HAZELWOOD OUTLOOK:
Will the Constitution prevail?

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The First Amendment Deserves Support

On Sept. 16, hundreds of thousands of high school students across the country will take a break from their classwork to celebrate. It's intended to commemorate the 200th birthday of the U.S. Constitution and is being sponsored by a wide variety of organizations, including national associations of school principals and school boards.

Less than a month later, those same groups of education administrators will join in urging the U.S. Supreme Court to eliminate the protections of the First Amendment for public high school student journalists. On Oct. 13, the nation's highest court will hear the case Hazelwood School District v. Kuhlmeier. Officials from Hazelwood East High School near St. Louis, Mo., will argue that they should be allowed to censor stories about teenage pregnancy and the effects of divorce on children from a student newspaper.

The message of these actions may not be new, but it is disturbing. Despite the often-voiced allegiance for the concepts of free speech and a free press, the enthusiasm of many professional educators evaporates when the situation involves demonstrating respect for differing viewpoints or teaching the First Amendment by example.

Our Constitution and student journalists deserve better.

It seems these school officials have forgotten that they are government, acting on the basis of authority given to them by the people. As federal courts from California to Maine have noted for 15 years, that simple fact makes all the difference in the world. Just as a non-student journalist would raise the First Amendment in his defense if a state employee attempted to interfere with journalistic efforts, so student reporters and editors deserve the same right to be free from government censorship that is intended to suppress their views.

As Shakespeare might have said it, something seems terribly rotten in the state of secondary education.

In September, education administrators will make a public spectacle of their support for the Constitution and all it stands for. The following month, many of the same individuals will do their best to ensure that they can ignore the First Amendment to the Constitution when it does not serve their purposes.

The SPLC, journalism educators and professional journalists from around the country are concerned about this case and the effect it could have on the rights of student journalists. But we are just as concerned about the lesson school censorship teaches tomorrow's citizens about the importance of free expression to our democracy.

If you share our concern, make your voice heard. Write a news story and editorial about the case for your own publications. Contact your community newspapers and broadcast stations and encourage them to cover this case and the impact it could have on student publications in your area. Make a contribution to an organization like the SPLC that fights for the rights of student journalists.

The Hazelwood School District and its supporters would like to rewrite the First Amendment. We hope that the Supreme Court will not allow them to do so, but instead will reaffirm the free press rights of students. We can imagine no more fitting tribute to our Constitution.
While the rest of the country celebrates the Constitution's bicentennial this year, three former Missouri high school students are testing its worth in the Supreme Court.

Oral argument before the justices is expected to begin October 13 in Hazelwood School District v. Kuhlmeier, a conflict that will decide whether school administrations should be allowed to censor student newspapers that are tied to a class in the school's academic curriculum. The case will mark the first high school press case argued before the Supreme Court.

Eighteen years ago, in Tinker v. Des Moines Independent Community School District, the high court ruled that students have First Amendment privileges to peacefully express themselves on school grounds. The current case goes much deeper for those involved with high school or college journalism.

The Supreme Court has suggested it will focus on two issues in this case: 1) Is a school-sponsored newspaper, produced as part of a journalism class, a public forum protected by the First Amendment, and 2) When can school officials censor a school-sponsored publication?

"If the Supreme Court rules in favor of the school board it really negates the role of the adviser in teaching press responsibility," said Ken Siver, president of the Journalism Education Association, a national organization of high school journalism advisers.

The case dates back to 1983 when Hazelwood (Mo.) East High School Principal Robert Reynolds removed two pages from the school's paper, Spectrum, because he considered its content "too sensitive" for high school students.

The two-page spread, under the headline, "Pressure describes it all for today's teenagers," contained articles ranging from teenage pregnancy and marriage to how divorce affects children. Students at the school were interviewed for the articles and had all given consent for the use of the information they provided. The students were also given pseudonyms.

Reynolds, in explaining his decision, said he was worried the articles invaded the students' privacy and might bring embarrassment to their families. He claimed that the students could possibly be identified despite the pseudonyms.

The censorship led three Spectrum staff members, Cathy Kuhlmeier, Lee Ann Tippett and Leslie Smart, to file a lawsuit three months later in federal court after continued attempts to get the articles published were quashed. They charged that their First Amendment rights had been violated and asked the court for the right to publish the articles.

Two lower court decisions led the case to the doors of the Supreme Court. First, a district court judge ruled in favor of the school district in May 1985. That decision was appealed to the Eighth Circuit Court of Appeals, where it was overturned by a divided panel of three judges. The Court of Appeals said in deciding in favor of the students that the newspaper was a forum for student expression. The court also said that the school administration could not show that the articles would disrupt the normal activities of the school or result in financial liability for it.

The appellate decision was not to the satisfaction of the school district, which asked the Supreme Court to review the case last fall. In January the Court agreed to hear the case. Briefs were filed late last spring.

The students' attorney, Leslie D. Edwards, argued in a brief to the Court that Spectrum is a limited public forum as defined by the school's Curriculum Guide and school board policies governing publications.

"Spectrum was not created as the mouthpiece of school officials. It was established for the express purpose of printing student ideas," the brief said.

The Student Press Law Center, along with 11 journalism education organizations from around the country, filed a friend-of-the-court brief in support of the students. The two national organizations of high school publications advisers, the Journalism Education Association and the Columbia Scholastic Press Adviser's Association, were at the top of the list of supporters.

Joining these groups in the brief were the Quill and Scroll Society, the National Scholastic Press Association/Associated Collegiate Press, the Missouri Journalism Education Association, the Journalism Association of Ohio Schools, the Southern Inter-scholastic Press Association, the Garden State Scholastic Press Association, College Media Advisers, the Community College Journalism Association and the Association for Education in Journalism and Mass Communication.

The brief noted that "affirmatively reject the censorship control the Hazelwood School District requests and assure the Court that such censorship plays no role in the maintenance of order in our classrooms, but in fact makes impossible the teaching of journalism and is inimical to a quality educational environment."

The brief noted that "over 75 percent of student publications at public high schools in this country are produced as part of a journalism class. These publications are in almost every instance the only outlet teenagers have for making their opinions, ideas and concerns known to their peers and the world. Were the Court to grant [the school district] the relief they request, a great many voices would be lost. Teaching students journalism, including the legal and ethical responsibilities that accompany First Amendment rights, would be..."
impossible. Dwindling interest among students in journalism study and the practice of journalism as a profession would soon follow. Disaffected young people with a growing indifference to the significance of constitutional guarantees would ultimately result."

Journalism advisers from around the country are trying to emphasize the importance of the Hazelwood decision and its precedents.

"A decision against student press rights in this case would do incalculable harm to the future of journalism education," said David L. Knott, president of College Media Advisers.

"All too often I think administrators look at the issues that students want to write about from a very conservative perspective," Siver added.

Minerva Howard, the former president of the Missouri Journalism Education Association, looked at it from a more practical point of view.

"Regarding the sensitive nature of the material censored in the Hazelwood case, schools are now being asked to include AIDS education into the curriculum. In this light, how could divorce and teenage pregnancy be 'not appropriate' for high school audiences?" she said.

Howard's opinion was reiterated in briefs filed in support of the students by the National Organization of Women Legal Defense and Education Fund and Planned Parenthood Federation of America.

"Stifling speech about pregnancy expressed with the guidance of a journalism teacher eliminates a source of responsible information and leaves teens with the likely alternative of traditional misinformation," the NOW Legal Defense and Education Fund stated.

Joining their brief was the National Organization of Women, the Children's Defense Fund, the Equal Rights Advocates, the Women's Equity Action League and the Women's Law Project.

Planned Parenthood said the articles in question "demonstrated educational value" and that peer communication is a vital part of adolescent education. Studies have indicated that adolescents rely on their peers more than anyone else for information on sex issues, the organization said.

Planned Parenthood's brief was joined by the National Board of the Young Women's Christian Association of the U.S.A., the Center for Population Options, the Society for Adolescent Medicine, the Sex Education and Information Council of the United States, the Newspaper Guild and the Professional Rights Committee of the American Society of Journalists and Authors.

Other briefs were filed in support of the students by the American Society of Newspaper Editors, the National Association of Broadcasters, the Reporter's Committee for Freedom of the Press, the Society of Professional Journalists, Sigma Delta Chi and the American Civil Liberties Union.

In its brief, the Hazelwood School District stood behind its belief that the Spectrum is not a public forum, which was also the ruling of the district court.

"There was clearly no intent on the part of school authorities to make the school-sponsored newspaper an open forum for indiscriminate use by the journalism class, let alone the student body or public at large," the brief said.

"The strong tradition of local control of curricular matters provides a compelling justification for vesting school authorities with broad discretion over the content of class-produced, school-sponsored publications."

Two other briefs were filed on behalf of the school board, one by the Pacific Legal Foundation and another jointly filed by the National Association of School Boards and the National Association of Secondary School Principals.

Yet an additional perspective was added in another friend-of-the-court brief.

The School Board of Dade County, Fla., filed a brief in support of neither side. What it did, however, was ask the Supreme Court to establish a clear policy on how the First Amendment will apply to student publications.

The Dade County district's policy concerning student newspapers holds the student editors responsible for the content. School administrators give educational instruction and forewarn student journalists to understand the consequences of their actions, its brief said.

"The most significant result of this approach is that student newspaper staffs have accepted and understand the rights and responsibilities associated with the rights of a free press," it said. "Another result of this district's approach is that the various school newspapers here have dealt truthfully and responsibly with so-called controversial issues such as those presented in the instant case free of censorship, and without disruption to schools or invasion of any individual's rights."

A decision is anticipated sometime in spring 1988.
Tour de Farce loses at Eighth Circuit

Court allows prior review of unofficial student papers

The Eighth Circuit Court of Appeals on June 25 upheld a Minnesota school district's policy requiring students to get approval before distributing unofficial student publications on school grounds. And five days after that decision, a second lawsuit filed by students involved was struck down by a federal judge.

The students are appealing both rulings.

In vacating the lower court's decision, the appeals court in Bystrom v. Fridley High School said that prior review by administrators did not violate the First Amendment rights of students producing the underground paper Tour de Farce.

In the 2-1 ruling, however, the court warned authorities at the suburban Minneapolis high school that they "are not at liberty to suppress or punish speech simply because they disagree with it."

The disputed policy allowed the school to censor unofficial written material whose contents are obscene to minors, libelous, pervasively indecent or vulgar, to advertise products or services illegal to minors, include insulting or fighting words and content that will cause a material and substantial disruption.

Though it upheld the policy, the three-judge panel rejected one clause that allowed censorship of material that was an invasion of privacy because Minnesota courts have not recognized those types of lawsuits. Even so, school district attorney David Hols said that administrators are satisfied with the thrust of the decision.

"What we have is a policy that strikes a balance between the rights of the students and the rights of administrators," he said.

Stephen Foley, the students' attorney, filed a motion for a rehearing of the case by the entire Eighth Circuit.

The dispute began in January 1985 when the publishers of Tour de Farce distributed an issue of the paper on school grounds. The next day, school administrators threatened the students with suspensions if they distributed any more publications without first getting approval.

In May 1985, a second issue of Tour de Farce was distributed on property adjacent to the school. Anticipating future issues, the school district revised its distribution policy for unofficial literature on school grounds and the Minnesota Civil Liberties Union on behalf of students Adam Collins and David Drangeid and publishers Cory Bystrom, John Collins and Martin Saperstein filed suit.

In March 1986, a federal district court judge granted summary judgment in favor of the students, ruling that any prior review of unofficial student publications violated their First Amendment rights.

Following that decision, the students distributed another issue in May 1986. Soon after, school officials suspended the three publishers on the grounds that the distribution materially disrupted school activities, that the paper contained vulgar and indecent language and that it advocated violence against teachers.

In that issue, an article headlined "Trash and Slash '86" reported that a Fridley High School teacher's house had been vandalized. The article claimed that "many students attending Fridley would like to claim responsibility for this act and "we at Tour de Farce find this act pretty damn funny."

In June 1986, a second suit was filed to stop the schools from taking such action again and sought removal of the suspensions from the students' records. On June 30, 1987, a federal district court judge granted summary judgment in favor of the school district.

In the case known as "Bystrom II," the judge said the most significant aspect was "the challenge to a disciplinary decision by authorities responsible for the administration of a public school."

While he said that the language of "Trash and Slash" fell short of the standards by which adults could be punished for advocating violence, he concluded that like the 1986 Supreme Court decision in Bethel School Dis-
Court No. 403 v. Fraser, the court would defer to the administrators' judgment that a material disruption occurred.

In the first case, "Bystrom I," the U.S. district court said that the policy of banning distribution of material that included "pervasively indecent or vulgar language" was too vague to be constitutionally permissible.

But the appeals court said that concepts such as indecency and vulgarity are general by their very nature and that guidelines "are designed to assure that school hours and school property are devoted primarily to education as embodied in the district's prescribed curriculum."

Therefore, the court added, the administrators' right to halt the distribution of material of that nature to minors served to "preserve some trace of calm on school property."

