rehearing of the case, *San Diego Committee Against Registration and the Draft v. Grossmont Union High School District*, 790 F.2d 1471 (9th Cir. 1986), before the entire appellate court.

The district had rejected the anti-draft advertisements saying its policies prohibited political advertisements in the student newspapers. The advertisements depicted a ghost-like figure, stating "Don't Let the Draft Blow You Away!" and contained other statements encouraging students to learn about their draft registration rights from the committee.

However, the court ruled that the district already had permitted political advertising when it allowed the papers to publish advertisements about possible military careers, despite its no-political-ads policy.

"The board provided a forum to those who advocate military service. The board then refused, without a valid reason, to allow those who oppose military service to use the same forum," the court said. "The only reasonable inference is that the board was engaging in viewpoint discrimination."

Such discrimination, the court said, is not permitted by constitutional guarantees pertaining to limited public forums. Though the government is under no obligation to create such forums, once in operation they must remain consistent with their original regulations. They may be open to certain groups for discussion of any topic or to the entire public for the discussion of certain topics.

Therefore, when the district opened the papers to advertisements about political issues, it was required to allow all sides of the topic to be aired.

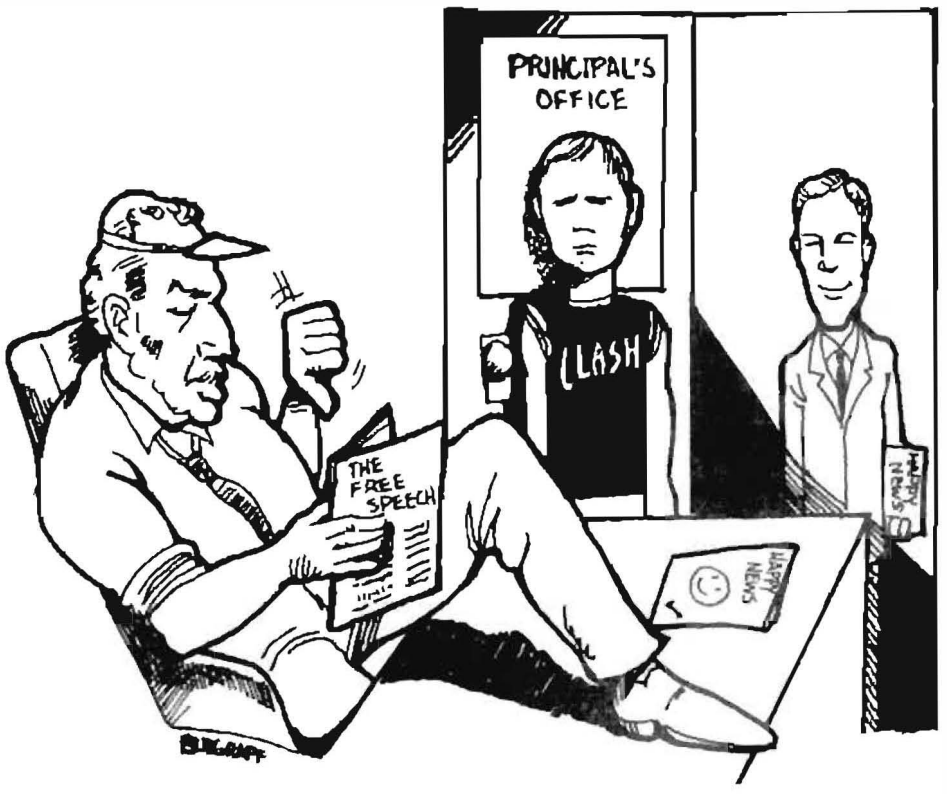
The dissenting judge argued that the board's policy prohibiting political advertising demonstrated that the district never intended to open the advertising columns for public political debate, despite the publication of the military advertisements.

The anti-draft organization's lawsuit was directed against the school district and its policies, not the student newspapers and their editors. Therefore, the court did not deal with whether the student editors would have had authority to reject advertising they did not want in the newspaper in the absence of a school policy.

In 1976, a federal court of appeals in Mississippi held that the decision of student editors in rejecting advertisements of an off-campus gay organization was final and unalterable. Because the school authorities had taken no part in the decision, and had no legal authority to do so, there was no state action involved, the court said. A federal trial court in Nebraska made a similar ruling this June. (See story this issue.)

The Ninth Circuit court, however, did not need to rule on whether the student editors could have legally rejected the advertisements in place of the school board.

In deciding that the advertisements must be published, the court rejected arguments that the advertisements advocated illegal conduct, saying there was no evidence to support that conclusion. ■



Virginia

Guidelines adopted after ad dispute

Administrators at Patrick County (Va.) High School have developed new guidelines for student publications after the American Civil Liberties Union threatened to sue the school board if it did not drop its prior review policy of the school newspaper.

The incident involved Patrick County school officials' refusal to allow students to accept advertising from the Central Committee for Conscientious Objectors (CCCO), a Pennsylvania draft and military counseling agency, claiming the ad was unpatriotic and inappropriate for the school newspaper.

The new guidelines, adopted on April 14, state that either the principal or a teacher appointed by him "may prohibit all or part of the proposed publication" if it is "obscene or pornographic", "libelous or slanderous" or the reviewer is "able to articulate facts by which he may reasonably forecast substantial disruption of or material interference with school activities on account of the distribution of such materials."

If the reviewer does prohibit the publication in question, the guidelines state, "the students in charge of the publication, by majority vote, may appeal his decision." A minimum of 21 days are allowed before a decision is rendered on whether the publication can be printed.

Stephen Bricker, the paper's attorney, said the guidelines "are probably too broad, but are certainly better than what we had before."

Gregory O'Bryan, the paper's faculty adviser, feels the review process "is still unfair." Student editor Marc Walton also has some problems with it.

