

student press law center

report

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Hammering Away at *Hazelwood*

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First National Survey Since *Hazelwood* Says Censorship Now a "Fact of Life"

For the first time since the Supreme Court's 1988 decision in *Hazelwood School District v. Kuhlmeier*, a nationwide survey of high school principals and student newspaper advisers has shown that censorship of student newspapers "seems to be an accepted fact of life at high schools across the United States."

J. William Click, professor and chair of the Department of Mass Communication at Winthrop College in South Carolina, and Lillian Lodge Kopenhaver, professor and associate director of the School of Journalism and Mass Communication at Florida International University, administered the 41-question survey to 531 student newspaper advisers and an equal number of principals during the spring and summer of 1989. Kopenhaver is past-president and board member of the Student Press Law Center. The results were presented before the Secondary Education Division of the Association for Education in Journalism and Mass Communication at its national convention in August.

The results showed that only a minority of respondents felt that the *Hazelwood* decision changed the status of their student newspaper; eight percent of principals and 17 percent of advisers said that it had. Eight percent of principals and 12 percent of advisers said they had experienced censorship problems in the year preceding the survey.

Click and Kopenhaver said their study suggests that high school newspapers have been experiencing a high level of censorship, and that the *Hazelwood* decision has increased that level slightly. Fueling this opinion is the fact that many principals or advisers that responded to the questionnaire did not understand *Hazelwood*. For example, more than half of the principals and more than one-third of the advisers disagreed with the statement: "If student editors in written policy or practice have been granted final

Calls to SPLC Increase

Censorship of student publications has increased dramatically in the 2 years since the *Hazelwood* decision, legal requests to the SPLC indicate.

In 1988, the SPLC received 548 requests from student journalists and their advisers asking for legal advice and assistance. In 1989, the number had increased to 615, up 12 percent. SPLC Executive Director Mark Goodman estimates that 80 percent of the calls received each year relate to actual or threatened censorship.

Early indicators suggest even more censorship incidents will be reported this year. In the first 6 months of 1990, legal calls to the SPLC totaled 507, up over 94 percent from the same period in 1989. ■

authority over the newspaper's content, they still have the right to that free expression after the *Hazelwood* decision." As stated in *Hazelwood*, only those publications that have not been opened as public forums for students properly fall under the ruling's mandate.

Although it is apparent to Click and Kopenhaver that strict control is being placed on publications, they state that they are more concerned with the fact that many advisers agree with principals on statements that indicate censorship. Even when the groups disagree, advisers do not overwhelmingly support a free student press. Only 44 percent of advisers agreed that once students have been trained in press responsibility they should have control over all editorial content. Also, only 35 percent of advisers disagreed that the faculty adviser is ultimately responsible for the newspaper content rather than the student editors. The authors see these reactions as proof that "the repression of the

exercise of student expression is rather widespread at all levels."

The study also shows that advisers felt strongly in a number of areas. Sixty-seven percent of advisers surveyed agreed that the student newspaper should be allowed to print a story that it can prove is true even if the printing will hurt the school's reputation. Seventy-seven percent of the advisers disagreed that school administrators should not have the right to prohibit publication of articles they deem harmful, even though such articles may not be legally libelous, obscene or disruptive. Principals' responses to these questions differed significantly.

There were some areas that showed principals in support of the student press. A clear majority (81 percent) of principals disagreed that the student newspaper should limit its reporting to school-related issues, 74 percent of principals disagreed that high school students are too immature to practice responsibly freedom of the press and 84 percent of principals disagreed that controversial issues have no place in a student newspaper.

While some principals affirmed their faith in their newspaper advisers, a large number asserted their rights of control. A Minnesota public school principal stated in the open-ended portion of the survey, "Censorship and control are part of the educational experience — that is what we (public and private education) have been doing over the past 100 years."

Some advisers stated that a new breed of student journalist is emerging that is not as concerned with controversial issues. A Nebraska public school newspaper adviser stated, "The students that I am getting these days are not nearly as aggressive as in years gone by. This year in particular, we tend to be more concerned with what we can and cannot do with a Macintosh than what we should be covering in the newspaper."

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Colorado Passes Free Press Law

Teachers Enlist Statewide Support to Assure Bill's Approval

COLORADO — After spearheading an eight-month campaign, teachers Fran Henry and Marta Hedde can sit back and rest knowing that Colorado student journalists are now protected by the state's new student freedom of expression law.

Colorado joins California, Massachusetts and Iowa in providing legislative protections for students' free press rights. The new law, which was signed by Gov. Roy Romer on June 7, guarantees student free expression unless that expression is considered libelous, obscene, incites students to break the law or creates a substantial threat of disruption to the educational process.

Henry and Hedde, high school journalism teachers and publication advisers, wanted to see the state create legislation that would curb the censorship that resulted from the Supreme Court's decision in *Hazelwood School District v. Kuhlmeier*. In that decision, the Court gave broad powers to public school administrators to censor some school-sponsored publications. The case was initiated when a high school principal in suburban St. Louis, Mo., deleted articles from a student newspaper that dealt with teenage pregnancy and the impact of divorce on students.

Henry and Hedde began their campaign in October 1989 with fellow board

members of the Colorado High School Press Association. The organization soon secured the commitment of Sen. Pat Pascoe, D-Denver, to sponsor legislation in the Senate and Rep. Jeanne Adkins, R-Douglas County, to sponsor in the House. The Colorado Language Arts Society was also involved in drafting and lobbying for the bill.

"It was apparent early on that we would need Republican support. After all, Colorado is a pretty conservative state," said Hedde.

After a call was made to Hedde's mother, a member of the Colorado Federation of Republican Women, a small network of Republican stalwarts decided to get involved.

In February, the bill was passed in the Senate with a vote of 20-15 under Pascoe's leadership, but opposition was waiting in the House.

The Colorado Association of School Boards and the Colorado Association of School Executives were prepared to defeat the bill with their testimony. A letter sent to the House of Representatives summarized their feelings.

"This legislation creates an open forum for student expression — at taxpayers expense. The school district will have virtually no control over the content of the school newspaper, since a

student editor is given primary responsibility for the news, editorial and advertising content," said the letter.

Sen. Ray Powers, R-Colorado Springs, also attacked the measure. In a Colorado newspaper guest editorial, he denounced the bill as "going too far" in relation to what students would be allowed to write. He also pointed out that Colorado's two largest daily newspapers, *The Denver Post* and the *Rocky Mountain News*, were in opposition to the bill. Reasons given were that student journalists would not learn about the world of journalism in a publisher-free environment. The *Rocky Mountain News*, in an editorial statement, said that "the inmates should probably not have so much say on who runs the asylum."

More support for the bill surfaced with formal resolutions passed by the Colorado Language Arts Society, and the Colorado High School Press Association. National organizations supporting the bill were the Journalism Education Association, Quill and Scroll, the National Council of Teachers of English and the Student Press Law Center.

Proponents of the bill argued that student journalists will not be able to grow and learn to be responsible citizens if they are subjected to censorship and

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How They Did It

Fran Henry of the Colorado High School Press Association said several factors were key to their success:

1) Strong bipartisan sponsorship

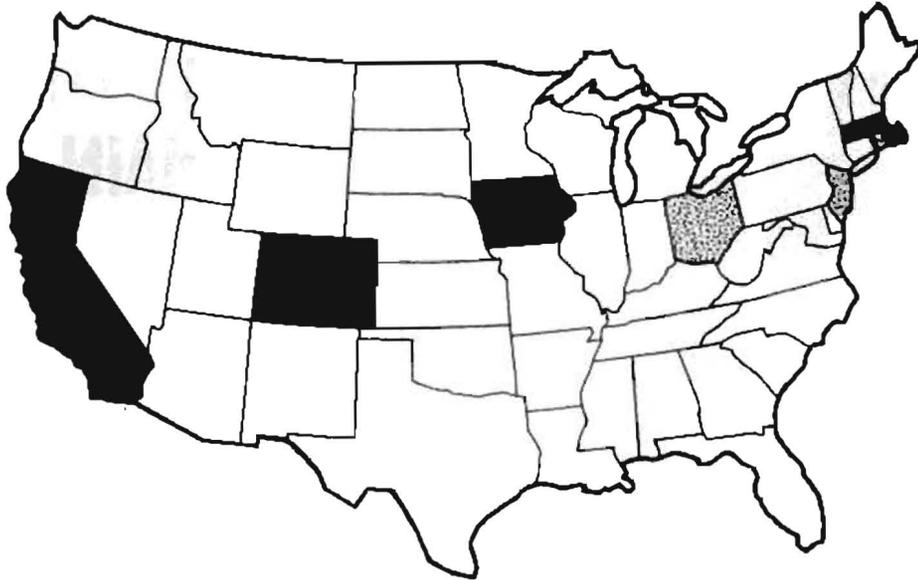
for the bill. Student press freedom is often thought of as a "liberal" issue and thus one more likely to be supported by Democrats. Henry said that having a Republican co-sponsor and the active support of the Colorado Federation of Republican Women demonstrated that the bill was important to members of both parties.

2) A good organization for spreading the work around: Henry said the CHSPA board had two people actively involved in coordinating the effort. They divided up lists of legislators and gave each board member a portion to call and

lobby for the bill. At journalism workshops around the state, they approached advisers individually and asked them to get involved.

3) An intensive campaign to support the bill. Henry said CHSPA went after support from other education organizations and sent a half dozen separate mailings to every legislator, one of which included copies of high school newspapers from around the state. "You can't get sponsors for the bill and then sit back and expect them to get it passed themselves," said Henry. ■

FREE PRESS LEGISLATION



Shaded states are still considering free press legislation while the darkened states have already passed such laws.

N.J., Ohio, R.I. Face Hurdles in Battles for Similar Laws

As Colorado is being lauded for joining the crusade supporting student free expression, other state legislators are having a tough time rallying support for similar bills.

In the New Jersey Legislature, Rep. Anthony Impreveduto, D-Hudson, is waiting patiently as AB 557 still sits in the Assembly Education Committee. According to a legislative assistant to Impreveduto, New Jersey's budget negotiations are forcing all other matters to be put on hold.

The New Jersey Education Association (NJEA), the state's largest teachers' union, stated that they have "serious questions and concerns" about the bill.

In a letter written to Impreveduto, Associate Director for Government Relations for the NJEA William Lewis said that the NJEA "supports free expression for students but not at the expense of other freedoms."

Things do not look good for the student free expression bill in Ohio this year. According to Grace Moran, legislative assistant to Rep. Judy Sheerer, D-Shaker Heights, HB 649 has been referred to the House Subcommittee on Education where its chances of passing look slim.

"The committee has a lot of old school

board members that are not too supportive of [the freedom of expression bill]," said Moran. She added that Sheerer has a good reputation in the House which could help the bill's chances.

Ohio's House of Representatives meets again in November.

Rhode Island student journalists were defeated again as the third attempt to pass a student free expression bill in the Ocean State lost by a large margin on the Senate floor this spring.

"Unfortunately, there are just a host of other issues caught up in this discussion," said Sen. Sean Coffey, D-Providence, the bill's sponsor. Coffey cited education lobbyists as the bill's major opponents and said his proposed legislation lost by nearly a 3-1 margin.

Supporters of the legislation included students, the Providence Chapter of the American Civil Liberties Union and the *Providence Journal-Bulletin*.

"Until and unless students make this an issue locally, I don't think this legislation will pass," Coffey said. "These old attitudes [toward high school discipline] die hard, in fact, they don't seem to die at all."

Coffey said he had no plans to reintroduce the bill. ■

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prior review by school administrators. In support of the bill, Pascoe cited the other duties that are often asked of students in a free society.

"At eighteen we will ask these young people to vote, perhaps die, for their country. Yet we have denied them the jewel in liberty's crown - freedom of speech," wrote Pascoe in a newspaper guest editorial.

Student journalists won the fight.

When asked why she thought the bill was successful, Henry lauded the efforts of the many people that offered to help.

"We had so many letters that were sent to legislators right at the last minute, which really helped. I think the students who testified [former high school editors Kristi Rose and Tina Battista who testified before the House and Senate Judiciary Committees] also helped change some minds about supporting the bill," said Henry.

Henry said that while some school publications have not experienced censorship, the law offers protection to all of Colorado's student journalists.

"In those districts where administrators want to control their student newspapers or use them as public relations vehicles, the law will make a big difference. Under Hazelwood, students and advisers often had to guess about what a particular administrator might find objectionable. Under Colorado law, now the rules are clear," said Henry. ■



When the Postman Bills Twice

The U.S. Postal Service has begun to crack down on high school papers, mailed as inserts in commercial papers, which do not meet postal regulations. Here's what high school papers need to know so they can continue to enjoy the same mailing privileges.

When the U.S. Postal Service refused to deliver an issue of the *Urbandale News*, a small paper in a suburb of Des Moines, Iowa, the paper's staff was forced to take to the streets and hand-deliver it. One of the reasons for the postal service's action was that the *Urbandale High School Jayhawker*, a student newspaper included inside the commercial paper, looked too much like an "independent publication," in violation of second-class postal regulations.

According to Scott Smith, adviser to the *Jayhawker*, the student pages had their own volume number and publication date, two of the things objected to by the postal service, for the over 25 years they had been published in the local paper. Smith says that in all that time, the postal service had never said there were any problems.

"All of a sudden it was a big issue," Smith said.

Why the sudden interest in high school papers and their volume numbers? According to Kevin Brown, owner and publisher of the *Urbandale News*, "the postal service is simply looking for ways to make money." He says the problems started when the *Des Moines Register*, the largest newspaper in Iowa, began publishing another publication, *The Neighbor*, and distributed it both as a supplement to the *Register* and as an independent paper. However, the *Register* continued to mail both out under the newspaper's single, second-class postal permit, rather than paying a higher rate for the separate publication. Regularly distributed newspapers and other periodicals can obtain such a permit and pay a reduced postal rate as long as they are single publications.

As a result of the *Register's* action, other papers followed suit. This situation, Brown claims, attracted the atten-

LEGAL ANALYSIS

tion of the postal service officials.

"Then they started looking at all second-class publications, and at how our second-class publication looked." As for the refusal to deliver his newspaper, Brown says, "I think they just wanted to make our paper an example."

Bill Monroe, executive director of the Iowa Newspaper Association, claims it was all just happenstance. "The past two years there have been a lot of new [postal] regulations, but not much with newspapers; so [the newspapers] were given more attention."

Bob Brinkmann, general counsel for the National Newspaper Association (NNA), says about the postal service, "They're a little anal."

"If high school newspapers were forced to purchase their own second-class postage [permits] it would, in effect, kill them."

Mary Arnold
Iowa High School Press Assoc.

On the postal service end, Leo Raymond, Senior Classification Support Specialist, claims the postal service only discovered the violations because the Iowa Newspaper Association contacted the National Newspaper Association about possible problems, and the NNA then contacted the postal service. "There aren't enough eyes in our heads to keep track of everything we do," Raymond says.

Whatever the reason, the impact is felt by the host and high school papers. About 70 percent of Iowa's high schools publish their student paper as part of the local commercial paper, according to Mary Arnold, executive secretary of the Iowa High School Press Association. And about half of these, she says, probably violated the current guidelines.

"If high school newspapers were forced to purchase their own second-class postage [permits]," Arnold warns, "it would, in effect, kill them."

The UHS *Jayhawker* was told it could no longer print its own volume number, page numbers, publication date or say

that it was "published periodically during the school year by the advanced journalism class." For Smith and his students, the changes they were forced to make have resulted in a feeling of lost independence.

"The editor was upset," Smith says. "We felt forced to give up certain privileges by making the changes. I think the main difference is that identity we had of being a paper by students for students."

Smith considered trying to put out the paper independently, but decided against it.

"We decided it was preferable to take somewhat of a backseat in exchange for increased visibility. To be part of and read by the whole community instead of just the high school gives our students much more validity in what they do." He also feels the community benefits more this way, as well. "In small communities like ours, the high school newspaper is one of the major interests of the community."

Still, he worries about the effects of the changes. "I have some increased anxiety around the publication," Smith admits. "I don't want someone coming in and saying, 'You can do this, you can't do that.'" In particular, he worries about not being able to tell readers that the *Jayhawker* is written and produced solely by the high school students, and not the *Urbandale News*. Host papers have always been legally responsible for anything printed in a high school section or insert, says NNA's Brinkmann, but Smith is worried about the public's perception of who is responsible for what.

"Kevin [Brown] hasn't changed the way he deals with us at all," Smith says, but "he shouldn't be penalized for what we say. I feel a little bit more concerned about what the repercussions might be if we do print anything controversial."

Compounding the problem is the fact that the specific guidelines for what is and is not allowed in the high school section under postal requirements are not entirely clear.

Monroe of the Iowa Newspaper Association agrees.

"There's been a lot of miscommunication over the regulations. People can't

agree on what they mean."

According to an article by Raymond in the April 1990 issue of *Classification Currents Communicator*, a publication of the U.S. Postal Service, high school news can be part of a commercial paper "so long as the page is not designed to be (or appears to be) an independent publication."

Entitled "Can School News be Bad News for Your Newspaper?" the article says the high school pages "cannot bear a volume and issue number, and should not bear a frequency of issue. Further, if a date or title is printed in the dateline, it must be the date of issue or the title of the district.

Brinkmann gives the following list: (1) no separate price, (2) no separate volume or issue number, (3) the name of the host paper at the top of the page.

Nevertheless, these minor differences in interpretation of the guidelines do not seem to have caused many problems.

"I have not heard of a call [on this issue] since February," Monroe says. Moreover, the SPLC has received no reports of problems in any state other than Iowa.

"The school news, like any other page or section, must be an integral of the host second-class publication."

Leo Raymond
U.S. Postal Service

In any case, the postal service promises that in the future, all mailable newspapers will be delivered. If a paper violates regulations because of an included student publication, it will simply be charged the higher rate.

"We're not trying to put anybody out of business," Raymond says.

If students and advisers have questions about how to produce their paper in compliance with second-class postage regulations, they should discuss the issue with the host newspaper publisher or contact the Student Press Law Center. ■

CAMPUS CRIME



Student Journalists Challenge Buckley

UNC Chancellor Gives Daily Tar Heel Campus Police Reports

NORTH CAROLINA— After months of controversy, Chancellor Paul Hardin has decided to give the student newspaper, the *Daily Tar Heel*, access to daily unedited campus police reports.

The decision followed a letter written to Hardin by legal counsel from the North Carolina Press Association in February requesting that a meeting be held to discuss the possibilities of opening the crime reports to the campus newspaper. The staff of the *Tar Heel* had initially requested the information in November 1989. (See Spring 1990 SPLC Report.)

"He seemed fairly supportive of our request to get the reports," said 1990-91 *Tar Heel* co-editor Lisa Thompson. "[His] main concern was that he didn't release too much information that might affect Buckley, [The Family Education Rights and Privacy Act of 1974, commonly referred to as the Buckley Amendment]." The Buckley Amendment as-

sure access by parents and students to student education records and prohibits schools from revealing student education records to others. Many schools interpret "education records" to include campus police reports, although no court has ever upheld such an interpretation.

After members of the *Tar Heel* staff met with Dean of Student Affairs Donald Boulton in April, he sent a letter to Hardin recommending that the crime reports be given to the *Tar Heel*.

On June 5, Hardin sent a letter to the *Tar Heel* releasing the authorization that had prevented campus police from giving unedited crime information to the paper.

"Effective immediately, it is the policy of the University of North Carolina at Chapel Hill that University Police incident reports will be made public," stated Hardin in the letter to *Tar Heel* general manager Kevin Schwartz.