Citing the Fraser decision in its support, the Eighth Circuit panel said it was clear that school boards can prohibit students from distributing on their property "written material pervaded or characterized by four-letter words that used to be considered unprintable."

In dissent, however, Judge Theodore McMillian disagreed, saying, "I would hold that the [policy's] requirement that students submit unofficial written material to school authorities for prior review and approval violates the First Amendment."

While the majority of the court said they were bound by the Eighth Circuit's decision in Kuhlmeier v. Hazelwood, which approved the practice of prior review in a footnote, McMillian noted the difference between underground publications and official student newspapers.

"Like the Spectrum, the school newspaper in Kuhlmeier, Tour de Force is produced by students," he said, "but it is not sponsored by or associated in any way with the school itself. In fact, much of its appeal is no doubt due precisely to its underground character."

The students' attorney Foley, agreed. In the appeal for rehearing, he stated, "the students' newspaper is not part of the official curriculum, it is generated without any support from the school, it is not sanctioned by the school, and thus it is a non-program related expression of opinion which must be free from governmental review and censorship."

He added, "There is a fundamental difference between a school's right to control the official school curriculum and classroom conduct versus the school's right to engage in prior restraint of unofficial student written newspapers distributed outside of the compulsory environment of the classroom to other students by students."

"The Student Press Law Center filed a brief in support of the students' request for rehearing."

While each of the judges in "Bystrom I" cited the Kuhlmeier decision in regard to tort liability, McMillian maintained that because there was no official link with the school, "distribution of an underground student newspaper such as Tour de Force would not result in tort liability for the school."

In summarizing its opinion, the court emphasized that its decision didn't automatically mean that all applications of the school district's policy were valid.

"If the policy is wrongly applied to speech that is constitutionally protected, the court will be open to hear students' complaints," the decision warned. "And if the students challenge the right of the administrator to limit student speech, the burden is on the school administrators to justify their actions."

The court also stressed that its decision was restricted to materials distributed on school property and that the ruling does not apply to colleges that are "traditionally places of virtually unlimited free expression."}
Federal judge allows fired adviser’s suit

Judge Raymond J. Dearie, in denying the school's motion for a judgment before trial, ruled on July 7 that Romano has third-party standing to assert the constitutional claims on behalf of his students.

"If [Principal] Harrington's conduct constituted unconstitutional retaliation for the exercise of First Amendment rights, such conduct may chill another adviser's willingness to give student writers the level of constitutional freedom to which they are entitled and may circumscribe the student editors' decisions regarding what to publish because of their concerns of indirect retaliation against their adviser or direct retaliation against a member of the student body," Dearie reasoned.

Romano was the adviser of the Crow's Nest for almost six years before he was removed by Principal Margaret Harrington on Feb. 8, 1984, because of an editorial that was published in the newspaper.

The article, entitled "Federal Holiday Mocks American Principles," appeared on the op-editorial page in an issue distributed during the first week of February. It was written by a non-staff member who opposed the adoption of a federal holiday in honor of Martin Luther King, Jr.

Harrington thought that Romano should have encouraged and printed an alternate viewpoint due to the school's history of racial conflicts. She voiced her sentiments to Romano the following week in a letter.

"As a result of your [Romano's] inability to see the need for balanced reporting, your professional judgment is lacking, and I have had to rate your service for the fall term 1983 as unsatisfactory," it said.

Harrington's termination decision, which Romano appealed, was upheld by the school's Board of Education.

Romano was not allowed to make the constitutional claim on his own behalf because his own First Amendment rights were not abridged, according to the court. It reasoned that an adviser is not permitted to use a student newspaper as a medium for his own views, thus the First Amendment rights at issue belong to the students and not the adviser.

Nevertheless, the third-party standing was what Romano said he had hoped for.

"We're trying to make sure the school won't censor the paper or him," said Paul Janis, Romano's attorney. "I don't know why [Romano] doesn't have first standing rights, too."

Dearie relied heavily on the Supreme Court of Colorado's 1984 decision... continued on page 9.
Student paper can reject ads, state judge says

A state court judge agreed in June that a University of Idaho student newspaper has the right to reject advertisements and is not responsible for business lost by advertisers when doing so.

In his request for rehearing of a January decision which took the newspaper's side, Bill Owens, the student proprietor of Gotcha Games in Moscow, Idaho, asked the judge to reconsider the contractual issue in the case. He claimed that the Argonaut was responsible for $2,500 in potential business he lost by its rejection of his ad.

"It is Bill Owens' position that if the newspaper makes a contract and breaks a contract, they're liable for the damages incurred from breaking the contract," Owens' attorney Clark Myers said.

But on June 25, the judge affirmed the previous decision and said that no such contract existed.

According to Charles Brown, the Argonaut's attorney, the judge said that there was "no meeting of the minds...They never agreed on the terms or the language of the ad and thus, the terms of the contract never existed."

The case began in September 1986 when Argonaut editors refused to print an advertisement offering special rental rates for paint pistols and pellets used during mock assassination games.

The staff objected to wording which implied that members of the local city council were communists. A line in the ad read, "In recognition of the People's Republic of Red Nicaragua and their Comrades on the Moscow City Council, one free tube of YELLOW Paint Pellets with a weekend rental."

In the first decision, the judge held that if a newspaper accepts payment for an advertisement and then decides not to run that ad, it does not breach an implied contract if the payment is refunded. Because no contract exists, a newspaper is not liable for money a business may lose because an ad is not printed.

Myers argued that the paper was responsible, however, because a contract existed to run the ad when the salesman called on Owens, compose the ad and accepted the money for it. Myers said Owens will not appeal the case.

The agreement says the staff agreed on terms of the ad and accepted the money. Because it does not have a contract in the usual sense, the paper is not responsible for the damages." Owens is still asking for $2,500 in lost business." he said.

"It seems to me that this is an extension of the First Amendment rights of the student paper," said Mark Goodman, executive director of the Student Press Law Center.

A third issue in Romano's case, one of property rights, was not decided. Romano asked the court to decide if he had property rights under the school's collective bargaining agreement. The agreement says that teachers with at least two years of satisfactory service in a particular activity shall have priority for retention. The court ruled that that issue would have to be resolved at trial.

Romano says his case should never have gone to court in the first place.

"This is something any responsible, educated professional could solve in the office in half an hour," he said.

"The school is saying, 'We don't like what was in the paper, so we're firing you.' As far as I'm concerned, that's censorship," Romano said.

"It sets the very dangerous precedent that an adviser may be fired because of what is printed in a student newspaper." Romano, who remains a tenure English teacher at Port Richmond, seeks $100,000 compensatory damages in addition to being reinstated in his former position.

Janis said he thinks the monetary figure Romano is asking for is correct given the length of time Romano has been removed from the position.

Romano expects his case to go to trial and a decision to be handed down sometime next year.
Local newspaper backs subpoenaed editor

A surprise move by a prosecuting attorney in Vancouver, Wash., last spring had at least one reporter wondering whether rules of confidentiality apply to the student press.

On April 22, Kathy Kessenger, managing editor of Clark College's student newspaper, interviewed a fellow student in jail charged with first degree aggravated murder. And after two paragraphs of the interview ran in a front-page story in The Independent, the prosecutor compelled Kessenger to testify about the conversation or be held in contempt of court.

"It's a mystery to me still as to why they did it," Kessenger said. "I think [the prosecution] had a fairly weak case, or they wouldn't have thought they needed to talk to me."

Tom Koenninger, editor of Vancouver's daily Columbian, said that when he learned of the incident, "It was pretty obvious to me [I ought] to get involved because the next person to be subpoenaed would be one of our reporters."

He added, "It was a crucial journalism issue and we felt that we shouldn't let it go unresolved."

Incidents such as this are not uncommon to newsgatherers. Civil and criminal litigants nationwide often subpoena journalists to obtain information they believe may assist them in presenting their cases.

In many states, legislatures have adopted shield laws affording the media varying degrees of protection against subpoenas. In others, the courts have recognized qualified First Amendment privileges that protect reporters from disclosing confidential information.

The Supreme Court in Washington has recognized such a privilege in civil and criminal cases. And Koenninger believes that this protection applies to all reporters—including the student press.

Acting on the advice of the Columbian's attorney, Kessenger agreed to answer four "yes or no" questions drafted by the prosecution, provided that would be the end of her involvement. Also present at the questioning were Koenninger, the assistant state attorney general [Kessenger's official lawyer], her journalism adviser and a sheriff's detective.

"Our objective," Koenninger said, "was to avoid any kind of questioning and to take it out of a court of law context." He noted that the next objective was then to reduce Kessenger's involvement to a minimum number of questions.

The questions, which focused on whether the arrested student implicated others during the interview, were hardly necessary, according to
The articles were not in the slightest accurate and no one was mis quoted.

In addition, Kessenger believes her status as a student journalist had some bearing on the prosecutor's decision to subpoena her.

Koenninger agreed, saying that he didn't think the situation would have occurred had Kessenger been a reporter for a local paper.

"As a student, it could be that [the prosecutor] felt he could question her easily and she would provide the information more readily [than a non-student reporter]," he said.

He added that at the questioning, the sheriff's detective began to stray beyond the four questions, but was later reminded of the agreement by Kessenger's supporters.

Now that the situation is over, Kessenger emphasizes the support she received from the local newspaper and the lessons learned about the First Amendment and source confidentiality.

And, after having dealt with a potentially harmful challenge to that trust, she concluded, "When you stand up for something and you know it's right, others will stand by you."

New York

Editor required to testify in faculty dispute

The student editor-in-chief at Broome Community College in Binghamton, N.Y., was subpoenaed in late June by the county attorney to testify in a labor practice hearing.

Thomas M. Frisk, editor of The Fulcrum last semester, was issued the subpoena by the Broome County attorney after writing several articles that investigated alleged improper labor practices by the faculty at the college. Frisk was scheduled to testify at the Public Employee Relations Board (PERB) hearing on July 23.

At least 16 others—all faculty members—were also subpoenaed for the hearing.

Articles by Frisk of interest to the PERB contain quotes attributed to Margaret Wingate, president of the faculty association. Broome County officials think that faculty members may have reduced their office hours at the start of last semester as part of a contract dispute.

Assistant county attorney Harvey Mervis has said Frisk will be called to testify only if Wingate denies statements attributed to her in The Fulcrum.

The teachers at the two-year school have been without contracts for the past academic year. When contract talks broke down in February, the teachers became disgruntled and began to air their views.

Twenty-year-old Frisk, of Owego, N.Y., said the articles were "factual, accurate and no one was misquoted." The articles were not in the slightest bit controversial, he added.

Anita Knopp Doll, adviser of The Fulcrum for the past three years and a non-union journalism instructor, strongly opposed the idea of a student journalist being used as a possible determining factor in a court hearing.

"It forces students into a very unsavory kind of role. I have a hard time believing that Tom's testimony is that crucial in the case," Doll said.

And if it is, she said, then she thinks the county has a very weak case.

"[The newspaper] cannot and should not take sides in gathering and reporting the news. We are not an extension of the college administration, nor are we an extension of county government. To force newspaper editors into this role through subpoenas or other means is to seriously jeopardize the newspaper's credibility on campus and its ability to gather news," Doll said.

Frisk has been advised he is not protected under the New York state Shield Law because The Fulcrum does not meet its definition of a professional newspaper. The shield law protects professional journalists in the state from having to reveal confidential information or sources.

A Nassau County, N.Y., state court judge ruled in May 1986 that a student journalist was not covered because his newspaper did not meet the requirements of a newspaper as defined by the state shield law. The statute defines a newspaper as a publication that is printed at least weekly with a paid circulation and has a second class mailing permit.

At present, The Fulcrum is published bimonthly during the school year and has a free circulation.

"I think that our shield law has problems," Doll said. "We're a fairly responsible newspaper. It's difficult to understand why we don't receive the same kind of protection that the professional press does."

The college tried to offer some help to Frisk by securing legal assistance to him.

"Basically, we paid $75 to hear the lawyer tell me that I would have to testify," Frisk said. "I'm looking at it as a learning experience."

Mark Goodman, executive director of the Student Press Law Center, protested the subpoena in a letter to Carl Young, the county executive of Broome County.

"The credibility of Mr. Frisk as a reporter and The Fulcrum itself could be unjustly maligned by their appearance as tools of the county. No news source will be able to place its trust in their independence in the future."

"The ultimate losers will be the publication's student and community readers who will be less likely to get the information they need about significant issues," Goodman said.

Rather than being nervous about testifying, Frisk said anxious was the appropriate word to use.

"I intend to pursue journalism as a career. If I run into this sort of thing now, then I foresee it [happening again] in the future," he said.
California

Hastings faculty meetings closed to public

Faculty meetings at Hastings College of the Law in San Francisco are now closed to the public as California's Bagley-Keene open meetings act was narrowly construed in a May appellate decision.

The action arose in 1984 when three Hastings law students sought to prevent the faculty from meeting in private to discuss matters of educational policy, approval of expenditures from appropriations, endowments and gifts. The students believed that because the faculty was founded and delegated authority by the University of California Board of Regents, it is a state body subject to the open meetings act.