"I think it's too long of an appeals process," Walton said. "It needs to be swifter. Also, what exactly do they mean by 'substantial disruption?' "

For prior review guidelines to be constitutionally sufficient, courts have ruled that they must clearly set out what is forbidden and establish an administrative procedure by which students can challenge decisions to censor.

For instance, regulations must offer criteria and specific examples as to what will be considered disruptive, obscene or defamatory so that students will understand what expression is proscribed. Definitions must be provided of all key terms used such as "disruption" and "obscenity." Guidelines must detail criteria by which an administrator might reasonably predict the occurrence of "substantial disruption."

Also, any system of prior review must give students the right to a prompt hearing before the decision-maker. Procedural due process requires that guidelines limit the time in which the official has to reach a decision on whether to prevent distribution, and such time period must be reasonable.

Walton said he had not decided whether to pursue the matter further.

The ad in question said: "The Military Offers One Thing That's Not Advertised. Sure you need a job. And a way to pay for school. A challenge. An Adventure. Pay and benefits. But are you willing to risk to your life or take somebody else's in order to get it? After the invasion of Grenada, Lt. Col. Taylor said: 'Our job is to kill people and destroy things.' Is that the kind of job you're really looking for? Now's the time to find out what you're getting into."

Walton said of the ad, "How much more clearly can you put the job of the military? That's what they do."

Although it was sent to over 3,000 schools and colleges, Patrick County was the first to encounter problems printing the ad, according to Lou Ann Merkle, coordinator of counseling for the CCCO.

Between the ad's appearance in November 1985 and adoption of the guidelines, principal James Hiatt reviewed and censored *The Cougar Review*, screening every page of the paper before it went to print and killing a CCCO ad scheduled to run in December.

The paper's student staff had wanted to run the ad again in March. It had regularly run ads for different branches of the military and some students thought it only fair to show the other side.

Though the principal opposes running controversial material, courts have ruled that his control over what students can print is strictly limited by consitutional law.

But according to a February edition of the *Roanoke Times*, Hiatt said his opinions on student press freedom "differ a little from the courts."

"I don't view a school newspaper as having the same freedoms as a public press. If the school paper dwelled on controversial issues, it would interfere with what students should be learning in journalism class."

Also, he said, schools should not tamper with values taught at home. "If you take a value out of the home and start giving a different side of the value, I feel you are moving too close into the area that should be instructed by the parent."

Faculty adviser O'Bryan, a former Army lieutenant, said the November ad carried a valuable message to the students. While in the military, he worked with soldiers as both defense and prosecuting counsel in court martial cases and said he saw problems that could have been avoided with proper counseling — problems arising from drugs, racial prejudice and immaturity. He said that hearing both sides of the military would give students a chance to make a clear decision.

The incident began, Hiatt said, when O'Bryan used his authority to override student editor Walton, who didn't want to run the ad, but was forced to by O'Bryan.

"The ad didn't bother me a whole lot," Hiatt said, "except that there was a lot of disruption in the school; students carrying signs and such."

Walton, however, laughing in disbelief, said, "He (O'Bryan) didn't force us to run the ad. And there weren't any demonstrations; no signs or anything."

Bricker agreed. "The reason he (Hiatt) said that is because that's his only defense if we were to sue him."

Walton said Hiatt first refused to run the ad because it wasn't paid for. Then, after CCCO agreed to pay for the space, Walton said, Hiatt told him he didn't like what the ad said, "so after that was when we contacted the attorney."

Bricker said he agreed to suspend legal action and let the school develop publication guidelines.■

The Fraser Decision

Court says students still do not shed free speech rights at schoolhouse gate

By Mark Goodman
SPLC Executive Director

The decision of the U.S. Supreme Court in *Bethel School District No. 403 v. Fraser* can be described in many ways: the loss of a three-year battle for honor student and champion debater Matthew Fraser, the first Supreme Court case in 17 years to deal with the free expression rights of high school students, one of the last opinions of retiring Chief Justice Warren Burger. Almost every description suggests something momentous, a decision of enormous significance for high school students around the country.

I—LEGAL ANALYSIS

But is the *Fraser* decision really all that momentous? Will the case have a dramatic negative effect on high school student journalists in the coming months and years? The opinion of the Court, read in its most straightforward manner, suggests probably not.

Although the vote in *Fraser* was seven justices to two, the Court handed down four different opinions, and one of the nine justices did not join in any of the four. Chief Justice Burger wrote for the majority of the Court in the opinion that becomes legal precedent. Justices White, Powell, Rehnquist and O'Connor joined his opinion. Justice Brennan filed a separate concurring opinion, and Justice Blackmun agreed with the result of the case but joined in no written opinion. Justices Marshall and Stevens each filed their own dissenting opinion.

What the majority justices said in their opinion is that the interest of the school in "teaching students the boundaries of socially appropriate behavior"[1] outweighed the interest of Matthew Fraser in giving a speech filled with sexual puns to a school-sponsored assembly. The Court recognized that the public school system is responsible for not only teaching English, mathematics and science, but also for educating students about the "fundamental values of 'habits and manners of civility' essential to a democratic society."[2] Because of that responsibility, "it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse."[3] The Court majority found Fraser's speech to be "plainly offensive" and "insulting" and indicated that they thought it could have a "seriously damaging" effect on 14 year olds in the audience.[4]

The majority opinion briefly discussed the question of whether Fraser's punishment was unconstitutional as a violation of due process. Fraser had argued that he had no way of knowing that the delivery of his speech would violate the school rule prohibiting "obscene, profane language or gestures." According to the Court, this argument was "wholly without merit."[5] It said that school disciplinary rules do not have to be as detailed as a criminal code; the language of the school rule and the fact that several teachers had told Fraser beforehand that his speech might cause problems was sufficient to give him all the warning due process required.

