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STATE SALVATION

All 50 states have their own constitutional free press guarantees which may offer even broader protection than the First Amendment.

For high school journalists worried about the possibility of censorship by school administrators, the Supreme Court's decision in Hazelwood School District v. Kuhlmeier was a knockout punch. The view was that student press rights were down for the count, with the possibility of a rematch someday, before a new set of justices, the only hope. Well, high school publications are on the ropes, but hold off the referee — there's a chance of switching to another set of rules, rules that just might produce a different, more favorable, outcome.

The First Amendment to the U.S. Constitution guarantees the right to a free press. "First Amendment rights" has become such a catchphrase, plaintiffs and their lawyers often forget they can base a free speech claim on other legal grounds. First are state regulatory policies; next comes state statutory law; and finally there are state constitutions. All 50 states have their own constitutional free press guarantees, and many of those provisions have been, or could conceivably be, construed as offering even broader protection than the First Amendment.

Regulations

Boards of education in eight states (Connecticut, Massachusetts, Michigan, Minnesota, Pennsylvania, South Dakota, Washington and West Virginia) and the District of Columbia have policies listing students' rights and responsibilities. For the most part, when it comes to protecting student press freedom these policies are a weak muscle, seldom flexed. Most statements are vague, and few expressly mention student publications. For instance, the Minnesota Department of Education's "Policy on the Freedom to Teach, to Learn, and to Express Ideas in the Public Schools" says public school personnel should: "... Provide students with access to a broad range of ideas and viewpoints; encourage students to become decision makers, to exercise freedom of thought, and to make independent judgments through the examination and evaluation of relevant information, evidence, facts, and differing viewpoints"; and "support students' rights to present their ideas even if some people might find the ideas objectionable."

Some state boards tend not to enforce these policies, normally reading them as mere guidelines local boards can adopt if they choose. Massachusetts, for one, took another tack. The state department of education's "Guide to Rights and Responsibilities for Massachusetts Students" specifically says "The content of a student publication may not be censored by the administration." While the department cannot enforce this guide upon individual local school districts, student services specialist Marylou Anderson

State regulations have never been used as the basis of a lawsuit. But that does not rule out their use in a broad-based complaint.
Students facing censorship in states that have educational regulations can alert their state departments of education for possible help.

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said prior to the adoption of the Massachusetts state statute respecting student press freedom that her office was still making the attempt to bring censor-prone school districts into line, simply by telling them to abide by the policy. "There are some schools that still buckle," she said.

In Connecticut, a policy called "Free to Learn" says "[]local school officials must demonstrate substantial or legitimate public interest in order to justify censorship or other proposed restrictions upon teaching and learning." Mark A. Stapleton, chief of legal affairs for the Connecticut Department of Education, intimated that the department may compel adherence to these guidelines through an indirect route, withholding state funds from districts that refuse to comply. Pennsylvania and the District of Columbia are the only places where government legal counsel think their state departments of education could force school administrators to behave according to their rules. Students and advisors would be wise to at least investigate this option by alerting their state departments of education when confronted with censorship.

States that do have policies have no record of their use as the basis for a lawsuit by censored students against a school. This does not rule out the possibility of such use, but a case might fare better if students can claim the school violated their rights under several different documents. For instance, Stapleton advised that the department's guidelines would best be used as supplementary evidence in a censorship suit, with a Connecticut statute granting students "equal opportunity to receive a suitable program of educational experiences" as the official cause of action.1 The guidelines could serve as proof of what the department of education defines as suitable educational experiences. "I would advise as using that [the free expression guidelines] as one of the arrows in your quiver, but I wouldn't rely on it alone," Stapleton said.

Statutes

Only California and Massachusetts thus far have enacted a law designed to curb abuses against the student press, although other states have attempted to pass such laws and many plan to submit bills to their legislatures again next year.

California's statute, Education Code Section 48907, delineates public school students' rights to free expression. It makes student editors themselves responsible for the content of their publications, granting supervisory control to an official adviser. Prior restraint of official school publications is prohibited unless the material is obscene, libelous or creates a clear and present danger of a disruption in school activity. With this law, California has in effect created a time warp, operating its state under the guidelines used in Tinker v. Des Moines School District, the controlling case for students in the pre-Hazelwood world, and giving scissors-happy administrators little room to slice.

The first real test of this law's strength came in late January, in Leeb v DeLong. Although the student plaintiff lost his case, California's Court of Appeal found the law was solid enough, with the California Constitution's backing, to withstand the Hazelwood tempest.

Massachusetts Gov. Michael Dukakis on July 14 signed into law that state's student press protection bill. Labeled as House bill 5264, the statute modifies a portion of the state's civil code that had left several preceding provisions, including 1974's Chapter 71, Section 82, Right of Students to Freedom of Expression, as optional. The changed statute, Chapter 71, Section 86, now omits reference to Section 82, making Section 82 mandatory.

The Massachusetts statute says students have the right to speak, write, publish and distribute their views, to express themselves through symbols and to peaceably assemble on school property. The only exception stated is if these activities create disorder or disruption within the school. Nancy Murray, director of the Bill of Rights education project for the American Civil Liberties Union of Massachusetts, said she knew of no actions being filed yet under the new law.

Frankly, statutes are probably the best type of coverage a student journalist can have. While open to
limitation by the courts, and change or repeal by the legislature, a statute still is an explicit statement granting specific press rights to high school students. Also, seeing how courts often consider the intent of the adopting legislators when interpreting a statute, a law formed in the wake of Hazelwood might stand even stronger. Even without combing through transcripts of discussions on the legislative floor about the statute, a court probably would find the law to be a direct response signaling the state lawmakers’ disfavor with Hazelwood’s allowance of censorship. This knowledge would help future courts read the statute as voiding all prior restraints or subsequent punishments lacking a legitimate compelling reason. Until other states enact such laws, only California and Massachusetts students will benefit from this statutory avenue.

State constitutions
The free speech sections of state constitutions have not yet been used to argue students deserve a stronger shield than the Supreme Court allowed under the U.S. Constitution in Hazelwood. Lack of trying does not impede these sections’ utility, though. In fact, the Supreme Court itself has said actions should be brought under state grounds whenever possible, rather than invoking comparable federal law. Justice William Brennan, for one, has chastened lawyers for too seldom applying the constitutions of their own states. "The essential point I am making, of course, is not that the United States Supreme Court is necessarily wrong in its interpretation of the federal Constitution, or that ultimate constitutional truths invariably come prepackaged in the dissents, including my own, from decisions of the Court. It is simply that the decisions of the Court are not, and should not be, dispositive of questions regarding rights guaranteed by counterpart provisions of state law.”

Most helpful of all to students wishing to sidestep Hazelwood, filing suit under a state constitution may be viewed as “adequate and independent state grounds,” and thus prevent any review on the merits by the Supreme Court. The Supreme Court cannot reverse a state court when the decision rests on an interpretation of the state’s own constitution. However, a state court must be

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Although open to limitation by the courts and change or repeal by the legislature, state statutes offer the best protection for student journalists. But until other states enact such laws, only California and Massachusetts students will benefit from legislative protection.
Seven states scramble to overcome Hazelwood

Mass. passes statute; Others will try again

The Hazelwood Supreme Court decision prompted a scramble for counterculture measures among state legislatures.

Spurred by the impending close of the legislative year, perturbed by the thought of a gagged student press, lawmakers across the country rushed to concoct bills protecting student papers from administrative oppression.

But among the seven measures eventually drafted, only the Massachusetts bill became law.

Introduced in January by former high school journalist and House Chairman of the Joint Education Committee Rep. Nicholas Paleologos, the Massachusetts bill made mandatory a statute school boards may or may not have adopted at their option.

Massachusetts' governor Michael Dukakis signed the bill July 14.

The statute, Section 82, Chapter 71 of Massachusetts' General Laws, guarantees students the right to free expression, as long as it does not "cause any disruption or disorder within the school." The section also protects school officials from bearing responsibility for the students' actions.

"No expression made by students in the exercise of such rights shall be deemed to be an expression of school policy and no school officials shall be held responsible in any civil or criminal action for any expression made or published by the students," the statute declares.

The bill passed sooner than anticipated.

"With our governor [Michael Dukakis] running for president, the bill [was] more or less on the back burner," Jeff Cahill, a research analyst for the Joint Education Committee, said.

Cahill also said the once gung-ho enthusiasm for the bill had died down.

"A lot of people are starting to wonder if the language in Section 82 is strong enough to protect students from Hazelwood," he said.

Other measures did not share the Massachusetts bill's good fortune.

Two of the bills, Rhode Island's and Iowa's, died in a House committee after passage by the state Senate.

Iowa's bill perished in the House Education Committee on "funnel day" in March, when all bills that do not emerge from committee are killed.

"Of course we were disappointed," said Mary Arnold, the executive director of the Iowa High School Press Association. "Its failure took us by surprise."

The bill, introduced by Sen. Richard Varn, was modeled after California Education Code Section 48907.

Section 48907 ensures broad protection for student expression, including flyers, petitions, buttons and badges, as well as official and unofficial school publications.

Of seven bills drafted after Hazelwood, only the Massachusetts bill became law. But legislators in other states plan to reintroduce the bills next year.

Rhode Island's bill, patterned after SPLC's model legislation and sponsored by Sen. Sean Coffey, included two provisions the California statute and the Iowa bill lacked: an enforcement provision and a prohibition on prior review.

According to the bills' supporters, legislators from both Rhode Island and Iowa plan to reintroduce the measures in January 1989 with possible modifications.

Arnold said she was unsure of the Iowa bill's chances for passage next year.

"Killer" amendments proved fatal to the Illinois bill.

After clearing the House Rules and Judiciary Committees, the measure died on the House floor in May.

According to Rep. Ellis Levin, the bill's sponsor, the amendments would have provided administrators with two major loopholes.

One of the amendments, Levin said, would have given principals the right to censor at their discretion articles they considered "substantially disruptive."

The other would have exempted administrators from justifying whatever censorship actions they take. Instead, students would bear the responsibility of proving that the censorship of an article was unjustifiable.

But before the attachment of the two amendments, the bill was a close copy of the California statute.

Levin said legislators are planning to introduce similar measures next year.

Wisconsin's bill, the culmination of 15 years labor for Rep. David Clarenbach, was the most comprehensive piece of student legislation drafted by any state so far.

In addition to ensuring broad protection for all forms of student expression, the measure guaranteed students equal treatment in the schools, regardless of ability, pregnancy, or marital status.

The bill was introduced in October, three months before Hazelwood, but too late for consideration during this year's session.

The bill will be reintroduced in January 1989, Clarenbach said.

But Ohio's student journalists may have to wait until next year for a final measure to be drafted.

Ohio's bill has been languishing while student press rights activists search for a sponsor in the legislature.

Sarah Ortman, a member of the Ohio Coalition for First Amendment Rights, said she hoped both bill and sponsor will be ready in time for the start of the legislative session this fall.

Meanwhile, a technicality finished off Wyoming's bill in February.
Not all legislators are optimistic about the successful passage of anti-Hazelwood statutes in their states. "The legislature might think that the school should tell the students what to do," said Wyoming state Rep. Nyla Murphy.

Introduced during the legislature's budgetary session, the measure was killed because it had nothing to do with the budget.

Rep. Nyla Murphy, the bill's co-sponsor, said she was not optimistic about the bill's chances for passage anyway. She cited the state's "ultra-conservative attitude."

"The legislature might think that the school should tell the students what to do," Murphy said.

The Wyoming bill also mimicked the California statute.
Legal Analysis

Some state constitutions offer journalists more freedom than under the First Amendment alone. Will courts extend these freedoms to student journalists?

Students may be able to gain greater protection from censorship if state courts agree that student papers are "public forums."

explicit in its reasoning, and be able to demonstrate its decision was based solely upon the state constitution and state law, rather than through a borrowed interpretation of the First or Fourteenth Amendments. Otherwise, the Supreme Court may wrest jurisdiction, calling the issue a federal question. Keeping a censorship case from the Supreme Court may be desirable, considering the uncomfortably narrow reading the current court gave to the question of whether the Hazelwood Spectrum was indeed a limited public forum, and thus safe from censorship.