After losing at trial, the students appealed arguing that the faculty was created by formal action of the Board of Regents, that it acts in an advisory capacity to the Board and that the Board is a state body within the meaning of the state open meetings act.

The Bagley-Keene Act requires that all state body meetings be open to the public unless the entity is specifically excepted by law or covered by a conflicting statute. "State body includes any board, commission, committee or similar multi-member body which exercises any authority delegated to it by the state body," the Act reads.

Ultimately inferring that only meetings of the Board and certain committees would be subject to the open meetings requirement, the court held that the legislature did not intend to subject Hastings faculty meetings to Bagley-Keene. When Bagley-Keene was originally enacted in 1967, lawmakers did not extend the Act to Board of Regents meetings.

However, in 1982, section 92030 of the Education Code was amended to place the Board specifically within Bagley-Keene's scope. The legislature also added section 92020 to the Education Code defining "Regents" to mean "the Board of Regents of the University of California and its standing and special committees or subcommittees ... appointed to advise and assist ... in contract negotiations."

According to the court's legislative analysis, it concluded that section 92030 mandates that only the Board of Regents and not faculty meetings would be subject to the Bagley-Keene Act.

The court justified its narrow construction by reasoning that the legislature amended section 92030 of the Education Code to specifically subject the Board of Regents to the Act instead of amending Bagley-Keene to include the Board of Regents in the definition of "state body."

Had the Board been defined as a "state body," then Hastings, and its faculty as an affiliate, would probably have fallen within the provisions of Bagley-Keene.

Indiana

Students sue for open meetings, records

Two staff members of the Ball State University Daily News filed suit against the school in March for barring their access to certain meetings and records, claiming that university officials broke Indiana's Open Door and Open Records laws.

Diane Goudy and Robert Vitale contend that BSU's refusal to reveal the names of applicants for the vice presidential posts of academic affairs and university relations and the dean of sciences and humanities violated the state's open records statute.

"We feel that the university is required to release those names after the initial screening period is over," said Alan Wilson, attorney for the students. "The university is taking the position that it is not required to list anybody at all."

After the newspaper was denied access to the names, the Daily News staff began research on a story that compared the search for candidates to the school's presidential search three years earlier. When the open records law took effect in January 1984, university officials declared that it didn't apply to them and closed that search halfway through its proceedings.

Vitale maintains, however, that the law's provisions include Ball State. The students are also contesting the legality of closed meetings held by the "calendar transition" committee — a group that deals with the campus' switch from a quarter to semester academic system in September 1988.

The committee, which was created by the university president and consists of administrators, faculty and students, first met in February 1986. Chaired by associate provost Thomas Kaluzynski, the 17-member group considered changes in areas such as academic credit, curriculum and teaching loads with regard to the switch.

Until December 1986, no Daily News reporters were covering the biweekly meetings, outside of contacting Kaluzynski afterward. When Vitale became news editor that month, he talked with the chairman who, Vitale says, "said that he didn't want anyone [covering the meetings] but wouldn't stop anyone [from doing so]."

"For obvious reasons," continued Vitale, "we would prefer having someone attending the meetings personally rather than relying second-hand on what happened."

Kaluzynski, however, recalled the conversation differently. He maintains that the two talked about continuing the arrangement where he would provide reporters with information after the meetings.

Following that conversation, Vitale went to the next meeting, but was asked to leave. After being refused entrance a second time with chief reporter Goudy, the two got in touch.
with a lawyer.

Holding open "calendar transition" meetings are crucial, Vitale said, because "the whole Ball State campus is going to be on an entirely new system next year... It's just going to be chaos if people don't know what's going to happen."

Kaluzyński disagreed, stressing that the nature of the committee lent itself to better functioning without constant press coverage. He said that because the committee could decide one thing one week and change its mind the next, continuing reports in the newspaper could "quite likely cause a lot of people to get upset" before a final decision on any subject could be reached.

In addition, Kaluzynski repeated the university's position which states that the meetings do not fall under the open door law because the committee was an internally appointed one.

The lawsuit, filed in an Indiana county court, is seeking injunctive relief for both complaints. Vitale added that it was initiated because Ball State "has a really bad history of not being open in its deliberations and meetings. The university administration feels they can do everything in secret and announce it later."

The students, both of whom were graduated this spring, decided not to request a preliminary injunction which could have allowed them to attend the meetings and view the records until the case was decided.

Their decision hinged on the fact that the positions were already filled by the time the lawsuit was filed and the university's agreement to not hold any more "calendar" meetings until the situation is resolved. Both sides have said that they will appeal if necessary.

In July, the students attorney filed documents with a Grant County Circuit Court judge. A decision is expected by the end of the summer. ■

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**New York**

**Closed meeting fails to hush** *Commentator*

The *Commentator* of the New York University School of Law had a hard time living up to its name last spring.

But not by its own choosing.

After months of controversial reporting on the school's mounting construction project costs and allegations of influence at construction sites by the dean's wife, *The Commentator* and the student government were banned from an April 22 faculty meeting.

"We've been reporting on the construction controversy throughout this semester.... We don't think that it's coincidental that the Dean [Norman Redlich] took action against one of his most vocal critics, the student press," said editorial board member Barbara Quackenbos in a press release.

Quackenbos said she felt the paper had done all of the thankless work of getting the alleged construction overruns publicized only to be kept out of the meeting.

According to the editorial board, the administration had made it a practice in the past to send an announcement to *The Commentator* office one week prior to a scheduled faculty meeting. This time no such announcement was received, but staff members heard about the meeting anyway.

"We [The Commentator's staff] made a tactical mistake by sending a reporter to cover the meeting and not an editorial board member," Quackenbos said. Rather than showing up at the meeting unannounced, Quackenbos said the reporter went to the Dean's secretary and asked if he could attend. The reporter was turned away.

Redlich, who has been the law school's dean for 12 years, defended the decision to bar the paper, saying that the meeting was intended as an informal one, which he said as a rule the school newspaper and Student Bar Association (SBA) cannot attend. Informal meetings are those that usually involve personnel and tenure decisions.

"It turned out at this informal faculty meeting that a formal action was taken," Redlich said. **continued on page 14**
The newspaper contends that it was more than one formal action.

Less than an hour after the meeting had been adjourned, The Commentator had received the information from the meeting from some faculty members in attendance.

"We had the minutes almost verbatim," Quackenbos said.

From that information, the staff learned that three significant decisions were made, including one motion that called for the school's Budget Advisory Committee to have an expanded role in the budgetary process.

Questioning the ban, the editorial board sent a memorandum to Dean Redlich on the day after the closed meeting to make certain the dean's position.

In a written reply, Redlich said that "we will continue our past policy to invite The Commentator to be present at all faculty meetings at which the faculty intends to take formal actions, unless the faculty acts to the contrary.'

The business conducted at the closed meeting was proposed two days earlier in a memo to faculty.

There was no mention in the memo of an intention to exclude the newspaper or the SBA. Because a faculty decision was not taken to exclude the paper, The Commentator decided to file a grievance within New York University against Redlich.

The grievance resulted in a meeting with Redlich and two-thirds of The Commentator editorial board.

"He [Redlich] sort of tacitly agreed that in the future the meeting should be put up to a faculty vote," Quackenbos said, on the subject of whether the paper would be allowed to attend.

The closed meeting was scrutinized at length in the last regular spring issue of the newspaper published on April 30.

"It is an odd lesson to give to the students of the law school that discussion of important issues is better done in a closed rather than an open forum," said SBA President Dan Blinn, in a page one article.

Furthermore, an editorial compared the actions of Dean Redlich to author George Orwell's "Newspeak" in the book 1984, saying that "his actions, in cutting off access to the Commentator and the SBA, bodies independent of his jurisdiction and control, have all the earmarks of a coverup."

At one point, some wondered if the newspaper staff might be overreacting to the closed meeting, neglecting more newsworthy subjects such as tuition increases and construction cost overruns.

"My sense is that it wasn't that much of a conspiracy," said editorial board member Bob Deyling. He added, however, that it was ironic that several significant decisions were made at the only meeting the paper could not attend.

Redlich, who would not answer any direct questions on the matter, said a decision will be made at the first faculty meeting this fall to determine what procedures will be followed regarding non-faculty attendance at a faculty meeting.

The "Freedom of the Press" policy of the New York School of Law states that the student press "must be protected from arbitrary action arising out of student, faculty, administration, alumni, or community disapproval of editorial policy or content."

But as a private school, the school has no statutory obligation to open any meeting.

Nevertheless, Quackenbos is relieved at the outcome.

"We've come to an understanding," she said.

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Maryland

Bare-breasted shot sends stir; no action taken

No action will be taken against the University of Maryland yearbook that printed a photograph of a bare-breasted coed, according to Michael Fribush, general manager of Maryland Media, Inc.

Fribush said that there will be no policy or guideline changes for The Terrapin next year, although several protests from organizations including the Young Democrats and the Women's Center, called for such after the photo came out in early May.

"There were a few students who came up to the office wanting changes to be made regarding the yearbook, but there were [no changes]," Fribush said.

The photo, taken by student editor Paul Souders on spring break in Florida during the previous spring, showed a young woman nude from the waist up having beer poured over her by a circle of laughing college men.

Protests were apparently dropped when the subject of the First Amendment was introduced.

"It all kind of ties in with censorship and freedom of the press," said Robert Montag, who is president of the school's Student Government Association.

Montag said he personally saw nothing wrong with the photo. However, he added that he thought the yearbook staff would learn something from the protests.

"It will certainly go down in history as one of the most controversial yearbooks," he said.
Massachusetts
Tufts student activist files civil rights suit; paper named for defamation of character

Tufts University was embroiled in controversy last spring when a student activist reported that he was attacked in a racially-motivated incident and school officials and the student daily called his story a hoax.

And in the wake of what became known as the Ian Kremer Affair, Kremer, the student, has sued Tufts officials and the student newspaper for defamation, violation of his civil rights and infliction of emotional distress.

The suit filed in a Massachusetts court in April, named Tufts president Jean Mayer, campus police officials and the Tufts Daily as defendants. It said that those who publicly raised doubts about Kremer's story were trying to muzzle his outspoken views about racism at the university.

"The rush to judgment resulted from a desire to silence him," said Kremer's attorney Robert Sherman.

A spokesperson for the university, Rosemarie Van Camp, said that because the suit was in litigation, Tufts officials had no comment regarding the incident.

The controversy began when Kremer, a sophomore, reported to police that he had been attacked shortly after midnight on February 18. While walking on school grounds, Kremer, who is white, alleges he was chased and physically attacked by three or four white men.

According to the complaint, Kremer's assailants "called him a 'nigger lover,' 'Jew boy,' and 'Commmie pinko,' thereby indicating that the attack was politically, racially and/or religiously motivated."

Kremer, who has openly criticized Mayer and Tufts on a variety of political and social issues, had been involved as a campus activist since his freshman year. A junior this fall, he has taken part in the effort to have Tufts divest its stocks from companies doing business in South Africa as well as encouraging minority student recruitment.

During the week following the attack, members of the Tufts community staged protests against racism and gathered on campus to show their concern about several race-related incidents, including the attack upon Kremer. Demonstrations against racism and the lack of minority student enrollment were also held.

Then, seven days after the attack, the Tufts Daily printed a story containing accounts by students near the scene of the crime who said that the incident never occurred. University police also questioned the credibility of Kremer's testimony.

In the same issue, an unsigned editorial appeared that began, "The Tufts community has been deceived.... Ian Kremer, through his vile act of deception, has clearly overstepped acceptable bounds in his efforts to further his political views."

"In addition," it continued, "he has caused the university and its students immense negative national publicity for a heinous crime that never occurred."

That night, president Mayer went on record calling Kremer's story a hoax. He then turned the matter over to the dean of students for an investigation and possible disciplinary action.

In March, Kremer's attorney Sherman requested an independent investigation of the entire affair but was turned down.

On April 8, Tufts announced that it was filing formal disciplinary charges against Kremer. A week later, Kremer responded with a lawsuit.

Sherman said there was no way to get a fair investigation by the dean of students' committee because an appeal would have been made to someone responsible to the university president. "It was our opinion that [an appeal] would have been futile," he said.

Spokesperson Van Camp said the university had no comment regarding the investigation except to release its findings — a unanimous decision by

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Massachusetts
Satirical insert causes uproar; editor wins out

An April Fools' edition of the North Adams State College newspaper last spring provided everything but laughter to students, faculty and administration in the northern Massachusetts town.

The eight-page satirical insert to The Beacon resulted in the removal of editor-in-chief Tom Auclair by the school's Student Government Association (SGA) and his reinstatement two weeks later by Dr. Robert Maust, vice president for student affairs at NASC.

"The Bacon," as the insert was named, created a month-long controversy because of its content.

One item objected to was a "phone sex" advertisement that had the school president's face superimposed onto a woman wearing a bikini. Next to the photo, a caption said, "Hi there ... I'm from Missouri, the show-me-state, but I can show you the best time of your life." Dr. Catherine A. Tisinger, who is president of NASC, is originally from Missouri.