In agreeing with the judgment of the Court, Justice Brennan said Fraser's speech given in the school assembly was disruptive of the school's educational mission and thus could be punished. However, he said that if the same speech had been given "under different circumstances," it "may well have been protected...."[6]

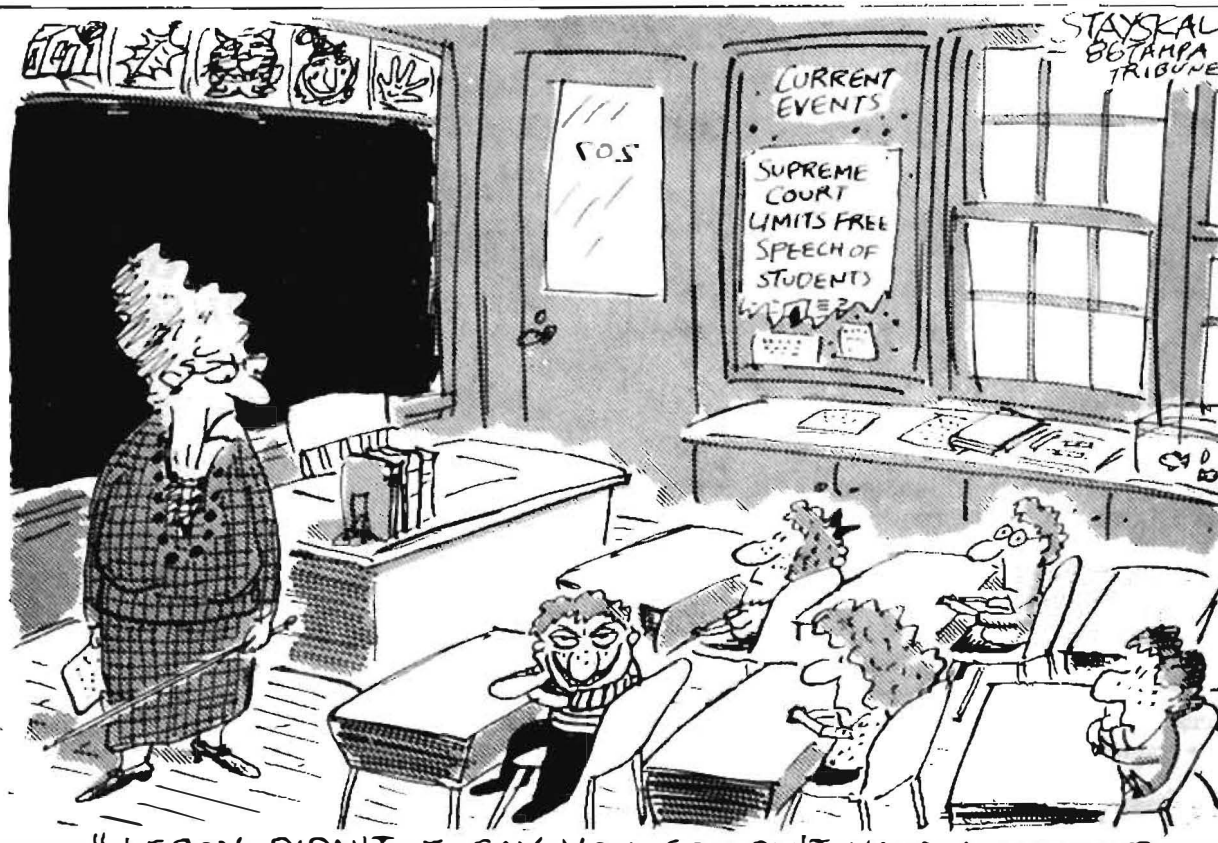
In the most cogent of the justices' four opinions, Justice Marshall dissented from the majority. Because the school had not been able to demonstrate to either of the two lower courts that any disruption of the educational process occurred, he said quite simply that the decision of those lower courts in favor of *Fraser* should not be disturbed.

Justice Stevens dissented also, but on the grounds that Fraser had been denied due process because the school rule was so vague he had no way of knowing his speech would be considered a violation.

The most significant aspect of all the opinions in the case is their reliance on the factual situation that confronted the Court. The majority certainly could have used this case to reconsider and reevaluate the First Amendment protection that has been afforded public high school students since *Tinker v. Des Moines Independent Community School District*.[7] In *Tinker* the Court coined the oft-quoted phrase that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[8] But in *Fraser* the Court made clear it was merely going to "consider the level of First Amendment protection accorded Fraser's utterances and actions before an official high school assembly attended by 600 students."[9] This reliance on facts will undoubtedly limit application of *Fraser* to future cases.

In at least a half dozen places the Court notes the especially intrusive and disruptive nature of objectionable verbal expression on a captive audience. The majority opinion compares Fraser's speech to the "indecent but not obscene" language prohibited from the broadcast airwaves during hours when children would be likely to inadver-

continued on next page



continued from previous page

tantly hear it. The Court also mentions the fact that the U.S. House of Representatives and Senate have rules prohibiting the use of offensive language during debate. Special emphasis must be placed on the Court's recognition that a "high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students."[10]

A second important point the Court makes is that Fraser's punishment for his speech had nothing to do with the endorsement of his candidate for student government. In the words of the Court, "the penalities imposed in this case were unrelated to any political viewpoint."[11] Or as Justice Brennan says in his concurring opinion, "There is no suggestion that school officials attempted to regulate [Fraser's] speech because they disagreed with the views he sought to express."[12] However, the Court failed to indicate how one goes about separating a viewpoint expressed from the words used to express that viewpoint. The justices made no mention of the holding in a previous decision that said, "We cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process."[13]

Nevertheless, these two aspects of *Fraser* indicate the limited effect the opinion should (and one hopes will) have. The Court's opinion is, for the most part, narrow enough to make it difficult to apply to other factual situations. Clearly, a student publication will not run the risk of creating the same verbal assault on a trapped audience that the Court felt resulted from Fraser's speech. And practically, almost all student press censorship cases are the direct result of attempts at suppression by school officials of controversial subjects, not "content-neutral" regulations on the appropriate manner of expression.