"I like openness and sharing of infor-

mation when I can. We simply decided that we weren't in violation of Buckley by releasing the information," stated Hardin.

The letter also states that, in following the practice of other law enforcement agencies in the area, the names and addresses of rape or assault victims will not be included on incident reports. The reports will also not include the names of addresses of witnesses where doing so might endanger the witness or jeopardize the success of an ongoing investigation. Hardin stated that the university police will follow the community standard in these respects.

"We are very pleased about the decision and feel very optimistic about the future of the *Tar Heel*. We believe that [the decision] will benefit not only the campus community but also the coverage in our newspaper," said *Tar Heel* co-editor Thompson. ■

CAMPUS CRIME

So. Ark. Editors Sue for Crime Reports

Paper Says University Wants to Cover Up Serious Campus Crimes

ARKANSAS — Two editors of the weekly paper at Southern Arkansas University have filed suit against their school for refusing to release incident reports filed by campus police.

Bray editor-in-chief Rosa Jones said she filed suit because the SAU Department of Public Safety was not willing to provide the paper with enough information to warn students about campus crime.

"People would say, 'Did you hear about the rape on campus?' Then we would call the Department of Public Safety and they would say 'What rape?' We weren't able to do our job right and they were just covering stuff up," she said.

University officials maintain that release of the incident reports is prohibited by the federal Family Educational Rights and Privacy Act, known as the Buckley Amendment, passed by Congress in 1974.

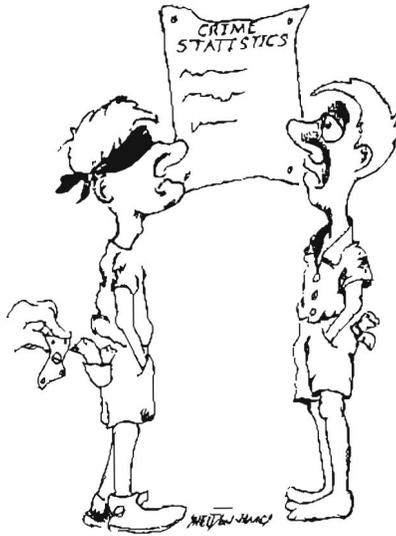
The suit, filed on March 1, charges the school with violating the Arkansas Freedom of Information Act (FOIA) and failing to uphold publication guidelines resulting from a 1981 court settlement.

In August 1989, Arkansas Attorney General Steve Clark responded to the possible conflict between the federal Buckley Amendment and the Arkansas FOIA. Clark referred the question to the Federal Department of Education.

"He dealt with a difficult question in an easy manner. He gave it to someone else," said David Guthrie, the attorney representing *The Bray* editors. "I consider the Department of Education to be an interested party."

Jones and managing editor Shea Wilson requested incident reports from the university in the spring of 1989 and again in December. Both requests were denied.

Jones said the university currently gives the paper information about campus crimes by issuing a list of crimes



committed on campus every two weeks. There is no guarantee that the list is complete and the list does not provide any details, Jones said.

"We are not being given any information on serious crimes. They are not even giving us enough information to say [the crimes] happened," said Jones.

The Bray tried to work out an agreement with school officials before filing suit. Under their proposal the paper would agree not to run the names of any student mentioned in campus crime

reports unless the student gave permission by signing a waiver. The school rejected their proposal.

The suit also charges the school with violating publication guidelines that stemmed from a 1981 court settlement. In 1978 two editors of *The Bray* filed suit in federal court after a university official censored an article by physically removing it from the paper. In 1981 the case was resolved when both sides agreed on publication guidelines which stated that student journalists would be allowed to cover "any and all newsworthy events."

Guthrie said he raised the issue of the 1981 settlement because the Buckley Amendment provides an exception for the release of information by court order.

According to the guidelines the school cannot prohibit the publication of material merely because it contains "unpopular, critical or controversial ideas."

Guthrie maintains that campus crime reports are newsworthy information and that the school, according to the guidelines, should not be allowed to bar from publication.

Guthrie said he expects the case will come to trial in October or November. ■

SPJ Pledges \$5000 to Editor in Mo. Campus Crime Suit

MISSOURI — The Society of Professional Journalists Legal Defense Fund has committed \$5,000 to assist the editor of Southwest Missouri State University's *Daily Standard* in her battle to access university crime records.

Traci Bauer, *The Standard* editor in chief, filed suit in federal court against university officials in January. She is asking for access to crime reports and \$5,000 in damages and attorney fees.

Bauer filed the suit after being denied access to files concerning an alleged

rape on campus. She claims the university is obligated to release the reports under Missouri's open records law.

The university maintains it cannot release the files because the disclosure is prohibited by the Family Educational Rights and Privacy Act, commonly termed the Buckley Amendment.

A university motion to dismiss the case was rejected by Judge Russell Clark on May 30. The case is expected to go to trial this the fall. ■

CAMPUS CRIME

Campus Crime Statistics Bill Passes House

House Vote Unanimous, Supporters Expect Senate Approval Soon

WASHINGTON, D.C. — Sponsors of federal legislation that would require colleges to publicly disclose crime statistics and student-athlete graduation rates compromised the name of their bill, but nothing else as the House passed the bill by a unanimous vote on June 5.

The Student Right to Know and Campus Security Act, H.R. 1454, is a combination of three separate bills, all of which deal with access to information about colleges and universities. The previous bills encompassed in the legislation include The Student Athlete Right to Know Act, The Crime Awareness and Campus Security Act and The Campus Crime Victim Protection Act.

Supporters say H.B. 1454 will provide a way for prospective students to obtain information which can help them with their college decisions.

The bill could also help student newspapers report on campus crime. As currently worded, the bill would require that colleges and universities receiving federal funds file "timely reports" on major crimes. "Such reports shall be distributed through appropriate publications and media to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences," the bill reads.

The bill would also require schools to report crime statistics on an annual basis and to make these reports available to prospective students. The bill's reporting requirements would begin on July 1, 1992.

The Crime Victims Protection Act section would give colleges and universities the right to disclose the results of campus disciplinary proceedings against

students accused of crimes to the victims of those crimes. Some schools currently withhold this information, by citing potential conflicts with the Family Educational Rights and Privacy Act of 1974, known as the Buckley Amendment. The question of whether or not schools could lose federal funding by disclosing the results of campus disciplinary hearings has never been raised in court.

The Student Athlete Right to Know section of the bill would require colleges to publicly compile overall graduation rates by race and sex and the graduation rates of scholarship athletes by race, sex and sport. Colleges would also be required to provide graduation rate statistics to recruits.

The fate of the bill currently rests with the Senate. House supporters are opti-

Commercial Press Joins Campus Crime Crusade

Courier-Journal Files Lawsuit to Get Murray State Crime Records

KENTUCKY — The commercial press has joined the fight to force colleges to release information about crime on campus.

The *Louisville Courier-Journal* filed suit in April in state court against Murray State University and the school's recordkeeper after the university refused to release records kept by the university's public safety office.

The newspaper contends that the records are public under the state Open Records Law and not exempt from disclosure by the Buckley Amendment, formally known as the Family Educational Rights and Privacy Act.

Courier-Journal reporter Fran Ellers requested records from the university's public safety office in December 1989 and January 1990. The records requested pertained to a disturbance at a university residence hall and complaints about mail tampering.

Ellers also requested complaints filed

with the public safety office about other disturbances at the residence hall during the fall semester of 1989. In addition, Ellers asked to inspect and copy five specific reports maintained by the public safety office regarding incidents on campus.

Anita Lawson, custodian of the university's records, denied each of the newspaper's requests in January. Lawson cited the Buckley Amendment in support of the university's decision.

Lawson stated that the university risked losing federal funding if it released student records covered by the Buckley Amendment. Lawson also stated that the university was not required to release the records under state law because Ellers' requests was not specific enough and would impose an undue burden on the university.

The newspaper appealed the university's decision to the state attorney general. In March, the attorney

general stated that Ellers should have access to the five documents kept by the public safety office, as long as information that identified students was deleted.

"[T]he request for those specified items was particular, and narrow in scope, thus making redaction or masking of confidential information feasible without unreasonable burden upon the agency," stated the attorney general's opinion.

The attorney general stated that the university otherwise acted in accord with the Buckley Amendment in denying the newspaper access to the records.

In its lawsuit the *Courier-Journal* asks that the court declare that neither the Buckley Amendment nor any other law bars the release of the records. The newspaper seeks an order compelling the university to produce the undisclosed records. ■

CAMPUS CRIME

mistic that they can iron out differences between their bill and similar Senate legislation, so it can be given to the president and signed into law.

"What is expected to happen is that the House bill will be added to a Senate bill," said Karen Baker, an aid to Rep. Bill Goodling, R-Pa, who introduced the campus crime bill.

The drive to make college crime statistics public has been led by Howard and Connie Clery, whose daughter was raped and murdered in her Lehigh University dormroom in 1986. Following their daughter's death, the Clery's founded an advocacy group, Security on Campus, which has lobbied for the improvement of campus security measures and the public disclosure of crime statistics.

"This legislation is our ultimate goal," said Lynda Getchins, Security on Campus representative. "It is a very good, very strong bill."

Security on Campus hopes that forcing schools to reveal crime statistics will lead them to take a more active role in improving campus security, Getchins said.

The major opponents of campus crime legislation have been college and university lobbyists who oppose the cost of recording the information and fear that unless common standards are used to compile college crime statistics, prospective students may be misled in their college choices.

Rep. Edolphus Townes, D-N.Y., has been a major supporter of the Student Athlete Right to Know Act, which was incorporated into the campus crime bill.

Townes said he believes making student athlete graduation rates public information, available to recruits, would force schools to emphasize the role of academics over athletics or risk losing an edge in recruiting wars for top prospects.

"We live in a world of misplaced priorities," Townes said. "Forty percent of the schools do not graduate one quarter of the basketball team. Somewhere along the way the goal of higher

education has been lost."

Supporters of H.B. 1454 drew analogies between higher education and the airline industry. Because both receive federal funding, they argued, the government should hold them accountable to consumers. If the government forces the airlines to publicly report consumer rights information concerning lost lug-

gage and on-time rates, supporters argued, they should also require colleges to provide prospective students with the graduation rates of student athletes and campus crime statistics.

"Surely education is more important than a piece of lost luggage," said Townes. ■

Three More States Enact Campus Crime Laws

Three governors signed campus crime statistics bills into law this summer, bringing the national total of states with bills to nine.

In Virginia, Gov. Douglas Wilder signed Senate bill 425 into law on April 6. The bill, which requires public institutions of higher education release crime statistics to the public, took effect July 1. A more comprehensive campus crime statistics bill, House bill 1130, is being held over for hearing until the 1991 session.

In Washington, Gov. Booth Gardner approved legislation forcing colleges and universities to release crime statistics to the public when he signed House bill 6626. The bill is an appropriations bill for higher education to which the crime statistics reporting requirements were added.

In Delaware, Gov. Micheal Castle signed House bill 606, which covers campus crime statistics, into law on July 11.

States with campus crime legislation already on the books include, Connecticut, Florida, Louisiana, Pennsylvania, Tennessee and Wisconsin.

Security on Campus, an advocacy group that has been in the forefront of the fight for campus crime legislation, plans to continue its lobbying effort on a state-by-state basis until federal legislation is passed (see story page 10), according to Lynda Getchins, a representative of the group.

Campus crime statistics legislation is expected to be considered this fall in California, Missouri, New Jersey and New York, Getchins said. ■



I THOUGHT THIS WAS
WHERE THE POLICY
MEETING WAS
BEING HELD



Newspaper Awaits Decision On Access

NEW YORK — Staffers of the Nassau Community College *Vignette* are currently awaiting a decision by the school's Faculty-Student Association, which the paper hopes will give reporters permission to attend student government finance board meetings.

Reporters are currently allowed to attend student senate meetings, but not student government finance board meetings. The paper wants access to finance board meetings in order to follow up on the complaints of student groups, whose members have raised questions after money was shaved from their budgets in the closed meetings, said Richard Conway, adviser to the *Vignette*.

"A great deal of hard decision making is made behind closed doors at finance committee meetings," Conway said.

In the fall of 1989, Jonathan Riegel,

then-assistant news editor of the *Vignette*, solicited an advisory opinion from the New York State Committee on Open Government in hopes of resolving the access question.

The Committee on Open Government responded in March with an advisory opinion supporting the paper's right of access. In the opinion, Robert J. Freeman, executive director of the committee, concluded that both the Student Government Association (SGA) and the Faculty-Student Association (FSA) are "public bodies", which means that under New York law their meetings and those of their subcommittees, including the student government finance board, must be open to the public.

The question of access is now being debated by the FSA. At a meeting in late June, an attorney who provides council to the FSA agreed to draft a legal opin-

ion on the issue. The FSA attorney agreed with the New York State Committee on Open Government in supporting the paper's right to access finance board meetings.

But the FSA attorney also argued that any group receiving government money was a branch of government. Student government leaders have used the FSA attorney's opinion to argue that if finance committee meetings are open to the public, then the *Vignette's* editorial meetings should also be open to the public, Conway said.

Conway said the FSA will continue to discuss the issue this summer. He is optimistic that they can resolve the conflict before the next student government finance board meetings in the fall.

"What I would like to see is some sort of clarification so that come September the student government won't be trying to crash our meetings," Conway said. ■

Courts Affirm U's Right to Withhold Info.

Decisions Deny Access to Admin. Salaries, Fund-raising Reports

PENNSYLVANIA — A Pennsylvania court has upheld Penn State University's refusal to make public the salaries of certain administrative officials at the university.

The three-judge court ruled in *Roy v. Pennsylvania State University*, 568 A.2d 751 (Pa. Commw. Ct. 1990), in January that Penn State could keep the salaries confidential because the university is a "state-related institution," not a state agency.

Three Penn State students had sought release of the salary information in the case. An appeal of the commonwealth court decision has not been made yet.

The students sought the salary information under Pennsylvania's Right to Know Act, which provides that every record of a state agency shall be open for examination by any citizen of that state.

The Penn State students argued that the university was a state agency because it was created by the commonwealth, received funding from the commonwealth and has been held to be a state actor by the federal courts.

The commonwealth court relied on the Pennsylvania Supreme Court's 1972 decision in *Mooney v. Temple Univer-*

sity Board of Trustees to uphold the university's efforts to keep the salary information confidential.

In *Mooney*, the state supreme court ruled that the fact that Temple University received financial assistance from the commonwealth did not, by itself, transform the university into a state agency.

"[The students] emphasize that Penn State's receipt of financial support is clearly indicative of agency status," wrote the commonwealth court in *Roy*. "The *Mooney* court rejected a similar argument concluding that just as the receipt of federal funds does not make Temple a federal agency, neither does the receipt of state funds make it a state agency."

In *Mooney*, the state supreme court ruled that the state legislature, by increasing financial support for Temple University, did not alter the university's status as a nonprofit corporation and transform the university into a state agency.

The court said Penn State's structure was essentially the same as that of Temple University, which was held a state-related institution in *Mooney*. ■

WEST VIRGINIA — A West Virginia University fund-raising foundation may refuse to release documents under the state's freedom of information act (FOIA) because the organization is not a public body.

The state supreme court of appeals ruled in *4-H Road Community Association v. West Virginia University Foundation*, 388 S.E.2d 308 (W.Va. 1989), that the foundation was neither created nor primarily funded by state authority.

The case began in 1977 when the 4-H Road Community Association sought information pertaining to coal leases from the West Virginia University Foundation under the FOIA. The foundation owned the coal leases.

A trial court ruled that the foundation was not a public body under state law, and thus was not subject to FOIA.

In upholding the lower court, the supreme court of appeals stressed that the foundation was formed by private citizens pursuant to the general corporate laws of the state.

"No legislative mandate for such an entity predated its incorporation," stated the court. "It is not located on state property; does not utilize state employees; and selection of its Board of Directors, and their duties, are governed by the corporation's by-laws."

The court said that although the university referred to the foundation as its "primary gift solicitation agency," that statement was "not tantamount to state authorization for the creation of the entity."

In addition, the court stated that no public money, property or employees were used in the operation of the foundation.

Because the decision is based on West Virginia law, it has no precedential authority in other states. But the court's reasoning could affect the application of other states' freedom of information laws to university fund-raising foundations. ■

Auburn Doesn't Appeal Open Records Judgment

ALABAMA — After Lee County Circuit Judge James Gullage granted the student newspaper at Auburn University, the *Auburn Plainsman*, access to alumni association records in March, then-student editor Page Oliver was sure the university would appeal. To her surprise, they did not.

"They wasted a lot of money on taking the matter to court," said Oliver.

The alumni records allegedly contained information about the misuse of college funds by the director of Auburn

University's alumni association.

Oliver, who graduated in June, does not foresee any problems between the *Plainsman* and the administration next year in light of the court's decision.

"The problem with [the *Plainsman*] is that we are the only aggressive newspaper in the city, and it's up to us to cover the big stories. Along with that, we're only a weekly," said Oliver.

University administrators were unavailable for comment. ■



Hammer Makes Waves, Keeps on Publishing

CALIFORNIA — Sheryl Bremmer, “silent adviser” to the Northview High School underground newspaper, the *Norseman's Hammer*, says that principal Roy Moore wishes the newspaper would just disappear, but the staff of the controversial paper in Covina has vowed to continue publication regardless of Moore's wishes.

The newspaper began publication

when an unsigned letter to the editor was censored from the established student newspaper, *The Vahalla*, which described Moore's refusal to allow students to start a social science club.

Writers for the *Hammer* say that their paper intends to be an alternative outlet that students can use to express their feelings about Northview. All of the writers use pseudonyms to protect their

grades from teachers that do not agree with the underground newspaper.

“Even though my name was never in the paper, teachers still had a feeling I was involved,” said 1990-91 *Hammer* student editor Jason Governelli. “My grades were never affected but the teachers that used to really like me started to treat me differently.”

At the center of the controversy is social studies teacher Sheryl Bremmer, who has served as the adviser to the underground paper. She is quick to point out, however, that the students deserve the credit for the continued publication of the paper. Bremmer has two master's degrees and has been honored for her 16 years of service at Northview. The attitude of fellow faculty members toward Bremmer took a turn for the worse when the newspaper was distributed.

“Initially, the faculty was very supportive [of an alternative newspaper]. Three teachers in the social science department wanted the department to be a sponsor of the newspaper,” said Bremmer. After four months of publication, their feelings changed.

“In April, several teachers began to confiscate the paper and became increasingly hostile,” said Bremmer.

The newspaper, funded entirely by the writers, published 25 issues last year that focused on the administrators' inability to accept the idea of an underground newspaper. One of the campaigns instituted by the paper was an effort to pass a student bill of rights.