State constitutions have served more frequently as a basis for decision-making in the last decade, but their free press provisions have been little-used. Even in those cases where a state court bothers to cite the appropriate passage, it often construes it as being in pari materia, a reiteration of the First Amendment. Such an interpretation is basically the least any state can do, for it cannot restrict federally-granted freedoms beyond the regulation the federal courts have allowed. States have the option, however, of giving their people greater rights. Alaska, for instance, lets its citizens possess small amounts of marijuana for personal use, interpreting its state constitution as granting a privacy right greater than that extrapolated from the U.S. Constitution. Some states have gone further than the federal constitution with press rights, saying their state constitutional provisions are more explicit, and broader. Even in those states, applying state constitutions to student press rights still would involve a ground breaking — the state court would have to determine whether that extra breadth can stretch far enough to envelop students in its protective folds.

Several state courts have already shown their moxie in a similar press related area: libel standards. In Gertz v. Robert Welch, Inc.,16 the Supreme Court suggested the states implement a system where a showing of actual malice was required for public officials and public figures, but private-figure plaintiffs could prevail simply by demonstrating negligence on the part of the news organization. The Court did not make this standard mandatory, and four states have chosen not to follow it. Indiana, Colorado and New Jersey decided that all libel plaintiffs, public or private, must prove actual malice; New York has ruled that private figures must show gross negligence. Indiana, Colorado and New York expressly based their decisions on their state constitutions; the Gertz rationale was fine for the purposes of the First Amendment, these state courts said, but a different standard would be better suited to the protections of the state constitution. (New Jersey based its ruling on the protections derived from state statutory law.)

The free speech aspects of state constitutions have most frequently been employed in cases dealing with the right to petition or distribute leaflets on private campuses or in privately owned shopping centers. In Lloyd Corp. v. Tanner,18 the U.S. Supreme Court, interpreting the First Amendment, said private property, like a shopping mall, could prohibit free speech activities in its gathering areas. The Court later acknowledged, though, in Pruneyard Shopping Center v. Robins,19 that state courts may construe their state law as California did to allow such petitioning in privately owned places.20

Most of the state decisions with the same outcome have gotten there by viewing the mall as a type of public forum. One court even referred to it as the modern-day equivalent of the colonial New England Green.21 If a mall, or any other private institution, has previously allowed public solicitation or free speech activity to take place on the premises, courts following this rationale have said, then the owner has no basis to exclude any other group from exercising its right to expression, as long as the activity meets reasonable time, place and manner restrictions. These rulings have even been applied to private colleges — and public schools. Several states, however, have said their constitutions stretch no further than the First Amendment in this regard, and have held for the malls, placing the emphasis on private property rights.23

Hazelwood likewise can be viewed as a decision based on forum theory. States that have weighed the balance and found their constitutions favor free speech over sedate shopping thus may be more amenable to student journalists' claims. In State v. Schmid, for example, New Jersey's Supreme Court found that Princeton University, by having an official statement encouraging free intellectual inquiry among its stu-
Although state constitutions may seem to grant greater freedom of expression, just how far those freedoms go is still up to the state courts.

Footnotes

2 "Congress shall make no law . . . abridging freedom of speech or of the press . . . ,"
8 Id. at 402.
17 447 U.S. 74 (1980).
22 This concept has held true under the First Amendment as well. Gambino v. Fairfax County Sch. Bd., 429 F. Supp. 731 (1977).
Across the country, advisers are fired, threatened, or harassed for what their students write. Some melt in the heat, but some fight back...

Administrators aren't on 'her side'

Your Side draws ire, censorship; teacher claims harassment, sues

Louisiana — A former high school history teacher is suing the administrators at West Jefferson High School for censoring a newspaper her students published as part of a class project.

Geraldine Moody said she was teaching a unit on press freedom when her students approached her about publishing their own newspaper.

The students' paper, entitled Your Side, was "very open and honest about school life," Moody said. Its articles dealt with such topics as pregnancy, drugs and cheating.

But according to Jack Grent, the school board's attorney, the paper told students how to cheat and how to use drugs. It also condemned several faculty members.

Principal Eldon Orgeron confiscated the papers after students attempted to sell them to their classmates for 50 cents apiece. According to Grent, Orgeron had received several complaints from teachers offended by Your Side.

The students were permitted to resume distribution only after intervention by the Louisiana Civil Liberties Union.

According to Ronald Wilson, Moody's attorney, Orgeron then tried to blame Moody, not the students, for the paper's content.

Moody claimed the principal harassed her continually for a confession and eventually transferred her to a middle school. Moody had taught at West Jefferson for 17 years.

Orgeron declined to comment, but Grent said Moody's allegations of harassment were "ridiculous."

Moody filed suit in August 1986, claiming she and her students were "robbed of academic freedom" by the censorship and its consequences.

But the case is still in the discovery period. Wilson said the case was put on hold for almost a year while Moody was undergoing extensive psychiatric treatment. As a result of the harassment, Wilson said, Moody suffered a complete nervous breakdown while giving her deposition.

Wilson did not know when the case will move out of discovery, but he said he hoped it will go to trial this year.
Adviser fears new hearing

New York — Students weren't the only victims of the Hazelwood Supreme Court decision.

Just ask Michael Romano.

The former adviser's exit from Port Richmond High School's newsroom may become permanent if The Crow's Nest is ruled a non-forum publication, and, as determined by Hazelwood, unprotected from censorship.

Romano filed suit on behalf of his students in 1984 when he was removed from his position as adviser. He claimed their First Amendment rights were abridged by Principal Margaret Harrington's demands for "balanced reporting."

Romano claimed he was fired because he did not force his students to counter an allegedly racist editorial with alternate viewpoints.

"The students alone should decide what goes in the paper," Romano said.

But the school insists that students alone did not put out The Crow's Nest.

According to an article in The Advance, a Staten Island newspaper, Romano may have been the real editor-in-chief of The Crow's Nest.

Quoting Principal Harrington, the article said Romano "rewrote

"The students alone should decide what goes in the paper."

— Michael Romano
Former Adviser
Adviser settles $9 million suit

California — A former newspaper adviser at Lincoln High School in Stockton settled his federal lawsuit against the school in May.

Gary Daloyan, who was reassigned and later fired after clashing with principal Dean Welin, settled the $9 million civil rights lawsuit against the district for $63,500. He has received another $40,000 from the district in back pay under an order by the California Commission on Professional Competence.

Daloyan said that the recent Supreme Court decision in Hazelwood School District v. Kuhlmeier was a major factor in his decision to accept the settlement. He called the decision "the greatest setback to the First Amendment and journalism education in American history."

"I fear more teachers will suffer in the future as a result and their jobs will be on the line if they choose to defend the rights of their student editors," Daloyan said.

"I fear more teachers will suffer in the future as a result [of Hazelwood]."

— Gary Daloyan
Fired Adviser

Under the agreement, Daloyan submitted a letter of resignation to the school and the district agreed to respond to prospective employers only in writing. Both sides also pledged not to make derogatory comments about the other.

Daloyan had been reassigned from Lincoln High School to Lincoln Senior Elementary School in 1983, after that the reassignment violated his civil rights. In May of 1987, at the Commission of Professional Competence recommended his dismissal, along with ordering the district to pay the $40,000 in back pay.

Daloyan said that he plans to continue freelance writing and search for a college journalism teaching position.

Reinstatement battle still raging at Cal St. – L.A.

California — The battle for control of the University Times — and the debate over whether such a conflict exists — still simmers on the campus of California State University-Los Angeles. Although relations between the paper and student government have improved, the paper's former faculty publisher is fighting to get her job back.

The California Faculty Association, the faculty union at CSU-LA, has appealed Joan Zyda's dismissal to Ann Reynolds, the chancellor of the California State University system. The grievance claims that Zyda's firing violated her contract and was due in part to the content of the University Times.

Several other grievances have been filed during the course of Zyda's clashes with the university. All are still pending.

"They [the CSU-LA administration] think that this whole thing has died down, but it hasn't," Zyda said. "I am going to keep fighting [the dismissal]. The administration has to understand what freedom of the press is all about."

But Evette Strothers, the journalism area coordinator and current adviser to the UT, said the university merely failed to renew Zyda's probationary contract.

"Her release had absolutely nothing to do with controlling the content of the paper," Strothers said.

Zyda said the publisher's position is probationary, but the contract for the position is for one year. Zyda had spent six months on the job when she was notified of her dismissal in April 1988, soon after her participation in an on-campus rally for freedom of the press. The letter notifying Zyda of her termination said that her firing would "better meet the educational goals of the university."

Zyda and UT staff members point to several incidents as examples of the administration's attempt to bring the paper under greater control. Their examples included:

• Proposals to change the faculty publisher position to a "laboretary supervisor" reporting to another faculty member.
• A plan to reduce the paper's circulation from 8,000 to 1,000 and charge 25 cents an issue.
• The exclusion of UT representatives from faculty meetings where such changes were discussed.

Zyda calls the proposals "Hazelwooding," a reference to the Supreme Court decision allowing censorship of high school newspapers that are part of a classroom "laboratory experience."

Keith Henning, chair of the Communications Department at CSU-LA, called Zyda's claim "unfounded."

"I don't see the connection between Hazelwood and this paper. This is a college paper, and Hazelwood is a high school case. There's no evidence for any kind of censorship."

But Henning also said that since the paper receives funds from the school's instructionally related fees account, it is an "instructionally related body."

"Ad revenues make up less than half of the budget," Henning
said, "With that responsibility to the department, we have a responsibility to provide faculty and staff for the students to interact with."

Strothers went further in refuting Zyda’s claims, calling them "distortions of reality."

"The dean [Bobby Patton, of the College of Arts and Letters] never said half the things she said he did," Strothers said. "His only proposal was to add money to the paper."

Zyda vehemently denied that she had distorted reality, asserting that Patton’s proposals were well-documented.

"Strothers never came in to get our side of the story, she just asked the administration for their side," Zyda said. "How good a journalist is that?"

Despite the continuing controversy over administration control, the paper’s relations with CSU-LA student government have improved significantly, according to Peggy Taormina, UT editor-in-chief. She said that new leadership in the Associated Students has meant a calming of the once-adversarial stance.

"We’ve started off on a pretty good footing."

Associated Students and the UT co-sponsored a "Trash the Day" last spring to combat litter problems on the campus.

Taormina said that relations with the administration had also improved somewhat after the publicity surrounding the paper’s earlier troubles and Zyda’s dismissal.

"The publicity has helped the situation," Taormina said. "Things looked so bad in print that the administration really hasn’t said anything about control for a while."

However, a desktop publishing system that staff members had said they did not want or need was installed at the UT in July. And Taormina said she is resisting Strothers’ demands that all staff members be enrolled in Journalism 391, the UT lab course.

"I’ve ignored it," Taormina said of the order. "It’s not in the communications code, and it’s not in the course catalog."

Strothers and Henning disagreed.

"Students have always been required to be in the University Times class," Strothers said. "Not to control the content of the paper, but to give it financial support from the student instructional fees account."

Zyda said that she never restricted the UT staff to students in the 391 class because that requirement is not in the communications code. She added that requiring the students to be in the class is, in her opinion, another example of the university’s attempted "Hazelwooding" of the paper.

On other fronts, the university’s communications code is currently under review by the faculty senate and will be reviewed by an outside consultant, Henning said. Strothers agreed that the code needs reworking, calling it "shoddily written and overly vague."

Both sides of the issue expect that the communications code revisions will take many months to complete. And Zyda says that she will take her grievances as far as it takes to win, even going to court if necessary. Meanwhile, Taormina said that she is putting in 10 to 14-hour days on the paper and is not optimistic about its prospects.

"The program is such a mess that we need to restructure the whole thing," she said.
Desk-raiding dean sued for invasion of privacy

Ohio — Administrators at St. Francis de Sales High School in Toledo apparently thought John McCartney had helped with an underground paper.