However, many school officials will see *Fraser* as a limitation by the Court on the strong First Amendment protection students have long been afforded. Undoubtedly, some will use *Fraser* to justify their attempts at censorship of a wide variety of student expression.

Student journalists should be advised that now, more than ever, they should strive toward true professionalism and avoid the use of unnecessary sexually explicit or profane language. Although the *Fraser* opinion does not say such language could be censored, why give an anxious school official the opportunity to manufacture a justification for censorship?

The aspect of *Fraser* that is most telling and which should be emphasized is that the Court did cite as authority its landmark decision in *Tinker*. The court implicity recognized once again that public high school students do have the right to express their opinions on important issues of the day.■

[1] *Bethel School District No. 403 v. Fraser*, No. 84-1667 slip op. at 5 (U.S. July 7, 1986).
[2] *Id.*
[3] *Id.* at 6.
[4] *Id.* at 7.
[5] *Id.* at 10.
[6] *Id.* at 3 (Brennan, J., concurring).
[7] 393 U.S. 503 (1969).
[8] *Id.* at 506
[9] *Fraser*, slip op. at 4.
[10] *Id.* at 9.
[11] *Id.*
[12] *Id.* at (Brennan, J., concurring).
[13] *Cohen v. California*, 403 U.S. 15, 26 (1971).

Can a "child" give consent?

Reporting About Minors

When four of the high school's 10 cheerleaders become pregnant during one fall football season, the editor of the student newspaper decides it's time for a story on teenage pregnancy.

Well aware of the sensitivity of the subject, the assigned reporter carefully obtains consent from the people interviewed, teenage mothers and fathers, before writing a story that refers to them by name.

Later, one of the teenage mothers, anguished over disparaging treatment she has received since the article's publication, sues the newspaper for invasion of her privacy. A while later, the father of one of the teenage fathers, embarrassed by damage to the family's reputation, also sues for invasion of privacy. Both lawsuits are based on the legal theory that a minor is legally unable to consent to an invasion of privacy. Therefore, even though the teenagers interviewed all gave their consent to use of their names and stories, that consent is claimed to be invalid.

This scenario, while fictitious, is not all that unlikely. As more high school and college newspapers attempt to report on sensitive, serious, sometimes embarrassing personal issues, such as teenage pregnancy, drug use and alcohol abuse, obtaining consent from the individuals interviewed to report on these matters is vital. However, the sources of information on which student journalists must rely often have not yet reached the legal age of adulthood.

No court, apparently, has ruled on the issue of whether a minor can give valid, legal consent to an invasion of his or her privacy, though one federal appeals court has implicitly recognized such ability exists.[1]

Thus is created the dilemma. Can a newspaper rely on a minor's consent to print what could be embarrassing or potentially damaging facts about his or her life? If so, what's to protect unknowing minors from the aggressive pressure tactics of prying reporters? If not, how will a minor with legitimate issues to air publicly find a medium of expression?

To analyze the problem, it's easiest to start with the absolute protection given to minors in the field of contract law. Courts have long upheld a rule that a minor may reject any commercial contract, as long as that contract is not for the purchase of necessities.[2] The purpose seems to be protection of youth unable to fend for themselves in a market where the ancient rule was "the buyer beware" and the competitive bargain was won by the most cunning participant. The common law conception was that a minor did not possess the discretion and experience of an adult and must be protected from his own contractual follies.

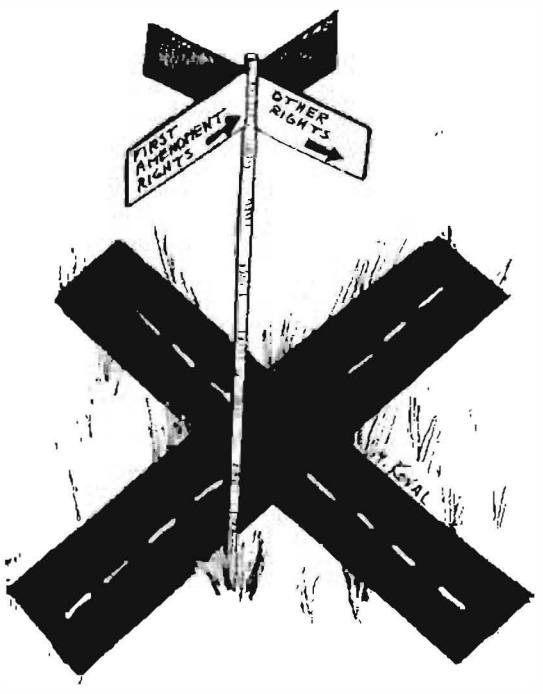
The rule of "anyone who deals with a minor does so at his own risk" became a corollary to the buyer beware doctrine of the marketplace. This protection was extended to all youth below the legal age of majority, despite the education, experience and intelligent understanding of the minor involved.

Such absolute protection has not been extended to minors who harm other people or commit crimes, however. While the courts have been willing to protect minors from other people, such as clever salesmen, the protection has been less stringent when the minors themselves are causing problems. For these areas of the law, criminal and tort, the courts have only been concerned with whether the minor was capable of understanding the consequences of his actions. Therefore, when a minor hurts someone, whether accidentally or on purpose, if he's capable of understanding what he was doing, he is going to be liable regardless of his age.[3] The same applies to any crime he may commit.[4]

The courts have used the same standard to accept a minor's confession to a crime as valid. If a minor, because of his education, experience and intelligence, is capable of understanding the consequences of confessing to a crime, he may do so legally and his admission may be used in court against him.[5]

One court has implicitly recognized that a minor may consent to invasion of his privacy. A federal court of appeals in Missouri, in discussing whether a school could censor a school publication because articles about teenage

continued on next page



pregnancy might lead to an actionable tort claim against the school, determined that invasion of privacy was the only possible tort claim that could arise. In deciding that no such claim could be filed as a result of the articles in question, the court said, "Certainly the parents of the girls could not maintain this tort against the school because the article did not expose any details of the parents' lives, only about the students, and they fully consented."[6]