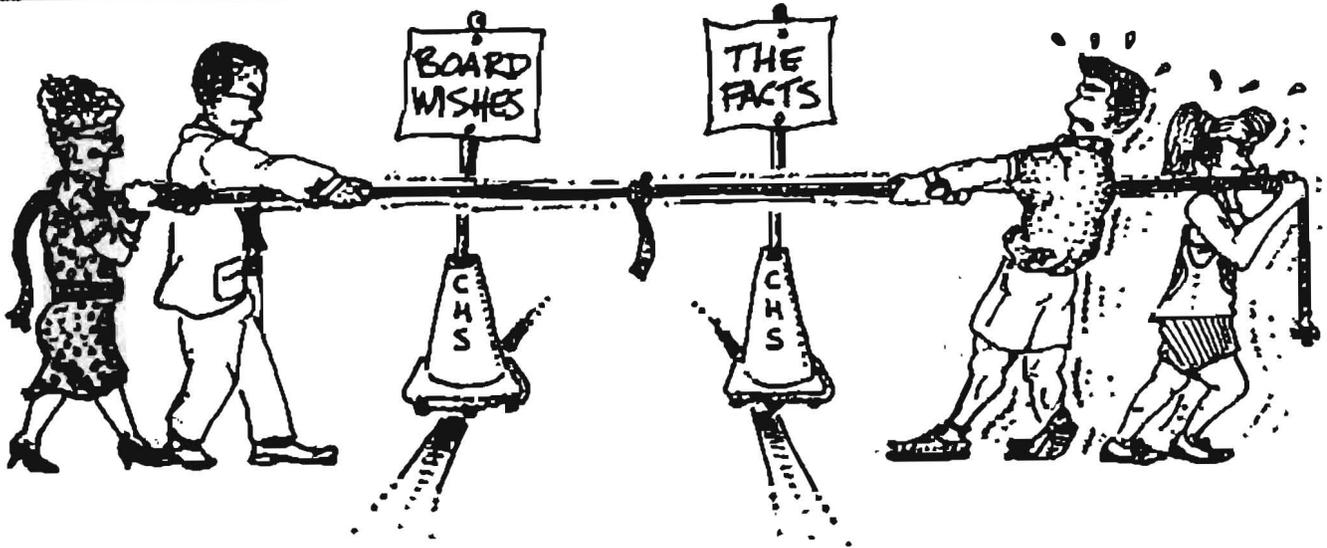
“Students at our school have no voice. We tried to change that through a bill of rights,” said Governelli.

The process included persuading one third of the students at the school to sign a petition calling for the bill, but Moore, according to Governelli and Bremmer, did not act on the petition while school was in session.

“They [the students] went through the exact procedure set forth in the school's constitution [for petitions] but [Moore] just decided to sit on it. It obviously became a power play for him,” explained Bremmer.

The *Hammer* controversy has also
continued on page 15

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Newspaper Staff Pressured By Board

SOUTH DAKOTA — After pressure by their school board, the staff of the Custer High School student newspaper, *Igmuzzi*, and adviser Dorothea Edgington decided to run a one sentence editor's note instead of an article regarding a former Custer student who was arrested for his involvement in a burglary at the school.

Three articles had appeared in the *Igmuzzi* describing the arrest and follow-up investigations of Lawrence "Tre" Ventling III, a recent graduate of Custer High School at the time of the burglary. Soon after their publication, Ventling's sister Jeffie, also a Custer High School student, had the articles taped onto her school locker and was "taunted" by her classmates about her brother, according to Ventling's parents.

Lawrence and Linda Ventling, parents of the students, claimed the articles were "inaccurate, insensitive and painful." A meeting was scheduled between the Ventlings, adviser Edgington and the school board. In that meeting, the Ventlings read a letter describing their feelings. They said that they felt "hurt and angry" towards Edgington for allowing the articles to run. They also requested that future articles of similar subject matter "be screened in advance to assess what effect it might have on other family members in the school system."

"Their basic premise was that the situation was very trying on the family and to have the paper run another article on their son would hurt their daughter more. It was a plea for compassion," said Edgington.

Following the meeting, the school board met in closed session where it decided that a fourth article on the situation was "not necessary." The board made its decision on the grounds that the two other boys involved in the burglary were having their sentences changed, but Ventling was not. They then approached the newspaper with their request.

"We requested that they not print another article since Ventling was not involved. If you call that pressure, then I guess we pressured them," said school board chairman Stan Neugebauer.

In a decision by *Igmuzzi* editors and Edgington, this explanation ran in place of the fourth Ventling story: "The story regarding the sentencing of the two individuals who pleaded guilty to the school burglary has been deleted according to the wishes of the school board and administration."

"They [the staff] were really in a dither," said Edgington. "Some of the kids said that members of the school board threatened to cut the journalism program if the story ran." Neugebauer said that the board did not make such a

threat.

"If there was any one individual that made that type of statement, I'm not aware of it. The board, as a whole, never said that," replied Neugebauer to the accusation.

"In the school system, you have to be concerned about the students you write about. When you're out working for a big newspaper, it's a totally different matter." ■

continued from page 14

given Bremmer cause to worry. Because of her involvement with the paper, Bremmer's future at Northview is shaky.

"Mr. Moore hasn't made any decision yet on the teaching schedule for next year. I am expecting an overt move to be made against me before next year," said Bremmer in a phone interview.

Bremmer will consult the American Civil Liberties Union if the school takes formal action against her. According to Bremmer, the district superintendent has hinted at the possibility of a transfer or a step down to junior high school.

Right now, the *Hammer* is focusing on next year. It will mark its return on the first day of school in the fall, according to Governelli who will be the advising editor while attending junior college.

Principal Moore said that he had no problem with the paper.

"As long as they want to write it, we'll allow it," said Moore. ■

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Crime Hidden, Funding Cut at LSUA

LOUISIANA — When the editor in chief at Louisiana State University at Alexandria tried to shed light on campus crime, she found funds for the paper slipped away in the dark.

During the spring semester, Tina Cureton, editor in chief of *The Paper Tiger*, found that her school was the site of larceny and vandalism. But whenever reporters tried to confirm their evidence with Dean of Student Activities Charnia Cheatwood, they returned empty handed.

On April 9, she called the Student Press Law Center in frustration. She wanted to learn what legal rights she had to police reports of campus crime.

The same day an SPLC reporter interviewed Cheatwood, Cheatwood sent a letter to Cureton telling her "funds for *The Paper Tiger* have run out."

After receiving the letter two days later, Cureton talked to her adviser. He

told her she should "do no more with the paper" because she "was no longer editor," she said.

Cureton first became aware of campus crime at LSUA on January 15, when she came to school to find the front door of the university administration building boarded up. Apparently the door had been shot out by vandals, Cureton said. Broken glass lay on the steps of the building.

"Right away they cleaned everything up and it was very hush," she said.

A few weeks later, reporter Candi Fontenot learned from campus police officer Keith Ducote that vandals hit the campus police car as well, slashing the tires and shooting out the windows. Fontenot said Ducote told her Cheatwood wanted to keep the incident out of the paper.

"I was told that 'Dr. Cheatwood doesn't want people to know about this,

so don't go publishing this,'" Fontenot said.

In March, Cureton learned of a student who had the t-top stolen from his car while he attended an afternoon class that fall. Fontenot asked Cheatwood about the incident and said he told her it was "old news."

Cheatwood said he thought press coverage would encourage further incidents.

"These incidents, which are usually isolated and unrelated have a way of perpetuating if they receive a lot of attention. For that reason, I chose not to make a big deal out of it," Cheatwood said.

He added that LSUA had an effective campus police force and "was known for being one of the safest schools around."

But Fontenot said she believes Cheatwood did not want the incidents re-

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ported because of the lack of campus security around certain buildings and parking lots.

"We don't have any lights in school parking lots — students are aware of that. It's just asking for trouble," Fontenot said.

"I think Cheatwood knows that if these break-ins are reported, the lack of security on campus is the first thing students are going to attack. They're going to say, 'Where are the lights and security people in these lots,'" Fontenot said.

Cureton published her seventh and last issue of *The Paper Tiger* on March 7. Classes at LSUA let out on May 4.

Before the semester began, Cureton and her adviser, Stacey Clanton, agreed to publish at least once a month. Clanton said they had planned on at least nine issues.

Financial arrangements for *The Paper Tiger* were conducted informally. The paper came out only twice in the previous school year.

Cureton said she realized the paper's budget was running low, but found her adviser unconcerned.

Clanton said he thought the paper would be able to find extra money if Cureton kept up with plans to publish at least nine issues.

"Dr. Cheatwood did frequently remind me about the pace of the paper, but I decided not to tell her [Cureton] to quit [publishing]. My attitude was 'Damn the torpedoes, full steam ahead,'" said Clanton, who added he always thought the school would be able to find extra money to support the paper if needed.

Cheatwood would neither confirm nor deny whether Cureton's phone call to the SPLC or *The Paper Tiger's* investigations of campus crime were linked to the paper's sudden shutdown.

Cureton said she talked to Cheatwood after the paper had been closed, asking him about advertising contracts already signed for future issues. She said Cheatwood's response was "I don't like contracts."

"I felt kind of empty when the paper was shutdown," said Cureton. "I felt like more could have been done and there were a lot of loose ends." ■

Editors Involved in Audit Dispute *Law School Threatens to Withhold Certifications*

CALIFORNIA — The two editors of the *Hastings Law News* of Hastings College of the Law in San Francisco graduated amid controversy in June when law school administrators threatened to withhold their good character certifications to the state bar for not complying with a demand for the newspaper's audit.

The demand for the student newspaper's audit came one week after an editorial was published in the *Law News* that called for the dismissal of the school's general counsel, Angele Khachadour.

In the editorial, Khachadour was accused of creating "many problems for the college" and refusing to provide "public information" to the *Law News*.

Editor of the *Law News* James Ballentine claims that the request for the audit was in retaliation to the editorial.

"It was very obvious that they didn't agree with the article. They just started to harass us with the audit request," said Ballentine.

Ballentine and his co-editor refused to comply with the audit because the *Law News* is not a student organization of the school and although the *Law News* offices are on the campus, it is financially self-sufficient, said Ballentine.

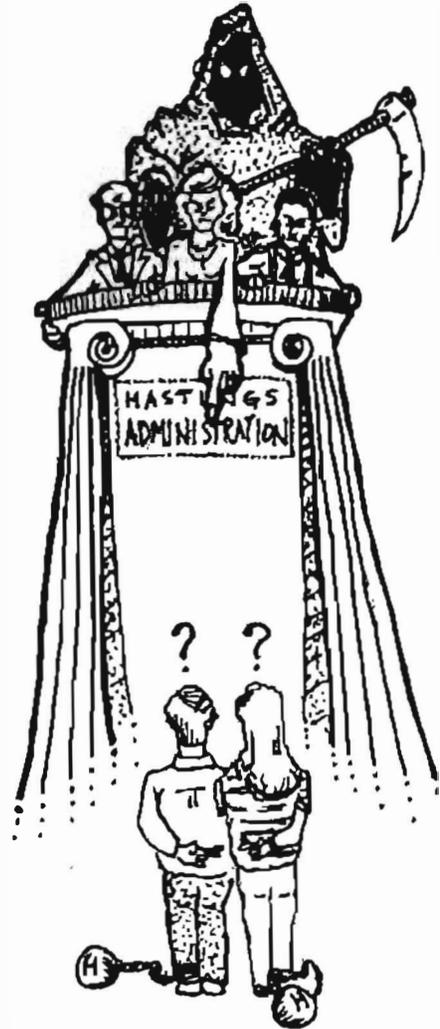
Khachadour warned the editors that if they did not comply with the audit, they would not receive their certifications of good character to the state bar, a requirement for being admitted to practice law in the state.

Ballentine said that he would allow a third-party audit by someone not affiliated with the school.

"If the audit was what they were concerned about, we had no real problems bringing in a third party. But they would have made us pay for it, and that is ridiculous," said Ballentine.

According to Hastings Law School's director of public relations Bob Erwin, the college is simply exercising its rights.

"They [the *Law News* staffers] use a campus office, they have access to school money and the student bylaws state that



they fall under the umbrella of student government," said Erwin.

Erwin also stated that the college has recently provided good character certifications for the editors with a note of exception that explains the *Law News* matter. Ballentine feels that Erwin does not understand the certificate's importance in securing employment after graduation.

"He has down-played the importance [of the certification] significantly," said Ballentine.

Ballentine has spoken to an attorney and said that he will take the matter to court if needed. ■

SUNY Paper Averts Spring Shutdown

Student Government President Focuses Attack on Financial Issues

NEW YORK — The weekly student newspaper at the State University of New York at Brockport came out on top following a three-week power struggle with student government leaders this spring.

The attack on the paper was led by then-Brockport Student Government (BSG) president Chris Nicholas, who said the *Strylus* should be shutdown because it was \$600 in debt.

"Finances were an issue, but not nearly as big an issue as they were made out to be," said Kevin Bambury, an attorney with the American Civil Liberties Union in nearby Rochester, who played a mediating role after being contacted by the *Strylus*.

"This was almost a Woodward and Bernstein against Nixon-type thing. The student government president was crazy," said Bambury.

Strylus staffers admitted that their award-winning paper had been guilty of "overzealous expansion" the previous semester, but they believed the paper's financial problems had been settled. Both current *Strylus* editor-in-chief John Dahlia and current BSG president Brian Wood agree that personality clashes between Nicholas and *Strylus* editors escalated the conflict.

The spring feud between the *Strylus* and BSG began on April 7 following a debate between candidates running for student government. At the debate, presidential candidate Brian Wood was asked about his proposed student referendum, which opposed increases in student parking fees. According to Dahlia, Wood's referendum would have had little or no effect on an already settled issue. Wood was apparently supported by then BSG president Nicholas, who had feuded with the *Strylus* in the past.

Later that night, Nicholas went to the *Strylus* office and told staffers he was "tired of supporting a paper that's shitting on my back door" and said he would not give the paper money if it didn't support him, Dahlia said.

Nicholas vetoed a request for \$8,700 of additional funding for the *Strylus* the next day. Two days later, he made an executive decision to freeze *Strylus* accounts after determining that the paper was \$591 in debt.

Dahlia defended the paper's finances.

Nevertheless, BSG voted to cancel the April 25 edition of the *Strylus*, claiming that the paper had "violated fiscal procedures" by coming out with two issues in one week.

Dahlia responded the day after the missed issue by publishing 1,500 copies



He said the paper's request for additional funding had already been approved and their debt would be covered when student groups paid their advertising bills at the end of the semester.

The *Strylus* responded to Nicholas' initial threats by publishing a four-page "Special Election Edition." The lead story, headlined "Nicholas Threatens *Strylus*," was written by a third party from the *New York State Student Leader*, a state-wide student paper. The election edition came out on a Monday, two days before the *Strylus*'s next scheduled issue.

After the regular edition of the *Strylus* appeared two days later with an editorial critical of Nicholas and BSG, Dahlia said Nicholas "went berserk" threatening to shut the paper down and cut its funding for a year. Two days later, Nicholas told the paper he had canceled their libel insurance.

At that point the *Strylus* contacted the Rochester ACLU. With Bambury's help, *Strylus* staffers learned that not only had their paper not been taken off the university's insurance, but that BSG had no authority to do so.

of *The Free Press*, a one-page underground paper. Dahlia said *The Pioneer* at St. John Fisher College, picked up the \$200 printing bill for the underground edition.

The feud between BSG and the *Strylus* came to a head on April 30 when *Strylus* staffers, accompanied by representatives from the ACLU, met with the BSG.

"With the help of two ACLU lawyers, we scattered the student government," Dahlia said.

BSG's final vote stood at 7-3 to keep the *Strylus* running.

Both Dahlia and Wood are glad the controversy has been settled and hope that BSG and the *Strylus* will be able to get along better in the future. While Dahlia has plans to petition BSG for a publications board in the fall, Wood believes things will run smoothly now that BSG has new leadership.

"As far as the people in office right now [are concerned], I don't think a publications board is necessary. But maybe it needs to be instituted, because you can never count on personalities," said Wood. ■

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Students Close Paper at Geneva College

Pub. Board Decision Made in Response to Anti-Catholic Editorial

PENNSYLVANIA — Co-valedictorian Eric Dugan can credit himself with being editor in chief of two campus newspapers in the same semester following a controversial year for student publications at Geneva College.

Dugan produced an eight-page underground tabloid, *The Last Word*, following a Student Publications Board decision to close the regular weekly paper

"This college is afraid of a free press and does not have any interest in living up to the standards of its publication policy."

Eric Dugan

for the remainder of the school year. Their decision was in response to an anti-Catholic editorial Dugan published in *The Cabinet* on March 23, a Friday.

Dugan's editorial, titled "The Theology of the Pointy Hats," questioned papal authority to interpret the scripture and likened Catholics to Jehovah's Witnesses and Mormons, based on their historical interpretations of the Bible. It went on to call the modern Catholic church "pagan" and "non-Christian."

The following Tuesday the student publications board called an emergency meeting and voted 8-2 to close the paper for the remainder of the school year.

An apology distributed by the board stated, "We regret that one of our publications was so offensive to the Geneva Community. One of the purposes of *The Cabinet*, according to its constitution, is "to foster the application of Christian values...in the spirit of love, justice and responsibility that Christ showed in all his dealings on earth."

"We do not feel that *The Cabinet* editorial has lived up to this purpose."

Dugan said he did not think there was anything wrong with discussing theological issues on the editorial page of a religious college newspaper. The Beaver Falls school is affiliated with the Reformed Presbyterian Church of North



America. About 15 percent of its 1,200 students are Catholic.

"The college is afraid of a free press and does not have any interest in living up to the standards of its publication policy," said Dugan.

Geneva College President Joseph McFarland and *Cabinet* adviser S.S. Hannah said the school's policies only forbid an administrative move to close the paper. The student publication board has the authority to shut down any publication, they said.

"I think the student publication board's response is a measure of the reaction of the student body," said McFarland. "I think the system worked."

Under the terms of the agreement, Dugan retained his position and received his full salary as editor, but was not allowed to publish any more papers. Several weeks after the editorial he raised the money to put out an eight-page underground paper, *The Last Word*.

"I was determined to go underground from the upswell of people supporting the idea," Dugan said.

The Last Word, according to Dugan, contained two full pages of letters — both pro and con — about the editorial and the closing of *The Cabinet*. It also included an article exploring what the

college needs to do to survive in the next ten years, he said.

McFarland said Dugan sought out controversy throughout the year.

"He is a very gifted young man, very intelligent and articulate. But he seems to have lost some of the balance off his wheel this last semester and I hope he regains it," McFarland said. "He created quite an atmosphere towards himself and seemed to thrive on persecution."

Dugan said he ran a far more aggressive paper than previous editors.

"I changed things very radically and it threw some people for a loop. Sometimes it was difficult for the staff to adjust," Dugan said.

In the fall a group of students who disagreed with Dugan's editorial policies split from *The Cabinet* to put out an underground paper called *The Closet*.

"He's a very gifted young man.... But he seems to have lost some of the balance off his wheel this last semester and I hope he regains it...."

Joseph McFarland

"I think it was probably the first time in the history of any college that students put out an underground newspaper that was pro-administration," said McFarland.

Scott Monzma, one of two students who published *The Closet*, told *The Beaver County Times* that editorial disagreements led students away from *The Cabinet*.

"Eric was not publishing certain letters to the editor that didn't agree with his editorials, or if he did publish them, he would put a long rebuttal at the end, totally ripping the letter to shreds," Monzma said.

Dugan said he added rebuttals to student letters in an effort to teach students to "think critically."

With its controversial editor graduated, *The Cabinet* will be published as usual in the fall, Hannah said. ■

“Sexist” Flier Leads College to Suspend Fraternity

CALIFORNIA — The Sigma Phi Epsilon fraternity at Santa Clara University was suspended on March 5 first by its national charter board then by the university after a newsletter written by its members that allegedly contained sexist language was discovered.

After the flier’s distribution to fraternity members on March 2, a group of approximately 500 students, faculty and staff began a protest to voice their opposition to the “profane and obscene comments about women,” according to Charles Erikson, Dean of Students at the private Catholic university.