McCartney was the yearbook adviser at the all-male Catholic school, and the students who put out the paper had worked on the yearbook. So when the paper came out, an administrator searched the publications room, including McCartney’s files and other personal belongings.

Now McCartney is suing the school for invasion of privacy.

“There was nothing in the pubs room for them to find,” McCartney said. “The only contact I had with the paper was to tell the students not to do it.”

St. Francis student Mark Hanusz said that he and his friend Marty Bihn decided to print an underground newspaper because McNusz said that he and his friend had gotten nowhere, McCartney said, so he decided to file suit.

McCartney was also fired from his teaching job at St. Francis before the suit was filed. He said that he was told he was dismissed for going over budget on the yearbook, but believes his firing was due to the Senioritis incident.

Olszewski declined to comment on McCartney’s firing.

McCartney said that he was very determined to go forward with the lawsuit, even though he might not win.

“Nothing will stop me from pursuing this,” McCartney said. “I’ve got nothing to lose.”

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Adviser mystified by insubordination charge protests dismissal

Florida — The adviser of a high school newspaper censored for its coverage of an on-campus shooting in February has been suspended from her position.

Susan Earley, adviser of Pinellas Park High School’s Powder Horn Press, was fired for “insubordination” in May. Earley, who appealed the dismissal, is awaiting the final word from the Board of Education.

The case was referred to the Board when negotiation between Earley and Principal Marilyn Henniger failed.

Earley claims she was fired after allowing The St. Petersburg Times and other professional newspapers to take photos of the Press’s censored issue.

The censored paper chronicled the deadly shooting rampage of two students that left one assistant principal dead and another wounded.

Earley said Henniger charged her with violating explicit orders not to distribute the offending paper.

“I don’t see how she can consider what I did distribution,” Earley said. “You couldn’t read what the paper said from the photo. . . . The [Florida Scholastic Press Association] even disqualified that issue from this year’s competitions because it wasn’t distributed.”

Carol Jackson, the Board’s Public Information Officer, said she was unaware of Henniger’s ban on distribution. She said Henniger had other reasons for Earley’s dismissal, but she declined to elaborate.

Henniger also declined to detail the charges against Earley.

According to Jackson, the Press was censored because of alleged inaccuracies in its coverage of the shooting.

“The paper would have been the first piece of information sent home to parents,” Jackson said. “We believed its inaccuracies would have only heightened the hysteria after this extremely traumatic event.”

Earley said the Press’s account of the incident was more accurate than those in professional papers.

“The only inaccuracy I could see was the slight misplacement of one of the assistant principals in an infographic,” Earley said.

Earley said the Powder Horn Press received praise for its coverage of the incident from several members of the professional media.
Judge says teacher's satirical letter not shielded by Constitution

Virginia—A high school teacher's satirical letter to the student newspaper was not protected under the First Amendment, a federal judge ruled in June.

Donald Seemuller, a teacher at Lake Braddock High School in suburban Washington, D.C., filed a $350,000 lawsuit against the Fairfax County School District in November 1987. The lawsuit alleged that Seemuller's rights were violated when he received a low rating and lost a pay raise because of the letter. In issuing a directed verdict in favor of the school, U.S. District Judge Claude Hilton said that the letter was not "a matter of public concern," and therefore unprotected.

Seemuller, who teaches physical education, wrote the letter in January 1987 in response to a previously printed letter alleging sexism in the physical education department.

"I cannot speak for every member of the staff," Seemuller wrote. "But as for myself, I like girls, and the many things they can accomplish. My two females at home are a 16-year-old whom I permit to chauffeur [sic] my son to and from his many activities, and my wife who is an adequate cook and housekeeper. My wife also does light yard work enabling me to play golf and pursue many other masculine activities.

Hopefully this letter will convince those girls in physical education at Lake Braddock that we have the utmost respect for their feminine talents."

Seemuller said he was disappointed by the judge's ruling.

"I felt like I had a right to say something," Seemuller said. "The judge said that the letter didn't address the concerns of the girls [who wrote the earlier letter]. I didn't think the matter of style came into play under the First Amendment."

Judge Hilton granted the school's motion for a directed verdict after Seemuller's lawyer had presented his arguments. A judge can issue a directed verdict, which effectively dismisses the suit, if the judge finds that the law and the facts overwhelmingly favor one side of the case.

According to Seemuller and court documents, Lake Braddock Principal George Stepp gave Seemuller the low rating because his letter drew several complaints and showed a lack of "mature professional judgement." The poor evaluation caused Seemuller to lose a pay increase of over $5,000.

But Patrick McCarthy, the paper's adviser, said that if there were any complaints, he never heard them.

"Supposedly the principal got scads of complaints, but we never got any," McCarthy said.

Seemuller also said that Stepp had seen the letter several days before the paper was printed, and made no objections at that time.

McCarthy confirmed this account.

"He [Stepp] happened to be in the room when we were laying out the issue," McCarthy said. "I pointed the letter out to him on the light board, and said 'Hey, read this,' because I thought it was pretty funny."

Stepp, through his secretary, declined to comment. Dolores Bohen, a district spokeswoman, and Tom Cawley, the school's attorney, also declined comment on the case.

Rick Nelson, the president of the Fairfax County Teachers' Association, which filed the suit on Seemuller's behalf, said Seemuller's position was based on the Supreme Court's 1969 decision in Tinker v. Des Moines Independent School District, which said that students and teachers have First Amendment rights. Nelson said that the court's recent ruling in Hazelwood School district v. Kuhlmeier did not apply, since the principal did not censor the paper.

McCarthy agreed, saying the paper was very independent and had not faced censorship.

"We've had no pressure ever on content," McCarthy said. "The paper is an open forum."

Nelson said the union will appeal the ruling to the U.S. Court of appeals for the Fourth Circuit in Richmond, Va., adding that he thought the appeal had a good chance of success.

New law unearths campus crime stats for PA student journalists

Pennsylvania — Under a new state law recently signed by Gov. Robert P. Casey, colleges and universities must reveal information about crime on their campuses to students, prospective students and employees.

State Rep. Richard McClatchy introduced the bill on the urging of Constance and Howard K. Cleary, whose daughter was raped and murdered on the campus of Lehigh University in 1986. The law requires schools to collect campus crime statistics and tabulate them on a yearly basis.

College journalists in Pennsylvania now will be able to request a compilation of on-campus crime statistics for the most recent three-year period, as well as information about security procedures and policies. The schools must also report on serious crime to the state police each year so that the figures may be included in yearly statewide crime reports.

The law does not, however, require colleges and universities to release information on individual crimes such as arrest reports.

Colleges that refuse to release crime figures covered by the law face a fine of up to $10,000. 
Ad ban upheld

Religious group appealing to U.S. Supreme Court for flyer distribution rights

California—In a 2-1 decision, the California State Court of Appeals in January upheld a district policy forbidding non-school-sponsored student groups from publicizing their meetings on campus.

Students at El Toro and Mission Viejo High Schools in Saddleback Valley were denied permission to distribute flyers promoting New Life, a student religious group. The students were also barred from placing an ad about New Life in the school yearbook.

District policy states, “No off-campus or private clubs are permitted to function in the school. They are also restricted from advertising in any form.”

The students’ “advertisement” was a hand-printed, photocopied leaflet that read, “Are you interested in studying the Bible? Meeting with other Christians at school? Praying for the needs of others while they pray for your needs? Del Taco can wait, come…”

The court agreed with the district that permitting New Lifers to publicize their meetings would imply school sponsorship of the group. School sponsorship of New Life would, in turn, be a violation of the Establishment Clause.

The Establishment Clause of the First Amendment, which applies to the states through the Fourteenth Amendment, prohibits any government institution from providing any form of support to a religion or religious group.

The school had allowed New Lifers to meet unofficially for discussion during the lunch hour. The students’ informal discussions about the Bible, the district said, were no different from other students’ discussions about other, secular topics.

David Llewellyn, the students’ attorney, said censorship of the ad and confiscation of the flyers was a violation of California Education Code Section 48907.

Section 48907 insures broad protection for student expression, including the “distribution of printed materials or petitions.” The statute also prohibits censorship of all official school publications.

Dissenting Justice Thomas Crosby said in his opinion the district’s actions were simply unreasonable, if not absurd.

He said the majority treated “the free expression of high school students during recess and a section of the yearbook devoted to paid advertisements as an anathema equivalent to the distribution of drugs or obscenity on campus or the broadcast of ship departures in wartime. These petitioners should have been left to distribute their harmless scraps of paper and run the innocuous little yearbook ad.”

Llewellyn appealed the case to the California Supreme Court, which denied his petition for review in April. Llewellyn is currently asking the United States Supreme Court to review the case.

Correction:

An article in the Spring issue of the Report erroneously reported that journalism students at Western Kentucky University can take no more than 40 percent of their coursework in journalism. The actual limit to journalism credit at WKU is one-fourth, or 25 percent of a student’s credits toward graduation. The Report regrets the error.

Court unlocks teacher personnel files

North Dakota—Teachers with something to hide, beware.

The North Dakota Supreme Court has ruled that personnel files of public school teachers in the state are not exempt from public scrutiny.

The Court stated in a February ruling in Hovet v. Hebron School District that exceptions to the state’s open records law must be specified explicitly within the language of the law itself, not implied from other statutes.

The suit arose in 1987 when the parent of a student requested to see the personnel files of Meredith Hovet, a physical education and business teacher.

Hovet sued the school district to prevent it from disclosing his files. He based his argument for confidentiality on certain sections of the state code that appeared to exempt personnel files from the open records law.

The Court also ruled that the right to privacy, although a constitutional guarantee, does not apply to employees of public agencies.
Nine-year old lawsuit ends; Court says negative content not cause of paper's fund cut

Colorado—It's finally over.

After almost a decade of litigation, Bill Bethke concedes, the case has closed on Olson v. Pikes Peak.

The Colorado State Court of Appeals in June upheld a lower court judgment that the content of Pikes Peak Community College's newspaper did not precipitate a funding cut by the school's student government.

Judge Edward E. Carelli ruled that the school's financial constraints and the Pikes Peak News' refusal to cooperate with a budgeting request were the decisive factors.

Bethke, attorney for publication adviser Judith Olson, who brought the suit, contends the trial court admitted impermissible evidence. He cited as example the testimony of a former student senator whose version of the facts seemed to vary with each cross-examination.

"The court really went out of its way to accept his testimony," Bethke said.

Olson declined to comment.

Bethke is appealing the judgment to the state Supreme Court, but he said the odds are three out of ten the Court will agree to hear the case.

The ruling came after nine years on a legal merry-go-round, with decisions and appeals at every level of the state court.

The controversy came to a head in 1984 when the Colorado Supreme Court, in a landmark ruling, granted Olson standing to sue on behalf of her students.

The case was also the first in the country to establish that the First Amendment prohibits student governments as well as administrators from censoring student publications.

Olson first filed suit in 1979 after the student senate, claiming administrative and budgetary problems, cut funding for the News. Olson claimed the funding cut was meant to silence the critical, sometimes harsh, editorial voice of the newspaper.

Past issues had included editorials entitled, "Editor Goes Bonkers Over Bureaucratic Maze" and "Vanishing Student Funds Foretell Bleak Outlook." Both articles criticized administrative mismanagement by the school and the student government.

The Senate eventually proffered $5,000 to the News—less than half the usual allotment—in exchange for $1,000 of advertising and the establishment of strict publication guidelines.

The paper rejected the offer. Olson went to court.

Olson lost the first round in March 1981, when the court granted the school summary judgment. The court ruled that neither Olson nor her students had standing to protest the funding cutoff.

Olson appealed and won. After the Colorado Supreme Court granted Olson the right to sue on her students' behalf, the case went back to trial in October 1985.

Meanwhile, the Pikes Peak Fuse began publication. The new newspaper, which was pamphlet-sized, depended almost entirely on ad revenues for its existence. As a result, the Fuse contained little else but advertising.
Connecticut—The editor and adviser of the literary magazine at Ridgefield High School have filed suit in federal court, charging that new school restrictions on the magazine are unconstitutional.