Some courts have even recognized that a minor may consent to a tort, a harm, against himself. A federal court of appeals in New York ruled in 1980 that children who consented to being taken into hiding with a step-father under the federal witness protection program could not later sue the government for abduction and false imprisonment.[7] In 1940, a South Carolina court seemed to implicitly recognize that a woman sued for false imprisonment of an 11-year-old would have a defense if she proved the child stayed with her voluntarily.[8]

In addition, courts have given minors the legal right to make other significant, important decisions, regarding child bearing and rearing. The U.S. Supreme Court has held that minors have a right to obtain contraceptives and have abortions without parental consent.[9] State courts have held that a minor may give his or her child up for adoption.[10]

Despite these rulings, medical treatment for minors still requires parental consent. One reason advanced for this seeming contradiction is that parents are going to be responsible financially for any improper medical treatment.[11] Other courts still maintain that minors are not capable of understanding enough about the consequences of treatment to give consent.[12] The Supreme Court has said that the difference between giving consent for abortion and other medical treatment is that an abortion is a constitutional right, while other treatment is not.[13]

Constitutional rights, the court has said, "do not mature and come into being magically only when one attains the state defined age of majority."[14]

The dilemma confronted with invasion of a minor's privacy seems to be resolved in favor of the mature, intelligent minor in the legal compilation, Restatement (Second) of Torts, section 892A. That widely accepted authority says consent to an invasion of a person's interests is effective if the person has the capacity to do so. In a comment on that section, the Restatement says a child's consent is effective if he is capable of appreciating the nature, extent and probable consequences of the conduct to which he consents, even if parental consent is not obtained or expressly refused. Such reasoning is in line with that adopted by the courts in determining whether a child is responsible for his torts, crimes and confessions to crimes.

Returning to the problem of whether a student publication can rely on a minor's consent to an invasion of his privacy, the issue becomes intertwined with that of a minor's right of free speech, a constitutional right to which the U.S. Supreme Court says a person is entitled despite his age.[15] A minor without a legal ability to consent to such an invasion is not going to have many forums available in which to express himself. The 17-year-old campus radical, dependent on publicity to get his message across, is going to be shunned by the media if publishers fear they could be sued two years later by the reformed business student attempting to get his first job at IBM.

And when the pregnant 16-year-old wants to tell her story to the local press for the lesson it might teach to her peers, the newspaper will likely avoid the issue completely if the teenager's parents are overruling the daughter's decision.

If the courts refuse to recognize a minor's right to consent to an invasion of his privacy, a situation could develop where a minor would be forced to sue the governent for deprivation of his First Amendment rights of free speech. Without a legal rule making his consent to invasion of privacy valid, he probably will not be given access to media. Therefore, only a legal rule making his consent valid will give him opportunity for that access.

However, it seems unlikely that such a situation will be allowed to occur. Given the fact that courts have allowed minors, with sufficient capabilities, legal ability to make so many significant decisions, such as abortion, adoption, and criminal confessions, it would be logical to extend that legal capability to the less significant decision to allow someone to invade his privacy. This outcome appears even more necessary when the First Amendment rights of minors are considered as well.

Practically, a student journalist who interviews a minor for a story and plans to rely on statements the minor has made about intimate details of his or her personal life should always attempt to get the consent of one of the minor's parents, too. And if that consent is not forthcoming, you should think long and hard about the appropriateness of running the story. If your thinking convinces you that the story should run, make sure you have the written and intelligent consent of the minor, for clarification purposes, and go with it.

Although no court has dealt with the issue, minors should be able to give valid consent to invasions of their privacy as long as they have sufficient age, knowledge, experience and education to appreciate the serious consequences of their actions. Such a rule not only protects minors too immature to appreciate the consequences of the consent, but also protects the free expression of minors fully aware of such consequences. ■

[1] *Kuhlmeier v. Hazelood School District*, No. 85-1614 (8th Cir. July 7, 1986).

[2] *Porter v. Wilson*, 106 N.H. 270, 209 A.2d 730 (1965).

[3] *Gibbs v. State Farm Mutual Insurance Co.*, 544 F.2d 423 (9th Cir. 1976).

[4] *Redman v. State*, 265 Ark. 774, 580 S.W.2d 945 (1979).

[5] *Gallegos v. Colorado*, 370 U.S. 49 (1962).

[6] *Kuhlmeier*, slip. op. at 15.

[7] *Leonhard v. United States*, 633 F.2d 599 (2d Cir. 1980).

[8] *Westbrook v. Hutchison*, 195 S.C. 01, 10 S.E.2d 145 (1940).

[9] *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52 (9176). *Carey v. Population Services International*, 431 U.S. 678 (1977).

[10] *Austin v. Collins*, 200 S.W.2d 666, (Tex. Civ. App. 1947).

[11] *Lacey v. Laird*, 166 Ohio St. 12, 139 N.E.2d 25 (1956).

[12] *Bonner v. Moran*, 126 F.2d 121 (D.C. App. 1941).

[13] *Planned Parenthood*, 428 U.S. at 74.

[14] *Id.*

[15] *Id.*


PRESS
JACK '86
DICKASON

Cover Story

The private school press:

Does a student at a private high school or college have to check his constitutional rights at the campus gate when he walks to class each morning?

It's a well known fact that many of the rights public school students take for granted go by the wayside on the private campus. Of particular interest to student journalists are the First Amendment guarantees of free speech and press. As the law is perceived by many, journalists at private schools don't have to worry about those rights: they don't have them. Because the First Amendment says, "Congress shall make no law...," courts say only the government can be stopped from denying a person his free speech rights. When a private institution is trying to censor, there's nothing the First Amendment can do about it. [1]

Or at least, that's the belief that has allowed some private campus officials to routinely censor those stories they don't like and punish those students who refuse to comply.

But all is not lost on the private school campus. Despite popular opinion and belief, there are some valid legal theories, along with some strong policy arguments, to help the private school journalist who's confronted with threats and acts of censorship.