The fraternity’s national charter board began the investigation process by suspending the chapter’s charter, which was immediately followed by the university’s

“We have had problems with this fraternity for the past two years....”

Charles Erikson
Dean of Students

decision to refuse recognition of the fraternity as a campus organization. The investigation showed that certain university policies in the student conduct code that do not allow “hazing, harassing or threatening actions toward any student, faculty or staff member” had been violated according to Erikson. This finding then led to Erikson’s decision to place the fraternity on inactive status.

“We have had problems with this fraternity for the past two years which added to the newsletter incident,” said Erikson in a phone conversation.

The fraternity, which was on probation at the time of the episode, was placed on inactive status by the university for the next four years. No appeal through the university was attempted by the members of Sigma Phi Epsilon. ■



Adviser Orders Columns Ripped from H.S. Mag

MISSOURI — Hickman High senior Nate Bradley’s parting words became the talk of the town after journalism classmates tore his editorials from the class’s semi-annual magazine this spring.

The students removed the pages on the orders of Minerva Howard, journalism adviser at the Columbia school.

“When I came to class, she was very upset,” Bradley said. “After the class started ripping out my editorial, I left the room.”

Bradley and Howard had not spoken to each other since the incident as of July. However, both agree it arose from a debate concerning religious references included in an editorial criticizing the “Just Say No” campaign.

“What’s to stop the propaganda machine from convincing children to vote Republican, worship Jesus, hate Jews or buy lunch at McDonald’s if we accept propaganda as a viable means of education,” Bradley wrote.

Howard said she spent time throughout the school year trying to convince student writers not to pick on a group of born-again Christians at the school. She said she did not want the religious references in the last issue of the magazine, since other students would not have a chance to respond.

“[The issue] was not just press freedom, it’s responsibility and fairness,” Howard said.

The school newspaper had been host to a wide-ranging religious debate, mostly in the form of letters to the editor, according to Bradley.

The day before the magazine was printed, Howard said she asked Bradley to take out the religious references and add his byline to the piece. Bradley said he thought Howard gave him a choice between adding his byline or removing the religious references.

“What I am fairly certain she said was to take out the references or put a byline on the piece,” Bradley said.

Bradley added his byline and left the references intact.

Howard and Bradley hold conflicting views of the incident.

“It was an issue of fairness and discipline in the classroom which had nothing to do with censorship,” Howard said.

“She did it as a disciplinary measure,” said Bradley. She was mad at me because she thought I tried to slip it by her. I think she made a mistake.”

Two students salvaged the pages from a dumpster behind the school and brought them to the attention of a reporter for *The Columbia Daily Tribune*. *The Tribune* immediately ran a story on the incident. Four days later, the paper printed Bradley’s editorials with the headline, “Banned: The columns Hickman High killed.”

“It had been a pretty controversial year and until the end we got along pretty well,” said Bradley.

Bradley said he hoped he and Howard would eventually be able to come to terms with the incident.

“She was one of my favorite teachers. I really respected her and I still do,” Bradley said. ■

Principal Halts Newspaper Distribution

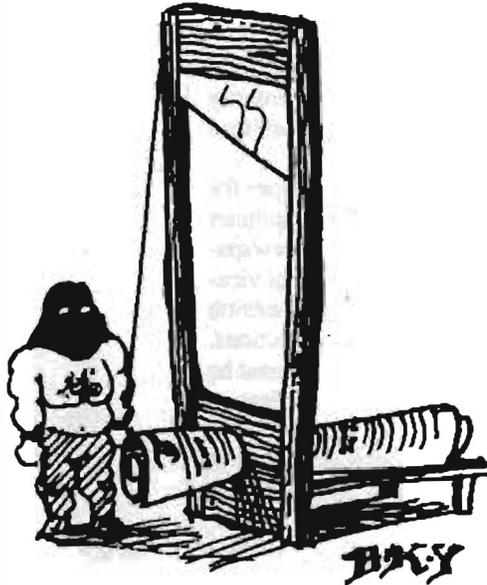
Adviser and local news media condemn act of censorship

WISCONSIN — The student newspaper at Madison Memorial High School in Madison was not distributed during the homeroom period on Friday, May 4, as had been expected. Instead, principal Carolyn Taylor decided to withhold the *Sword and Shield*, which had front-page coverage of a lunchtime-racial fight.

According to Mark Weiss, assistant principal at the high school, a small fight turned into a racially motivated brawl in the school's cafeteria. *Sword and Shield* adviser Art Camosy had four students cover the altercation, which also gained attention in the local media. The articles attempted to present how different racial groups on campus reacted to the fight.

The student newspapers were delivered to the high school the night before they were scheduled for distribution. Principal Taylor then made the decision to hold the paper that evening. Taylor told Camosy that she was holding them because of the articles about the fight.

"Carolyn was working late at the school when the papers were delivered. She called me at home, worried that the



articles would renew hard feelings about the fight," said Camosy. According to Weiss, Taylor wanted to hold an assembly before students read the paper. Taylor was unavailable for comment.

"Principal Taylor wanted to hold a unification rally to bring everyone to-

gether and talk about the fight," said Weiss. "She simply wanted to do all the positive stuff before students read the articles."

Camosy did not agree with Taylor's decision and called local news media to inform them of her actions.

"The brawl was big news to begin with in the media, but this made it worse. One of the papers ran a very critical editorial about her actions," said Camosy.

The assembly took place the next day and, according to Camosy, principal Taylor felt confident in releasing the papers when it had finished. When asked about the decision to withhold the papers, Camosy said he was surprised that Taylor would be the one to do it.

"It [withholding the papers] was totally unexpected. She has always been an advocate of student press rights," said Camosy.

Next year is going to be different than the past as far as Camosy is concerned.

"I think it is going to make us a little wary when it comes to writing anything," said Camosy. ■



N.J. Movie Review Case Continues on to Court

NEW JERSEY — Brien Desilets, the eighth grader whose movie reviews of *Mississippi Burning* and *Rain Man* were censored from the student newspaper because of the movies' "R" ratings, has decided to continue the lawsuit he filed against school officials.

The court ordered that discussion take place through June 14 between attorneys to see if an agreement could be reached out of court. According to Bill Buckman, attorney for Desilets, counsel for the school never approached him and the case will now continue to court.

The censorship has not stopped with the movie reviews according to Buckman. He claims that the school has not allowed Desilets to write stories for the junior high school newspaper, the *Pioneer Press*, describing his legal situation with the school.

"They [the school's administrators] are saying that they don't agree with the way he's writing the story. Apparently, it's not about grammar or spelling, but the content," said Buckman.

Principal Charles Bishop and superintendent Michael Toscano refused to comment on the case. ■

Administrators Step In to Save Newspaper

V.P. Overturns Student Senate

PENNSYLVANIA — The weekly Millersville University *Snapper* averted a two-week shutdown this spring when the university administration stepped in and overturned a student senate decision to close the paper.

In March the student senate voted 12-8 to close *The Snapper* for two weeks as punishment for failing to run an opinion column written in the previous school year that was critical of the newspaper and for endorsing a *Snapper* editor's bid for the office of vice-president of the student senate the year before. The suspension would have blocked coverage during the week of student elections.

But Dr. Gary Reighard, vice president for student affairs, said he was concerned that the vote was "very close to an infringement on the First Amendment."

Reighard decided to solicit a legal opinion from state attorneys as a way of addressing the legal questions raised by the student senate decision. Their report supported *The Snapper*.

"The Commonwealth attorneys advised us and the student senate that while they did not find evidence of censorship, the sanctions were too harsh and needed to be modified," Reighard said.

Senate President Jennifer Crissman agreed with the administrative decision to overturn the student senate vote.

"The administration and the student senate have to abide by the U.S. Constitution," Crissman said.

Kathy Rinino, co-chair of the senate constitutional committee, defended the Senate's 12-8 vote to suspend the paper.

"I don't view it as a punishment, so much as a chance for the student senate and *The Snapper* to alleviate the problem, so this does not happen in the future," she told the *Lancaster Intelligencer Journal*.

"We are here to be educated. We are not here to be on a newspaper," she added.

Joe Vulopas, news editor of *The Snapper* said the student senate's original decision was absurd.

"They had no case for closing the paper," he said.

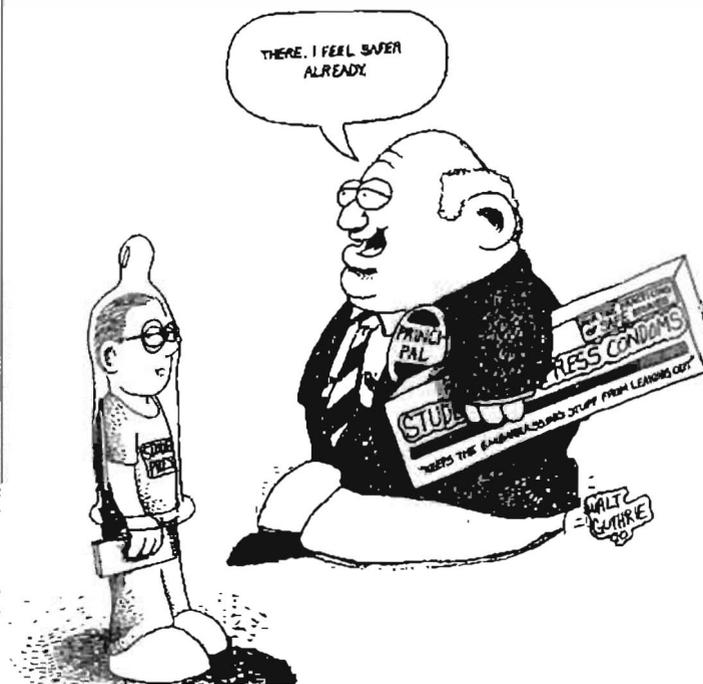
According to Vulopas the newspaper was to be punished for issues that were already resolved.

"Everything between the paper and the Senate was worked out at the end of last year. Then in the middle of this semester they decided to shut us down," Vulopas said.

Vulopas said breaking the *Snapper's* story to the local media helped resolve the conflict.

"The local newspaper picked up the story right away. They loved it and put it on the front page, which really put pressure on the university," he said.

Vulopas said other college newspapers had offered to help *The Snapper* following the student senate's original decision. But the paper's staffers, by mobilizing support over spring break, were able to get the decision overturned before they missed an issue. ■



Editor Instrumental in Curriculum Change

NEW JERSEY — Large scale curriculum change is what he wanted and change is what he got. Craig LaCava, student editor of the Holmdel High School newspaper, *The Sting*, was not allowed to run an article last spring describing the correct use of a condom, a mandate sent down from principal Richard White. LaCava's objective in printing the article was reached, however, in changing the school's sex education curriculum, as new classes in the subject will be instituted this fall.

After discussing the situation with White and being allowed to sit on a committee dealing with the curriculum, Holmdel administrators agreed that, at least on the high school level, more extensive classes should be offered.

The more informative sex education series will be instituted in the fall semester at the New Jersey high school which, according to White, "seems to satisfy them [the students]."

LaCava is happy about the change and optimistic about the attitude between the school's administration and the newspaper. As reported in the spring issue of the *Report*, LaCava plans on continuing to attend school board meetings with *Sting* reporters and voice his opinions on issues that affect students. The original censorship issue does not seem to bother LaCava now that the changes have been made.

"Even though we weren't allowed to run the article, we're very happy about the curriculum change," LaCava said. ■

Hazelwood-like Publication Policy Threatened at Missouri High School

MISSOURI — After working under a tentative publication policy at Park Hill High School for one year, Marcia Johnson, adviser to the student newspaper, *The Trojan*, is afraid that a permanent prior review policy patterned after the 1988 *Hazelwood* Supreme Court ruling will be approved by the high school board before classes resume at the Kansas City high school.

In May, Park Hill superintendent Harold Gaarde decided principal Barton Albright would stop reviewing issues of *The Trojan* before publication, a practice that had been in effect since last winter. A publication board made up of two assistant principals has continued to review administration-related stories.

The board met again in June to decide on a permanent publication policy. Members of *The Trojan* staff, concerned parents and Johnson were in attendance to voice their disapproval of a prior review policy. Unfortunately, the carpet was pulled out from under their feet.

"They decided to vote on a policy that



followed *Hazelwood* [the 1988 Supreme Court decision that gave more power to public high school administrators to

ensor material in some school-sponsored student publications]. When they couldn't reach a decision, the board decided to table the issue. We figured they were done for the night," said Johnson.

After the opposition group had left the meeting, the high school board decided to bring up the matter again.

"Everyone that had come to speak out against the policy left. The local TV news anchor and camera crew were out in the hall ready to go because they thought it was over. The board then brought up the matter again and decided to discuss the policy at a closed session in July," explained Johnson.

John Simpson, an American Civil Liberties Union attorney representing *The Trojan*, was not surprised with the board's tactics.

"I'm not overly surprised at all. I'm sure [these actions] will continue for a while," said Simpson.

No vote on the publication policy has been taken at press time. ■

Justice Brennan Retires

Friend of Student Press Leaves Supreme Court Bench

WASHINGTON, D.C. — With the retirement of Justice William Brennan in July, the student press lost one of its strongest defenders on the Supreme Court. Brennan was widely admired for his strong dissenting opinion in *Hazelwood School District v. Kuhlmeier*, in which he condemned the school's censorship as "unthinking contempt for individual rights."

Brennan reportedly was pleased to hear that not all schools were censoring student publications as the *Hazelwood School District* had.

"I was hoping that the message would get out that *Hazelwood* is not manda-

tory," Brennan told national columnist Nat Hentoff.

So will Brennan's replacement bring a change in the the Court's attitude toward student free expression rights? President Bush's nominee, appellate court judge David Souter, appears to have little record on First Amendment issues in the schools. However, in 1981, as a New Hampshire Superior Court Judge, Souter did recognize a First Amendment privilege protecting college newspaper reporters from being compelled to reveal confidential sources. *New Hampshire v. Siel*, 7 Med. L. Rptr. 1904. ■

continued from page 3

The authors state that *Hazelwood* may signal a change in the student press.

"The *Hazelwood* decision has certainly had an effect on freedom of the student press, both in reinforcing those who were already censoring and in providing a note of caution to others that maybe they should leave controversy alone.... Now, maybe, with the threat of censorship both subtle and overt so strong, that encouragement [to report on controversial topics] is waning, and student newspapers may become less the vehicles for free student expression than for reporting bulletin board information."

A complete copy of the report is available for \$2 to cover postage from the Student Press Law Center. ■

Western Ky. Gets Publications Policy

President Meredith's Announcement Ends Two-Year Controversy

KENTUCKY — Student journalists at Western Kentucky University breathed a sigh of relief this April when President Thomas Meredith released his long-awaited recommendations for the school's student publications.

"I believe student newspapers should be run by students," he said. "It should not be controlled editorially by administration or by faculty."

Meredith's recommendations ended two years of uncertainty surrounding publications at the Bowling Green school.

"His recommendations really put the whole controversy to rest," said Eric Woehler, editor of the *College Heights Herald*.

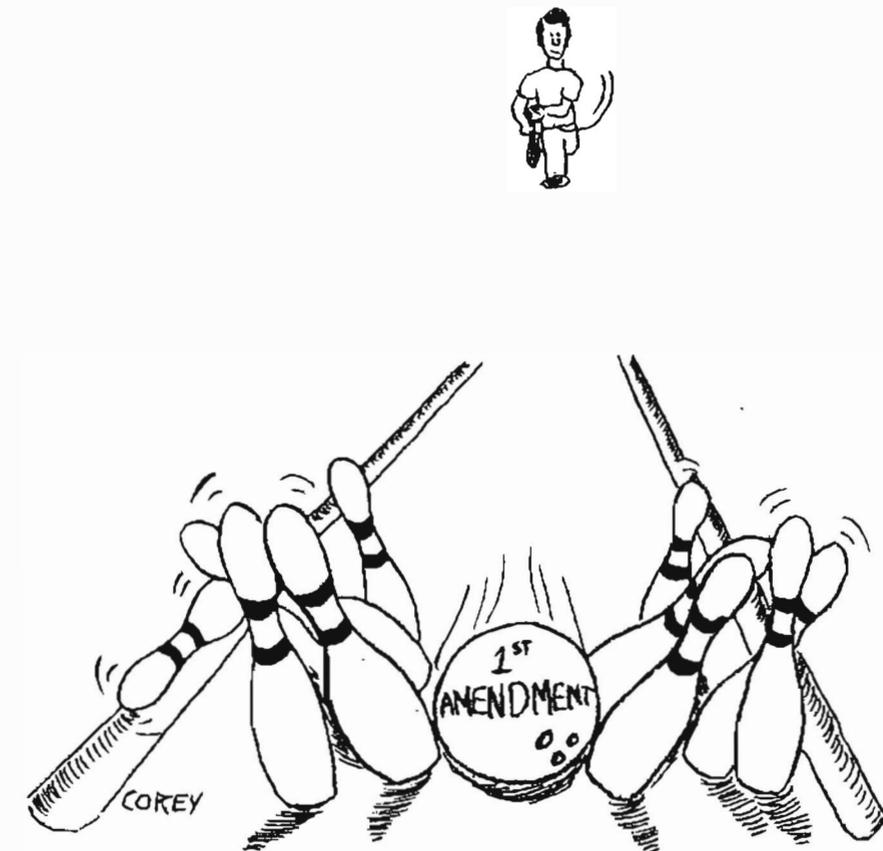
In March 1988, former president Kern Alexander drew national headlines when he directed a subcommittee on publications to consider establishing faculty editors for the paper and yearbook. Alexander also advocated giving a publications committee some editorial control and requiring students to receive academic credit for work on student publications. His move closely followed the Supreme Court's *Hazelwood* decision restricting press rights for high school students.

Alexander's suggestions angered students, faculty advisers and alumni journalists. Four reports rejecting his suggestions were filed by committees he appointed to settle the issue. More than 200 students marched across campus in opposition. And alumni journalists took the college's story to the national press.

"It always surprised me that it became as big an issue as it did," said WKU director of publications Bob Adams. "By the time it was over we had tables full of clippings."

Adams said alumni journalists from the school deserve much of the credit for leading the fight against Alexander's recommendations.

"The alumni reacted quickly and strongly," Adams said. "A lot of people who have worked on this newspaper are



in the business."

Alexander resigned following the spring 1988 term to take a distinguished professorship at the Virginia Polytech Institute. His unpopular stance on student publications may have played a role in his decision.