The president's phone number and extension at the school were listed with the ad.

Auclair defended the advertisement saying he would print it again, but said he would probably leave out the number if he had to do again.

Another questionable story ran with the headline "X-rated Reverend irks Pope by passing out rubbers at Mass" and was written under the pseudonym "I. M. Hung." The story said the NASC campus priest was passing out rubber galoshes at mass just two weeks after announcing that he would star in a X-rated film.

The paper's staff ran a disclaimer at the bottom of the second page of the insert that said, in part, "The Bacon is a fictional, non-profit newspaper that revels in the time-lost journalistic tradition of the cheap shot, low-blow, and near-libel."

Tisinger, who expressed her disappointment with the issue of "The
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the three professors and two students on the hearing panel that said Kremer was guilty of misrepresentation. As punishment, he was placed on a year's probation.

Now that the complaint and response have been filed, both sides are waiting for the case to go to trial. As of mid-July, Kremer was still considering various options before returning to Tufts.

Meanwhile, Bill Shein, the news editor who reported on developments in the Kremer story, says the lawsuit will have "no major impact" on the paper.

"I don't think the newspaper will be affected [by the suit]," he said. "The thrust of it was more towards the university. The lawsuit names us in reference to the editorial, not coverage."

He added that after the lawsuit was filed, the Daily considered creating an ombudsman position to address readers' complaints, but the idea was later dropped.

A decision anticipated last spring by a California court of appeals has been delayed in a case involving a 1984 April Fools' Day edition of the Rancho Alamitos High School student newspaper in Garden Grove.

The court, apparently having trouble deciding how to rule, has extended the time period to consider the case, according to ACLU attorney Gary Williams.

Oral argument was heard in January in a lawsuit that is challenging a 1977 state law which allows school administrators to censor student publications thought to be disruptive, obscene or libelous.

Williams is representing former student editor David Leeb, who was stopped by Principal James DeLong from distributing a satirical edition of La Voz Del Vaquero because DeLong thought the paper included "potentially libelous" statements. Leeb, now a student at California State University at Fullerton, then sued DeLong and the school district for prior restraint infringement of his First Amendment rights.

The article in the four-page spoof issue that created the controversy reported that Playboy magazine would feature the school's girls in a nude photo spread called the "Girl of Rancho." Accompanying the article was a photograph of five fully clothed students at the school who were allegedly among the Playboy hopefuls.

The girls posed for the photo with out knowing how it would be used but no one complained to the principal.

In a lower court decision, which Leeb lost, the judge ruled that Leeb had not properly informed the five students how the photo would be used. The judge also ruled, however, that he found nothing libelous about the satirical edition.

Williams said he hopes to have a decision by sometime this fall.

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California

**Appeals court extends period to consider suit**

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Pennsylvania

Principal stops distribution; students sue

Three Pennsylvania junior high school students are still awaiting a decision in a lawsuit which began after they were reprimanded for distributing a religious newspaper at school.

The confrontation started in spring 1986 because of Issues and Answers, a monthly newspaper that carries a religious message published by Student Action for Christ, Inc. It addresses topics of particular interest to teenagers such as sports, teen suicide and dating.

Bryan Thompson and Marc Shunk, students at Antietam Junior High School (AJHS) in Waynesboro, were suspended by principal Robert Mesaros after being warned not to pass out the newspaper inside the school building. Mesaros had originally told them they could not distribute the newspaper anywhere at school.

The students said they were handing out copies of the newspaper in an attempt to communicate its views to their classmates. They added that they were not aware of an official policy that would control the time and place for distribution of the newspaper.

On April 29, 1986, Mesaros reconsidered his earlier restriction and gave permission for the newspaper to be handed out "before school up to 7:50 a.m." in areas "outside the school building on the sidewalk and/or parking lot areas."

The students felt this was a restriction of their freedom of expression since other papers and magazines were freely exchanged within the school building. On May 8 they continued to hand out the literature in the school's locker area. When summoned to the principal's office, Thompson and Shunk were placed on in-school suspension. Another student who was distributing the newspaper, Christopher Eakle, was also questioned later that day.

Thompson was told by Mesaros not to hand out the newspaper because he had violated school policy. Four days later, they began passing out the newspaper again, which resulted in a full day's suspension for Thompson and Shunk along with a letter to their parents. In the letter, Mesaros backed his punishment noting the students' "willful disregard for school district policy and direct disobedience."

The three students' parents enlisted the services of attorney Larry Crain and the Rutherford Institute, a non-profit legal defense organization that defends persons whose First Amendment religious liberties have been threatened. Crain wrote the school a letter requesting the students be allowed to hand out the newspaper at certain times of each day and that the suspensions be lifted from their school records. The request was denied a week and a half later in a letter from Timothy Misner, the school's attorney.

"The school officials did not want the school to become a battlefield of philosophies," Misner said later.

The students and their parents then filed a lawsuit in district court, arguing that their free expression rights had been infringed when the school censored Issues and Answers based on the religious content.

Both sides have moved that the judge grant a decision without going to trial in Thompson v. Waynesboro Area School District, filed in U.S. District Court for the middle district of Pennsylvania. Crain expects a decision on this at any time.

"I think it's pretty clear that [the religious content] was the overriding factor," Crain said, "because of the fact of the statements they [school officials] made."

Crain believes that the school's
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prohibition of the newspaper because of its religious content constitutes an actionable violation of the Equal Access Act of 1984. That act prohibits public secondary schools from discriminating against students who want to make use of school facilities on the basis of the religious nature of their activity.

Miser said that under the Pennsylvania Student Bill of Rights, the school holds the right to control the time and place of distribution.

The possibility of permanently having the suspensions on the students' record is a concern, according to Crain. But the students' principal desire is to exercise their right to convey their views openly without restriction, he said.

Thompson, Shunk and Eakle be ninth graders this fall at AJ which consists of grades six through nine.

Pennsylvania

Penn papers pirated at Wharton School

The Wharton School of Business and the student newspaper at the University of Pennsylvania agree that on Friday, May 15, copies of the Daily Pennsylvania were removed from two Wharton buildings. The dispute over who did it, however, may never be resolved.

According to the newspaper, about 1,000 copies were removed from distribution points within the school over the course of Penn's alumni weekend. Following the incident, the staff accused Wharton officials of taking entire bundles and said that those who took the papers wanted to hide what was in them.

The pilfered edition included a lead story on a Wharton professor charged with rape and an article on the same page that reported on the arrest of four Penn students, including one from Wharton, for dealing drugs. A third article disclosed that a Penn official had violated university policy by conducting photographic surveillance of a student protest demonstration.

In a press release issued the following Monday, the Wharton School criticized the paper for an unbalanced and "inappropriate" reporting that it said gave a "negative impression" to 3,500 alumni visiting the university over the weekend.

Jay Begun, the paper's summer editor, conceded, "I'm sure the alumni weren't pleased," but added, "We're not going to hold back on our news to appease the alumni or the Wharton School."

The statement also said that, "Shortly after the papers were removed, Penn president Sheldon Hackney called (the Wharton dean) and papers were promptly replaced at the specified areas in the buildings."

But Begun said that the papers were not returned and that subsequent deliveries at 6:45 and 10:30 p.m. were pirated as well.

In addition, the next morning, a staff photographer deposited a fourth batch of papers when he witnessed and photographed a man take most of the bundle to an administrative office.

While Wharton officials maintain that the individual photographed was not connected to the happenings of the day before, Begun noted that "he could be acting independently, but we're not sure." He added that the Daily Pennsylvania is considering taking further action, but nothing definite has been planned.

Although the Wharton School limited its comment on the incident to the written statement, William Epstein, assistant to president Hackney, said that his office saw the need to issue a follow-up.

In his statement, Hackney announced that the removal of campus publication "is entirely consistent with the University's policies and procedures, and with the ideals of the University." He added that the incident was inconsistent with the contractual arrangement that permits distribution of the student daily to campus buildings and facilities.

While the situation has since been down, Begun anticipates a broad awareness on campus of free speech in general.

Epstein added that he thought the situation was over and said that if further questions arise, student editors and Hackney will discuss them before the fall term begins.
California

Student editor at Northridge awaits decision

A news editor at the University of California at Northridge will have to wait until fall before a decision is made in an academic grievance he filed in April.

James Taranto of The Daily Sundial filed the grievance after he received a two-week suspension for publishing an opinion column alongside an editorial cartoon that criticized affirmative action. The cartoon had already caused suspensions for an editor and art director at UCLA when it originally appeared in The Daily Bruin.

The column summarized what had taken place at UCLA and defended The Daily Bruin’s right to print the cartoon. The cartoon depicted a rooster being asked how he was allowed on a college campus. The rooster replied that “Affirmative Action” had admitted him.

Faculty adviser Cynthia Rawitch says she suspended Taranto because he did not let her read the column beforehand.

“The real reason that she suspended me was because she was offended by the topic,” Taranto contended.

The grievance committee at Northridge was scheduled to meet twice before the spring semester ended but was not able to conduct business because it lacked a quorum. The committee consists of five faculty members and four students.

The next hearing will be in September.

If he is not satisfied with the results of the hearing, Taranto plans to take his case to court.

“I’d first like to exhaust all of my administrative avenues,” he said.

Illinois

Former editor sets his sights on future trial

An Illinois federal district court judge denied a request to reinstate a fired editor during April pre-trial hearings in a case involving the Collinsville High School student newspaper.

A date for the jury trial on the merits of Lunn v. Collinsville Unit 10 Board of Education has not been set.

The $200,000 lawsuit, filed on behalf of former Kahoki editor Brian Lunn by the American Civil Liberties Union, contends that principal Ronald Ganschietz removed Lunn from his position in March in retaliation for Lunn’s opposition to the school board’s student conduct code.

In December 1986, Lunn wrote an editorial criticizing that policy, which bars students from school-sanctioned activities unless they refrain from drinking, taking drugs or otherwise indulging in unlawful activity.

Six weeks later, Lunn was fired after not responding to Ganschietz’s requests that he define his “role as student editor.” Soon after, the principal suspended the publication.

The lawsuit, filed against Ganschietz and the school board, seeks $100,000 in compensatory damages for psychological harm suffered by Lunn and for First and 14th Amendment rights denied to the student. It also asks for $100,000 in punitive damages.

Although the case has not yet gone to trial, Ganschietz feels the denial of immediate reinstatement was in order. “We presented our side of the issue and it was upheld that we hadn’t violated any First Amendment rights,” he said.

Lunn, however, has set his sights on the trial and decision regarding the merits of the case.
Illinois

SIUE editor fights for student control
Conflict spans school year; resolved at State House

During her stint as a publicist for the U.S. Air Force, Deborah Pauly was used to being told what was “news” and what wasn’t.

But when Pauly became student newspaper editor at Southern Illinois University at Edwardsville (SIUE) and was told the same thing, she put her foot down and stood up to the administration. “They were using the newspaper as an in-house publication, and to me that seemed unheard of,” Pauly said of university officials. “I didn’t feel that was the purpose of a student newspaper.”

Although SIUE administrators deny such charges, Pauly maintains that conflicts involving the twice-weekly Aleslie over the 1986-87 school year focused on university attempts to gain control of it.

And while a number of issues were resolved by the end of Pauly’s one-year term, the former editor contends that student journalists everywhere must continue to exercise their First Amendment rights.

According to school officials, administrative relations with the Aleslie were good prior to Pauly’s editorship. University president Earl Lazerson emphasized that since he took office in 1979, “there has been a hands-off policy as far as the newspaper goes” and that “[the relationship] has been excellent with this exception.”

In response to accusations that SIUE administrators were trying to gain control of the paper, Lazerson said, “If we are, we’ve certainly done a poor job of it.” He added that charges of SIUE using the Aleslie as a house-organ publication were false and “we have neither asked the paper to print or not to print a story.”

Pauly and her supporters, however, disagree. They say that only after Illinois lawmakers and a state teachers’ union became involved did school officials respond to Pauly’s complaints. They claim that Pauly’s practice of running stories critical of the administration put her in bad stead with school officials.

The watershed in the confrontation with SIUE occurred in December 1986 when the Aleslie ran a story that reported on missing funds from its own accounts and the university’s audit into the matter.

The next day, the paper was ordered by the dean of students to stop paying advertising commissions to students — including payments that were owed and not yet paid. At the time, administrators said such payments violated federal policy, and later, university policy.

Pauly said that the staff “took every precaution” before running the story, calling on the dean of students, a lawyer and others to read the article. She noted that the reporter working on the story was threatened by the dean, who warned that if the Aleslie got sued, the university might not be able to help her out.

After the article on the audit ran, “[the dean] said [the ban on commissions] wasn’t punishment,” Pauly said. “But all of a sudden, it was against the policy and we couldn’t pay the commissions.”

Pauly points out that during her term, the Aleslie was changing its funding formula from about a 50-50 ratio of university to advertising revenue to one where 56 percent of all funds were self-generated. When the commissions stopped, however, plans for the Aleslie to become more autonomous were nixed.