The following suggested policy arguments against censorship are ones that private school student journalists can present to school officials to help convince them that censorship is a bad practice.

First, just because a court is not going to prevent censorship at a private school doesn't make it right. This is the nation where Patrick Henry said, "Give me liberty or give me death," and any official censorship of a newspaper, whether by private school administrator or government action seems patently un-American. A private school that actively seeks to stifle the expression of its students is not only violating fundamental democratic concepts, it also is retarding one of the basic necessities of the learning process—unfettered free flow of ideas. Minds simply need new ideas and means of expression to grow. Free expression is what has made America the country it is today and what separates it from the totalitarian nations that we condemn.

Second, if the private school believes that its ultimate function is to turn students into valuable citizens, a basic understanding of and experience with the workings of a democratic society is a requirement. A student journalist who experienced censorship and prior restraint throughout his academic career is going to approach the realities of journalism and its role in American society with a warped perspective. When censored, the students of a private school receive a lesser education than their counterparts in public schools, thereby decreasing the stature of the private schools that stifle expression.

Third, because many private schools are church affiliated, a special affinity for the First Amendment should create a common bond with journalists and their free expression rights. If it weren't for the First Amendment and its protections for the free exercise of religion, many of the schools themselves might not exist. It would seem incumbent upon church schools to advocate the guarantees that protect journalists as much as themselves within the same amendment.

When this kind of reasoning doesn't work, there remains the possibility that public and political pressure may lessen an administrator's desire to censor students. Organized groups of students, parents and faculty, publicly expressing their grievances to the regular, local press sometimes get results that internal discussion does not.

Ultimately, however, there is the possibility of going to court, seeking legal redress for the wrongs done, even when those wrongs are committed by a private institution. The chances for relief seem slim, but there are at least four legal theories under discussion that might gain a favorable hearing from a court.

Contract Rights

In the right situation, the legal remedy most likely to protect the student journalist in a private school is based on breach of contract. Those catalogs, student handbooks and brochures distributed by schools usually contain pages of policies, regulations and rules. Some courts have ruled that distribution of these documents and their acceptance by students creates a contract relationship. [2] This means that what the school promises to provide to the student, in exchange for the students' completion of course requirements and adherence to the rules, must be provided. Otherwise, there is a breach of contract for which the student may take court action.

For example, a private university is not legally required to provide a procedure for a student to respond when the school wants to take action against him, such as a hearing to answer a charge that could result in a student's expulsion. With no government rules to guide it, a private school can expel a student for no reason. However, when

Ways to win free speech

that school has a written policy outlining the procedures to be followed in student disciplinary action, those procedures must be followed. [3] If not, there is a breach of contract and the student may seek damages or reinstatement. This "due process" does not need to meet the standards of the federal Constitution, but it does need to meet the standards specified in the brochure, catalog or other policy statement.

Therefore, if a private school states in its policies or regulations that its student publications will be free of administrative interference, with final editorial control left to the students, any action contrary to that policy is a breach of contract for which a court would presumably give relief. Students should check to see if such a policy exists at their school, and if not, encourage the adoption of one.

State Action

Regardless of whether a contract exists, a court will exercise its jurisdiction and protect free expression rights if it is shown that the private university is really taking what amounts to governmental action when it censors the student press. This so-called "state action" doctrine comes in three forms, each rare and difficult to demonstrate. The first is proof that the private school and the state have developed an interdependent, symbiotic relationship. [4] This is possible when the school is heavily dependent on the state for its existence, relying on infusions of public money, financing and other visible means of support. In return, the state depends on the private school to perform a part of its function. Initially it might seem that practically all private schools might fall into this category because of the massive amounts of money the state and federal governments provide for the support of education and students. However, this is not the case. In several instances, courts have ruled that financial support is not enough. Only in Pennsylvania has this interdependent relationship been recognized. The state not only provided money to the schools in question, it also had designated representatives on the boards of trustees. In addition, there existed state statutes creating and defining the role the private schools were to play in the state university system. Even the names of the schools had been changed to demonstrate this role. With statutes to support them, the courts ruled that the schools were in effect part of the public university system, making them subject to restrictions on government action. [5]

State action might also be found without this dependent relationship if the private school is only doing what the government tells it to do. This is called the "close nexus" test, where a citizen is being deprived of his rights because a private institution is adhering to a government regulation. [6] Under this rule, a student journalist would receive First Amendment protection if a government regulation was forcing the private school to exercise censorship or prior restraint. Such a scenario is unlikely, however.

Finally, state action may be found if the private institution is performing duties and functions that traditionally have been done exclusively by government. [7] This public function doctrine developed from a case in which a company-owned town was performing all the functions traditionally done by local government. Because the company was doing all these activities, the court ruled that it had to abide by the same federal guidelines as a government. The key to this legal doctrine is its exclusivity. Courts have found that a private entity is performing a public function only when that function has been done exclusively by government in the past. [8] An example is police protection. Education, which has a private as well as public history, would probably not fit this standard.

One means of gaining legal relief being tentatively explored by the courts relies on use of individual state constitutions and free expression guarantees. Unlike the federal Constitution, which only prohibits government interference with free speech, the constitutions of 44 states have language that affirmatively protects free expression. The wording of the Pennsylvania Constitution, art. I, sec. 7, is typical of these types of provisions: "The free

continued on next page

continued from previous page
communication of thoughts and opinions is one of the invaluable rights of man and every citizen may freely speak, write or print on any subject, being responsible for abuse of that liberty."

This wording sounds like the government has a duty to stop anyone, private or public, from depriving someone else of his right of free community.