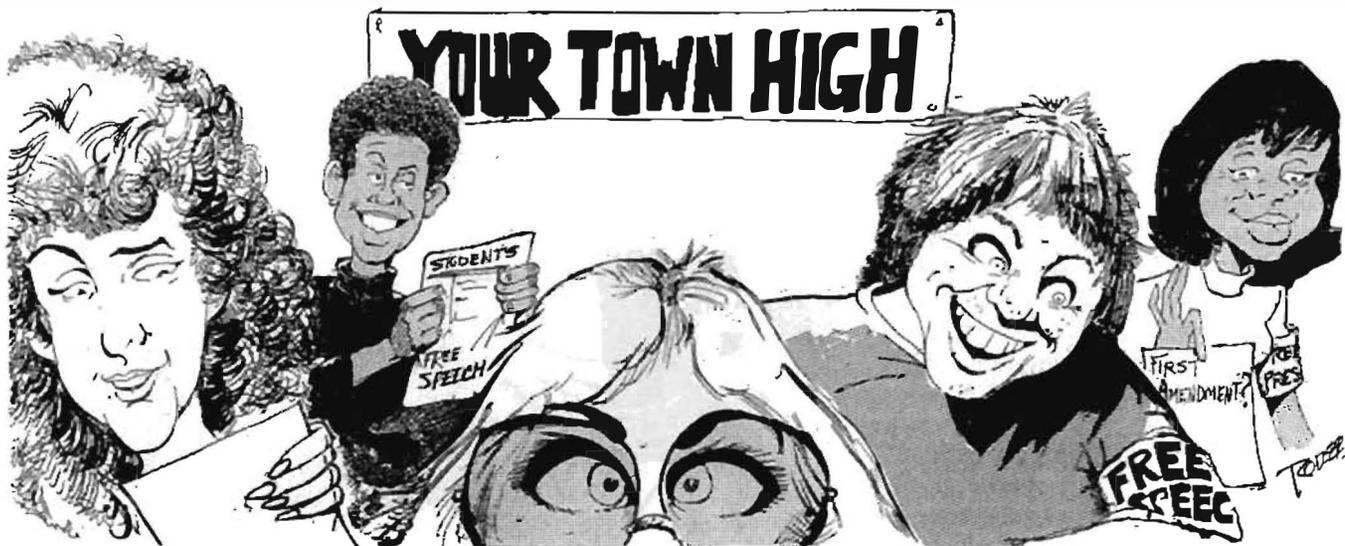
"People on campus say that's what forced him to leave, but I don't know if that's true," said Adams. "There was lots of controversy and support for the newspaper, which is usually not what happens."

Woehler and Adams both praised Meredith's handling of the press controversy he inherited.

"He has had a real sense of the importance of student publications," said Woehler. "We've certainly butted heads at times, but there has never been a breakdown in communications."

Although he said the two-year wait for publication guidelines had been a long one, Woehler said he thinks WKU publications have not been hurt by the pressures of national attention and uncertainty.

"Student publications at Western Kentucky are probably stronger than they've ever been," he said. "Because of the attention our case got, I think it woke a lot of people up." ■



Religion and the High School Press **Courts Address Religious Speech Issues**

Pennsylvania Student Sues School; Seeks to Distribute Pamphlets

PENNSYLVANIA — A high school student in Prospect Park has sued school administrators who allegedly violated his First Amendment rights when they forced him to stop distributing Christian pamphlets on school grounds.

Principal of Interboro High School Nicholas Cianci threatened to expel Scott Slotterback if he did not stop distributing the material but later changed his mind to allow distribution for two days a year at specified times. Michael Considine, attorney for Slotterback, thinks that is too restrictive.

"Any policy restricting free speech must be narrowly defined and can be no more restrictive than is reasonably necessary to protect an important governmental interest. A policy that allows distribution for only two days a year is far too broad," said Considine.

Attorneys for the school district claim that the halls and classrooms at the school are non-public forums, which allows the principal to govern distribution. They also state that the policy in place is reasonable.

Considine expects the case to go to trial this fall.

"Many people are watching this case very closely. The school board is ready for a fight," said Considine. ■

Decision on Christian Mag. Accepted by Illinois Students

ILLINOIS — Although the court's ruling only allows them to pass out the Christian magazine *Issues and Answers* before school, at lunch and after school, Moline High School students David and Katie Nelson have chosen not to appeal the summary judgement handed down in *Nelson v. Moline*, 725 F. Supp. 965 (C.D. Ill. 1989) in September 1989.

The Nelson's sued the Moline school district for depriving them of their First Amendment rights by restricting distribution of *Issues and Answers*. Under the high school's policy, the students could distribute the magazine only from a designated lunchroom station and at school entrances before and after school.

"The students simply decided that the issue wasn't worth appealing," said Charles Hervas, attorney for the Nelsons.

Stanley Eisenhammer, acting as the school's attorney, feels confident that the school's original intentions were held intact.

"[The Nelsons] are distributing the magazine in the manner that we set forth. They must also submit a copy to the principal to review before they distribute," explained Eisenhammer. ■

Middle School Editor Fights Removal

Loses with Administration, School Board; Considering Lawsuit

KANSAS — Pittsburg Middle School student Jason Bailey says he is considering legal action after the school principal removed him as co-editor of the student newspaper in April.

Principal Robert Heck objected to an editorial written by Bailey in the first issue of the *Scholastic Tribune*, a paper published as part of an after-school club and distributed throughout the school.

Heck said Bailey's editorial was "extremely critical" and "very derogatory."

"I didn't want him writing any more. He didn't have the support of other students at the school," Heck said. "When students don't function well in a club, we remove them from the club."

In the lead editorial, Bailey criticized the previous school paper, which he had also worked for.

"The only good thing about our former school 'periodical,' P.E.P., was its name: Pittsburg-Educational-Periodical. It had style, but even that was skeptical because the way it was going, P.E.P. should have been called P.U.R. Pittsburg-Uneducational-Ragsheet!

"*Scholastic Tribune* is 100 times better than P.E.P. could have ever been!" Bailey concluded.

Bailey believes the principal did not follow school district policy with the editorial. According to district policy on school-sponsored student publications "all material published in school-sponsored publications must have the prior approval of the faculty sponsor and building principal."

Bailey said he was punished for a piece that had already been approved by his adviser two weeks before it appeared in print.

The adviser, Charlotte Barnett, said district policy was not usually followed at Pittsburg Middle School.

"It had never been necessary before for me to clear everything with the administration," she said.

Barnett added that the editorial that



ran was Bailey's third draft. She said she had Bailey re-write his first two drafts because they were "too negative."

The day Bailey's editorial appeared in print, Heck told him he would no longer be allowed to write for the publication.

The next day, Heck, Assistant Principal Bert VanLuyck and Barnett all agreed to remove Bailey from the club completely. They maintain the editorial was not the only reason for Bailey's dismissal.

"There had been other things before, but this was probably the straw that broke the camel's back," Heck said.

"There are other factors we are not allowed to discuss," said Barnett, citing the confidentiality of student records.

Last year, Bailey helped organize a student walkout in protest of a school board decision not to renew the contracts of two teachers.

After a story about Bailey appeared in the *Pittsburg Morning Sun*, Heck offered to re-instate him as co-editor if other members of the *Scholastic Trib-*

une staff voted him into the office. Bailey refused the offer.

Bailey said he believed Heck's offer was still a punishment and explained his position in a letter to the *Pittsburg Morning Sun*.

"If Mr. Heck lost his position as prin-

"There had been other things before but [Bailey's editorial] was probably the straw that broke the camel's back."

Principal Robert Heck

cipal for no apparent reason, but was then told shortly after the incident he could regain his position if the teachers voted in favor of him...that would be quite unfair because he had strived to achieve that position just as I strived to be the co-editor of the *Scholastic Tribune*.

"It is a privilege to be an American,

CENSORSHIP

Montana Adviser Wins Fight; Defeats Prior Review Policy

MONTANA — On April 17, with a large crowd of supporters backing him, Jefferson High School newspaper adviser Mark Kelley won his battle against the Jefferson High School Board concerning prior review.

The award-winning newspaper, the *Panther Press*, had been told by then-school board Chairwoman Janice Anderson on January 5 that all articles relating to upcoming teacher contract negotiations would be reviewed by the board prior to their publication. Kelley, backed by the local teacher's union, then filed a grievance with the board to dispute the request for prior review.

Among those present at the board meeting were reporters for the *Panther Press*, teachers and concerned area residents.

"There were a number of people there that were concerned about the policy, all in support of my actions," said Kelley.

After further discussion, the board

decided to rescind the policy with seven votes in support and two abstentions. Kelley attributed the change of opinion by the board to the many people present that spoke out in support of the newspaper who were adamant in their disagreement with the prior review policy.

"I think the whole idea [of prior review] got squashed pretty bad. Everyone saw the problems with it and it was just something that I felt strongly about," said Kelley.

Ken Tyler, a staff writer for the *Panther Press*, expressed his approval of the school board's decision.

"After the decision, we all went back to the teacher's lounge to celebrate. It [the board's decision] was super," said Tyler.

Kelley sees no further problem with next year's school board in terms of prior review and plans on continuing with the newspaper as adviser this fall. ■



and I believe no matter what your race, religion, sex or AGE, you should not be punished for expressing your opinions," Bailey concluded.

On April 23, two weeks after the paper was published, Pittsburg's Board of Education voted 6-0 on a motion to "support actions taken by administrators and not take any further action in connection with this incident."

In an effort to settle the issue, Bailey's mother, Mary Kay Griffen, contacted the Kansas City chapter of the American Civil Liberties Union.

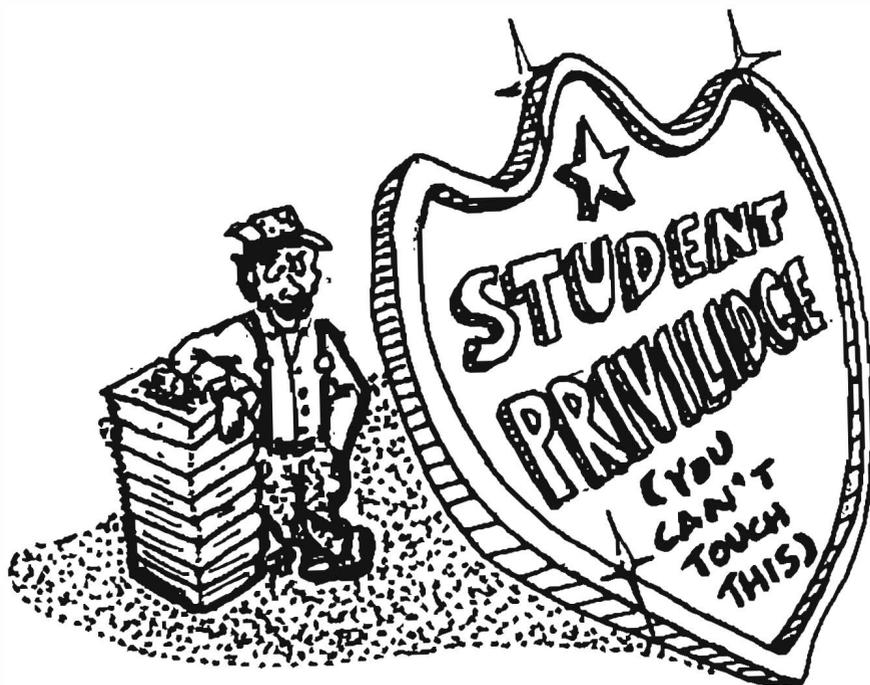
The ACLU drafted a letter attempting to settle the dispute, which the board rejected. The board responded with a letter of its own explaining that Bailey was dismissed because of "peer response" to the editorial and because of the judgement of school authorities who believed his "criticism of the previous club publication was inaccurate, self-serving and wholly inappropriate."

Heck said he probably would not allow any more student publications at the school for a few years following the incident.

"We probably won't have one for a while," he said. "It has turned out to be a negative-type thing."

Bailey said in July that he was considering legal action and that the ACLU has expressed interest in the case. ■





Protecting the Reporter's Privilege...

Shield Laws

This summer, reporter Brian Karem of KMOL-TV in San Antonio, Tex., spent 13 days in jail for refusing to reveal a confidential source. Karem's decision, and the fact that Texas has no shield law to protect journalists in his situation, makes for a timely illustration of the importance of this on-going Report series. Do journalists have the right to protect sources and information when courts or those bringing private lawsuits try to force them to turn them over? If so, do those protections apply to student journalists as well? The SPLC

presents here our best judgment on the answers to those questions. If your state is not listed here, check for it in past or future issues of the Report or contact the SPLC.

MARYLAND

Shield Law: Md. Cts. & Jud. Proc. Code Ann. Section 9-112 (1989).

Maryland's shield law extends a qualified privilege to "any person who is, or has been, employed by the news media in any newsgathering or news disseminating capacity." No court has decided

whether the privilege applies to student journalists. However, the statutory language indicates that the privilege would not apply to student journalists unless they were "employed by" the news media. If the courts construe the statute to require compensation, student reporters would have to show that they were paid for their work or received other compensation such as a tuition reimbursement for the privilege to apply.

A reporter who qualifies for the privilege is protected from disclosing the identity of any source or information, regardless of whether there was a promise of confidentiality. *Jenoff v. Hearst Corp.*, 453 F. Supp. 541 (D. Md. 1978), *aff'd*, 644 F.2d 1004 (4th Cir. 1981).

MASSACHUSETTS

Shield Law: None

Student journalists may be protected from disclosing confidential and non-confidential sources and information in some circumstances. The Supreme Judicial Court has recognized a qualified common law privilege to protect confidential sources in a civil lawsuit. *Sinnott v. Boston Retirement Board*, 402 Mass. 581, 524 N.E.2d 100 (1988), *cert. denied*, 109 S.Ct. 528 (1988). In *Sinnott*, the court said that a judge may weigh the public interest in a free flow of information against a litigant's need for information and the availability of information from other sources in deciding whether a reporter should be protected from disclosure of a source or information. The court did not indicate whether the privilege would apply to student journalists. The court has refused to base the qualified privilege on the First Amendment or the Massachusetts Constitution. Instead, the court will balance the interests for and against disclosure on a case-by-case basis.

MICHIGAN

Shield Law: Mich. Comp. Laws Section 767.5a (1982 & Supp. 1988) (Mich. Stat. Ann. Section 28.945(1) (Callaghan 1985 and Supp. 1990)).

The shield law extends a qualified privilege to "a reporter or other person who is involved in the gathering of preparation of news...." No Michigan court

LEGAL ANALYSIS

has decided whether the privilege extends to students. But the statute's broad language indicates that student journalists would enjoy the privilege. Notably missing from the shield law is any requirement that the journalist be "professional" or "employed by" the news media to qualify for the privilege.

The shield law provides a qualified privilege against compelled disclosure of sources and published and unpublished information. The privilege may be overcome only in cases involving a crime punishable by life imprisonment and where the information is essential to the proceeding and unavailable from any other source.

MISSISSIPPI

Shield Law: None

Two state court decisions recognized a reporter's qualified privilege to refuse to disclose confidential information or sources in civil and criminal proceedings. *Hawkins v. Williams*, Civ. No. 2900054 (Cir. Ct. 1st Jud. Dist. Hinds Cty., March 16, 1983); *Mississippi v. Hardin*, Crim. No. 3858 (Cir. Ct. Yalobusha Cty., March 23, 1983). The courts in *Hawkins* and *Hardin* based the reporter's privilege on the First Amendment and the state constitution. Arguably, student journalists should be able to assert the privilege, especially since the privilege was based on constitutional grounds.

MISSOURI

Shield Law: None

The Missouri Court of Appeals implicitly recognized a qualified privilege against compelled disclosure of sources and information based on the First Amendment. *CBS Inc. v. Campbell*, 645 S.W.2d 30 (Mo. Ct. App. 1982). In *Campbell*, the court refused to quash a subpoena of a television station's "outtakes" because the reporters had not made a promise of confidentiality to the sources.

Student journalists may argue that the qualified privilege applies to them on First Amendment grounds as it would

professional newsgatherers.

NEW HAMPSHIRE

Shield Law: None

There appears to be little doubt that state courts would extend a qualified privilege against disclosure to student reporters. In *New Hampshire v. Siel*, 444 A.2d 499 (1982) [8 Med. L. Rptr. 1265], the court approved a lower court ruling that two reporters for a college newspaper could assert a qualified privilege against disclosing the identity of confidential sources in a criminal proceeding. The reporters in *Siel* acquired and published confidential information about a murder victim's alleged drug dealing before his murder. The defendant, who was convicted of the murder, tried to force the reporters to disclose their sources of information. The supreme court said the reporters were protected from disclosure because the defendant did not show that the confi-

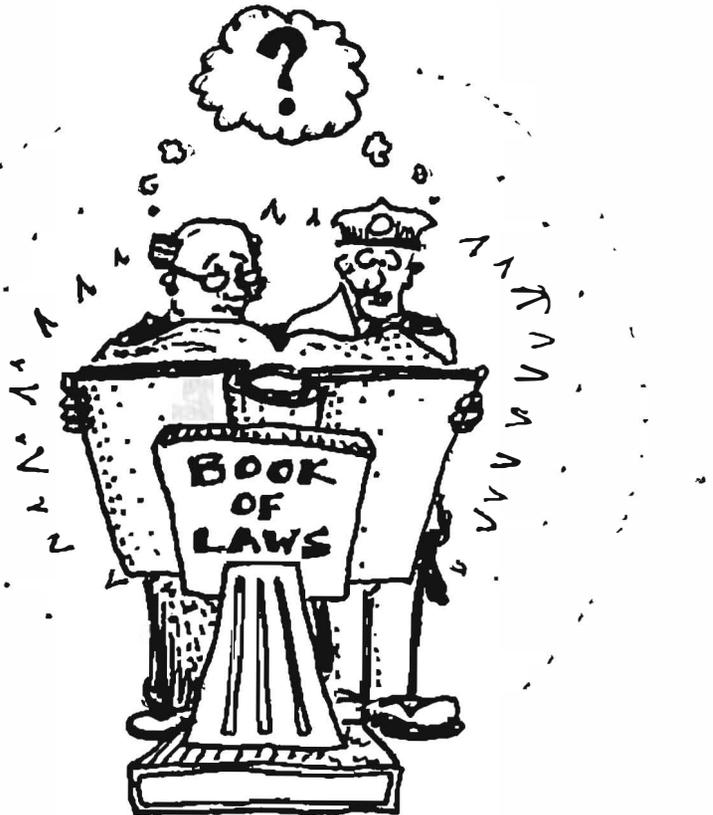
dential information, if released, would affect the guilty verdict.

The supreme court in *Siel* approved the lower court's ruling without explicitly noting that the reporters worked for a student newspaper. The supreme court based its decision on the state constitution's guarantee of freedom of the press.

A qualified privilege also has been recognized in civil cases. Opinion of the Justices, 117 N.H. 386, 373 A.2d 644 (1977). The court declined to define who qualifies as "press" under the state constitution. But the decision in *Siel* indicates that student reporters, particularly at the college level, would be protected from forced disclosure unless a litigant can overcome the privilege.

NEW JERSEY

Shield Law: NJ. Stat. Ann. Section 2A:84A-21 to 21.9, 2A:84A-29 (West
continued on page 30)



LEGAL ANALYSIS

continued from page 29

1976 and Supp. 1989).

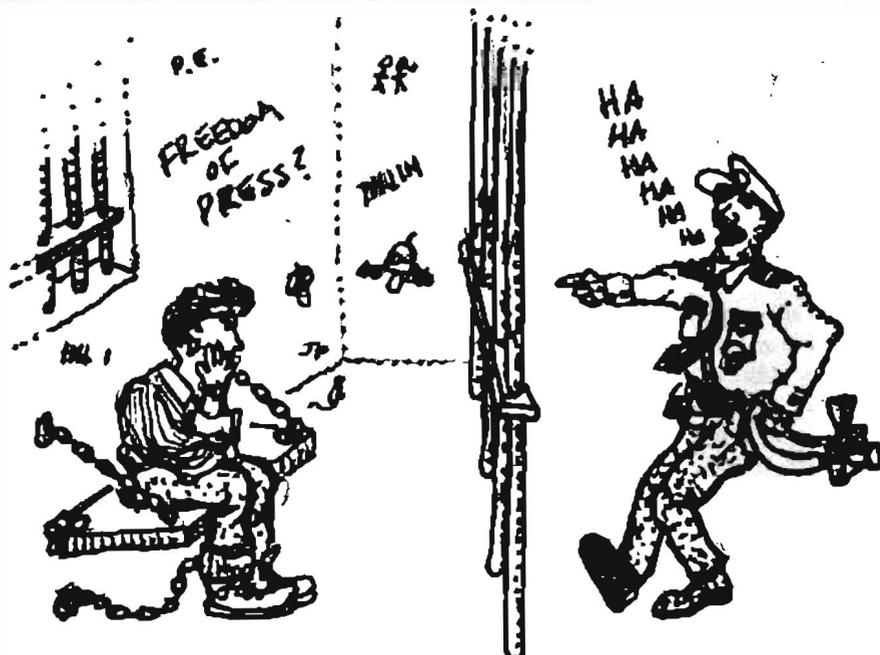
Although the state courts have not ruled on whether the state's shield law applies to student reporters, there are several reasons to believe that students would be protected from compelled disclosure.