After 10 weeks of protesting the directive to no avail, Pauly and the Aleslie staff issued a press release saying that they would take the university to small claims court. The next day, SIUE promised to restore past payments.

But that wasn’t the end of it, said Pauly. When the audit’s final conclusions were issued in May, it said that the problems with the Aleslie resulted from student supervision.

In addition, Director of SIUE’s News Service Sam Smith said that the audit “indicated that there should be better business practices put into place in terms of ad accounts, monitoring student work hours and billing.”

But Pauly maintains that the audit “never did what [the administration] said it was supposed to do” — that is determine why funds were missing from the Aleslie’s records.

While Pauly’s suspicions that university-hired secretary was taking the money were kept quiet for month, the audit concluded that no enough evidence existed to implicate anyone.

Another issue taken up by Pauly involved the university’s efforts to rewrite the Aleslie’s working papers.

Marcus Albrecht, a higher education coordinator for the Illinois Education Association, said that his organization became involved on the Aleslie’s side at the faculty’s request.

Because of a similar situation at Northern Illinois University the year before (see story this issue), Albrecht said state lawmakers were also anxious to have the conflict resolved. In May, the majority leader of the Illinois House of Representatives Jim McPike met with the university president and afterwards said that as far as he was concerned, Pauly’s complaints were satisfied.

“I made it clear to [Lazerson] that we were not going to allow tampering with free speech, boycott or even harassment of the student newspaper,” McPike said.

He added that he found “difficult to believe” the SIUE administration claim that the halt to commission was “coincidental” with the running of the prohibited story.

Now that the situation is over, Albrecht and current editor Michell Paul say they are keeping tabs on the administration’s moves.

The administration, however, feel that the situation with the Aleslie has been exaggerated and caused a misunderstanding.

Lazerson maintains that the problems brought to his attention had been dealt with. He feels that there has been “totally inappropriate action continuing on page 21

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unjust publicity” toward the dispute.

Paul conceded that she has a different approach to managing the Aisle than her predecessor Pauly, but gives credit to the former editor for her accomplishments.

“She's paved the way for us if we ever need to get in contact with legislators or need help.” In addition to her eliminating a $28,000 deficit, Paul said that because of Pauly's efforts, “I feel very confident that no one will try to censor us ... we're openly communicating.”

And although Paul admitted that it may be too early to predict the Aisle's future, she said, “so far, so good.”

Oklahoma

State resolution boosts attempts for TJC paper

Students fighting for control of an official school newspaper at Tulsa Junior College (TJC) were given support through a resolution of the Oklahoma Legislature included in a higher education appropriation bill in June.

The “non-binding resolution, labeled the House Concurrent Resolution No. 1053, was included in a two-part bill that passed through the state legislature on June 30 just before the session adjourned for the summer.

“It is the intent of the Legislature that institutions of higher education within the Oklahoma State System of Higher Education respect the First Amendment rights of the students of such institutions, especially with reference to freedom of the press of student newspapers,” the resolution said.

The resolution was added to the bill at the request of Rep. Don McCorkell, D-Tulsa, in reaction to an ongoing struggle between administrators and students at TJC over the status of the Horizon, the school's paper.

The resolution also stated, “The Legislature recognizes that prior restraint of student publications at public institutions of higher education have been determined by the Supreme Court of the United States of America to be violation of the First Amendment rights accorded under the First Amendment to the Constitution of the United States of America, and the Oklahoma Legislature will not tolerate abridgment of such freedom.”

“I have never known them [school administrators] to ignore a resolution of intent, and if they do, it would raise serious legal questions,” McCorkell said.

Students at TJC use the word “newspaper” loosely, if at all to describe the Horizon, considering that present circulation is only 100 and copies cannot be removed from the journalism classroom. The Horizon is termed by TJC administrators as

Texas

Free press prevails as bill dies; students continue political support

A bill that could have barred state-supported student publications from endorsing political candidates died in the Texas legislature last spring before several lawmakers said it would stifle the voice of student journalists.

The amendment to a bill dealing with college accounting practices by Rep. Terral-Smith, R-Austin, would have outlawed using student service fees to influence elections and legislation. While it did not target student newspapers specifically, its opponents pointed out that publications like the Daily Texan at the University of Texas are partially supported by such fees.

The Texas Senate removed the provision, and following debate over First Amendment rights, the House on May 31 voted to concur with the Senate version.

Sen. Gonzalo Barrientos, D-Austin, who has been endorsed several times by the Texan, removed the provision from the bill. Had it passed, he said it would have stifled the rights of student journalists and "would have stripped college newspapers from endorsing and editorializing."

In floor debate, Rep. Lena Guerrero, D-Austin, agreed saying, "We'd be violating personal freedom of speech if we began to tell a student newspaper what to print and what not to print."

Smith, however, maintained that the amendment was not initially aimed toward newspapers, "It at student groups that use fee money to buy political ads. While he acknowledged that the measure was broad enough to have covered student newspapers, he said it was initiated for an entirely different reason.

According to Smith, a group of students sued UT's Student Association in 1984 after the SA used student fees to buy a newspaper ad endorsing a straight Democratic ticket. The group — the Young Conservatives of Texas — claimed victory in a January 1987 out-of-court settlement in which the SA agreed to stop making endorsements.

While the agreement was bound only to the Austin campus, the Smith Amendment would have set a precedent for all Texas state schools.

When Daily Texan editor Sean Price first heard of the pending measure, he was "very upset...near the original version [of the amendment] said it would keep anybody that receives student fees from endorsing and that would include the paper." However, "I don't think it would've been able to stand up in the courts."

Price added, "Every time we endorse, we get a lot of griping — someone saying why is my fee money going toward those candidates?"

Regardless of his primary intentions, Smith emphasizes his support for student press rights and mentioned that student newspapers should give up their school funding to avoid problems like this.

"I think they ought to run endorsements," he said of the newspaper. "But don't let an editorial board or an endorser use [fee money] to say who he thinks should be in office."

He continued, "the issue is not whether he has the right to say something; the issue is who's going to pay for it."
merely a laboratory exercise, and the school’s communication division chairman has said that experience in publishing a newspaper should wait until students transfer to a four-year school. TJC offers an associate degree in journalism.

Started at TJC in 1971, the Horizon had grown to a circulation of 4,000 before a signed editorial in November 1976 got it in hot water with school president Dr. Alfred M. Philips.

The editorial supported a state correctional facility being placed near the college’s downtown campus, an opinion that conflicted with the one held by the school administration.

Soon afterwards the school created editorial guidelines and procedures regarding the Horizon, which prohibited letters to the editor and editorials. Circulation was restricted to 200 in 1985 and to its present number last November.

After this latest restriction some TJC students began the battle again.

Former editor David Arnett was fired in February after writing an editorial calling for a free student press. The next editor, Dana Mitchell, was fired only a month later for “questioning policy”. Arnett is now leading an attempt to get the Horizon reinstated to its former status.

However, Philips, the only president in the school’s history, and other TJC administrators are resisting change.

Given the usual hard knocks politicians receive from journalists, Arnett is pleased that the Oklahoma legislators are attempting to help.

“It’s nice when they [politicians] stand up and recognize us as part of the process,” Arnett said.

Arnett has attended every meeting of TJC’s Board of Regents since February petitioning for a school newspaper. At the May meeting, the board directed TJC Vice President Dr. Dean Van Trease to form policies that would apply to student publications. Van Trease appointed four people from the Tulsa community to serve on the committee.

“I chose people that were known for being exceptionally talented in journalism,” Van Trease said.

“They’re reviewing the journalism program of the college.”

However, Arnett is fuming that no faculty members or students were included on the committee, and feels Van Trease might have stacked the committee with those who will side with TJC administration.

To fill the void left by the Horizon, Arnett has started an independent newspaper to serve the 15,000 students at TJC. Backed by a Tulsa investor, Richard L. “Tex” Jones III, he published three editions of the Independent Student News last spring. The main focus of the paper has been to bring attention to problems in journalism at TJC.

In the summer issue, published at the end of June, Arnett relayed his concerns in a “letter from the publisher.”

“We have been ignored when not harassed and insulted by the administration of TJC. And yet we have not reacted in anger but have sought cooperation for the good of our college,” it said.

Arnett has tried at length to avoid introducing a lawsuit against the school even though he is confident he could win.

“You know we can win in court, I know we can win in court, and they know we can win in court,” Arnett said. “What we’re trying to do is motivate them without going to court,” he said.

Still, Arnett thinks that the Oklahoma legislation resolution has helped the chances of getting the Horizon back to the status it had in the 1970s, that of a real newspaper.
Settlement outlines students’ press rights

Fired newspaper adviser Patricia Miller accepted an out-of-court settlement from the Putnam City, Okla., school district in February, ending a nearly three-year-old legal battle.

The agreement, which awarded Miller $54,500 in exchange for dismissal of her lawsuit and a release of all claims against the school district, proposed adoption of a new student publications policy. The settlement also acknowledged satisfaction with Miller’s current performance teaching seventh grade English and said that her job was not in jeopardy.

The dispute began in April 1984 when Putnam West High School’s Towne Cryer published a series of indepth articles that dealt with teenage pregnancy, birth control and abortion.

In the suit filed by Miller, the former newspaper and yearbook adviser claimed she was removed from her position for allowing the articles to run. She sought reinstatement and requested compensatory and punitive damages, alleging that school officials acted in “bad faith” and violated her constitutional rights by punishing her for not censoring the newspaper.

The school district, however, maintained that First Amendment issues were not involved and that personnel-related problems prior to the appearance of the issue led to her dismissal.

The settlement drafted by William Bleakley, attorney for the school district, stated that it “would not resolve these issues in favor of either party” and “would not constitute an admission of liability by the District.”

The settlement also included a five-part policy regarding “Official District-sponsored Student Publications” with headings outlining the responsibilities of student journalists, faculty advisers and principals.

According to Miller’s attorney, Joel Carson, a lot of the policy material was taken from Student Press Law Center Model Publications Guidelines. He noted that “Students and faculty involved in the process of the student newspaper now have certain and more delineated rights and obligations.”

Carson said that both parties were satisfied with the policy which “is presently in full force and effect,” adding that he hopes it will have a far-reaching impact on all school boards in Oklahoma.

NIU adviser gets $15,000 in settlement

Jerry Thompson, the newspaper adviser removed, reassigned and reinstated within a month’s time last year at Northern Illinois University, says it’s been “business as usual” at the paper after a lawsuit he brought against school officials was settled in May.

The settlement, which allows Thompson to keep his job and requires NIU to pay $15,000 of his almost $23,000 in legal expenses, marked the end of a tale of twists and turns that began more than two years ago.

In June of 1985, Thompson and editors at the Northern Star thought they were covering a newsworthy issue when they ran an article detailing incoming president Clyde Wingfield’s expenditures of state funds. Over the next 10 months, the newspaper pursued the story and disclosed, among other things, that more than $100,000 had been spent to remodel Wingfield’s house and pay for his inauguration.

After the last issue of the 1985-86 Star was distributed, Wingfield transferred Thompson to a public relations post within the school, citing findings from an internal audit critical of Star business practices under Thompson.

“There is not in any way a First Amendment issue here,” said Wingfield, who was later forced to resign after state legislators questioned spending detailed in the Star articles.

“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,” he said.

But Thompson said the decision to transfer him was a retaliatory attempt to silence the controversial Star whose daily circulation numbers around 17,500. In May 1986, he filed suit in a U.S. district court, seeking reinstatement and $110,000 in damages for defamation of character.

In the weeks that followed, Thompson’s case caused a statewide brouhaha and garnered national attention as Illinois newspapers, including the Chicago Tribune and Sun-Times kept close tabs on its developments. Star alumni quickly formed “Alumni for a Free Press,” a group that staged protests and launched a fund-raising drive that has since raised over $3,000 toward Thompson’s legal fees.

Meanwhile, back in court, the judge granted Thompson a temporary injunction and later an extension to keep his position until July 1986. In a surprise move at the end of June, however, the Board of Regents voted to reinstate Thompson, pending the outcome of the suit.

At that meeting, university officials said that Thompson’s reinstatement would depend on the findings of a 15-member committee of NIU’s University Council that would examine the
process of incorporation is worth going through to stop "what any fair-minded person wouldn't do anyway."

Now, Thompson said, "Our concern remains that we make sure that it doesn't cost the newspaper anything extra to incorporate."

Costs, both physical and emotional, are not a new issue with Thompson. The time and expenses of litigation, he acknowledged, were a key factor in the decision to settle, although "A lot of people wanted us to take this through to the end."

Even so, Thompson hopes that what happened at Northern 1 will serve as a deterrent for administrators watching student news nationwide.

"I would hope that for us and other papers that a signal went out to administrators that they can't have their way if they disagree with content," he said. "They just can't force these into lying through their advisers"

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**Colorado**

**Patient adviser continues eight-year suit**

An eight-year-old lawsuit should be proof enough that Judith Olson is not one to give in easily.