The students won a temporary victory soon after the suit was filed in May, when the school district agreed to fund this year's issue of *Lodestar* and delay enforcing the regulations until after the case goes to court. The suit challenges a ban on alumni writing in the magazine and a new policy giving the school more control over student publications.

"We decided that they didn't have the right to determine our content," said *Lodestar* editor Suzanne Rieke.

The main issue in the case is the ban on alumni contributions to the magazine, first proposed in August 1987 and ratified by the school board in April.

The order angered *Lodestar* members, who saw it as an intrusion on their editorial process, Rieke said. The students felt betrayed, Rieke said, because:

* The magazine had been established by students in 1980 to include writing and artwork from students, alumni and faculty, in part to show that writing is a lifelong process.
* When the school board first agreed to fund the magazine, the students saw the agreement as a ratification of the guidelines that they presented to the board. The new rules, they felt, unfairly reversed that approval.
* The school board contributes slightly less than half of *Lodestar*'s funding and the magazine is not part of a class. Its adviser is chosen by the students and has no control over content.
* Robert Mitchell, the school's attorney, said the rule's purpose is purely educational.

"As long as school funding is used to support *Lodestar*, we felt that it should be used to the maximum educational purpose of the school," Mitchell said.

However, faculty contributions were still allowed under the new policy.

Rieke responded that the school's statement revealed ignorance of the magazine's editorial process, because there is no set limit on the number of articles printed.

"He hasn't been listening to what we've been saying," Rieke said. "We don't replace anything. Everything that doesn't make it in is resubmitted. We give it back to the authors with pointers on how to make it better, but we can't rewrite it for them if they don't want to rewrite it."

The complaint in the case alleges that the regulations were adopted to punish the magazine for printing an article in the 1987 issue that contained profanity.

"That's not true," Mitchell said. "That article was written by a faculty member, and it still would have run under these rules."

However, board member Joseph Sweeney, at a public meeting prior to the board's adoption of the regulation, called the article "obscene" and said that similar articles would never run in *Lodestar* again.

"It was not a point of view shared by the majority of the school board," Sweeney said in a later interview. "But I thought the article was in bad taste."

And the immediate effect of the ban would have been to exclude three works by Anna Myers, a Ridgefield alumna who edited the magazine when the controversial article ran.

Rieke said she thinks that the board's actions do amount to censorship.

On April 4, the board adopted a revision of the district's policy on student expression that, Mitchell said, "guarantees freedom of expression as long as it corresponds to the academic strictures of the school." The complaint alleges that this policy is also unconstitutional.

Then, at the board's April 25 meeting, the board discussed the ban on alumni articles in closed session, and voted in open session to implement the regulation. The issue of whether the closed meeting violated state law is now before the state Freedom of Information Commission, which can nullify the outcome of illegal meetings.

Sweeney said that the executive session was a "mistake."

"It would have been much bet-

"As long as school funding is used to support *Lodestar*, we felt that it should be used to the maximum educational purpose of the school."

— Robert Mitchell
School's Attorney
ter to discuss the whole damn thing openly," Sweeney said.

On May 5, the Lodestar filed suit against the school district in U.S. District Court at New Haven. The school board then threatened to cut off Lodestar's $4,000 in school funds if the students disobeyed the new regulations, and rejected a settlement offer where the portions of the magazine containing alumni articles would be totally student funded.

But several days later, on the eve of a hearing on the student's request for a court order barring enforcement of the regulations, the school gave in, according to William Laviano, the attorney for Lodestar.

"We felt that if we stopped the magazine entirely we'd be throwing the baby out with the bath water," Sweeney said. "The students put lots of work into this issue, and we didn't want to penalize the 99 percent of the work that was done by the kids."

The case could set an important legal precedent, since it is the first student press claim filed since the Supreme Court's Hazelwood decision.

Principal pulls poll naming school's worst teachers, claiming inaccuracy

Colorado — A high school principal fearful of damaging reputations and feelings censored from the school's newspaper the results of a student poll naming the 10 "least effective" teachers at the school.

Ed Rice, principal of Poudre High School, claimed the poll was not "scientifically accurate."

"To get on the 'least effective' list, a teacher only had to have six votes out of a student body of 1,100," Rice said.

The two reporters for Poudre's Silver Quill who conducted the poll questioned 120 students, or approximately 10 percent of the student body.

Rice claimed that a large number of the students polled were seniors, making the survey "top-heavy." He also said the pollsters' questions were ambiguous.

"What exactly determines a 'least effective' teacher?" Rice said.

Silver Quill editor Mike Wunder said he sympathized with Rice's view on some points.

"It was probably not as scientific as it could have been," he said. "But it also seems to me that the students don't have any say about the quality of their teachers."

The poll was part of a center-spread entitled "The Quality of Education." A companion poll naming students' opinions of the 10 "most effective" teachers at Poudre was allowed to run.

Wunder said Rice had pledged the staff he would contact the teachers who made the bottom 10 individually.

"But whether he really did that or not, no one can say," Wunder said.

Wunder said Rice had never tried to censor the Silver Quill before. According to Wunder, Rice had permitted articles on such subjects as AIDS, drugs and teen pregnancy.

"He didn't say anything as long as our articles were general," Wunder said. "But once we started bringing in names, and risking people's feelings, he started to mind."

Rice said he would have permitted the poll to run if the student sample had been larger and the questions clearer.

Lesbian group settles lawsuit

Iowa — A lesbian student group and the University of Iowa have settled a lawsuit stemming from the university's refusal to print the group's magazine.

The Printing Services department at the university refused to print the summer 1986 issue of Common Lives/Lesbian Lives, a literary magazine produced by the university's Lesbian Alliance, a recognized student group. Printing Services rejected the magazine because of a photographic series in the magazine they described as depicting "sexual activity."

The series depicted nude women embracing and engaging in other physical contact. But the university eventually conceded the photos were not legally obscene, and Printing Services later admitted that they had printed similar, assumedly heterosexual, photographs before.

Duane Rehovit, attorney for the students, said that both sides in the case have agreed to keep the terms of the settlement secret. He called the agreement an "economic settlement" which includes attorney's fees and said that it did not address the issue of Printing Service's regulations on sexually explicit photographs. But the university will print at least one more issue of CL/LL, Rehovit said.

"Obviously, my clients think that it's a favorable settlement. or else they wouldn't have agreed to it," Rehovit said.

Iowa law professor Arthur Bonfield is currently developing new guidelines for Printing Services covering the publishing of explicit material. Bonfield said through his secretary the project is "a low priority" and he is not doing much work on the policy.

Richard Remington, the university's interim president who instructed Bonfield to review the matter, will be replaced by the university's new president, Hunter Rawlings III. This fall, Joan Benson, a member of the Alliance, said that the group will have to "wait and see" whether Rawlings will overturn the informal Printing Services policy against sexually explicit photos.
Ex-editor sues school over suspension for column

California — James Taranto was outraged when two student editors at the University of California-Los Angeles were briefly suspended for printing a controversial cartoon.

Then the same thing happened to him.

When Taranto, then news editor of the Daily Sundial at California State University at Northridge, reprinted the February 1987 UCLA cartoon and wrote a column critical of the incident, he was suspended from the paper for two weeks. According to the head of the journalism department at Northridge, Taranto was punished for not notifying the Sundial's faculty publisher, Cynthia Rawitch, of the article prior to publication.

On May 10, Taranto filed suit in California Superior Court, charging that the suspension violated his rights under the First Amendment and the California state constitution. He is also seeking the $93 stipend he lost during the suspension and other, unspecified damages.

The controversial cartoon was one installment of a strip called “UC Rooster,” in which the rooster said he had been admitted to the university due to affirmative action. The cartoon sparked loud complaints from minority groups on the UCLA campus and the suspensions of two editors from the Daily Bruin. The editors were reinstated a day later when the school's Publications Board admitted the suspensions had violated UCLA's communications policy.

Taranto's commentary, headlined “At UCLA, ‘sensitvity’ means violence and censorship,” asserted that even if the cartoon was racist, as some claimed, the Daily Bruin had a right to print it. Taranto also criticized a black student group at UCLA for printing “hate-mongering, racist filth” in its publication.

Michael Emery, head of the journalism department at Cal State-Northridge, said that Taranto's suspension was justified.

“It's considered a discipline matter between him and a professor,” Emery said. “Rawitch suspended him because he didn't give her the opportunity to give guidance.

“They're claiming censorship, we're claiming it's teaching, advising and editing,” Emery added. “This is not a case of censorship. Censorship is against our policy.

“I never understood that if Rawitch didn't like something I wrote, I would be punished for it,” Taranto countered.

Taranto said that on the day

Complaints may doom station's metal format

New Jersey—Over the past two years, WSOU's heavy metal format seems to have drawn more complaints than song requests.

Because WSOU is the radio station of Catholic-affiliated Seton Hall University, irate listeners have demanded music more consistent with Catholic philosophy, faculty station director Michael Collazo said.

And if some protesters have their way, Ozzy Osbourne may give way to Chopin, and Judas Priest may be supplanted by genuine religious programming.

To reconcile metal enthusiasts with fans of mellow music, Seton Hall administrators in April assembled a task force of local radio professionals. The panel will offer recommendations for redefining the station's format and improving overall programming.

Collazo said the task force is likely to recommend the broadcast of more ethnic and community-oriented programs. Metal may be pushed into a late-night slot.

Because the panel is not administration-affiliated, student program director Joe Palumbo is confident that heavy metal will remain a major part of the station's format.

“It would kill me if it isn’t,” he said.

But if heavy metal is banned from the format, Palumbo said, he is willing to fight for its reinstatement.

“It wasn't an issue of censorship. It was an issue of good taste.”

— Michael Collazo
Faculty station director

Students at WSOU have pulled some groups from the playlist already. The banned bands include Megadeath, Anthrax, Metallica, Lizzie Borden, T & A and Overkill.

“It wasn’t an issue of censorship,” Collazo said. “It was an issue of good taste.”

Other songs were removed from the station's playlist temporarily. After the torrent of complaints unleashed by a teen suicide in May, Ozzy Osbourne was shelved for a few weeks. The teenager had been found with a note and a cassette tape containing Osbourne’s songs “Suicide Solution” and “Goodbye to Romance.”

In all, 10 to 15 bands and about 100 songs made the permanently restricted list.

Although the university owns the station, and the Board of Trustees holds the license, the administration has not taken an active role in controlling WSOU's format, Collazo said.

Contrary to media accounts, the administration has not threatened to pull the plug or force the broadcast of religious programming. The most it has done besides assembling the task force, Collazo said, is issue warnings.

Palumbo said he did not know when the task force will finalize its recommendations, but he said he expected some decision this fall.

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after the editorial ran, Rawitch called an emergency editorial board meeting because of the article.

“She yelled at us for half an hour,” Taranto said. “She was furious. She said that she would have pulled the cartoon, and would have had me tone down the article.”

Rawitch declined to comment. But an article in the Arizona Republic on Oct. 4, 1987, quoted Rawitch as admitting she would have asked Taranto to tone down his commentary.

Emery claimed, however, that Taranto’s suspension was not due to what he wrote.

“This had nothing to do with content,” Emery said. “It would’ve run without any problem if he had let [Rawitch] know about it.”

Nonsense, Taranto said.

“Emery wasn’t at that meeting,” Taranto said. “He can’t say that it had nothing to do with content.”

Emery called Taranto’s failure to notify Rawitch of the article “a deliberate attempt to get around the rules.” But at the time of the suspension, the Sunday staff policy only required the editor-in-chief to let the publisher know of any “questionable material.” Last March, the journalism department revised the policy to include “key editorial assistants” and assert that final control over content rested with the publisher.

Taranto said that he did not know of any policy, written or unwritten, that required him to notify Rawitch.

Emery conceded that the rule Taranto broke was unwritten.

“The expectation is that [a Sunday writer] will notify the publisher of anything potentially libelous,” Emery said. “He knew that this was a sensitive issue, that it had created controversy at UCLA. He should have at least called Rawitch to let her know what he was doing.”

Chris Foley, the attorney for the university, said that their case will rest on the argument that the Journalism Department, as publisher, has all First Amendment rights to he Sunday.