The shield law protects "[A] person engaged in, connected with, or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public" Student reporters clearly are engaged in, connected with and possibly even employed by the news media. However, student reporters may have a harder time showing that the general public is their audience. Students may try to prove that the general public is their audience by showing that:

(1) their publications are read by persons other than students, (2) their publications address issues of general interest in the community, or (3) their publications comply with the shield law requirements in all other respects.

In applying the shield law, a New Jersey superior court liberally construed the requirements for what constitutes a "news medium" under the statute. *In re Avila*, 206 N.J. Super. 61, 501 A.2d 1018 (App. Div. 1985). The court said a 20-page tabloid paper fell under the statutory language extending that privilege to reporters at a publication "similar to" a newspaper. The court ruled that the tabloid, which was distributed free, did not meet the statutory requirements of a "newspaper" because it did not have a paid circulation. But the court extended the privilege to the tabloid, saying that the courts should look at the intention behind the statutory requirements rather than merely the form. The decision suggests that even if a student publication does not strictly comply with the shield law's requirements, a court may possibly extend the privilege to students connected with the publication.

Several other decisions have recognized that the legislature has tried to establish the strongest possible protection for reporters and the news media. For example, in *In re Schuman*, 114 N.J. 14, 552 A.2d 602 (1989), the supreme



court held that the shield law protects journalists from being compelled to testify for the prosecution in a criminal case, even if the information or news has already been disseminated. Also, the shield law protects reporters who are defendants in libel cases. *Maressa v. New Jersey Monthly*, 85 N.J. 176, 445 A.2d 376, cert. denied, 459 U.S. 907 (1982).

NEW YORK

Shield Law: N.Y. Civ. Rights Law Section 79-h (McKinney 1976 & Supp. 1989).

New York is one of the only states to interpret its shield law in a case involving student reporters. In *New York v. Hennessey*, 13 Med. L. Rptr. 1109 (Dist. Ct. Nassau Cty. 1986), the court held that student reporters at Hofstra University were not protected by the law. The court held that the student publication was not a "newspaper" under the statutory definition. Although the court's decision does not carry the same precedential weight as an appellate court decision, it indicates that the courts might strictly construe the shield law's requirements.

According to the law's definition, a newspaper is a paper that has been ordinarily printed and distributed at least once a week for a year or more. In addition, a newspaper must contain news, articles of opinion, features, advertis-

ing, or other matter regarded as of current interest, have a paid circulation and be entered at the post office as second-class matter. Student publications must meet each of the required statutory requirements, which may be difficult given the nature of many student publications.

The shield law itself protects "professional journalists" who "for gain or livelihood, [are] engaged in gathering, preparing, collecting, writing, editing, filming, taping or photographing of news intended for a newspaper, magazine, news agency, press association or wire service or other professional medium or agency"

Given the court's decision in *Hennessey*, it is questionable that a student reporter could qualify for the privilege as a "professional journalist." While few student journalists derive their livelihood from their work on a student publication, it is not clear whether students who are given a scholarship, tuition reimbursement or other compensation for their work might be said to "gain" from such participation.

Those reporters who qualify for the privilege are protected by one of the most comprehensive shield laws in the country. The shield law provides an absolute privilege to journalists to refuse to disclose confidential sources or information in a civil or criminal proceeding. The law extends a qualified privilege for nonconfidential news. ■

Daily Campus News Office Searched

Judge Cites Connecticut Statute in Response to Search Warrant

CONNECTICUT — Campus police at the University of Connecticut searched the student newspaper office in April after a judge issued a warrant that cited a Connecticut statute allowing newsroom searches if the property being searched “constitutes an instrumentality of a crime.”

The incidents leading up to the search of the *Daily Campus* began in February when a female student at the university reported being attacked and threatened by an unidentified male.

“All of the incidents that she reported implied violence but she was never physically harmed,” said Major Donn Herindeen of the campus police department.

A series of classified advertisements then appeared in the *Daily Campus* that threatened the victim with violence. Campus police initially thought that the woman might have been placing the ads herself.

“We had some doubts about the scenarios that she gave us. Some of the facts didn’t add up,” according to chief of campus police Robert Hudd.

In an effort to obtain fingerprints, the campus police then asked the newspaper for the classified ad form that was completed by the individual who placed the ad. The *Daily Campus* refused to allow Hood to take the form because they felt that no part of the newsroom should be searched. Herindeen then sought a search warrant.

“We went to [the court] on Friday to obtain a search warrant. The following Monday we received the warrant from the judge to get the item [classified ad form] that was requested,” explained Herindeen.

After campus police obtained the classified ad form, they sent it to the state crime lab in Meriden for a finger-

obtain news information.

A statute in the state’s criminal procedure code allows for a police search of a news organization when the “property [named in the search warrant] constitutes contraband or an instrumentality of a crime.”

Ralph Elliot, an attorney for the *Hartford Courant* feels that this was a situation that clearly fell under the exception in the statute.

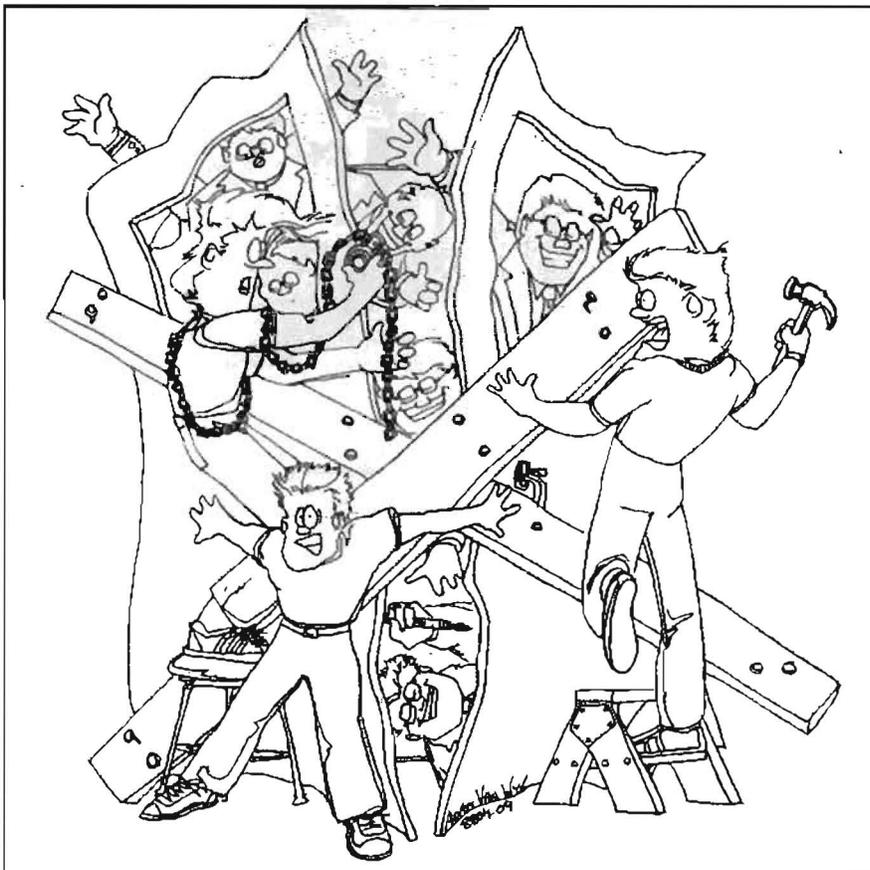
“I think the nature of the incident called for the search warrant. The individual was clearly in danger of great physical harm,” said Elliot.

The Connecticut statute was written in light of the U.S. Supreme Court decision in *Zurcher v. Stanford Daily*, where the Palo Alto, Calif., police department searched the student newspaper at Stanford University with a search warrant to obtain photographs of a campus demonstration. The decision held that searching a newsroom for

criminal evidence with a warrant is not a violation of the First or Fourth Amendment.

In response to the search, *Daily Campus* editor Jason Kauppy said that this was a distinctive situation.

“We were inclined to help the police as long as they produced a warrant. We were not that concerned from the start [about the search] since it was only a business document, not a search of the entire newsroom,” said Kauppy. ■



print check. The lab affirmed Herindeen’s original speculation that the woman who reported the assaults was the person who had placed the ads.

“We were definitely dealing with a deep psychological problem with this woman. Luckily, we were right about our initial hunch,” said Herindeen.

Judge Jonathan Kaplan was the superior court judge who authorized the search warrant. Kaplan described this case as an unusual one that should not be confused with cases where police try to

Defense Dept. Guard Confiscates Film

MARYLAND — Their day began innocently enough. Two University of Maryland at College Park journalism students packed up their camera gear and drove to the outskirts of town.

They were filming a segment for a campus news program. Their subject was the university's Science and Technology Center, currently under construction in Bowie.

"It was just kind of a fluff story, no big deal," according to their professor, Chet Rhodes.

The site was little more than a deserted field, "mostly dirt" with an "old farmhouse," said Lorie Wimpee, a first year graduate student who was delivering standup. In the background stood the Supercomputing Research Center (SRC), which is run by the Institute for Defense Analysis and does work for the National Security Agency.

Wimpee thought the SRC would make a good backdrop.

"We shot for about 10 minutes," said Wimpee. As they were finishing up, a security guard appeared.

"She said she had just talked to her supervisor and had to have the tape," Wimpee said. The guard told Wimpee's cameraman she was from 'an agency of the Department of Defense.' The cameraman handed over the tape.

Wimpee had talked to the guard a week earlier and asked about taping. The guard told her she would need clearance if she wanted to film inside the security gate, but it was all right to film from the sidewalk near the driveway, Wimpee said.

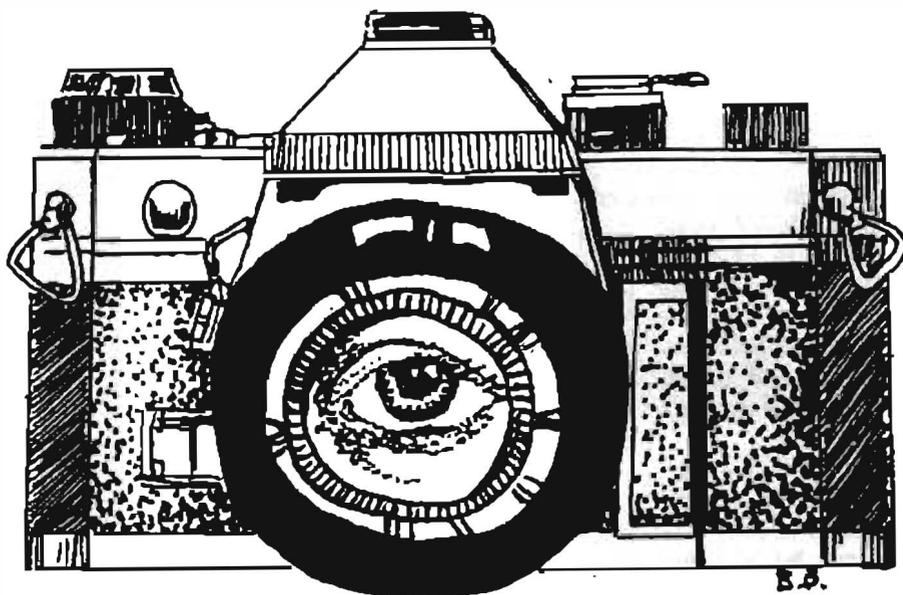
"I started thinking, am I ever going to get this back?," Wimpee said.

Wimpee asked the guard if she could put her name on the tape. The guard refused.

Wimpee asked for the guard's phone number. The guard told her she would have to call her supervisor.

Wimpee asked for the supervisor's number. The guard said, "I can't tell you."

"How can I call you?," Wimpee asked.



"I started thinking, am I ever going to get this back?"

Lorie Wimpee
University of Maryland Journalism Student

"It turned out to be an excellent classroom activity in trespass and freedom of the press."

Chet Rhodes
University of Maryland Journalism Professor

"Okay, I'll give you my number," the guard gave in.

Back on campus, Wimpee told Rhodes about the incident.

"I was quite upset," Rhodes remembers. He alerted the university's lawyers, then placed a quick call to the SRC.

Rhodes' powers of persuasion seemed to work wonders.

"They basically admitted they made a mistake and told us they would return the tape the next day," he said.

"I said, 'well, how about [returning

the tape] today,'" said Rhodes.

A few tense exchanges later, the SRC agreed to release the tape and Wimpee picked it up later that day.

"It turned out to be an excellent classroom exercise in trespass and freedom of the press," said Rhodes.

Wimpee also feels she learned from the ordeal.

"I definitely would never give up my tape again," she said. "I just couldn't believe it, it was ridiculous." ■



Kan. Court Recognizes Privilege *Reporter May Avoid Revealing Source*

KANSAS – A state district court has conditionally extended a privilege against compelled disclosure of a confidential source to a reporter for the Wichita State University *Sunflower*.

But the judge's order is a double-edged sword for reporter Jeff Fast because it directs Fast to turn over the notes and drafts of his May 9 story to the judge for review.

Fast was subpoenaed by James and Jane VanMilligen, who have filed a \$2.1 million lawsuit against the university, the Kappa Sigma fraternity and the fraternity's members.

The couple has alleged that the fraternity members trespassed on their property, harassed them and conspired to inflict emotional damage upon them. The VanMilligens also allege that the

university failed to control the conduct of the fraternity members.

The VanMilligens contend that Fast acquired confidential information as a reporter that would be helpful in their lawsuit and want Fast to disclose this information in a deposition.

If Judge M. Kay Royse determines that the confidential source in Fast's story is a party to the lawsuit, Fast may not assert a privilege against giving a deposition, the judge said.

Pat Doran, Fast's attorney, said that he will ask Royse to reconsider her June 11 order in an attempt to protect Fast from having to turn over his notes or drafts of his story.

Doran said that if Royse denies his petition for reconsideration, he may appeal the judge's order to a higher court. He added that if the VanMilligens try to depose Fast before the judge rules on the reconsideration, he will seek an order from the court to protect Fast from having to testify.

In her order, Judge Royse extended a qualified privilege to Fast to refuse to disclose confidential sources or information. The judge based the reporter's privilege on the First and 14th Amendments.

However, the judge stated that recognition of the privilege must be balanced against the VanMilligens' right to acquire evidence. Royse ruled that the privilege protected Fast from disclosing sources or information that the couple could acquire from other sources or that was irrelevant or immaterial to their case.

But Royse noted that the confidential source used for Fast's story was described as a Kappa Sigma alumnus and that several members of the fraternity are parties to the lawsuit. Royse added that Fast should not be used "by a defendant to circumvent appropriate discovery proceedings in this court."

Royse said that if her review of Fast's notes and drafts of his story reveal that the confidential source is a party to the lawsuit, the reporter's privilege will not apply.

If the source is not a defendant in the lawsuit, Fast will be protected by the privilege. ■



San Jose St. Campus Police Seize Film

CALIFORNIA — A photographer for the San Jose State University student newspaper has decided not to pursue legal action after a campus police officer seized film he shot at the scene of a pipe bomb explosion on campus this spring.

Kelley Chinn, a photographer for the *Spartan Daily*, said after all the bad publicity the SJS police force received following the incident he was satisfied they "wouldn't do anything like it again."

Chinn did file an official complaint against the officer, and the police force responded with an internal investigation. They drafted a letter announcing their conclusions three weeks later.

"They never admitted they did any-

"The UPD officer threatened me with handcuffing me...throwing me in the back of the squad car and taking me to jail...."

Kelley Chinn

thing wrong," Chinn said. But he added, "I've pretty much put it past me now."

Chinn said he arrived at the scene of the explosion shortly before noon on April 18. The pipe bomb had exploded around 2 a.m. the previous day.

When he pulled out his camera, Chinn said, agents from the Federal Bureau of

Alcohol, Tobacco and Firearms told him he could not photograph them.

Chinn said he agreed with their orders and took photos only of the scene and university investigators. But a university officer told him to hand over the film, he said.

"The UPD officer threatened me with handcuffing me, arresting me, throwing me in the back of the squad car and taking me to jail if I didn't hand over the film to the federal agent," he told a reporter for the *San Jose Mercury News*.

The officers took the film and returned it to Chinn a day later with one frame that showed the face of an undercover officer clipped. ■



Student Journalist Jailed Pleads "Not Guilty" to Disorderly Conduct Charge

NEW YORK — David Galarza, editor of the *Seawanhaka* at Long Island University in New York, has pleaded not guilty to a disorderly conduct charge stemming from a demonstration where he was arrested by New York City police while taking pictures of officers arresting student demonstrators.

Galarza was taking photos and covering the speech of New York City College philosophy professor Michael Levin given at Long Island University. A demonstration broke out in response to Levin's paper "White Fear of Black Crime is Morally and Epistemically Justified." Galarza began taking pictures of New York City police officers arresting protestors.

"At times, there were five or six police on one kid. There were a lot of people getting really beat up by the officers," said Galarza. Galarza also stated that he was not interfering with the arrests while they were taking place.

When an officer noticed that he was taking pictures, Galarza was arrested

and his film was intentionally exposed by the arresting officer. Galarza spent four hours in a detention center "handcuffed to a wall" before he was released.

Attorney Ronald Kuby, who is representing Galarza, does not think that the case will go very far in court.

"I have no doubt that the charges will be dismissed. In cases like this where a number of people are arrested [at demonstrations], the charges are just dismissed when they get to court. Unfortunately, [that outcome] does not address the First Amendment issue [concerning the arrest of a journalist and the destruction of Galarza's film]," said Kuby.

Kuby said that plans for filing a lawsuit against the city are "somewhat premature at this point."

"To file suit in a city like New York, you need to prove a great degree of brutality with some type of serious injury," said Kuby.

At press time, Galarza's court date has not been set. ■

Student Body President Withdraws Subpoena for Notes

ILLINOIS — Defense attorneys representing Illinois State University student body president Dan Schramm decided that a First Amendment dispute was not what they wanted for their client, who was arrested for burglary in an incident at the Bloomington campus in 1989. Thus they withdrew a subpoena in April that demanded the reporter's notes from a story describing that Schramm had confessed to the burglary.

Student body president Dan Schramm was arrested on charges that he broke into his own fraternity house and stole approximately \$5,000 worth of computer and video equipment. Kent Dean, a reporter for the campus newspaper, the *Daily Vidette*, covered the story. In the story, Dean reported that Schramm had signed a "confession" the night he was arrested. Schramm, through his attorney, subpoenaed Dean's notes relating to the story to use for his case in court. Counsel for Schramm felt that the confession would jeopardize his client's case.

Following a series of editorials concerning the subpoena written in local newspapers, the incident quickly turned into a classic First Amendment dispute.