After decisions and subsequent appeals in every possible state court, the journalism instructor at Pikes Peak Community College in Colorado is still seeking satisfaction in a case that started in June 1979 when the student government at the school voted to cut off the funding of the Pikes Peak News.

The student government eventually offered to allot the newspaper a budget of $5,000 — less than half the previous year's budget — if the paper would give the student government $1,000 worth of free advertising and write a constitution for itself. When the newspaper rejected the offer, Olson filed suit on behalf of the students, claiming that the funding was cut because the student government did not approve of the paper's editorial content.

After the funding cut, the Pikes Peak File, a mini-magazine, was established with Olson serving as adviser. It is printed at a lower budget and is dependent on advertising revenues to operate. As a result, news content has dropped drastically, according to Olson.

The first trial held in March 1981 resulted in a summary judgment for the school on the grounds that neither Olson nor her students could protest the funding cutoff. The court reasoned that the case would be moot by the time of the students' graduation and that there was no indication that a teacher had the constitutional right to start a lawsuit on behalf of her students.

Olson appealed and won in the state court of appeals, but the case was not over.

In 1984, the Colorado Supreme Court rendered its landmark decision in Olson v. State Board of Community Colleges and Occupational Education, 687 P.2d 429 (Colo. 1984), which allows advisors to sue on behalf of their students.

The court also reversed the earlier ruling that Olson's own First Amendment rights had been violated.

The case went back for trial in October 1985 to determine if the funding cut was in fact motivated by an intent to censor. The court adopted "essentially verbatim" the findings and conclusions suggested by the defendants, according to Olson's attorney William P. Bethke.

"We simply submit that a revocation of the whole record will leave this with the unmistakable content that invidious motivation was shown," Bethke said.

"The trial court erred in finding that the funding for the Pikes Peak News would have been terminate in the absence of any construction of its editorial content," it
Condom ad not protected from censorship

A California high school's student newspaper took the senior prom theme "Night to Remember" seriously last spring when it decided to run a public service advertisement urging condom use to prevent the spread of AIDS.

But when the issue was distributed at Glendale's Hoover High, the PSA was missing. In its place was a statement by district superintendent Robert Sanchis, explaining his decision to nix the ad.

Sexually related advertising in a high school student publication "must be evaluated for its suitability to the majority of its student readership and to the parents and other members of the community also reading the newspaper," Sanchis said in the written statement.

"Further," he continued, "it must be evaluated whether the appearance of such an advertisement ... implies the endorsement of the school and the school district."

The advertisement — timed to appear just before the upcoming senior prom — was scheduled to run on page three of the Purple Press. But before any papers were printed, Hoover High's principal told journalism adviser Diane Bell that Sanchis did not want the ad to appear.

The advertisement would have been the first of its kind to turn up in a Glendale school newspaper and perhaps one of the first in a high school newspaper nationwide. It featured in bold print the word "condom," broken into two syllables as it appears in the dictionary and included a quiz asking readers to check off one of four definitions:

1. Large vulture of the southwestern United States.
2. Building where Yuppies live.
3. A popular sailing port in Maine.
4. Thin protective sheath for the penis, usually of rubber, to prevent venereal infection or as a contraceptive.

Part of the censored ad.

Bell described Sanchis' press release as "a very long statement that basically said that the school district's policy is for abstinence," as it is with drugs and alcohol. "The ad, by telling [students] what to do if they did have sex, was going against the official policy of the district."

Sanchis defended his decision to censor the ad, saying that schools should act only as providers of factual information and not be in the business of advising students regarding sexual behavior.

"If the school district goes beyond providing factual information and begins to make recommendations, [it] must consider the legal, medical and social policy implications of such actions," he said.

The superintendent added that banning the ad "wasn't a question of a First Amendment issue." He said that the most significant legal question involved the state's definition of statutory rape.

According to Sanchis, California law states that any person who encourages or tends to encourage any person under 18 to commit an unlawful act shall be prosecuted by the district attorney. And since the majority of Hoover High students are under 18, running the condom ad raised the question as to whether it invited students to commit the illegal act of sexual intercourse between minors.

"Plus," he said, "the ad was misleading. Nowhere did it refer to the..."
fact that [condoms do not provide] 100 percent prevention of the spread of AIDS. As a first attempt to deal with a very sensitive and complex issue, [the ad] was a very weak approach.

As a result of the condom ad controversy, district officials are formulating a publications policy for the three Glendale high schools. In addition, an ad hoc committee designed to review the State Board of Education's guidelines on family life programs, including suggested information on AIDS, was initiated.

According to Bell, the school district acted more promptly than is characteristic in forming the committee. But Sanchis maintains that the condom advertisement had nothing to do with sparking the district to move faster on the issue.

Nevada

Planned Parenthood awaits access ruling

A case that may test the free speech rights of family planning organizations to advertise in high school newspapers was presented to a federal district court in Nevada this summer.

After months of unsuccessful attempts to settle, attorneys for Planned Parenthood of Southern Nevada (PPSN) and the Clark County School District (CCSD) presented their dispute in Las Vegas on June 22.

The lawsuit was initiated by PPSN in December 1984 after the school district two months earlier proposed a regulation that would bar student publications from printing advertisements for birth control products and information.

Other prohibited ads included those for gambling aids, tobacco products, drug look-alikes, liquor products, and "items which may not be legally possessed by students less than 18 years of age."

Although the measure was not formally approved by the school district, it was sent to all CCSD secondary school principals. Since then, all but one high school in the district has rejected PPSN advertising until the situation is resolved.

In a poll taken of 75 students by Las Vegas' Valley High School student newspaper, 90 percent of those questioned thought the ads should be run. Fifty-seven percent, however, felt that certain restrictions should apply to those types of ads and many felt that simply including PPSN's phone number and address was enough.

In its complaint, PPSN claimed the district's policy violates the First and Fourteenth Amendments because it allows high school principals to censor advertising "without establishing narrow, objective and definite standards to guide their conduct."

PPSN also contended that high school students and other third parties who seek access to Planned Parenthood's services have been harmed by the district's refusal to print the ads.

"Such harm is irreparable and continuing and is a restraint on the students' and other third parties' rights to receive information," the brief stated.

At the June 22 trial, CCSD's attorney Tom Moore said the school district discussed whether the high school newspaper was a publication of the state and that Planned Parenthood was forcing access to the student press.

According to Moore, the CCSD newspapers are not public forums and "the school district has a right to determine what's going to be published under its name." He added that the control was similar to that of private commercial newspapers and broadcasting stations.

PPSN attorney Roger Evans said, however, that the school district "failed to demonstrate a compelling interest to keep out information" provided by Planned Parenthood. He argued that the ad ban was an effort by the state to regulate what information students received.

"We tried to persuade [the judge] that the point of the First Amendment was to protect us, the citizenry, from restriction of speech when carried out by a state agency," he said.

Evans added that throughout the hearing, the judge initially indicated that since the school district forbade ads from both sides of family planning, the restriction might be permissible.

Evans said that the "opposite" of Planned Parenthood would generally be considered to be so-called "pro-life" organizations. However, he added "We're not talking about a debate on the morality of abortion, we're talking about the provision of services."

Although both sides are glad that the case finally went to trial, both PPSN and the school district say they will appeal should they lose.

In the meantime, Planned Parenthood is hoping for a decision by fall so they can extend their message to all Clark County high school students.
California

KCSB-FM responds to FCC investigation

While it may still be too early to detect the aftershocks of the Federal Communications Commission's crackdown last April on "indecent" broadcasts, student and professional media alike are awaiting the agency's next move.

In June, regents at the University of California responded to queries by the FCC's Mass Media Bureau on whether the school had enough control over its student-run radio stations. The investigation began after KCSB-FM at the Santa Barbara campus was one of three stations warned in the Commission's April 16 ruling.

In that announcement, the FCC said that it would begin enforcing tougher restrictions on indecent broadcasts, that is, those depicting or describing sexual or excretory activities or organs "in terms patently offensive as measured by contemporary community standards for the broadcast medium."

Prior to the ruling, the general definition of "indecent" meant broadcasting the "seven dirty words" made famous by comedian George Carlin, which were the subject of a 1978 Supreme Court case.

The FCC declared that the new standards would prohibit broadcasts of indecent material any time during the day or night when there was a "reasonable risk" that children would be listening. The previous standard only prohibited broadcasts before 10 p.m. The Commission also held that advance warning of the material would continue to be required.

The KCSB warning came nine months after a disc jockey at the station played "Making Bacon" during a late-night show. The song by the Pork Dukes, a British punk rock group, described oral and anal bisexual intercourse and moved an offended listener to contact the Washington D.C.-based Parents Music Resource Center.

After the complaint was forwarded to the FCC, the Commission found that the music broadcast would constitute "actionable indecency," under the newly-adopted standards.

But Malcolm Gault-Williams, KCSB-FM's general manager, said that the song was within FCC guidelines when it was aired the previous summer and with the changes, "the definition became considerably more vague."

That "vagueness" is what worries several members of the professional media. In a joint petition filed in June, 15 media groups urged the FCC to reconsider standards that they deem too broad and contrary to the public interest.

Groups ranging from the major television networks to National Public Radio said the Commission was faced with "a task of great delicacy" and urged the FCC to let individual stations, on good faith, decide what is acceptable programming.

"If [the FCC] wishes to channel speech that it views indecent, it must proceed cautiously and provide an adequate and narrow standard to avoid discouraging the broadcast of speech designed to inform and educate the American public," the brief stated.

For the FCC's investigation into the control over KCSB-FM, Gary Morrison, legal counsel for the University, said that the school submitted a detailed response explaining its role as the station's operator.

He said that the letter filed to the Mass Media Bureau outlined the oversight of radio stations by chancellors at each campus and reiterated the training programs and operating guidelines they followed.

Roger Holberg, an attorney in the Mass Media Bureau's Complaints and Investigations division, said that a licensee "is generally required to be in control of the operation of the station and to be responsible for what it broadcasts and all matters of its operation."

"We'll look at [the university's] response, and if we need further information, we'll go back," Holberg said. He added that a wide range of actions could be taken against the station — from no action to revoking its license.

Morrison said that during the university's internal investigation, he was impressed with the professional
manner in which the stations were run, and that the broadcasters understood what may be put over the airwaves.

He added, "I am confident that a fair inquiry will show that we're exercising the proper degree of control." But if the FCC disagrees with programs already in place, he admitted, "we may have some problems."

Although officials interviewed at the University of California and on the Santa Barbara campus agree that the new standards are vague, all said that the impact of the warning to KCSB-FM has been small.

Gault-Williams said that aside from the publicity, "The only thing that's changed is that we've set the playing of objectionable material back to midnight to 6 a.m." Previously, such material was allowed after 10 p.m.

Edward Birch, UCSB vice-chancellor for student affairs, said he doesn't think the FCC ruling will have a major impact but "if anything, what it has done is to alert those who work at the radio station that they do have people who will raise complaints on inappropriate material."

"Our intent is to be in compliance," he said. "The feeling is not one of castigation toward the FCC's ruling. It's a reality — something we have to work with."

Gault-Williams said that the station has received comments about objectionable material since the warning, but maintains, "We feel that part of our mission as a radio station is to air material that not everyone sees as appropriate."

"We take chances where not everyone will and we feel very strongly about our educational purpose as part of the University of California," he said.

Gault-Williams emphasized that college stations specifically should not overact to the ruling. By this, he pointed to "having such things as a banned records list or never playing a record with obscenities or one objectionable to someone."

While the overall impact of the FCC's ruling has yet to be decided, Morrison said that a perception of increased vigilance by the FCC does cast a shadow on all broadcasters. But he concluded, "Whether it will be serious or not, only time will tell." ■

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**Michigan**

**Record ban imposed at WYCE; district announces format change**

The music director at a student-run radio station in Michigan cried censorship last May after a record ban was imposed prior to a change in the station's format.

The ban at WYCE-FM in Wyoming, Mich., was only a precautionary move until a new music format could be implemented, according to school administrators. The station is part of an adult education program.

According to Susan Walter, director of communications at Wyoming Public Schools, some 50 groups were banned by the superintendent David Bailey to curb WYCE from playing music "questionable to good taste." The station's estimated listener's age is 25.

Apparently no direct complaints from the conservative Wyoming community, a suburb of Grand Rapids, spurred the written directive from Bailey.

"But we questioned whether it was appropriate for a school station to play [the banned music]," Walter said. "I find some of the material offensive and I consider myself to be a very liberal person."

"The station plays a predominant amount of what might be termed alternative music," she added.

The music that was banned consisted of primarily progressive and rock groups such as Poison and Ozzy Osbourne.

Brian Tennis, the music director of the station, is not pleased with the result of the ban or the new format. Music that was cut gets played every day on other area stations, Tennis said.

Immediately after the ban, Tennis protested it.

Walter disagreed that the ban was a form of censorship.

"I don't see it as censorship, As the holder of the license the school district has the right to make this choice [of what is played]. I do not see it as First Amendment issue at all," Walter said.

At that time, Walter indicated that the school district was reviewing WYCE for a possible format change.