Just six years ago, the U.S. Supreme Court said that states are free to provide protection beyond that of the federal Constitution in their own constitutions. [9] In the case where this rule was stated, the court said states may provide greater, even affirmative, protection for free speech, guaranteeing its exercise on private property as long as the value of the property was not diminished and the purpose for which it was used was not disrupted. [10]

State Constitutions

At least two states, California and Washington, have used their state constitutions to allow the exercise of free speech, with reasonable restrictions, on privately owned shopping centers. [11] In addition, Pennsylvania and New Jersey have ruled that distribution of political materials must be allowed on private school campuses. [12] There has been no ruling on whether a state constitution, with an affirmative right of free speech and press, protects the student newspapers of private schools.

For a court to make such a ruling, it first would have to hold that the private school had created a public forum for student expression. Such a forum exists when the students are given a significant amount of editorial control. This usually is demonstrated through the publication of student news, student editorials or letters to the editor and distribution outside the journalism classroom. Practically, almost every student newspaper could be considered a forum for student expression. Courts have held that public forums at public schools may not be subject to administrative control.

In addition, the court would have to hold that publication of the article would not cause any substantial or material disruption of the school's learning environment.

State supreme courts that have indicated that the affirmative language in their constitutional free expression provisions provides broader protection than the federal Constitution's First Amendment are California, New Jersey, Pennsylvania and Washington. However, other states with similar affirmative language in their constitutions have said there is no free speech protection greater than the federal Constitution. These states are Connecticut, Florida, Michigan, New York, and North Carolina. [13] In addition, there are six states with free expression provisions similar to the federal First Amendment: Hawaii, Indiana, Oregon, South Carolina, Utah and West Virginia. Presumably, these state provisions would be interpreted by state courts to provide only the same protections as the federal Constitution. The remaining states have not ruled on the extent to which their constitutions protect free speech.

Winning First Amendment protections for student journalists at private schools with this legal theory might be a mixed blessing for journalism as a whole. Forcing a private institution to allow use of its newspaper for public expression comes close to the state forcing publication of something it wants in a privately owned newspaper. The Supreme Court has ruled that the government cannot impose material on a privately owned newspaper. [14] In fact, the government cannot force a private citizen to affirm a belief he does not share. [15] With these protections, the question arises as to whether the state, through its courts, can force a private school to allow its student newspaper to advocate ideas with which school officials disagree. Providing such a right to student journalists

requires a careful delineation between a privately owned public forum and a simple privately published newspaper. Because the legal definition of public forum for student expression implicates such a large role for student editorial control, however, a distinction from a non-academic private publication can be easily made.

Incorporation

Of course, the best way to resolve a legal dispute is to take preparatory measures that prevent the dispute ever from arising. To forestall administrative control of private school student journalism, the publication may incorporate itself as an entity separate from the school. The provisions separating control of the paper from the school's grasp must be explicit in the articles of incorporation, however. Many incorporated papers handle this by requiring that a majority of the board of directors positions be filled by students or other individuals who are not school officials. Incorporation is practical for only a few papers, though. An incorporated newspaper at a private school should not expect any financial or material support from its school if it wants to guarantee its freedom from censorship. Because of the ongoing costs involved, only the largest college newspapers have found incorporation a realistic alternative.

Although official control of student journalists at private schools remains a legal and practical reality, the student victim of censorship and prior restraint has some strong policy arguments and avenues of legal action open to him. Ideally, control of the press should be as repugnant to the school as to the student journalist. But where that is not the case, given the right set of circumstances, whether there is state action, a contract or even a state constitution providing protection, press freedom on private campuses can realistically be fought for and won. ■

[1] *Hudgens v. N.L.R.B.*, 424 U.S. 507 (1976).

[2] *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 13 Ill. Dec. 699, 371 N.E.2d 634 (1977).

[3] *Jansen v. Emory University*, 440 F. Supp. 1060 (N.D. Ga. 1977).

[4] *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961).

[5] *Isaacs v. Temple University*, 385 F. Supp. 473 (E.D. Pa. 1974); *Braden v. University of Pittsburgh*, 552 F.2d 948 (3rd. Cir. 1977).

[6] *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974).

[7] *Marsh v. State of Alabama*, 326 U.S. 501 (1946).

[8] *Flagg Bros. v. Brooks*, 436 U.S. 149 (1978).

[9] *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980).

[10] Id. at 83.