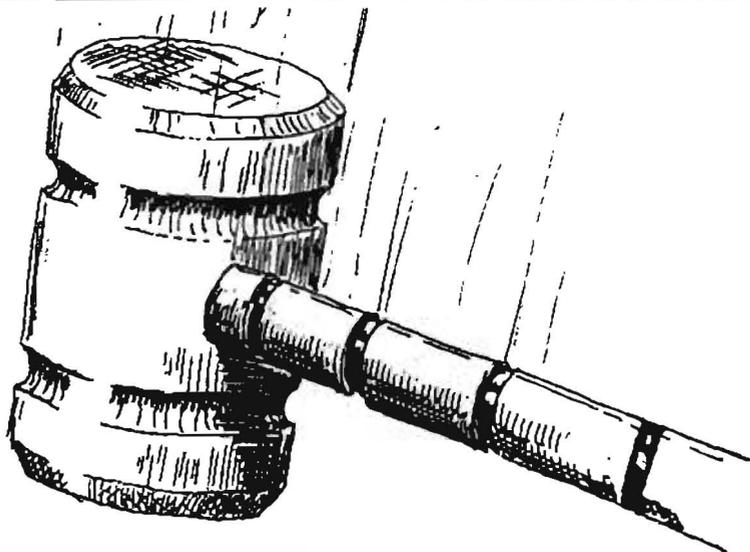
"The defense attorneys approached me wanting to talk about the case," said Fred Moore, attorney for Dean.

"We concluded that anything of any relevance to their case was printed in the story. Anything he [Dean] had, went into the story."

Following the meeting, attorneys for Schramm decided to withdraw the subpoena requesting Dean's notes.

"It was basically a no-win, no-lose situation for both sides," said Moore.

Schramm went on to be sentenced to 60 days in the county jail for the burglary. ■



Nude Dancing Club Ad is Protected, Court Rules in Michigan College Case

MICHIGAN — A community college cannot prohibit a student newspaper from running an ad for a nude dancing club, a federal court ruled in February.

The decision in *Lueth v. St. Clair County Community College*, 732 F. Supp. 1410 (E.D. Mich. 1990), marks the second federal court decision to refuse to apply the *Hazelwood* case to college newspapers.

Elizabeth Lueth, former editor of the *Erie Square Gazette* at St. Clair County Community College in Port Huron, filed suit against the school in 1988 after a dean told her that she could no longer publish an advertisement for Cheri Champaigne's, a club in neighboring Sarnia, Ontario, Canada. The ad noted that the Canadian drinking age was 19 and that the club's dancers were totally nude.

In holding that the school's action was an infringement of the editor's First Amendment rights, the court raised the Supreme Court's 1988 decision in *Hazelwood School District v. Kuhlmeier*, which upheld censorship by high school officials of stories about teen pregnancy and divorce from a student newspaper. In contrast to the situation in *Hazelwood*, the court said St. Clair County Community College had created the *Gazette* as a "forum for public expression" and thus was significantly limited by the

First Amendment in its ability to censor. The court noted that the *Gazette* was not produced as part of a class but rather was an independent student activity, that no faculty member controlled the publication and that the newspaper was distributed throughout the community and solicited community advertisers. In addition, the court found that the paper's own rules and regulations gave content controls to the student editor.

A U.S. Court of Appeals in Massachusetts ruled last year in *Student Government Association v. Board of Trustees*, 868 F.2d 473 (1st Cir. 1989), that *Hazelwood* "is not applicable to college newspapers."

In Lueth's case, the court said that under Supreme Court decisions relating to restrictions on commercial advertising, the school's argument that the advertisement was "degrading to women [and] promoted drinking to students at the College not of legal drinking age" demonstrated a significant interest on its part. But the court said that the regulatory mechanism being used by the school to support that interest, randomly censoring advertisements in the newspaper, was not "narrowly tailored to serve the [college's] interest."

A trial is expected this fall on what money damages Lueth is entitled to as a result of the First Amendment infringement. ■

UMW Post Files Suit Against University Over Rules

WISCONSIN — Ten students at the University of Wisconsin at Milwaukee and the student newspaper, the *UWM Post*, have filed a lawsuit against the university's board of regents to stop the school from enforcing a portion of the student disciplinary rules that ban expressions considered "discriminatory." This case marks the first time in recent years a student newspaper has sued a school over one of the growing number of anti-harassment policies created to respond to the problem of racism on campus.

The complaint was filed in federal district court last March by the newspaper and the ten students, all of whom are student leaders including the president of the UWM student association. The complaint stems from a set of rules that were passed by the school's board of regents in the summer of 1989. The new rules prohibit any "racist or discriminatory comments or other expressive behavior" directed at an individual that intentionally "demean" the individual's "race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry or age" and that "create an intimidating, hostile or demeaning" university environment.

According to the American Civil Liberties Union (ACLU), the rules inhibit the free expression of ideas on the university campus and are so vague that students cannot determine in advance what expression is prohibited. The ACLU is representing the students through a law firm in Madison.

A similar case was decided last Sep-

COURTS

tember in Michigan where a federal district judge deemed the University of Michigan's anti-harassment policy unconstitutional. The judge, in his opinion, said that the policy was "broad" and "overly vague."

Theresa Flynn, one of the plaintiffs in the suit and *UWM Post* editor, hopes that the lawsuit will bring awareness to the student body.

"All of us [that filed suit] hope that the legal action will define free speech rights on our campus," said Flynn. She also thinks that the new rules would directly affect the newspaper's coverage of certain events.

"We have a [large number] of Palestinian and Israeli students on our campus. When covering stories relating to those students, we would have to be very

concerned [about breaking the rules]." Flynn said that she is also concerned that the newspaper's coverage of racial conflicts on campus could be used as evidence in prosecuting others under the rules.

"We wouldn't want that," said Flynn.

A court date for the case is expected to be announced in the fall. ■



Six-Year Court Case Ends Romano Decides to Settle Out of Court

NEW YORK — The former adviser to the student newspaper at Port Richmond High School has settled out of court for an undisclosed amount of money in a case that he filed against the New York City School District six years ago when he was fired.

Michael Romano was released as adviser to the *Crow's Nest* when the newspaper ran a student's editorial criticizing the creation of a federal holiday for Martin Luther King Jr. Romano sued on behalf of the student reporters, claiming that his removal prevented them from exercising free speech. Throughout the legal proceedings, Romano kept his tenured job as teacher at the school but was never reassigned to advise the newspaper.

According to Paul Janis, attorney for Romano, the case would not have won in court.

"It is probably better that it ended this way [with an out of court settlement]. With a case like this, [the outcome] depends on the judge, and Spatt [U.S.

District Court Judge Arthur Spatt, the judge that would have presided over the proceedings] would have relied on *Hazelwood* to make his judgement. That would not have been good for our case," said Janis.

U.S. District Court Judge Raymond Dearie refused to dismiss the case in favor of the school district in November 1989. Dearie's opinion in *Romano v. Harrington*, 725 F. Supp. 687 (E.D.N.Y. 1989), said that the editorial control by school officials allowed in *Hazelwood* applied only to newspapers that are part of the school's classroom curriculum. Romano wishes that the case could have kept its momentum.

"It's really the courts that ruin the legal system. Dearie gave us some good law but I am not sure that we would have prevailed at trial," said Romano.

Romano has since been appointed as a guidance counselor at another Staten Island high school. He said that the move was not related to the litigation. ■

CSULA Adviser Settles Out of Court

CALIFORNIA — Mark Haeefe, former publications manager at California State University at Los Angeles, has accepted a \$500 settlement for damages stemming from a dispute he had with university officials following his April 1989 dismissal.

Haeefe threatened to file suit after reading quotes in *The Los Angeles Times* which said that he was fired for "unsatisfactory job performance" and allowing "too many errors" in the school's publication. The statements were attributed to Charles Simmons, the newspaper's faculty adviser and Keith Henning, then-chairman of the communications department.

Haeefe originally planned to sue the university for loss of his job and Simmons and Henning for libel.

The university agreed to retract the statements and paid Haeefe \$500 in March. Haeefe received the money in late June.

"I'm a lot happier now," said Haeefe, who is currently employed as a writer for KCET public television in Los Angeles.

Haeefe was the second person fired from the same job within a one year period. Joan Zyda, who preceded Haeefe, filed charges against the university in March 1989. Zyda charges she was unlawfully terminated in April 1988 and that the school violated her First Amendment rights as an advocate for the student press. ■

Pace University Dean Sues Newspaper

NEW YORK — A former Dean for Students at Pace University is suing the university's student newspaper and the paper's editor and faculty adviser for libel over an article, a cartoon and an April Fools' Day issue.

Maryanne Dimarzo claims that editor Grace Guiffrida intentionally and maliciously printed defamatory information about Dimarzo. She says faculty adviser Donald Ryan allowed such information to be printed in *New Morning*. Dimarzo's complaint also accuses other employees of the university of making death threats, conducting surveillance and other harassments against her.

Dimarzo was Dean for Students at the Westchester campus of Pace. In November 1989, Robert Heywood, a popular assistant dean on campus, resigned. Heywood officially said he left for personal reasons. However, rumors circulated that he was forced out by Dimarzo and University President William Sharwell. Students held rallies and protests against Dimarzo, and *New Morning* printed several articles and a cartoon about the situation. Dimarzo later became Dean of Student Services and eventually took a leave of absence.

Dimarzo's complaint alleges that Guiffrida and Ryan published an inaccurate article on the front page of the newspaper that said Dimarzo was responsible for the firing of Heywood and that she "utilized an improper relationship with President Sharwell of Pace University to effectuate said firing." The complaint also claims that the article "irresponsibly alleg[ed] that President Sharwell was [Dimarzo's] 'Godfather.'"

The alleged libelous section of the article reads, "More than one source has told 'New Morning' that they believe Sharwell, who is Dimarzo's 'Godfather,' may have taken a special interest in Heywood's resignation because of the Dean [Dimarzo]."

Dimarzo is also suing over a cartoon that appeared in the same issue of the newspaper, which the complaint calls



"ethnically libelous." The complaint says the cartoon depicts Dimarzo and Sharwell in a "Mafia like atmosphere," with Dimarzo stating to Sharwell, "But Godfather, how are we going to get rid of Heywood?" Sharwell replies, "Don't worry — I'll make him an offer he can't refuse!"

Both the article and the cartoon, the complaint states, "were false and malicious, and they were known by Guiffrida and Ryan to be false when they were made and when they were published in the 'New Morning' of December 1989."

The complaint alleges that Guiffrida is also responsible for producing an April Fools' issue of the paper, entitled *New Moaning*, "with the sole purpose of harassing [Dimarzo]." The complaint adds that "within said publication, [Dimarzo's] name appeared in most articles, and confidential information

regarding [Dimarzo's] family, known only to those with access to [Dimarzo's] personal file, were disclosed. [Dimarzo's] mother's name and friends of the family were mentioned in the newspaper." These references to Dimarzo and her family, the complaint argues, "wrongfully and maliciously intended to injure [her] by holding her and her family up to public ridicule."

According to the complaint, Guiffrida and Ryan also refused to publish letters of support for her that the paper received.

Dimarzo also claims intentional infliction of emotional distress against Guiffrida for running the article, cartoon, and April Fools' issue.

Ryan responds that his role is only that of an adviser to *New Morning* and that he does not censor anything the students want to include. In any case, he claims that all the information in the

ADVERTISING/ADVISERS

article was based on reliable sources, and that both the cartoon and the April Fools' issue were protected statements of opinion and not libelous.

"This is just a nuisance suit," he claims. I think they're looking for some kind of settlement. I have been advising the paper for 18 years and we take libel very seriously. We don't shoot from the hip."

He claims the information about Dimarzo being responsible for Heywood's resignation came from Heywood himself. As for the alleged relationship between Dimarzo and Sharwell, Ryan says "We never hinted at any possible romantic relationship." The reference to a "relationship," he claims, was based on a public statement by Dimarzo in which she said about Sharwell, "I'm proud to be friends."

The "Godfather" quote, Ryan says, came from a statement Sharwell made at a university function a year and a half ago that was heard by a *New Morning* reporter. Sharwell said about Dimarzo, "I'm her godfather." Ryan states that the reporter who heard the statement took it literally and believed it to be true.

The cartoon, Ryan states, is obviously

opinion and thus cannot be libelous. Furthermore, he believes that the public conception of a "Godfather" has changed. "'Godfather' has replaced 'Rabbi' as meaning someone who has power and is willing to use it on behalf of a friend or relative." Finally, Ryan mentions that the cartoonist, like Dimarzo, is of Italian descent.

In response to the allegation that *New Morning* refused to print letters in support of Dimarzo, Ryan says this assertion is untrue. He claims the paper received only one very long "letter to the editor" supporting Dimarzo. Although the letter was edited, Ryan states "We printed all the criticism [of the newspaper's coverage]." The only other letters supporting Dimarzo or critical of the paper were addressed personally to Guiffrida and/or Ryan, and their authors did not indicate they wanted them printed in the newspaper, according to Ryan.

Ironically, Ryan adds that *New Morning* received awards at two college press competitions for issues that included the Dimarzo coverage.

Ryan says they plan to file a motion for dismissal of the case. ■

Athmann Done Fundraising; To File Lawsuit

INDIANA — Marilyn Athmann has now given the green light to her attorney after raising the \$25,000 needed to contest her dismissal from the post of yearbook adviser at Ben Davis High School in Indianapolis.

Headed by Athmann's sister, Winifred Pushor, the Athmann Legal Defense fund has been soliciting donations since December. The fund reached its goal in late June.

Athmann believes she was dismissed as yearbook adviser for her refusal to turn over the direction of the yearbook football pages to the athletic director and the football coach following Ben Davis's 1987 state title.

Dr. James W. Mifflin, principal, disagrees with Athmann's position.

"It's not a First Amendment issue at all; it's a teacher evaluation situation," he told the Dow Jones Newspaper Fund's *Adviser Update* in May.

Athmann's attorney Richard Cardwell said the first round of legal action is now "in the works."

Athmann received the Indiana High School Press Association's "Adviser of the Year" award in 1989 for her work with the Ben Davis high school yearbook. ■

Congress Debates Campus Bills

Tobacco Ad Restrictions Stalled in Committee

WASHINGTON, D.C. — A bill that could prevent advertising of tobacco products in college and university newspapers has stalled in the Senate Energy and Commerce Committee.

Introduced by Rep. Jim Bates, R-Calif., the bill aims to prohibit the advertising of all tobacco products in publications "directed primarily to those under 21 years of age, including school, college or university media."

No further action on the bill has taken place since its introduction in February. ■

Copyright Bills Move Forward; Await Vote in House

WASHINGTON, D.C. — Two bills that would make state colleges and universities subject to copyright infringement lawsuits have continued to move forward in the legislative process.

The Senate passed the House version of the bill in June, introduced by Rep. Robert Kastenmeier, D-Wis. The Senate also added an amendment introduced by Sen. Dennis DeConcini, D-Ariz. The bill, with the addition, has now returned to the House for approval.

Education lobbyists have opposed the legislation arguing that copyright infringement is not widespread in public institutions. ■



ADVISERS



Maryland Yearbook Adviser Suspended

School Officials Hold Him Responsible for Controversial Senior Captions

MARYLAND — With his 22-year teaching career on the line following publication of three questionable captions in the 1990 Bowie High School yearbook, adviser Donald Watson finds himself asking the question, "Why me?"

"I wish I knew the answer to why this happened like it did," said Watson. "It was insane right from day one."

In late May, Watson was suspended without pay after school officials found the word "nigger" spelled in reverse and the word "fuck" among the senior captions in the yearbook. After Watson was suspended, school administrators discovered a third caption in which a male student used the word "c-nts" to describe his female peers.

Bowie Principal John Hagen described the yearbook incident as an "unfortunate setback" in a year in which the school had been trying to quell racial tensions that came to a head in February 1989 when black students walked out to protest racial problems at the 970-student school.

"Perhaps we are not reading this docu-

ment as carefully as we should," Hagen told a local reporter. Hagen added that as principal he must accept part of the blame for the publication.

But Prince George's County Schools Superintendent John A. Murphy maintains that the ultimate responsibility for the yearbook lies with the adviser.

Watson is a 22-year teaching veteran who was once Bowie's teacher of the year. In 1989 the yearbook he advises won a second-place award in Columbia Scholastic Press Association's national yearbook competition.

Ironically, Watson said he had tried for the last two years to get rid of the yearbook captions, which are submitted by the seniors, but the principal would not let him.

"It's impossible for an adviser with a full teaching load to read all the captions as carefully as the job demands," Watson said. "There were never any standards or direction, never anything but 'meet the deadlines.'"

Watson has received strong support in the community. Seniors wore black

arm-bands to school to protest his firing, more than 300 supporters carrying black balloons with the slogan 'reinstata nostaW' (Watson spelled backwards) attended a June school board meeting and 74 teachers signed a petition pro-

"There were never any standards or direction, never anything but 'meet the deadlines.'"

Donald Watson

testing his dismissal.

Watson's immediate fate may be decided in hearings before school begins this fall. In preparation for his defense, Watson and his attorney compiled a report of similar language in local yearbooks. Watson discovered that the 1990 Bowie captions were far from an isolated phenomenon.

"We found 10 or 11 books with racial slurs," Watson said. "Sixteen out of the 19 books which came out in the county this year contained filthy, vulgar language." ■



*Just When You Thought Your
Money Was Safe...*

The Tax Man Came

Suppose your high school or college newspaper plans to buy new computers or photographic equipment with money raised by the sale of advertising. The equipment will improve the quality and

continued on page 42

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continued from page 41

efficiency of your newspaper. But then you get a call from the school's business manager, who advises you to hold up any such purchases because the income generated by the sale of advertising may be subject to federal income tax. If the income is taxed, says the business manager, the school will require that the taxes be paid out of the newspaper's advertising income. Any money left after taxes could then be used to purchase equipment, adds the business manager.

Is there any way to avoid this situation? Does your school or your publication itself have to pay taxes on the income raised by advertising in your newspaper or other student media? Fortunately for the student press, most high schools and colleges will be exempt from paying taxes on this advertising income. Public schools generally are exempt from paying taxes because they are governmental entities. For private schools, the courts and the Internal Revenue Service focus on the level and nature of student involvement in the solicitation and sale of advertising to determine whether the advertising income from student media is subject to taxation.

Under federal tax law, organizations

that are "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes" are exempt from paying federal income taxes.¹ Private high schools and colleges take advantage of this exemption to avoid paying federal taxes.

However, educational organizations may not exploit their tax-exempt status by generating income from sources that are unrelated to their purpose. Before 1950, some private universities used their tax-exempt status to avoid paying taxes on income from the production of automobile parts, chinaware and food products, and the operation of theaters, oil wells and cotton gins.²

In response to perceived abuses of the tax laws, Congress in 1950 imposed a tax on the income that a tax-exempt organization receives from any "unrelated trade or business ... regularly carried on by it."³ The new tax law sought to restrain unfair competition by tax-exempt organizations with private for-profit industries.