"We're looking for a format will maybe form a unique niche this particular area," Walter said.

The school district announced new format in a press release on 17. WYCE now offers a blend of rock and jazz music.

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"I don't see it as censorship the holder of the license school district has the right make this choice [of what is played]. I do not see it as First Amendment issue at all

Susan Walter
Director of Communications
Wyoming Public Schools

"This format is in keeping with district's educational goals in that it will expose both listeners and students to musical styles which may not have been previously exposed to, or sought out," it said.

"We're trying to train students into leaving the school commercial mark." Walter said.

Until it can adjust to the format the station will operate on a reduced schedule. Walter said more records are being purchased and she he WYCE will be back in its normal hour-a-day schedule by the beginning of the fall semester.

The most vocal of the opposition to the new format is Tennis, who plans to leave the station soon.

"We went from being a station the community and something the Ministration wanted to hear," Ter said. "There were definitely some types of music that WYCE played that no one else did. Now they can be heard in the community at all."

Most of the station's 40 on-the-staff members are non-paid broadcasting and electronics students.

The station manager said that these, only about half have indica tion that they will remain WYCE. ■
Newspaper funding:
Putting a halt to purse string censorship
by Dale R. Wilson

In this issue the Report introduces Viewpoint, an occasional series written by those who have a special perspective on the problems of the student press.

The method and sources of funding of many college and university student newspapers are inconsistent with, the basic foundation of the First Amendment. In many schools, student editors must, hat in hand, submit budgets to and testify before budget committees operated by student government. Thus, in many cases student governments control the lifeline of the student press.

Student government officials are not exactly impervious to exercising the control they have, which can lead to exchanges like this:

Student Government President: "The next budget for consideration is for the student newspaper the Spectator. Discussion?"

Senator Axe: "I move the budget of the Spectator be decreased by one half."

Senator Bodoni: "What? Why? Have advertising revenues decreased?"

Senator Axe: "Nope."

Senator Bodoni: "Has the paper's staff been abusing their budget?"

Senator Axe: "I wish! But I don't think so."

Senator Bodoni: "We have enough money this year, don't we?"

Senator Axe: "Well, the ski club wants more money to go to Aspen this year."

Senator Bodoni: "Aspen? Why do you really want to cut the paper's budget?"

Senator Axe: "Because I don't like them, that's why."

That conversation actually took place at a budget hearing I covered as a reporter for my university paper. Newspaper editors at colleges and universities are under constant budgetary attack from student government, and in some cases the college administration, because coverage of those groups has not been favorable.

What are editors to do? At most schools the paper could not survive without some type of institutional support. If the editors said "you and your money can take a hike" they might as well give the office keys to the hikers because the paper could not afford to continue.

On the other hand, the editors can hardly pout in the corner and succumb to the demands of the funding body by only reporting the good deeds of that body. The editors might as well give the office keys to the funding body and let them publish the paper.

Once again, what are the editors to do? The solution is easy. Well, the solution is easy to state, but more difficult to implement. The newspaper should attempt to alter the method by which the institution supports the paper. I will review several of those methods and recommend a system of funding that could minimize the problem of censorship through budget cuts.

The Independent Newspaper

By far, the safest student newspaper is the financially independent one. Such a newspaper has no financial ties with the school. The school does not provide funding, free office space or an adviser. The only affiliation the paper has with the school is that the paper is distributed at the school and staffed by students.

The financially independent student newspaper is the most desirable because the tools of official control are very limited. Officials could attempt to control the paper by either disrupting distribution or contacting and persuading advertisers to discontinue advertising, which, I might add, they may do.

With one of the student newspapers I edited, the administration attempted to cut our finances by calling our advertisers and stating, "Don't you know that bunch is really a bunch of radicals? Do you really want to support them?" Fortunately, our advertisers laughed and bought larger space in the next issue.

But that won't always happen. Financial independence is unrealistic, if not impossible, for most student newspapers. In many communities, it is difficult to sell sufficient advertising to support a student newspaper. If advertising is insufficient, a paper could attempt to collect a subscription from students. But students are not likely to pay a subscription fee directly to the newspaper. If the paper refuses to provide a paper to non-subscribing students, fewer will read the paper. If fewer students read the paper, advertisers will not be pleased and might decrease the amount of space they buy. Also, the paper will not be able to charge as much for space sold. Thus, the spiral of decreasing financial resources begins, and if paper is to survive, outside support would be needed.

School Funding

As previously stated, school funding of student newspapers is usually provided by either the administration or student government. The amount of funding provided is usually determined annually through a budgeting process. However, censorship does not always occur during the budget process. In some instances, the funding body will reduce the budget almost immediately after the student media has failed to respond to an official mandate.

For example, the student senate president at one school did not like the paper's coverage of senate activities and told the paper to change it. When the paper refused, the president ordered a freeze on all newspaper staff paychecks.

That action was rather blatant. The more sophisticated censors attempt to put some time between the story they object to and the punishment. Officials may wait a few

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months after the story is published, then act, or they cut the budget during regular budget proceedings for the upcoming year. In either case the message is clear: Do as we say or face the consequences.

The source of school funding, however, can be critical to providing a remedy. Funding from either the administration or student government has special problems.

It was once thought that student government funding provided more protection for the student press than administration funding. After all, students would not censor students.

Today, we know better. In fact, student government funding has two basic problems.

First, and most important, there has been little case law involving student government censorship of student publications. Thus some say it is unclear whether the constitution prohibits such actions.

The First Amendment applies only when there is either federal or state government action involved in controlling the press. Thus, only those officials at public or state-supported schools are prohibited by the First Amendment from censoring the student press. Can the actions of student governments be considered state action? Only one court has specifically considered this issue.

In State Board for Community Colleges v. Olson, the Colorado Supreme Court held that the censoring action of a public college's student government is a First Amendment infringement because the school has "authority and control" over the funds it allows the student government to distribute. The Court also noted that the school approved the student senate's decision to cut off funds, which it could have rejected. Other courts may adopt this analysis in the future.

A second problem is that student governments are unstable. Generally, the leadership of student government changes each year. One year, the leadership may understand the necessity of press independence, but the next year they may not. Instability can sometimes create a cycle where the same battle between the student government and student press occur every few years, even though past government leaders and editors came to an understanding. Thus, the student media must continually adjust to new student government leadership. This adjustment takes time, and energy, that could be better used to gather and publish information.

A possible solution to student government instability is education. Student journalists can attempt to quickly educate student leaders on the relationship between the news media and government. The problem is that student leaders are not always receptive to press-government theory. For example, the student senate president who froze staff paychecks responded to censorship charges by stating, "What censorship? I didn't stop them from printing anything." Bright man. He failed to understand that attempting to control content by controlling the publication purse strings in indirect censorship.

Like student government funding, administrative funding has its peaks and valleys. The largest advantage of administrative funding is that the law is clearer. Attempts by the school administration to control the content of the student press are clearly unconstitutional. In Tinker v. Des Moines Independent Community School District, the U.S Supreme Court stated that censorship by administrators is state action, and the state may not control expression in most circumstances. Dozens of court decisions from around the country have made clear that student publications at public colleges are entitled to the full protection of the First Amendment.

School administrations are also more stable. Usually, the entire administrative staff does not turn over every year. Stability gives students the opportunity to educate the administration on the rights of student journalists. Once educated, at least one can hope that administrators will respect those rights and will not attempt censorship.

The problem is that many administrators understand the law but choose to disregard it. Administrators use the funding process as a means to control student newspapers under the guise of cutting costs. Students are less likely to freely exercise their rights if they know that a controversial story may result in further cuts.

Additionally, administrative action frequently is cloaked in the aura of authority. In some cases, student journalists are not aware of their rights. They view administrators as their superiors and accept each command as the final word, whereas students may be more inclined to challenge the decisions of their peers in the students government.

Changing funding systems to protect student media

Neither school administration nor student government control over the finances of student news organizations is satisfactory. Therefore, a system that minimizes the financial contact between the funding body and the news organization should be developed.

The first step is to determine who has the ultimate power to distribute money to the student news organiz-
tion. There are usually two sources of ultimate power: 1) the students, and 2) the school’s policy-making board such as a board of trustees. In many cases, the individual that allocates the money does not make the ultimate decision on how the money is distributed. For example, budgets in most schools must be approved by a policy-making board. Although school administrators make recommendations to the board, the board makes the final decision and administrators must abide by those decisions. Thus, the board makes the final decision.

Similarly, most decisions to allocate money made by student government must be approved by the school administration, and ultimately the policy-making board. Once again, the board has the final word. However, if a student government has full control over the disbursement of student fees, the students, through a referendum, can usually direct the student government to allocate those fees in a certain way. Thus, the students have the ultimate authority.

Once the ultimate decision-making body is identified, a student news organization should develop a plan to ask the controlling body to adopt a system of funding that protects the news organization from financial censorship. If the controlling body is the student body, a referendum should be held according to the requirements of the student constitution or other organizing document. If the controlling body is a policy-making board, the student news organization should make a presentation and ask the board to adopt the plan.

Each plan should include the following components:

First, a special account should be created that can only be used to fund the publication costs of the student newspaper. The plan should state that the account may be audited by the school administration to ensure that the funds are being spent appropriately. The plan should also state that no one may remove funds from the account for non-student publication-related expenses, except in budgetary emergency. If a policy-making board has the final decision-making authority, it must declare a budgetary emergency. If the students have the final authority, the student government must declare the emergency. However, an emergency declared by the student government should last only two months. After two months, if the student government decides the emergency still exists, a referendum should be held to validate the government’s position. If the students fail to validate the decision of student government, then student government must cease using student publication funds for non-publication related activities.

Second, the plan should specify the amount of money the publication will receive. For example, the plan could state that 10 cents per student per issue will be removed from the student activity fund and placed in the special publications account.

Third, the plan should specify the amount of time the funding arrangement will continue. For example, it could say that the agreement will run for five years.

The advantages to this system are obvious. Student news organizations would have the benefits of institutional support, without the dangers of institutional control.

The disadvantage is that student news organizations would have to make long-range plans carefully. If costs increase sharply over a short period, the organization may not have the necessary money to meet expenses.

The solution to that problem is simple. In a policy board setting, the news organization could ask the board to increase the amount of money allocated per student, say from 10 cents per student per issue to 12 cents. There is not guarantee that the request will be approved, but at least the option is available.

In the student setting, the student newspaper may seek interim emergency funding from student government, while preparing a referendum asking the students to increase the newspaper allocation.

In either setting, this type of funding system provides increased protection for student journalists from financial censorship attempts.

Then when attempts are made to control content, student journalists could tell officials to “take a hike” without fear of losing institutional support.

NOTES
1 687 P.2d 429 (Colo. 1984).
2 Id. at 433 n. 4.

Dale R. Wilson is an attorney with the Chicago area office of the law firm Hayt, Hayt & Landau. He is a former editor of student newspapers at Elgin Community College, Elgin, IL; Rochester Community College, Rochester, MN; the University of Wisconsin, Eau Claire; and the University of North Dakota. Mr. Wilson’s battles against press censorship were first chronicled in the SPLC Report in Spring 1979.
Music video yearbooks: Trendy alternative is copyright risk

School memories preserved on video, accented by trendy music and sold supplementary to traditional print yearbooks may be the latest advance in student journalism, but copyright complications abound.

The right to create and profit exclusively from a song or record is protected by the copyright law of 1976. This includes the right to make derivative versions of the musical work, to publish copies of it and to grant permission to others to use the song or recording. Those who produce video yearbooks using copyrighted songs without getting permission from the copyright holder may be breaking the law. However, students independently producing video yearbooks as an educational exercise may be excluded from getting consent and paying royalty fees by the fair use clause of the statute.

**THE FAIR USE POSSIBILITY**

A fair use is a limited privilege granted to someone other than the copyright owner to use the protected material in a reasonable manner without the owner's consent. Fair use is an equitable rule of reason and thus is flexible.2

Title 17 of the U.S. Code, section 107 defines fair use: [T]he fair use of a copyrighted work, including such use by reproduction in copies or phonorecords ... for purposes such as criticism, comment, news reporting, teaching, (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

1. the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole and;
4. the effect of the use upon the potential market or value of copyrighted work.

Guidelines for the educational uses of music that interpreted the doctrine of fair use were adopted by the House and Senate in 1976. Those guidelines provide that:

For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not compromise a part of the whole which would constitute a performance unit ... [that is] more than 10% of the whole work. The number of copies shall not exceed one per pupil.

The courts have not yet examined this four-part test with respect to educational fair use of popular music in a video yearbook. But one might predict that if the students themselves were editing and synchronizing the film and music, then selling the final product back to members of the production class at cost, this would satisfy step one of the analysis.

Next, the court would look to the nature of the work to determine whether it is informative or creative. It could be argued that songs incorporated in a student produced video yearbook serve the informative function of establishing the theme of the class or the tone of the year. If an informative function is established then this factor would weigh towards fair use. For example, the song "We Are The World," which stood for famine relief in Africa, could have represented the year 1985 to a civic-minded school class graduating that year. On the other hand, a court could find the song itself to have been more of a creative effort than informative, thus its use in the capacity of a video yearbook would weigh against fair use.