The suit has been assigned to the “fast track,” an experimental program in Los Angeles County courts that assures a case will be resolved within a year after it is filed. Attorneys for both sides in the case said that although an out-of-court settlement is not out of the question, settlement talks are not yet under way.

School officials yank letter to editor

Local tanning business made writer see red

Michigan — Advertiser interests prevailed over student concerns at Wayland High School when administrators barred publication in the student newspaper of a letter to the editor critical of a local salon.

Superintendent Robert Brenner halted distribution of the April issue of Paw Prints when he learned from a print shop employee of the critical letter. He then ordered the paper reprinted with the objectionable material removed.

The author of the letter, student Holly Krulac, complained that the Dorr Family Hair Care Salon had cancelled a week’s worth of her tanning appointments without telling her.

In her response to the letter, Paw Prints editor Bridgette Fifelski related a similar experience of her own at the same salon and suggested that Krulac make her next tanning appointments elsewhere.

Fifelski said she included the letter in the paper as a service to the students.

“I wanted other kids to know what was going on at the salon,” she said. “I didn’t want them to lose their money, too.”

The salon, however, happened to be one of the paper’s major advertisers and one of the school district’s primary patrons.

“Business people are the district’s best supporters,” Brenner said. “We’re not going to have a student paper, either rightly or wrongly, attack individuals or businesses in the community.”

Brenner finally did relent after Fifelski contacted the SPLC for legal advice, and the letters were printed in the May issue within the body of an article on censorship.

But Fifelski does not believe the students have really won yet.

“The administration wants a nice, happy paper,” she said. “But not all news is happy, and it’s still our job to report it. . . . [The student-administration fight] is not over.”

Nor has the battle just begun. Although the paper started up barely a year ago after a six-year hiatus, it has already had several skirmishes with the administration.

Two instances involved students’ use of firearms. In one case, a student waved an unloaded rifle at a school security guard on school grounds, and in another, a student fired shots at another student off school property.

In both cases, Principal Jack Deming warned staffers against publishing newspaper accounts of the incidents.

More recently, Deming censored publication of a survey revealing student attitudes toward a new AIDS awareness program. Fifelski said she was baffled by Deming’s action, since the results were in support of the school.

Fifelski nonetheless complied with Deming’s demands and ended up rewriting the survey article three times. The ultimate result, Fifelski said, was a watery editorial.

“At that point, it was more important to me that something be in,” she said.

The school board was to convene this summer to draw up definite publication guidelines to end all the wrangling, but Brenner said the board has no easy task.

“As a teaching tool for these kids, the newspaper’s number one interest is within the school itself,” he said. “But at the same time, we don’t want to educate these kids to stick their heads in the sand.”
Principal censors 'derogatory' editorial, cartoon

Colorado—When Broomfield High School principal James Sandoval censored an editorial for the third consecutive issue of the Eagle's Cry, staff members and adviser Chris King decided they would not stay silent any longer.

Instead of an editorial and cartoon that Sandoval reportedly deemed "derogatory," the staff ran white space and a box explaining that the editorial had been pulled by administrative order.

"That really got his attention," King said. "He had censored stuff before but no one knew about it. Now, people could see that he was censoring things, and it put a lot more pressure on him."

The editorial and cartoon criticized a plan developed by Sandoval to make study halls mandatory for underclassmen. The page also included a companion editorial in favor of the policy. Sandoval left that intact.

"I was mad, because I had worked pretty hard on [the editorial]," said Ollie Kirkpatrick, the author of the censored story. "[Sandoval] wanted to censor articles that he didn't like and left in one that he agreed with."

"When he censored it, he never continued on page 23

Judgement sought in open meetings case

Indiana—Ball State University attorneys and the attorney for a former Ball State Daily News reporter will both ask for summary judgement in a suit for access to university committee meetings.

Former student Diane Goudy contends in her suit that Ball State violated Indiana's Open Door law by closing off meetings of the university's Calendar Transition Committee.

The committee was assembled in 1986 to guide the university academic system's transition from quarters to semesters.

In December 1986, Goudy and another News reporter, Robert Wile, were barred from attending the meetings.

Goudy filed suit in March 1987.

The cross-motions for summary judgement were to be filed this August, one year after a county circuit court judge threw out Ball State's motion for the suit's dismissal.

The case has been slow-moving because of Goudy's struggle to finance a lawyer.

Goudy's first attorney dropped the case last fall. He first took the case without pay, but later was unable to continue without compensation.

About six months later, Goudy recruited her current attorney, Frank Harshey, through the Indiana Civil Liberties Union.

Because of the tortoise pace, Goudy's suit may be in jeopardy.

"We're afraid the judge will declare the case moot because the Calendar Committee has disbanded," said Frank Harshey, Goudy's attorney. "We may have to refile."

Harshay said he expects a decision on the motion for summary judgement this fall.
We'd already let him get away with it by changing a few things here and there.

But the paper's staff decided to fight back when Sandoval began censoring whole articles, typically ones critical of the administration. For example, Sandoval censored an editorial attacking the Supreme Court's Hazelwood decision and pointing out that no other principals in the district even practiced prior review of student newspapers.

After this incident, King suggested the paper run white space when Sandoval censored again. Eagle's Cry editors agreed.

"[Sandoval] was angry about the white space," said Shonnie Bollinger who drew the censored cartoon. "But I think people have a right to know when something's been censored."

King wrote to Sandoval after the white space ran explaining the action and his disagreement with the censorship and asserting that the editorial and cartoon "are fair and reasonable expressions of student opinion."

"I would not have allowed the censored notice to be printed had I not felt that your actions were unjustified and in need of attention," King wrote.

The paper got a lot of support from both students and parents after the white space ran, according to Battista. The controversy came to a head one night at a meeting of the BHS Citizen's Advisory Council, where a parent brought up the subject of censorship. Battista called it "an ugly evening."

According to Battista and a report in the Broomfield Enterprise-Sentinel, Sandoval denied having censored any articles before the one by Ollie Kirkpatrick. Sandoval also said that this editorial was one of a string of "derogatory" editorials, and that students should not be given "carte blanche to do whatever they want at anyone's expense."

Battista said she was angered by Sandoval's comments and came to the paper's defense. She told those attending the meeting that the students were conscientious and fair in their presentation of news and opinion.

Some parents at the meeting supported the students' rights, although some took Sandoval's view, Battista said.

Sandoval refused to comment on any details of the meeting.

Adviser King said that after the last instance of censorship, he and Sandoval reached an agreement.

"We both tested the boundaries, to see how far we could go," King said. "It's an episode behind us. We did reach some common ground. That's what I was trying to do—to push him, to test the boundaries of what's allowed."

Although King's English-teaching position was eliminated due to budget cuts, he said he thinks the paper's adviser next year will have no problems with censorship.

"Now [Sandoval] knows what he can and cannot do," King said.

He called the incident a good experience for the students.

"It was a real learning experience," King said. "My kids know Hazelwood inside and out now. You can't ask for a better real-life situation for them to learn about their rights as student journalists."

Battista agrees.

"I learned so much about people," Battista said. "Sometimes I wish I wasn't part of it, but I'm glad I was. It was a remarkable learning experience.

"We took our stands, and took our punches, too."
Officials fear students will decide for themselves

Kentucky — Enid Wohlstien was concerned that her fellow students at Lafayette High School in Lexington were making the wrong decisions about sex.

"I got to school early each morning, and I'd hear students talking about how drunk they were going to get or who they were going to sleep with," Wohlstien said. "I don't think that many people were thinking about the results of their actions."

So Wohlstien, co-editor of the Lafayette Times, wrote an editorial for the March issue encouraging students to make more responsible decisions about sex.

"Only the individual can decide when the time is right to become intimate with someone," she wrote. "Intimacy between a couple is wrong when occurring with false information, dishonest intentions, or under less than ideal conditions."

But when Lafayette Principal Thurmas Reynolds saw the article, he ordered Wohlstien not to print it.

"He said that with all the religious feelings in the community, bringing up sex is a no-no," Wohlstien said.

Reynolds declined to comment. Associate principal Robert Murray said that the administration did not disagree with the idea of the article, just with the way it was written.

"Some of the wording we felt could have been misunderstood by students," Murray said. "It may have been interpreted by students to mean that it's okay to participate in sexual activity if they decide they want to."

Wohlstien said that the censorship made her extremely angry.

"How can someone be so blind as to ignore problems teenagers have now?" Wohlstien said. "Why can't we for once let students have their say?"

Wohlstien said that the school, which has over 2,000 students in grades 10-12, is considered one of the top schools in the state, in both academics and sports. She charged that the administration was more concerned about the school's image than promoting quality journalism.

"They don't want us to get into the big issues like sex and AIDS and pregnancy," she said. "If we keep it general, nationwide, that's OK. But if we're zeroing in on the school's population, that's where the problem is, because that's chipping away at the image."

Murray admitted that parents' feelings did play a role in the censorship of the article.

"We're sensitive to how our

College paper blasted for 'insensitive' letter

South Carolina — The printing of a political satire in the USC-Aiken newspaper almost produced an eruption of racial turmoil on campus and spurred demands for administrative review of the paper before publication.

"Political Poetry," a letter to the editor written by incoming freshman Christopher Powers, characterized presidential hopeful Jesse Jackson as "big and crude." Drawing heavily on stereotype, Powers depicted Jackson as the proud owner of a Cadillac and an eater of black-eyed peas, chicken and soul food.

Fellow candidates Gary Hart and Bob Dole also suffered a few jabs.

According to Linda Whitlaw, adviser of the Pacer Times, Powers intended the poem as a joke.

But black students, who comprise 16 percent of USC-Aiken's student body, saw only racism, not humor, in Powers' effort.

"Excluding the fact that the poet's attempt at poetic expression was somewhat limited, the poem [was] tasteless, insensitive and very offensive," wrote student Dorothy Walker in a letter to the editor.

Student Donna Marie Bridges wrote in another letter, "'Political Poetry' was unjust in its contents and deserves a more fitting title: 'Bogus Bull.' The ... racial image of ... Jackson ... was so far from the truth that if writing false racial stereotypes were a criminal offense, the author would be sentenced to the death penalty."

Pacer policy dictates that every letter received will run, Whitlaw said, as long as the contents are not obscene or libelous.

And policy, Whitlaw said, was the only reason "Political Poetry" was published.

"We certainly didn't agree with it," she said. In fact, the Pacer ran an editorial condemning both poet and product. The paper also ran a total of five letters to the editor from offended readers.

Nonetheless, outraged black students demanded that similar letters be censored from future issues.

Whitlaw said some student groups have even demanded that Pacer editors be elected at-large from the student population, not appointed by the Publications Board.

So far, the administration has elected to take a hands-off approach to the newspaper, Whitlaw said.

"They're in total support of the students' rights to publish," she said.

The administration responded to the uproar by sponsoring a series of "open forums" in April, one month after the incident. Students, newspaper staff and faculty met at the forums to discuss campus racial issues.

The forums have succeeded in soothing student anger said Eileen Menesee, the university's director of Minority Resources, and the administration plans to continue them this fall.

But she said the undercurrent of racism has not been exorcised from the university.

"I would really like to think that this will be the last incident," she said. "But I'm afraid it's not."
parents feel about what their kids read," he said. "[Wohlsten] has to understand that we are responsible for every activity that goes on here. What is printed there [in the Lafayette Times], we would have to answer for that."

Although the school district has a policy allowing students to appeal censorship of articles to the board of education, Wohlsten said that she did not know about the process at the time of the censorship. She added that Reynolds had exercised prior review of potentially troublesome articles before.

Murray said that newspaper advisers in the district were expected to bring any potentially controversial articles to the attention of the principal, and that censorship of these articles was a common practice.

"If a student came in with an article that treated sex in an irresponsible manner like that, sure, we pulled it," Murray said.

After the editorial was censored, Wohlsten wrote to the Lexington Herald-Leader objecting to the censorship. The Herald-Leader responded by printing a front-page account of the incident and reprinting Wohlsten's editorial.