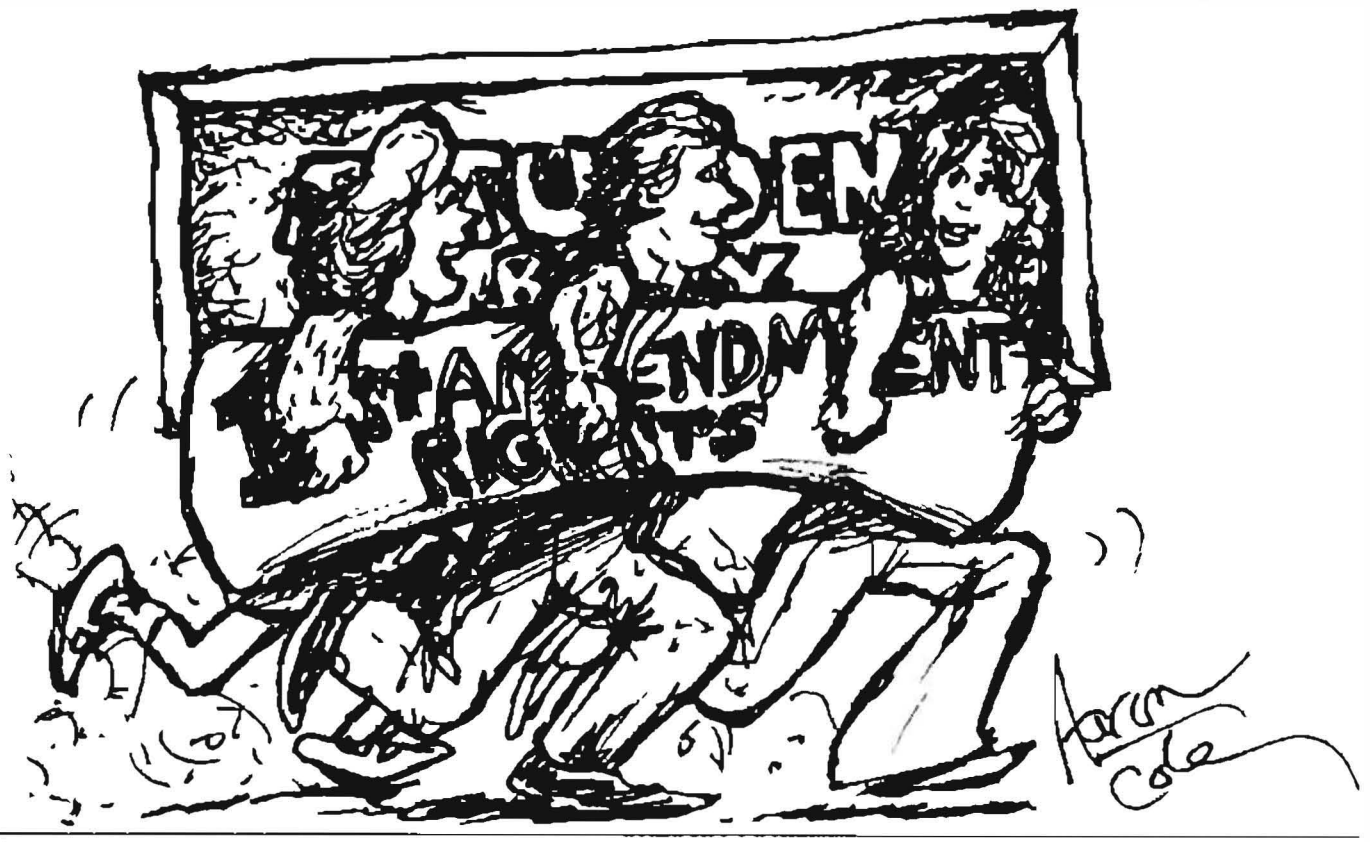
[11] *Robins v. PruneYard Shopping Center*, 23 Cal. 3d 899, 153 Cal. Rptr. 854, 592 P.2d 341 (1979); *Alderwood Associates v. Washington Environmental Council*, 96 Wash. 2d 230, 635 P.2d 108 (1981).

[12] *Commonwealth of Pennsylvania v. Tate*, 495 Pa. 158, 432 A.2d 1382 (1981); *State of New Jersey v. Chris Schmid*, 84 N.J. 535, 423 A.2d 615 (1980).

[13] *Cologne v. Westfarm Associates*, 469 A.2d 1201 (Conn. 1984); *Dept. of Education v. Lewis*, 416 So. 2d 455 (Fla. 1982); *Woodland v. Michigan Citizens Lobby*, 423 Mich. 188, 378 N.W.2d 337 (1985); *Shad Alliance v. Smith Haven Mall*, 66 N.Y.2d 496, 488 N.E.2d 1211 (1985); *State v. Felmet*, 302 N.C. 173, 273 S.E.2d 708 (1981).

[14] *Miami Herald Publishing Company v. Tornillo*, 418 U.S. 241 (1974).

[15] *Wooley v. Maynard*, 430 U.S. 705 (1977).



AWARD

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

Nominations for the award are accepted until August 1 of each year and should clearly explain why the nominee deserves the Scholastic Press Freedom award and provide supporting material. A nominee should demonstrate a responsible representation of press freedom through writing or actions and the ability to raise difficult and necessary issues in news coverage

Send nominations to:

Scholastic Press Freedom Award
Student Press Law Center
800 18th Street, NW
Suite 300
Washington, DC 20006

The Student Press Law Center is here when you need it. If you are facing a legal problem or have a question about your rights as a student journalist or faculty adviser, call our attorney at **(202) 466-5242.** All services are provided cost-free to students and teachers.

Internship opportunities with the SPLC are available during each school semester and the summer for college and law students with an interest in student journalism. Interns write and produce the SPLC *Report*, handle requests for information on student press rights and assist the Executive Director by providing research and paralegal support. Interested individuals are encouraged to write for more information.

Drawings, cartoons and news tips are welcome and needed. Help us inform the scholastic journalism community by contributing your skills and information to the SPLC *Report*.

Write or call us at:

Student Press Law Center
Suite 300, 800 18th Street NW
Washington, DC 20006
(202) 466-5242

FRIENDS OF SPLC

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.

(Contributions from April 15 to July 15)

BENEFACTORS ($100 or more)

College Media Advisers
Great Lakes Interscholastic Press Association
Journalism Education Assocation
Mary Olive Pierson (LA)
North Carolina Scholastic Press Association

SUPPORTERS ($50 to $99)

Missouri Journalism Educator's Association

CONTRIBUTORS ($25 to $49)

Donal Brown (CA)
James D. Cobb (FL)
Penelope Deakin(NY)
Grosse Pointe South High School (MI)
Harbinger, Mount Wachusett Community College (MA)

Help Support The SPLC

Let Yourself In On The Scoop

Your subscription supports the work of the Student Press Law Center

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

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

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

Defending your rights isn't cheap. Subscription dollars form a large part of our budget.

Your subscription price will help us continue to serve as the national advocate for the rights of student journalists. Other contributions are tax-deductible.

All orders must be pre-paid.

Please enter my subscription to SPLC Reports:

☐ 1 year at $10.00

Along with this blank I have enclosed a check or money order payable to:

Student Press Law Center
800 18th St., NW
Suite 300
Washington, DC 20006

Name _____ (Please print)

Address _____

City,State,Zip _____

☐ I wish to support the work of the Student Press Law Center with a contribution in the following amount: _____

The SPLC is interested in the titles or positions of its individual subscribers: _____ title/position

Now a benefit of Journalism Education Association Membership

SPLC

STUDENT PRESS LAW CENTER

Suite 300 : 800 18th Street NW : Washington, D.C. 20006

ATTENTION: Student Publication