The third factor to be considered would be how much of the song was used. Given that most songs are 120 to 150 seconds long, use of 12 to 15 seconds could serve its intended purpose and still be a fair use. However, exceeding this 10 percent allowance without permission would weigh against fair use.

Finally, and most important, according to a recent Supreme Court decision, Harper & Row Publishers, Inc. v. Nation Enterprises, the court would consider the effect of the use on the potential market value of the copyrighted work. The Harper case clarified an earlier Supreme Court decision, Sony Corp. of America v. Universal City Studios, Inc., which established that "what is necessary is a showing by a preponderance of the evidence that some meaningful likelihood of future harm exists." A court could view this factor either way. On the one hand, even if students are the prime target for sales of the recording, a video yearbook could act as a promotional tool to get students to purchase the whole record. Thus, the market might be improved. On the other hand, if many schools were to use a recognized recording for their video yearbooks, the copyright holder could lose a significant amount of money just from the potential lost sales of such rights.

Until a court deals with the question of fair use for

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Footnotes:

1. Fair use is an equitable rule of reason and thus is flexible.2

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video yearbooks, the law will remain unclear. But in most situations, students would be unwise to consider themselves protected by fair use. Just as a print yearbook cannot reprint the entire lyrics of a popular song without risking a copyright lawsuit, the video yearbook staff must take the limitations of the copyright law seriously.

**ALTERNATIVES**

Rather than dealing with the technical hassles of video yearbook production or the risk of infringing copyrights, 20 high schools and colleges utilized YearLook Enterprises to produce their video yearbooks in 1987. For four years Bob Levitan, founder of the North Carolina-based YearLook has devoted his company to editing student footage, then professionally and legally synchronizing the material to popular music selected by the students. YearLook acquires the requisite synchronization license, granted by the publishing company owning the rights to the music and lyrics. Levitan's company also gets a master recording license, granted by the record company owning the right to a certain recorded version of the song.

Levitan explains that unless the publishers and record companies know they will make a significant profit they are not inclined to grant licenses. However, music publishers are more likely to deal than record companies, he says.

Those interested solely in obtaining a synchronization license usually make requests to organizations like the Harry Fox Agency in New York. For example, if students wanted to have one of their own bands perform a copyrighted work they would start by going to the Harry Fox Agency. The agency would go through the motions so that students could make legal use of the music and lyrics. However, Harry Fox representative Pat Galino explains that there is no such thing as a blanket license; each work used is licensed separately. In the case where students were performing the copyrighted work, they would also have to obtain a separate performance license from the music publisher.

For video yearbook purposes, students often are not only interested in the music and lyrics, but in the popular recorded version of the hit as well. To produce a video yearbook using a prerecorded version of a hit, a master recording license also is required. Levitan explains that to obtain this license, a prospective independent licensee would call CBS Records, for example, and express an interest in licensing the recording of say "Born in the U.S.A." by Bruce Springsteen. CBS would want to know the price of the final product, how long the video will run and what percentage of the recording will be used.

Levitan says that each tape usually includes five to six complete songs for a 30 minute video yearbook. While a YearLook produced tape costs about $30, including a $1.50 royalty fee per tape, he says that students trying to obtain synchronization and recording rights independently would pay $5 to $10 per tape if the record companies and music publishers would agree. You have to "make it worth their while or they won't deal with you," emphasizes Levitan. YearLook makes the video yearbook business look attractive to the record companies and music publishers by buying the licenses to songs in bulk for use in the videos for several schools. Thus YearLook can make it more economical for students.

A less expensive alternative to acquiring synchronization and recording licenses is called library sounds. Claudia Walters, co-owner of Copy Cat Video based in Illinois also produces video yearbooks, but does not use popular recordings. Walters deals with a company called Omnimus which creates generic sounds with similar beats to popular tunes. She then pays a "drop fee" to Omnimus for the right to reproduce the recording in a certain number of video yearbooks. Students independently producing video yearbooks would also find music libraries, such as Omnimus, less expensive.

Another avenue, for those who do not wish to pay anything for the songs they incorporate in their video yearbooks, is to use music such as classical works which have fallen into the public domain. Copyright protection usually lasts only 50 years after the death of the author of the work. Thus, most of the music created before 1900 is now available for public use. The United States Copyright Office can give definitive information as to which works have fallen into the public domain.

Despite the efforts of Levitan and Walters to go through the proper channels to gain inexpensive legal access to copyrighted works there will be students who are un inhibited by the law against copyright infringement and who will produce video yearbooks using the most popular songs without paying royalty fees in a way that will not be a fair use. Levitan explains that record companies and music publishers are caught between a rock and a hard place because they will lose money paying lawyers to bring suit to recover relatively insignificant profits whereas students do not want to hassle with paying $500 to $1,000 for a license that may never be questioned.

Whether or not the inclusion of copyrighted music within student produced video yearbooks would ever be considered an educational fair use is a close question. One could predict that given a narrow situation where the video yearbook was not produced at a profit, the students themselves edited and synchronized the music to the footage, 10 percent or less of each song was used to illustrate a specific point, the final product was distributed to only those who participated in the production and a potential plaintiff could not show meaningful likelihood of future economic harm that a court would find this to be a fair educational use of the copyrighted material.

**Notes**

7. *Copy Cat Video*, 432 Keller, Godfrey, Ill. 62035, (618) 466-3010.
Teacher Evaluations: 
Publication potentially libelous unless opinion

Student journalists could be entering the forbidden libel zone by writing evaluative stories about their teachers or administrators. Even a letter to the editor, staff editorial comment or any other report on the performance of the teacher or administrator could result in a libel suit for the reporter and paper.

Libel is any printed communication, words or pictures, which could bring about public hatred, shame, contempt or disgrace for someone. Libel also results if one's reputation in the community is damaged such that he can no longer earn a living in his chosen field. If the published information were found to be unsubstantiated fact the plaintiff would win, but if the [story] was found to be an expression of opinion, the defendant would win.

The media have always had the absolute defense of truth to a libel suit, but in some states they have also had to prove their contentions as well. Recently, "in an effort to ensure that true speech on matters of public concern is not deterred," the Supreme Court said that the person bringing the libel suit must show that the published information is false.

In addition to the defense of truth, the media are protected when making false and damaging statements about a public official or public figure, unless the statement is made with knowledge of its falsity or with reckless disregard for the truth.

**Protected Statements Of Opinion**

Before invoking the truth or public official/figure defenses, a school newspaper would first try to show that the evaluative statements made were pure opinion. According to the Supreme Court, "[t]here is no such thing as a false idea." In other words, an opinion cannot be libelous.

Courts have developed many ways of explaining the distinction between fact and opinion. Federal courts in Florida use no set formula, but make the distinction on a case by case basis. A more progressive District of Columbia Court of Appeals in *Ollman v. Evans* has developed a several part test to determine whether the alleged defamatory statement is libelous. First the *Ollman* court explained that statements of fact are "assertions that describe present or past conditions capable of being known." For example, a statement published in a student newspaper that "Professor King frequently uses swear words directed at members of his class," would likely be considered a statement of fact.

"At the other extreme are evaluative statements reflect-

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ing the author’s political, moral or aesthetic views, not \ldots \text{ sense perceptions.}\) For example, a statement such as, "Professor King is obnoxious to the class," would clearly be considered a subjective, moral evaluation of Professor King’s method of presentation.

A Modern Four-Step Opinion/Fact Analysis

The Ollman court suggests a four-step method of distinguishing between opinion and fact. Factor one looks to whether the alleged libelous statement has a precise meaning.\(^8\) Although "accusations of criminal conduct are statements ‘laden with factual content’ that may support a libel suit," statements that are "loosely definable" or "variously interpretable" cannot, in most cases, be considered libelous.\(^10\)

The second factor examines the verifiability of the statement. Whether the statement is objectively capable of proof or disproof will determine if a reader could rationally view a statement as conveying actual facts. For example, a statement that Professor King is always late to class is capable of being objectively proven true or false by submitting evidence to the judge and jury of Professor King’s actions. In some cases, expert testimony would also be helpful.

Factor three looks at the entire context in which the statement occurs. "The language of the entire column may signal that a specific statement which, standing alone, would appear to be factual is actually a statement of opinion."\(^11\) For example, an article which described strange habits of faculty members, which taken on its face would be considered defamatory, could be considered opinion in the context of a parody, if the parody was apparent to the readers.

Another consideration when examining the context of the statement is to note any cautionary language used, indicating that the author is expressing opinion. The rationale is that language such as "In the opinion of" or "I think" puts the reader on notice that opinion is being expressed. Similarly, comments made on an editorial page or in an editorial cartoon are more likely to be seen as opinion than those comments made on a news page. But labeling something as opinion will not necessarily make it one if other factors indicate fact.

Finally, the Ollman analysis looks to the broad social context into which the statement fits. A humor magazine could have some otherwise damaging statements in it, but taken as a whole the magazine would not likely be regarded as conveying any factual information. The Eighth Circuit Court of Appeals has followed the Ollman four-step approach.\(^12\)

Factual Determination Under The Ollman Analysis

The best way to understand the Ollman analysis is to apply it to a hypothetical situation. In our hypothetical a college sophomore reporter writes a piece describing certain professors which is to be published in the student newspaper’s first issue of the year. In the piece, the reporter states that he thinks Professor King must be an alcoholic.

According to step one of the Ollman analysis, a court would first look to the definiteness or ambiguity of the term "alcoholic." It is clear that even outside a clinical setting, the term has a well understood meaning and is not loosely definable or subject to different interpretations. Next, a court would look to whether the statement was verifiable. Although alcoholism is a disease without precise boundaries, the presence of certain symptoms go a long way to verifying the condition. Third, although this statement has clear cautionary language within it, the term "alcoholic" has such clear connotations and is so likely verifiable that the cautionary language would not weigh heavily on the side of opinion. Finally, the social context would probably not weigh in favor of treating the statement as one of opinion because a student writing a description of the professors within a school-sponsored newspaper would be assumed to be reporting facts, especially if he has made personal observations of Professor King’s demeanor in class. Thus, the statement that Professor King is an alcoholic could be considered factual and held libelous if proven false by Professor King.

However, if Professor King was ruled a public official or public figure [someone who has thrust himself to the forefront of a controversy] he would have to show that the statement was made with knowledge of its falsity or with reckless disregard for the truth.\(^13\) The Supreme Court has never applied the public official/figure designation to school teachers, administrators or college professors and other courts are split.

In Illinois, an appellate court cited its state’s constitution for the proposition that education is a prime governmental responsibility.\(^14\) Reasoning that teachers and coaches are "public employees hired by the school board and paid with public funds ... [and as such] maintain highly responsible positions in the community," the court held that the public official/figure standard applies.\(^15\) The court further stated that the conduct of school teachers and their policies are as much of a concern to the community as are other "public officials" or "public figures."\(^16\)

A public school teacher is not a public official for libel purposes, according to courts in California. In Franklin v. Lodge 1108 Benevolent and Protective Order of Elks, the court found that implicit in public official analysis is the concept of freedom of those who are influenced by the operation of government to criticize those who control government. Since the governance and control which a public classroom teacher might be said to exercise over the conduct of government is at most remote and philosophical, a public school teacher cannot be a public official.\(^17\)

Until the Supreme Court definitively deals with the issue of whether school teachers, administrators and college professors are public officials or public figures, lower courts will continue to rule in a non-uniform fashion. The weight of authority leans toward holding the average classroom teacher not to be a public official because his position as representative of the government is too remote. However, if the individual assumes an additional role, such as coach or administrator, he may rise to the level of public official due to the increased amount of responsibility he has undertaken. More likely, if he voluntarily injects himself into some controversy, he will become a public figure based on his thrusting himself to the forefront of public attention.\(^18\) Hence, a teacher deemed to be a public official or figure must prove that the paper had knowledge of the falsity of its story or acted

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LEgal analysis

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with reckless disregard for the truth.

The best way to avoid a libel suit is to make sure that what you write is fair, even-handed and most of all accurate! Comments about an instructor’s performance that are intended only as opinion should be presented in such a way that readers will perceive them as opinion and not statements of fact.

Notes:

6 Ollman v. Evans, 750 F.2d 970, 977, 978 (D.C. Cir. 1984); Janklow v. Newsweek, 788 F.2d 1300, 1303, 1304, 1305 (8th Cir. 1986).
7 Ollman at 978.
8 Id. at 978.
10 Buckley v. Littell, 539 F.2d 882, 885 (2d Cir. 1976).
11 Ollman at 982.
12 Janklow at 1303 (Courts in North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri and Kansas follow the Ollman four-step approach.)
13 Sullivan at 279, 280; Curtis at 130.
16 Id. at __, 321 N.E. 2d at 742; see Gallman v. Carnes, 254 Ark. 987, S.W. 2d 47, 56 (1973) (assistant dean and professor at law school is a public official).
18 Gertz at 345.
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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.

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