"I was pleased with what happened," Wohlsten said. "I think that more students and teachers talked about it than if it had just been printed [in the school newspaper]."

Andy Mead, the Herald-Leader reporter who covered the case, said that he was surprised that the editorial had been censored.

"I didn't think it was very offensive," Mead said. "I expected something more awful, but it was a very mild, mature, well-reasoned editorial."

Mead said that the paper decided to reprint the editorial because editors felt that, after the Supreme Court's Hazelwood decision, the professional press should serve as an "escape valve" for censored students to express their views.

Wohlsten said that the plans to study communications at the University of Kentucky, which she will attend this fall. She said that her experience only gave her minor doubts about becoming a professional journalist.

"I want [journalism] to be my career," Wohlsten said. "I write things to make people think. I've asked myself, is it really worth it? Am I going to have to come up against that kind of opposition every time? I hope not."

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**School's anti-leaflet rule irks Hispanic group**

Illinois—Members of a city-wide organization for Hispanic students in Chicago have threatened to file suit against the school board for barring the distribution of flyers announcing an off-campus fundraising party.

The Aspira Club, which is devoted to the prevention of drug abuse, has thirteen high school chapters in Chicago.

Aspira member and Kelvyn Park High School student Osbaldo Gonzalez said over 150 flyers were confiscated by assistant principal Martin Rockwell during the lunch hour. According to Gonzales, Rockwell threatened the students with disciplinary action if a second offense occurred.

Board policy dictates that "[m]aterials, flyers, etc. that are not authorized by the Chicago Board of Education are not to be posted, mailed, or distributed among students, teachers, or staff by students, teachers, or staff without prior review and approval of the principal."

This policy, however, directly contradicts the 1972 ruling, Fujishima v. Board of Education, the U.S. Court of Appeals for the Seventh Circuit ruled in Fujishima that prior review is unconstitutional. The ruling is controlling law in Illinois, Indiana and Wisconsin.

Kelvyn Park principal Rudolfo Serna said he refused to authorize the flyer's distribution because he did not want to set precedent. But Serna said he allows the distribution of the Aspira Club's newsletter, Today's Aspirante, without prior review.

"I already know what it is," he said. "I allow distribution of all newsletters as long as I know what they are. They just can't advertise."

But according to a press release from Aspira members, students at Lane Technical High School have had to submit their newsletters to Principal Maude Carson for prior review.

Gonzales nonetheless charges that the policy infringes on the club's First Amendment right to free speech. In April, he contacted the SPLC and the American Civil Liberties Union for legal advice.

Gonzales said he plans to file suit this fall.
Distribution of Christian paper brings court battles

Students across the country are calling on the courts for an answer to the issue of issues & Answers, a nationwide religious magazine.

Judges in Pennsylvania, Illinois and Colorado will be wrestling with the constitutionality of allowing the magazine's distribution on public school property.

While one case has been decided, and is currently in appeal, two others are waiting for trial.

The question the judges face: By prohibiting the distribution of Issues & Answers on campus, are administrators violating student rights to free speech, or are they upholding the sacred wall between church and state?

Pennsylvania — The Waynesboro Area School District is appealing a federal district judge's ruling in favor of three Antietam Junior High School students wanting to pass out Issues & Answers.

A U.S. district judge ruled in December 1987 that the school's blanket ban of in-school distribution of the magazine violated the First Amendment rights of Bryan Thompson, Marc Shunk and Christopher Eakle.

But the judge threw out the students' claims that the restrictions violated the Equal Access Act and the students' right to assembly.

The school district was also ordered to pay the students' legal fees.

The case is expected to be heard by the U.S. Court of Appeals for the Third Circuit sometime this fall.

Illinois — Four students who wanted to "spread God's word" by passing out Issues & Answers have filed suit in federal court to overturn school guidelines on the distribution of non-school-sponsored materials.

The students are also seeking $1 apiece in damages.

Under Moline High School's current policy, the students can distribute the magazine only from a designated lunchroom station and at school entrances before and after school. In addition, the students must give Principal Keith Schwab a copy of the magazine before they pass it out to students.

The students charge that the restrictions deprive them of their rights under the U.S. and Illinois constitutions.

"We all felt like we were being discriminated against," said student Matt Rogerson.

But Schwab said, "I felt that unregulated distribution [of Issues & Answers] would be a disruption to classes."

Stanley Eisenhammer, the school's attorney, said Schwab's time, place and manner restrictions, as well as the prior review, were legal.

But the U.S. Court of Appeals for the Seventh Circuit, which has jurisdiction over Illinois, ruled in 1972 that any prior review of student materials by school administrators is unconstitutional.

Attorneys for both sides expect preliminary motions to be heard this fall. Both sides say an out-of-court settlement is unlikely.

Another Illinois student has settled his suit with Round Lake High School and now will be able to distribute Issues & Answers without harassment.

Under the terms of the settlement, Charlie Johnson may pass out the magazine in the halls between classes, as long as he keeps moving. If he wants to distribute large quantities, he must give them out at designated times and place.
According to Johnson's attorney, the court will monitor the school for five years to ensure compliance.

The school also agreed to grant Johnson an undisclosed financial settlement and pay for attorney's fees.

Colorado—Students at La Junta High School who filed suit suit against their school for banning Issues & Answers may see some action in the case this fall.

David French, the students' attorney, said the case is almost out of the discovery period, and a motion for summary judgement may be filed in August.

The suit was filed in July 1987. The students claimed that the administration infringed on their First Amendment rights and violated Colorado law by limiting distribution of the magazine. They also claimed religious discrimination.

Administrators countered the charges by claiming students "engaged in willful disobedience" by ignoring explicit orders not to distribute Issues & Answers.

District policy prohibits the distribution of any non-curricular materials "that proselytize a particular religious or political viewpoint."

Permitting students to distribute Issues & Answers would imply the administration's endorsement of the paper's religious viewpoint, school officials said, and therefore violate the constitutionally decreed separation of church and state.

Another Colorado student at Thomas Jefferson High School was ordered to distribute Issues & Answers off-campus when she tried to pass them out at the school's front door.

Student Joann Wood was told that district policy prohibits the distribution of all non-sponsored publications on school property. Woods does not plan to file suit, but she said she may defy the administration again this fall.

"If they said we couldn't pass them out, then I definitely would," she said. "But it may be best not to cause trouble. . . I guess it's in God's hands."

At first glance, Issues & Answers seems to be a typical teeny-bopper mag — a clone of Spin or Rolling Stone.

Teen actress Molly Ringwald, petulant and pouting, pretty in pink, adorns the front cover. The comic-book hero Luminas graces the back.

Inside are reviews of popular movies, critiques of popular books, biographies of popular sports stars.

But the magazine lacks the wide-eyed adoration of movie stars that most other teen mags have. And there are no fashion tips, no beauty hints, no gossipy pull-out centerfolds.

Issues & Answers, which has a nation-wide circulation of about 25,000, is written from what editor Bill Jack calls "a Christian perspective."

Published by the Caleb Campaign, an evangelical youth ministry based near Chicago, Issues & Answers attempts "to encourage Christians to apply their faith in all areas," Jack said.

But to some, the magazine may encourage a harsh, almost condemnatory, view of popular culture and science.

Sandwiched between the reviews and bios are articles blasting evolution, archeology, sex education, death education, communism, and Dungeons & Dragons.

One article from a recent issue, entitled "Big Bang Theory is Religion," set forth "definitive proof" that the earth is only about 6,000 years old. Among other things, scientists quoted in the article claim the speed of light is slowing.

Another article, entitled "D&D: Deadly & Deceiving," condemned Dungeons & Dragons, a role-playing game, as "evil" and likened it to brain-washing. Above all, the article said, Dungeon & Dragons is blasphemous.

"Holy men, or clerics, are common in D & D, yet the miracles of Christ are depicted as spells alongside occult rites," the author wrote. "Clerics of God are depicted in the game on an equal standing with priests of demi-gods or demons."

Another articles decried globalism, or the movement for world government.

"In His letter to mankind knows as The Bible, the Creator of the Universe outlawed the establishment of a global society," the article said. "Nations were established by Him to keep evil from dominating the earth."

Other, more neutral, articles chronicled the lives of prophets, political figures and historical heroes.

The magazine also analyzes current events from a Biblical perspective.

"We give Christian students information they won't be able to find in the newspaper," Jack said.

Jack insists that Issues & Answers does not proselytize the Christian viewpoint, as some school principals contend. Its intent is to inform, not to convert, he said.

But some schools have found Issues & Answers so objectionable they have banned or severely restricted its distribution on school grounds.

The bans have raised cries of First Amendment infringement, and an increasing number of students are taking their schools to court.■
Thieves poach 4,000 Lobos

New Mexico—Staff members of the Daily Lobo at the University of New Mexico were angered last March when 4,000 copies of their newspaper were stolen the day they endorsed candidates for student government.

"It's obvious that the papers were stolen because somebody couldn't handle the endorsements," said editor Mike Kemper, a reporter at the time of the incident. "The students were ripped off."

About 3,000 copies of the paper were taken from a distribution point outside the paper's office, and another 1,000 of the paper's normal run of 15,000 were missing from other distribution points on campus.

The stolen issues contained the Lobo's endorsements of candidates in the student government elections to be held that day, as well as the endorsements of about 20 student groups. The election was later cancelled because some ballots were counted before the polls closed.

The newspaper regularly runs endorsements before elections because "with 30,000 people on campus, meeting the actual candidates isn't a real possibility," Kemper said. "Endorsements are one way to reach voters."

Kemper said that an investigation into the incident by the university's dean of students did not find enough evidence to charge anyone with the theft. Kemper said that the decision has been appealed to the grievance board at the university, and may be appealed to the student courts. Further action in the case is not expected until school resumes this fall, Kemper said.

The paper plans to run new endorsements when the rescheduled elections are held in September. Kemper said. And the paper's distribution will not be changed.

"It's not really practical to change distribution," Kemper said. "To guard each distribution point, we take a hostage. You have to go on good faith."

Paper kidnapping plot foiled by campus police

South Carolina—The theft took place about 2 a.m., the week before Spring Break.

Markus Moore and 3 other Clemson University students trailed the student newspaper's distribution manager on his rounds. They snatched up bundles of the Tiger and stashed them in the trunks of their cars.

The group said they wanted to protest what they perceived was the paper's neglect of minority affairs.

Just the week before, Moore said, the Tiger had opted not to print a story about the racial tension on campus. Moore himself had been the story's primary source.

And over the year, Moore claimed, the paper repeatedly had ignored minority-sponsored campus events.

Instead of an article on the Gospel Explosion, Moore said, the Tiger ran a feature about Def Leppard's one-armed drummer. Instead of a story on the Alvin Ailey dance troupe's visit to Clemson, the paper printed a piece about carbonated ice cream.

According to Moore, the injustices stacked up.

Jennifer Brown, the incoming Tiger editor, is also a black student. But to her, Moore's claims are groundless.

"We don't treat minority groups any differently from other student groups," she said. "We don't have the staff, the time, or the space to take care of everything that happens on this campus. Naturally, something's going to get left out."

As for the unprinted story that prompted the theft, Brown said, Moore and his cohorts were as much to blame. According to Brown, some of the students missed their interviews and had to reschedule. As a result, the story was not finished by deadline.

"We ran it in the first issue out after Spring Break anyway," Brown said.

Moore said he and several other students had tried more conventional means to influence the Tiger before resorting to theft.

He said they had written, called and visited in person—all to no avail. They had even lobbied administrators to pressure the staff.

But Moore admits the theft did not bring about the dramatic results he had hoped for.

According to the original scheme, Moore and his accomplices planned to hold the papers hostage for a few hours, then return them amidst a flurry of media attention, a point made.

If not for the campus police, who caught them during the haul, the plan would have been successful.

Because the Tiger is a free newspaper, and nothing in the school regulations prohibits students from taking as many papers as they wish, the culprits were sentenced to producing a videotape about Clemson's racial atmosphere.

Brown said several Tiger staff members did not consider the punishment fitting.