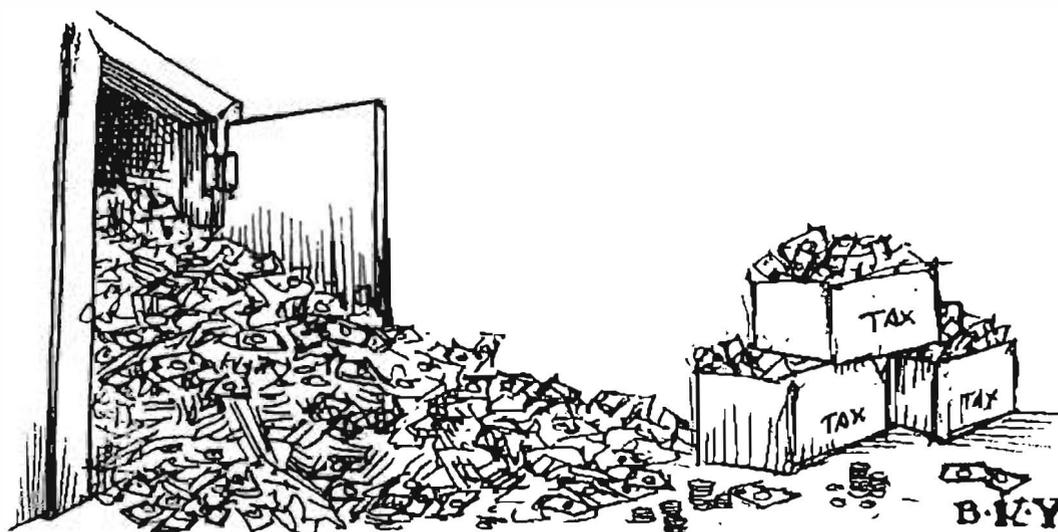
The Internal Revenue Code defines an "unrelated trade or business" as "any trade or business the conduct of which is not substantially related ... to the exercise or performance by such organiza-

tion of its charitable, educational, or other purpose."⁴ The tax code sets up a three-part test for determining whether the advertising income from a publication of a tax-exempt organization is taxable: (1) whether the publication of paid advertising is a "trade or business," (2) whether it is regularly carried on, and (3) whether it is substantially related to the organization's tax-exempt purposes.

The tax code explicitly describes advertising as a trade or business.⁵ The Treasury Department's Regulations, which represent the position of the IRS as to how the tax code should be interpreted, provide that business activities are "regularly carried on" when they "manifest a frequency and continuity, and are pursued in a manner, generally similar to comparable commercial activities of nonexempt organizations."⁶

In the context of student media, advertising income probably would meet the first two parts of the test for unrelated business taxable income. However, advertising income still will be exempt from federal taxation if it is substantially related to the educational purpose of the tax-exempt organization.

The leading court decision on whether advertising income is substantially related to a tax-exempt organization's



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purpose is *United States v. American College of Physicians*.⁷ In that case, the Supreme Court said that commercial advertisements in a medical organization's journal were not substantially related to the journal's educational purposes. In addition to scholarly articles on internal medicine, the journal published advertisements for pharmaceuticals and medical supplies and equipment. Each issue also contained notices of available medical positions.

The Court held that the income derived from advertising in the medical journal was taxable as unrelated business income. The Court stated that it had to ask whether the journal performed its advertising services with the intention of contributing to the educational value of the journal. In ruling that this was not the journal's intention, the Court stated: "[A]ny educational function [the advertising] may have served was incidental to its purpose of raising revenue."

Although the Court ruled that the medical organization should be taxed on the advertising income, it also held that the Treasury Regulations required a case-by-case analysis of whether advertising income from a professional journal is taxable. Thus, the Court recognized that advertising income generated by a pub-

lication of a tax-exempt organization may be exempt from taxation in some circumstances.

In addition to the Supreme Court's decision in *American College of Physicians*, the IRS has addressed whether the advertising income of a tax-exempt organization is taxable. In Revenue Ruling 73-424, 1973-2 C.B. 190, the IRS said that advertising income was taxable where a tax-exempt organization contracted with a commercial firm to solicit and sell advertising for a yearbook. The IRS reasoned that this sale of advertising did not vary from the "customary commercial practice in any material respect." The ruling noted that employees of the organization prepared the editorial content of the yearbook.

In Revenue Ruling 75-201, 1975-1 C.B. 164, the IRS recognized the exception in the tax law for the sale of advertisements by volunteers.⁸ In this ruling, members of a volunteer committee solicited and sold advertising for an annual concert book that was distributed at a charity ball. The advertising raised revenue for a tax-exempt symphony orchestra. The ruling stated that the sale of advertising by volunteers did not constitute a trade or business "regularly carried on," and therefore income derived from the sale of advertising was not taxable as unrelated business income.⁹ Thus, if volunteer students solicit and sell advertising for the student media, the income probably would not be taxed because of the tax law's exception.

In Revenue Ruling 81-19, 1981-1 C.B. 240, the IRS noted a second exception in the tax code to the unrelated business taxable income: When a trade or business is carried on by a tax-exempt organization "primarily for the convenience" of its members, students, officers or employees, the organization is not required to pay taxes on this income.¹⁰ The IRS ruled that food vending services and a laundromat operated primarily for the convenience of students and faculty did not generate taxable income for the tax-exempt university. An organization formed by the university operated these services.



The ruling added that the food vending services and laundromat "are an integral part of the exempt activities of the university, and the organization furthers the educational program of the university by operating facilities for the convenience of the university community."

Under the principle of this IRS ruling, schools could argue that the student media are operated primarily for the convenience of students and faculty because they disseminate information about the campus and community. Schools could assert that advertising income helps fund the student media, and thus the sale of advertising is primarily for the convenience of students and faculty because it results in the dissemination or publication of the student media.

However, no revenue ruling or case has addressed whether the student media, and the advertising income generated by it, are primarily for the conven-

Three-point Test to Determine Taxable Unrelated Business Income:

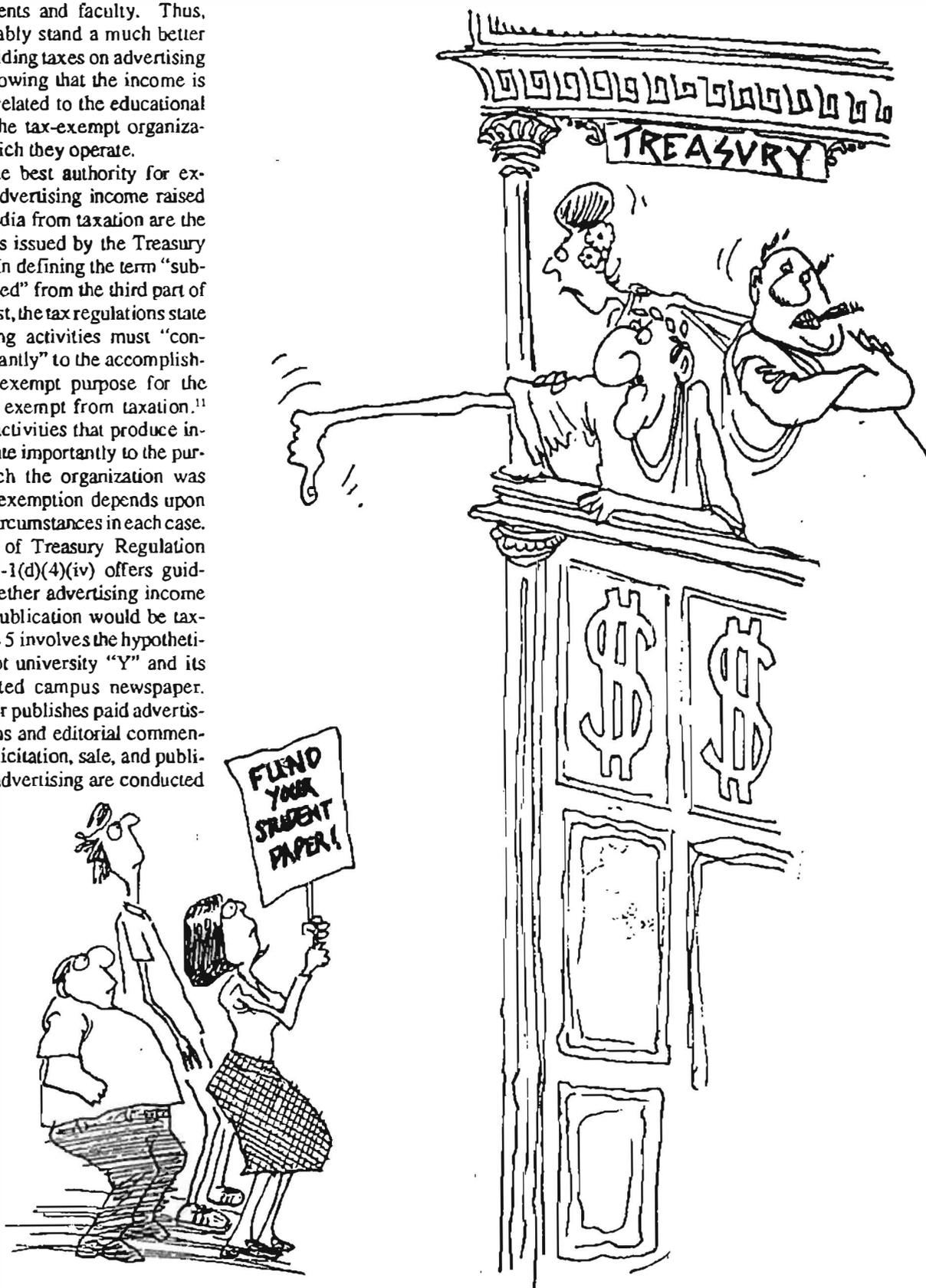
- 1) Whether the publication of paid ads is a "trade or business"***
- 2) Whether it is regularly carried on***
- 3) Whether it is substantially related to the organization's tax-exempt purposes***

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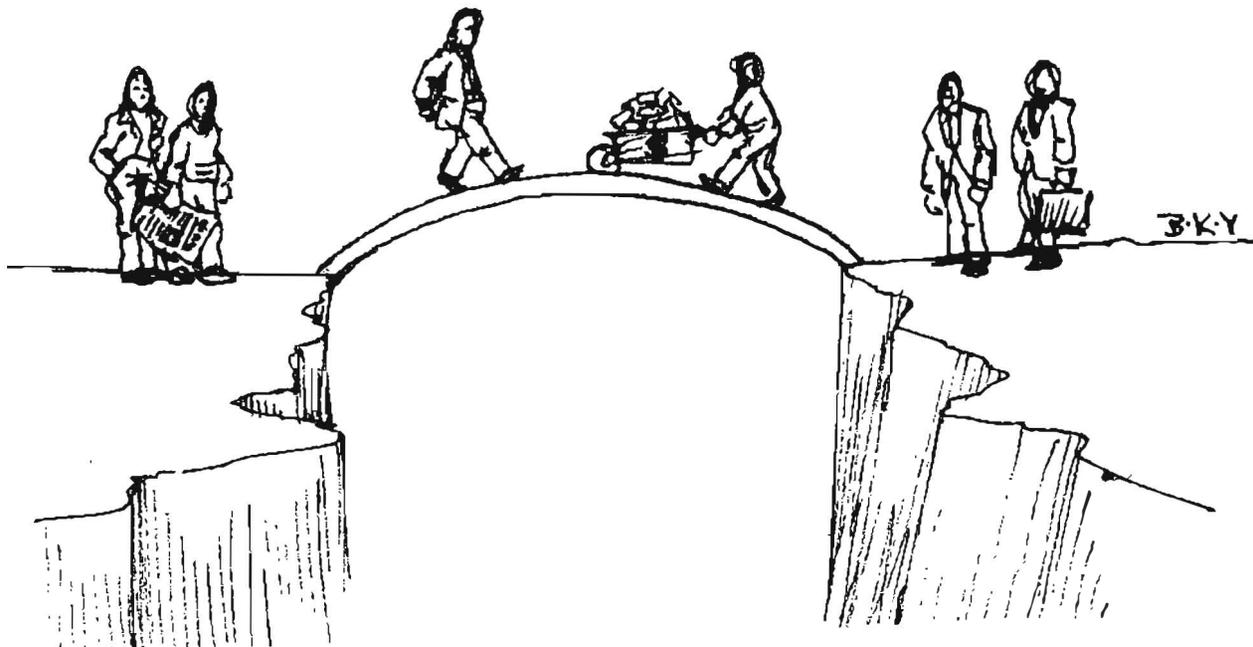
ience of students and faculty. Thus, students probably stand a much better chance of avoiding taxes on advertising income by showing that the income is substantially related to the educational purposes of the tax-exempt organization under which they operate.

Probably the best authority for exempting the advertising income raised by student media from taxation are the tax regulations issued by the Treasury Department. In defining the term "substantially related" from the third part of the tax code test, the tax regulations state that advertising activities must "contribute importantly" to the accomplishments of an exempt purpose for the income to be exempt from taxation.¹¹ Whether the activities that produce income contribute importantly to the purpose for which the organization was granted a tax exemption depends upon the facts and circumstances in each case.

Example 5 of Treasury Regulation Section 1.513-1(d)(4)(iv) offers guidance as to whether advertising income of a student publication would be taxable. Example 5 involves the hypothetical tax-exempt university "Y" and its student-operated campus newspaper. The newspaper publishes paid advertising, news items and editorial commentary. The "solicitation, sale, and publication of the advertising are conducted



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instruction of the university," states the Treasury Regulation.

The example adds: "[T]he services rendered to the advertisers are of a commercial character [but] the advertising business contributes importantly to the university's educational program through the training of the students involved." Under these circumstances, the Treasury Regulation concludes that none of the advertising income derived from publication of "Y's" newspaper constitutes taxable unrelated business income.

The same Treasury Regulation adds that income generated by a student newspaper would be exempt from taxation even if that newspaper is published "by a separately incorporated [tax-exempt] organization." Thus, a high school or college newspaper that is a separately incorporated tax-exempt organization would be exempt from federal taxation on income derived from advertising, as long as the solicitation, sale and publication of the advertising are performed by students. The Treasury Regulation example states that the exemption still will apply if the organization uses "its own facilities and is independent of faculty supervision, but carries out its educational purposes by means of student instruction of other students in the editorial and advertising activities and student participation in those activities."

Under the tax regulations, the educational benefit to students from the advertising sales and production experience is more important than the involvement of the high school or college in providing a facility or supervision. The example clearly indicates that whether the advertising income of student media is substantially related to an organization's tax-exempt status will depend upon the level and nature of student involvement in soliciting and selling advertising.

Thus, student media that employ non-students to solicit and sell advertising probably could be subject to taxation on their advertising income. For example, a student publication that has a professional business adviser or a non-student secretary who regularly solicit and sell advertising might be subject to taxation on that income. Under such an arrangement, the publication would have a hard time showing that its advertising income is substantially related or contributes importantly to its tax-exempt status as an educational organization.

When students sell and solicit the advertising and non-students produce it, the income should not be taxed because it is the solicitation and sale of the advertising that generates the income and students are involved in that effort.

When students produce the advertising and non-students solicit and sell it, the income arguably could be exempt

from taxation because the students producing the advertising still are involved in an educational experience substantially related to the purposes of the tax-exempt organization — that is, learning advertising production. However, it is possible that the IRS or courts would hold that this income is taxable because, unlike the example above, non-students are generating the advertising income.

In conclusion, student media that want to avoid federal taxation on their advertising income should make sure that students are involved in the solicitation and sale of advertising on a regular basis. If non-students are regularly engaged in the solicitation and sale of advertising, it is more likely that this income will be subject to the federal income tax. ■

NOTES

- ¹ 26 U.S.C.S. sec. 501(c)(3) (1988).
- ² H.R. Rep. No. 2319, 81st Cong., 2d Sess., 36-37 (1950).
- ³ 26 U.S.C.S. secs. 511(a)(1), 512(a)(1) (1988).
- ⁴ 26 U.S.C.S. sec. 513(a) (1988).
- ⁵ 26 U.S.C.S. sec. 513(c) (1988).
- ⁶ Treas. Reg. sec. 1.513-1(c)(1) (1967).
- ⁷ 475 U.S. 834 (1986).
- ⁸ 26 U.S.C.S. sec. 513(a)(1) (1988).
- ⁹ Compare to Rev. Rul. 75-200, 1975-1 C.B. 163 (advertising income taxed when paid employees of tax-exempt organization solicited and sold advertising).
- ¹⁰ 26 U.S.C.S. sec. 513(a)(2) (1988).
- ¹¹ Treas. Reg. sec. 1.513-1(d)(2) (1967).

FRIENDS

The Student Press Law Center gratefully acknowledges the generous support of the following institutions and individuals, without whom there might not be an SPLC, and without whose support defending the free press rights of the student press would be a far more difficult task.

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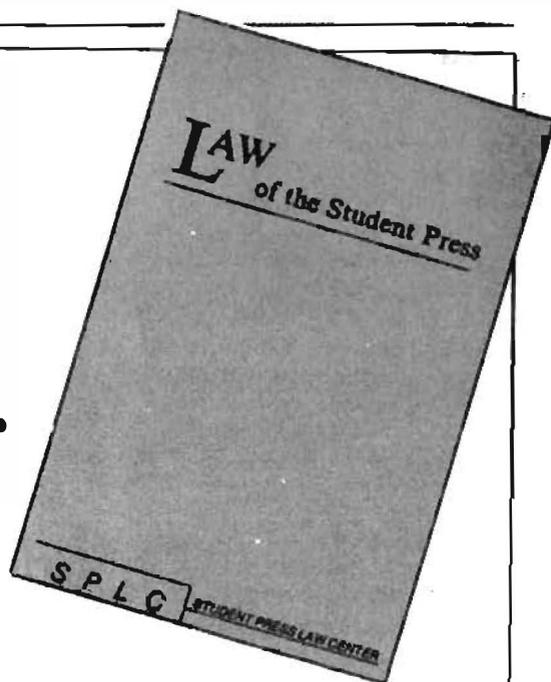
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The Report Staff

Nat Bulkley is a May graduate of Brown University. With his history degree in hand, he intends to follow his Romantic vision of setting off across the Pacific to seek his fortune. Along the way he plans to continue writing, improve his Chinese and stay out of office buildings.

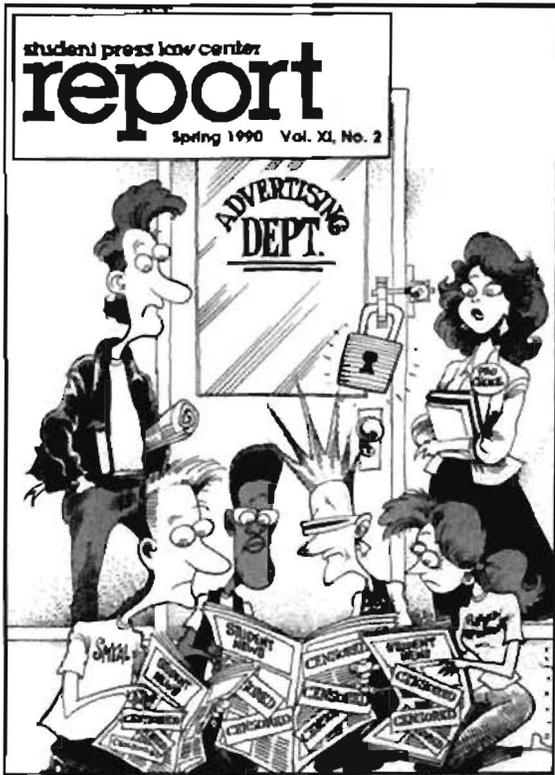
Darrin Cantrell is a senior philosophy/pre-law major at Point Loma Nazarene Col-

lege in San Diego, Calif. He has worked on his college newspaper and edited the 1989-90 yearbook. When he graduates in June 1991, he plans to attend law school in Vermont where he hopes he can enjoy cold winters and warm people.

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