"It's not going to prevent them from doing something like this again," she said.
Paper runs racy valentine; issues disappear

New York—Staffers at The Cardozo Law Forum knew the ad was not a typical Valentine.

Signed “the Boys of Law Review,” it was addressed to a woman described only by first name.

“... then we’ll velcro you to the table in the big room,” the ad began, and went on to detail what the newspaper later described as a gang rape.

Forum editor Pete Richter decided to print the ad, and on Sunday, Feb. 14, the paper was distributed as usual.

By Monday morning, 1500 copies of the Forum’s Valentine’s Day issue had disappeared.

No one witnessed the theft. No one confessed. But the blame focused immediately on the law review, an elite student organization of the Cardozo Law School in Manhattan.

Richter said members of the Review outraged by the ad had disposed of the paper to protect their reputations, as well as the reputation of the woman to whom the ad was addressed.

Review editor-in-chief Nancy Sindell refused to comment about the incident.

But the Review later expelled without a hearing the member who submitted the ad.

Because of a lack of evidence, Dean Monroe Price said, no punitive action was taken against any students for the missing papers.

The administration’s only response to the theft was a memo sent to students that read: “Students should show respect for the work of other students including the published product of student organizations such as the Cardozo Forum, the Law Review and other publications, and should assist in their distribution.”

But immediately after the incident, Richter said, the administration threatened the Forum with prior review. When Richter called in lawyers Francis Ellis and Jim

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Florida paper thieves sentenced to probation

Florida — Four University of Florida students were convicted this spring of misdemeanor theft charges after stealing 300 copies of a free conservative student monthly.

The four UF students pleaded no contest to the charges in Alachua County Court and were each sentenced to six months probation, 25 hours of community service and court costs of $100.

The four, Joe Saviak, Dan Carlson, Frederick Lewis and Joe Gullford were charged with stealing copies of the Florida Review as part of a feud between two conservative groups on campus.

The conflict began when two Review editors accused Saviak of vote fraud in an election for president of UF’s College Republicans.

John Cornelius, Review executive editor, said that the paper was pleased with the criminal sentences, but thought that the university “wimped out” by not disciplining the thieves.

The case is believed to be one of the first in the nation where criminal charges have been brought for theft of free newspapers. And Tom Julin, a Miami media law attorney contacted by the Review, said this summer that a civil suit against the four was still a possibility.
Rayhill. administrators backed down.

"As far as I'm concerned, the Deans are showing tacit approval [of the theft]." Richter said. "It's not fair that we were punished [with the threat of prior review] for publishing the ad when the people who were responsible for the ad in the first place weren't punished for stealing."

Dean Price declined comment.

Richter acknowledges that the Forum may have made a mistake by printing the ad. He said; however, that he had no idea the woman referred to in the ad was as easily identifiable as some students later claimed.

"I didn't know there was only one woman by that name in the whole school," Richter said. "There was no last name, so I didn't think there would be any harm [in printing the ad]."

According to a letter to the editor published in a later issue of the Forum, the woman's "feelings have been hurt, her reputation called in question, her ability to keep up with her studies disturbed, her parents mortified."

Richter said, in retrospect, that he should have omitted the woman's name. But he said he would not have changed the signature, "although that's what got us into trouble."

The Valentine's Day issue of the Forum was eventually reprinted without the ad and distributed without incident.

School officials halt yearbook's memorial page

Pennsylvania—To some students at Fairview High School, administrators acted as if T.J. Hetz's death never happened.

Fearing the glorification of the Fairview Senior's Christmas suicide, school officials vetoed almost every effort the senior class made to memorialize Hetz—including the dedication of a page in the yearbook.

The page was censored on the advice of psychologists concerned about stemming a wave of "copycat" suicides, said Principal Charles Huntley.

"We didn't want to encourage students to emulate Hetz by making him a hero," he said.

Despite the administration's intentions, yearbook editor Jessica Paulson was outraged by the decision.

The page was to be a memorial, not a eulogy, she said. Far from glorifying Hetz's suicide, the page would have contained only Hetz's senior portrait and a short message. No mention would have been made of how he died, or why, according to Paulson.

The staff had even obtained permission from Hetz's parents to print the page.

"We felt cheated," Paulson said. "They should have let us do something to remember him.... [It's as if] they never allowed us to really get over his death."

The censorship broke a precedent set several years ago with the suicide of a teacher. Paulson said. In that instance, faculty were permitted to dedicate a plaque to their colleague.

That plaque now hangs in a foyer at the back of the school.

The yearbook was not the only victim of the administration's rush to quell the panic following Hetz's death.

The controversy received national attention in June when, amid death threats and rumors of a suicide pact, the school's graduation ceremony was cancelled.

The 1988 edition of the Fairview High School yearbook, published in April, did contain Hetz's photo. It was printed alongside the senior portraits of his classmates—like that of any other hopeful grad.

Planned Parenthood to appeal new ruling

Hazelwood application questioned

Nevada—Attorneys for Planned Parenthood of Southern Nevada are appealing a federal district court's decision permitting school officials to prohibit advertising in student newspapers.

Judge Roger Foley ruled in April that, because of the Hazelwood Supreme Court decision, Clark County public high school student publications are not open forums, and therefore subject to administrative censorship.

The ruling was a reversal of Foley's decision in July 1987, which required the district to allow Planned Parenthood advertising.

The school district banned Planned Parenthood ads in 1984, claiming they conflicted with district policy on sex education.

Under this policy, only approved instructors are allowed to teach sex education. In addition, sex education materials must have school board approval before distribution.

Planned Parenthood sued the school district, claiming the restriction infringed upon its First Amendment rights.

Judge Foley ruled the school's policy valid in his April decision. He said the district had sound educational reasons for prohibiting controversial advertising and wanting students to receive sex education in the classroom only.

The appeal is expected to be heard in the U.S. Court of Appeals for the Ninth Circuit this fall.
The article was seen by Cole and many students as racist. At one point, Baldwin said that Cole’s face “wrinkles like a mud pie” and later referred to a recording of Native American music as a “gut-busting, mind-rapping Indian disco.”

A transcript of a telephone interview with Cole ran as a sidebar to the story, in which Cole lambasted a Review reporter and called staff members “Goddamn f—kin’-ass white boy racists,” as well as other profanities. Cole had settled a libel suit against the paper in 1985 for an article that said his head “looks like a used Brillo pad.”

During the confrontation in Cole’s classroom, the Review staffers repeatedly asked for a response to the article and for an apology from Cole for his earlier statements, according to a Review transcript of the incident. The students also claimed Cole broke a photographer’s flash and physically threatened the students.

The College’s Committee on Standards found three of the students guilty of harassment, invasion of privacy, and disorderly conduct, and one student guilty of disorderly conduct alone. The students also claimed that the disciplinary hearing violated their rights to due process.

But an investigation into the proceedings by the New Hampshire Civil Liberties Union found that the punishments were supported by the evidence, according to Claire Ebel, who heads the group. Ebel said that the NHCLU is investigating the overall situation at Dartmouth, however.

“We are troubled both by the appearance of an inhospitable racial climate and a less than hospitable civil liberties climate at Dartmouth,” Ebel said.

Attorney Ruegger said that the NEH can decide whether to investigate the Review complaint against Dartmouth, and then decide what, if any, action to take. Ruegger said that his clients do not want to punish Dartmouth, but just want the truth to be told.

“We’re not looking for any particular relief from the NEH,” Ruegger said. “But we feel that the government must look at the situation. We think that if the world can look at the real facts, the Review students will be vindicated.”

Dartmouth spokesman Huppe accused the Review of trying to use political contacts within the Reagan Administration to further their cause.

“The Review has powerful allies within the Department of Education and in the White House,” Huppe said. “They have lots of allies within the Reagan government, and they feel that they can capitalize on that.”

Review staffers declined to comment. Dinesh D’Souza, a White House policy analyst acting as a spokesman for the Review, said that the students are also considering legal action against Dartmouth.

“We want to try to make this a test case,” D’Souza said. “Hopefully we can establish the principle of freedom of expression there . . . . There shouldn’t be one standard for liberal students and one standard for conservatives.”

“There shouldn’t be one standard for liberal students and one standard for conservatives.”

— Dinesh D’Souza

Review spokesman
Math teacher claims libel, asks for $1 million

California—Jason Rothman experienced some of the excitement in journalism when he was news editor of his high school paper.

Unfortunately, that excitement came when a teacher at Foothill High School in Pleasanton claimed he was libeled by one of Rothman's news stories.

On May 26, math and business education teacher Larry Moyer filed a $1 million libel claim against the Amador Valley High School District. The claim alleged that Rothman's report of a smoke bomb incident in Moyer's class damaged the teacher's reputation and mental health, and also asked for $1,040 in psychiatrist's fees.

Rothman's story in the March 11 issue of InFlight, the student paper at Foothill High School, anonymously quoted two students responsible for planting a smoke bomb in Moyer's class. One of the students, who supplied the bomb, was quoted as calling Moyer "a babbler" and "the worst teacher at FHS."

The story quoted students in the class alleging that Moyer shut the door to the classroom, keeping the smoke in. It also included Moyer's claim that he kept the door open.

Rothman said that he thought that since he was merely quoting students' opinions of Moyer, the story was not libelous.

"If I thought it was going to be libelous, I wouldn't have printed it," Rothman said.

The school district rejected Moyer's claim and sent it to their insurance carrier for further consideration. If, as is expected, the insurance company denies the claim, Moyer can file a lawsuit in the case.

"I was relieved that he filed it against the district and not against me," Rothman said. "I didn't think he had a case. I didn't understand why he wanted to do it."

Moyer declined to comment.

The article had caused problems for the paper since the day it ran, according to InFlight staff members. Rothman said that an administrator called him to the office and questioned his ethics in writing the story. And Larry Aladeen, the paper's adviser, was reprimanded in writing by Foothill principal Roger Dabney for allowing the article to run.

According to a disciplinary letter in Aladeen's personnel file, Dabney felt that the adviser used poor judgement by not notifying Dabney of the article prior to publication.

"This article . . . had the clear potential to incite students to substantially disrupt the future orderly operation of Mr. Moyer's classroom or any other classroom in the high school," Dabney wrote.

In a scathing written response to the letter, Aladeen pointed out that the article had created no such disruption.

"I would argue that any distress or exacerbation of the present situation was not, in fact, the result of any lack of 'good judgement' on my part," Aladeen wrote. "Rather, it was a result of the administration's . . . specific failure to take timely, appropriate action to deal with the incident."

Dabney also ordered InFlight editor Margy Grassmeyer to allow him to review the next issue of the paper before it was printed. School regulations allow such review when the principal has "reasonable belief" that the copy is libelous, obscene or incites unlawful or disruptive activity. Dabney said that he did have such a belief then.

"I wouldn't have [asked for review] if I didn't," Dabney said. "It was based on the fact that the responsibility of the adviser and the responsibility of the editor were in question. I wanted to confirm that responsibility."

But Dabney did not censor the paper, and later told the InFlight that he no longer needed to review the paper.

Students at FHS were surprised when Moyer filed the claim nearly three months after the incident, Rothman said.

"Most people were taken aback by it," Rothman said. "They didn't think Mr. Moyer had it in him."

Moyer's lawyer, Rita Rowland, said that she and Moyer are still considering whether to file a lawsuit. Rowland declined to discuss the case further, saying she did not want "to try my case in the media."
Judge dismisses libel case; rules parody ad harmless

New Jersey — A state Superior Court judge has dismissed a $1.7 million libel suit against those responsible for a parody issue of the Kean College Independent.

Ann Walko, an administrator at Kean College, had claimed that a fake ad in the parody issue called the Incredible damaged her reputation and caused emotional distress. Judge Barbara Byrd Wecker dismissed the suit in July, ruling that no reasonable person could take the parody ad seriously.

“I’m very happy with the ruling,” said David Mack, the attorney for Independent editor Nanette Strehl. “It’s a pretty big win. The judge ruled that the ad was a joke, and no one could take it as anything else.”

Judge Wecker dismissed the emotional distress part of the claim, Mack said, by relying on the Supreme Court’s recent ruling in Falwell v. Flynt which gave satirists broad First Amendment protections. Wecker also ruled that Walko was a limited-purpose public figure, and therefore had to prove that the parody was not just negligent, but printed with malice.

Robert Renaud, Walko’s lawyer, said that he was disappointed by the decision.

“I don’t agree with it,” Renaud said. “I think we should have had the opportunity to bring the case before a jury.”

Renaud said that he had not yet talked to Walko about filing an appeal of the dismissal.

Former prof appeals dismissal of libel case

New York — Claiming he was not given a fair opportunity to finish his fact-finding, former Dowling College professor Jerome Epstein is appealing a ruling for summary judgement in a libel suit he filed against the school.

Epstein claims the college fired him in 1986 because of a critical letter to the editor in The Lion’s Voice, the student newspaper.

Student Kim Kiechlin, in her letter, accused Epstein of having inadequate teaching methods, unfair grading policies and overly restricted office hours.

The school filed a motion for summary judgement before the discovery period was completed.

In November 1987, the New York Supreme Court granted judgement on the grounds that neither the letter nor the reply were libelous.

“The statements set forth in the letters are constitutionally protected as expressions of opinion,” the decision said.

In her reply to Kiechlin’s letter, editor Rebecca Smith related her own experience in Epstein’s class and summarized what she claimed were twenty more letters criticizing Epstein.

Among other things, students quoted in Smith’s summary accused Epstein of “refusing to sign withdrawals and then failing students, lying, deceiving, making false promises, . . . giving limited help while eating in the cafeteria, . . . putting down Dowling, his colleagues and students,” and having “poor teaching abilities [and] lack of organization.”

Joseph Pierini, Epstein’s attorney, is contesting the court’s judgement that the letters were not libelous.

“Accusing a . . . teacher of refusing to sign withdrawals, and then flunking the students who requested to withdraw, is not expressing an opinion. It is accusing him of a cruel act.”

— Joseph Pierini
Epstein’s Attorney

Ex-dean wins suit against student paper

Hawaii — A former dean at the University of Hawaii-Hilo has won a libel suit against the university’s student newspaper, the July 2, 1988, issue of Editor & Publisher reports.

Professor David Purcell was awarded $10,414 in damages for a story which allegedly contained false information about a confrontation involving Purcell and a female student.

State attorneys who defended the Vulcan News said the article’s author was guilty of errors of judgement but not of reckless disregard for the truth.

“Accusing a teacher of refusing to sign withdrawals and then flunking the students who requested to withdraw is not expressing an opinion. It is accusing him of a cruel act.”

— Joseph Pierini
Epstein’s Attorney
At the college level, censorship is often subtle. Administrators may try to cut funds or even shut down the paper altogether. What legal remedies do college students have?

Some college journalists may be assuming censorship is one subject they can avoid learning about. After all, the Supreme Court expressly stated that its Hazelwood decision applied only to high school students. However, as many collegians are unhappily discovering, university administrators are employing other means, more creeping and creative than direct censorship, to control what goes into their student publications—and they may be relying on Hazelwood to do so. Some schools are attempting to take control of publications where student editors previously made all content decisions, by making the publications part of a school-supervised laboratory class. At other schools, even where the publication is already produced in a class for credit, an administrator may impose a new policy allowing a school official or faculty member to censor the publication before it goes to press. This change is sometimes attempted by a restructuring of the publications procedure—for example, placing a formerly independent newspaper under the control of a school public relations officer. Whatever the method, the intent is the same: giving the school the power to withhold certain stories from publication, purely on the basis of their content.

These administrative actions leave student staffers disheartened—but they need not cave in. The case law leading up to Hazelwood has consistently sided in favor of college press freedom, and indicates this indirect censorship will not be allowed.

Court decisions state that where an open forum for exchange of ideas exists, the state, including a public college or university, may not censor it. High school administrators were allowed to censor in Hazelwood because the Supreme Court found the paper was not an open forum. This finding was based on the Hazelwood Spectrum's past operating practice and the school's policy. The paper's contents had always been subject to approval by an adviser, and the school principal had traditionally been given a chance for prior review. In addition, the school's policy did not specifically designate the Spectrum as a forum. Had the paper been considered a forum, school officials would have been prohibited from exercising all but the most limited content controls.

This line of reasoning has been referred to as "forum theory." The Supreme Court, in Perry Education Association v. Perry Local Educators' Association, found three types of forums: 1) traditional forums, those places such as public streets and parks, which "by long tradition or by government fiat have been devoted to assembly and debate;" 2) designated or limited forums, meaning a governmental body has allowed its property to exist as such; and 3) nonpublic forums (such as a military base or jail). Most courts have implied that school-sponsored student publications at public colleges (and in public high schools as well, for that matter) are to be considered designated forums for student use.

The changing forum

The interpretation of what constitutes a designated public forum, however, is changing. Justice Sandra Day O'Connor, in Cornelius v. NAACP, wrote that a designated forum could be created only when the governmental body intended to do so. This view could contradict a long history of cases where courts discerned designated forums wherever a government had simply not interfered with the forum's operations; no express statement granting the property a forum's freedoms was required. If courts adhere strictly to this intent requirement, as O'Connor's colleague Justice Byron White did in Hazelwood, an obstacle to free speech rights for student publications could be created. Specific written or verbal designation of the publication as a forum may
not be necessary, though, for a court to find evidence of intent. As the Court noted in Hazelwood, either the "policy or practice" of a school district will affect the determination of whether a student publication is a forum.7

What kind of practice, according to the courts, made a school publication a forum? Zucker v. Panitz,8 a 1969 U.S. district court case dealing with a high school paper, noted these factors: the paper was sold to students throughout the school, rather than distributed just to members of a journalism class; it contained letters to the editor, showing the pages were open to comment by members of the public; and past articles had dealt with controversial issues such as the war in Vietnam and students' opinions of national political candidates. In a college case, Trujillo v. Love,9 a paper was found to be "a forum for free expression"10 primarily because the college had previously exercised no control, direct or indirect, over its content.

Conflicting decisions

The lower federal courts that have entered the fray have produced some conflicting decisions. In Student Coalition for Peace v. Lower Merion School District Board of School Directors,11 the U.S. Court of Appeals for the Third Circuit found no intent on a public school's behalf to make an athletic field a designated forum. The court reached this determination even though other community groups regularly used it for recreational purposes with no permission needed.

A different circuit court, though, while claiming to adhere to O'Connor's formula, put the practice rules into play. In San Diego Committee Against Registration and the Draft (CARD) v. Governing Board of Grossmont Union High School District,12 the U.S. Court of Appeals for the Ninth Circuit found an intent on the part of the public schools' board to create the district's school newspapers as limited public forums.13 However, the court located this intent not in any manifest statement but in the papers' past practice. The papers had previously carried advertisements promoting military service, which the court found an intrinsically political and controversial topic. Therefore, the papers could not be prevented from printing ads opposing the draft.

Past precedent, and the greater leeway courts have historically given to older students, indicates college publications are more likely than their high school counterparts to be called limited public forums. College students are perceived as being more mature than high schoolers, possessing more responsibility as journalists and being better-prepared as an audience to handle reading about controversial topics like sex and radical politics. In addition, going to college is a voluntary activity; by enrolling, students have chosen to place themselves in a free and open atmosphere — where students' hands are no longer held by school officials, it would be reckless for courts to permit their eyes to be shielded to ideas as they walk through academia. In one case, a court learned a college had manifested an intent to encourage free academic discourse on campus.14 This type of intent may even be found to be inherent in all colleges. "The university setting of college-age students being exposed to a wide range of intellectual experiences creates a relatively mature marketplace for the exchange of ideas so that the free speech clause of the First Amendment, with its underlying assumption that there is positive social value in an open forum, seems particularly appropriate."15

Content control

On this basis courts have halted college administrators' attempts to lasso feisty publications. Officials cannot prevent student journalists at official college newspapers from publishing such things as a four-letter reference to the university president,16 a photograph of a burning American flag,17 an editorial calling for racial segregation of the university,18 criticism of the governor and state legislature,19 an article by a non-student containing profanity,20 and a scathing attack on the Catholic church.21

Content censorship also may not be accomplished through administrators' ouster of student editors22 or withholding of operating funds.23 Nor may a former student-run newspaper be made subject to prior restraint by a university-appointed faculty adviser.24

Even though a university channels money to a student newspaper, the university administrator or faculty has no right to exercise content-related control over the paper's publication. (This principle was upheld on the high school level in Gambino v. Fairfax County School Board.25) For instance, in 1983, the U.S. Court of Appeals for the Eighth
The Supreme Court said the state is not "required to indefinitely retain the open character" of a limited public forum. Would this allow a school that grows uncomfortable with its hard-hitting student newspaper to do away with the forum?

Circuit said the University of Minnesota could not legally allow individual students to reclaim activity fees that supported the Minnesota Daily. The refund plan was unlawful because it arose from administrators' displeasure at the content of a "Humor Issue." The court made this finding based upon school officials' testimony and their failure to make a similar refund offer at the school's other three campuses.

Unfettered forever

This wave of precedent signals a certain level of comfort for college journalists (and high schoolers on forum publications) confronted with any kind of editorial interference by a school official. Indirect censorship, where a format change sets up a system of prior review and restraint by school faculty or administrators, logically would no more be allowed than a direct prohibition on all student expression.

However, the Supreme Court said in Perry that the state is not "required to indefinitely retain the open character" of a limited public forum. Would this allow a school that grows increasingly uncomfortable with its hard-hitting student newspaper to do away with the "open character" of the publication in order to silence its voice? Every student press case decided by the courts suggests not.

The case most similar to this situation is Trujillo v. Love. There, the administration of Southern Colorado State College took over the financing of the student-run newspaper, the Arrow, previously funded by student activity fees. The school's president then placed the newspaper under the supervision of the school's mass communications department. The object, the school president said, was to make the Arrow "an instructional tool." In the first issue that fall, the paper's adviser censored a cartoon lampooning the college president. Student staffers were then told that any "controversial" material would have to be approved before it would be published. When managing editor Dorothy Trujillo submitted an editorial she had written questioning the handling of the college's parking problem, the adviser demanded the piece be revised. He then suspended Trujillo.

A federal district court said the school had acted improperly. Prior to the funding change, the Arrow had served as a forum for student expression, the
court said. Because the school did not effectively communicate an intent to alter the nature of the publication, the court said it was still a forum. "The state is not necessarily the unlettered master of all it creates. Having established a particular forum for expression, officials may not then place limitations upon the use of that forum which interfere with protected speech and are not unjustified by an overriding state interest."29

The Trujillo court said it did not have to decide whether the school could have done away with the forum if it had attempted to do so in a different way.

The court noted, however, that it found no evidence that the administration had intended to change the forum in order to censor.

The upshot is that once a forum is found to exist, under whatever test, it cannot be shackled. As one court put it, "It may well be that a college need not establish a campus newspaper, or, if a paper has been established, the college may permanently discontinue publication for reasons wholly unrelated to the First Amendment. But if a college has a student newspaper, its publication cannot be suppressed because the college officials dislike its editorial comment."30

Footnotes

2 The Supreme Court explicitly avoided applying Hazelwood to college students. "We need not now decide whether the same degree of deference [to content controls by school officials] is appropriate with respect to school-sponsored expressive activities at the college and university level." Id. at 571 n.7.
4 Id. at 45.
7 Hazelwood, 108 S. Ct. at 568, citing Perry.
10 Id. at 1271.
11 776 F.2d 431 (3rd Cir. 1985). The Third Circuit includes Delaware, New Jersey, Pennsylvania and the Virgin Islands.
13 Id. at 1476.

20 Antonelli.
22 Schiltz v. Williams, 519 F.2d 257 (1975).
23 Stanley v. McGrath, 719 F.2d 279 (8th Cir. 1983).
24 Trujillo.
26 Stanley.
27 Perry, 460 U.S. at 46.
28 Trujillo.
29 Id. at 1270. Accord Antonelli, 308 F. Supp. at 1337.
30 Joyner, 477 F.2d at 460.
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